THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

<u>WRIT PETITION No. 20119 OF 2007</u>

<u>O R D E R</u>:

The notice dated 08.08.2007, which demanded the petitioner to pay Rs.18,27,000/- towards three months minimum charges for the deferred 3rd phase Contracted Maximum Demand (CMD) of 2100 KVA, within 15 days from that date, is under challenge in this Writ Petition.

The brief facts, which led to filing this Writ Petition, are as follows:

The petitioner is an industrial concern engaged in the manufacture of mild steel ingots through induction furnace method. For the said purpose, the petitioner contracted with the 1st respondent Central Power Distribution Company of A.P. Limited for a maximum demand of 5400 KVA. Thereafter in November 2005, the petitioner had approached the 1st respondent seeking sanction of additional load of 4600 KVA in three phases, as under:

1) 1st phase 1000 KVA by June 2005
2) 2nd phase 2500 KVA by August 2005
3) 3rd phase 1100 KVA by November 2005

While sanctioning the said demand on 04.05.2005, the petitioner was required to pay a sum of Rs.55,20,000/- towards the development charges in 24 installments and a sum of Rs.99 lacs towards security/consumption deposit. Accordingly, the 1st phase load was released on 02.07.2005. At that stage, at the request of the petitioner, by letter dated 05.11.2005, 1500 KVA out of 2500 KVA load, which was originally slated to be released in August

2005, was released in December 2005. Thereafter, the petitioner did not seek release of the deferred 1000 KVA and the 3rd phase load of 1100 KVA, which was slated to be released in November 2005. On 15.06.2007, the petitioner addressed a letter to the 2nd respondent seeking release of the balance 2100 KVA load. Then, through the impugned notice dated 08.08.2007, the 4th respondent Senior Accounts Officer, Operation, required the petitioner to pay a sum of Rs.18,27,000/- towards the minimum charges for the sanctioned but not utilised load by quoting condition No. 26.12 of the Terms and Conditions of Supply. Aggrieved by the same, this Writ Petition was filed.

Two counter-affidavits; one on behalf of Respondents 1 to 3 and the other by the 4th respondent, have been filed. In the counter-affidavit filed on behalf of Respondents 1 to 3, it has been stated that as per Condition No. 5.9.4.3, the petitioner company is liable to pay three months charges towards deferment under the heading ***" Termination of LT Agreement and HT Agreement on account of disconnection",*** hence, the impugned notice cannot be said to be arbitrary or illegal.

Sri D.V. Nagarjuna Babu, learned counsel for the petitioner has made three-fold submissions.

1) In terms of Condition No. 5.9.2.1, the Company shall give the petitioner three months' prior notice indicating its readiness to provide supply and if the consumer fails to avail the same, the respondents would be entitled to demand the unconnected minimum charges. Since, in the present case,

the respondents had not issued such notice, they are not entitled to demand the unconnected minimum charges.

2) Under Rule 63 of the Indian Electricity Rules, 1956, the installations of both the petitioners and the respondent DISCOM are required to be approved by the competent authority i.e. Chief Electrical Inspector to Government (CEIG) and there is a duty cast on the DISCOM to ensure that the installation of the petitioner has complied with the statutory requirements under the Indian Electricity Act, 1910 and it is only thereafter the DISCOM can release the supply. In the present case on hand, it is only on 08.11.2007 the CEIG has approved the installation of the petitioner in terms of Rule 63(3) of the Rules and as such, the demand could have been raised only after 08.11.2007, if the petitioner had not availed the supply. As a matter of fact, the supply was released to the petitioner after 20.12.2007 after compliance with the formalities as specified by the 3rd respondent in its letter dated 20.12.2007. The learned counsel would place reliance on the unreported judgment of this Court dated 09.08.2008 in Writ Petition No. 3691 of 2002 interpreting Condition No. 26.2 of the Terms and Conditions of Supply of Electrical Energy by APSEB notified under B.P.Ms.No.690 dated 17.09.1975.

3) Condition No. 5.9.2.2 empowers the respondents to relax the rigor of Condition No. 5.9.2.1 and in the present case, acceding to the request of the petitioner to defer supply from the originally sanctioned schedule, deemed to have impliedly

acceded to the request without any conditions and thereby exercised their right in terms of Condition No. 5.9.2.2. In those circumstances, the learned counsel for the petitioner submits that enforcing the demand under the threat of disconnection by the respondents violates the rights of the petitioner guaranteed under Articles 14, 19(1)(g), 21 and in particular Article 300-A of the Constitution. It is the contention of the learned counsel for the petitioner that the levy of this nature would amount to taxing the petitioner which is contrary to Article 265 of the Constitution.

On the other hand, Sri R. Vinod Reddy, learned Standing Counsel, referring to Condition No. 5.9.4.3, would submit that the unconnected minimum charges are to be paid. He would also contend that it is not the case of the petitioner that the respondent DISCOM is not ready to supply the power and at any rate, in the absence of proper pleadings and particularly considering the fact that it is the petitioner, which sought deferment of release of the power, such contention does not stand to reason. The learned Standing Counsel would submit that Condition No. 5.9.2.1 would apply only for initial release and it is only Condition No. 5.9.2.2 that applies to the release of supply in a phased manner.

Having heard the submissions made by the respective counsel, the question that falls for consideration is ***'whether Condition No. 5.9.2.1 or Condition No. 5.9.4.3 that would apply to the facts of the case on hand and whether there is any requirement of giving three months' notice before release***

of the additional supply by the DISCOM, as contended by the learned counsel'.

Undisputedly, by letter dated 04.05.2005, the petitioner was sanctioned additional load of 4600 KVA to the existing CMD of 5,400 KVA, to be released in three phases. Acceding to the request of the petitioner for deferment of the release of the 2nd phase of 2500 KVA, the same was restricted to 1000 KVA, which was availed by it in the month of August 2005 and it is still required to avail the balance 2100 KVA. The readiness on the part of the petitioner to avail the said balance was communicated only on 15.06.2007. At this stage, the minimum charges for three months was demanded invoking Condition No. 26.1.2 of the General Terms and Conditions of supply (framed under the Electricity Supply Act, 1948), which is *in pari materia* with Condition No. 5.9.2.1.

To answer the first contention raised by the learned counsel for the petitioner, the relevant provision as applicable to the present case i.e. Condition No. 5.9.2.1 and 5.9.2.2 is to be noticed. Condition No. 5.9.2.1 is part of Condition No. 5.9 under the heading ***"Agreement with Consumers to Avail Supply"***. Under Condition No. 5.9, every consumer, who desires to have supply from the DISCOM, which is authorized and licensed to distribute power, is required to enter into an agreement, the format of which is prescribed by the Regulatory Commission i.e. APERC. Entering into agreement is at the initial stages as well as at the stage of requisitioning additional loads. In the case on hand, there being no contention raised that such agreement was not entered into, it is presumed that the petitioner has entered into an agreement to avail additional load of 4600 KVA. It is also not the case of the petitioner at any point of time that the respondent was not in readiness to release the additional load as requisitioned and agreed to be availed by the petitioner. In terms of Condition No. 5.9.2.1, if the petitioner fails to avail supply, it is required to pay the monthly minimum charges and/or fixed charges in terms of tariff order. It is also not the case of the petitioner that such minimum charges are not payable. The only contention of the petitioner is that the respondent DISCOM has not issued three months' notice to it. It may be noted that in the case on hand, it was at the instance of the petitioner the release of supply was deferred which go to indicate that the petitioner was on notice of the readiness on the part of the DISCOM to release the power as requisitioned. In those circumstances, there is no requirement of issuance of three months' notice, as contended by the petitioner. At the cost of repetition, it may be noted that the technical sanction for release of additional load was made on 04.05.2005 . Sofar as Condition No. 5.9.2.2 is concerned, there is no question of assuming any implied relaxation with respect to Condition No. 5.9.2.1. However, the fact remains that there was no condition imposed on the petitioner while allowing it to avail supply in a phased manner. However, the respondents by demanding only three months' minimum charges or restricting their demand only for three months minimum charges applying Condition No. 5.9.4.3 by implication had accepted that the petitioner had abandoned the availment of the additional load though originally sanctioned. In that view of the matter, the petitioner was relieved of the liability arising under

Condition No. 5.9.2.1 and restricting the same to only three months' period. In that view of the matter, the demand of charges for three months is sustainable.

Sofar as the argument of the learned counsel for the petitioner invoking Rule 63 of the 1956 Rules is concerned, the same is liable to be rejected both on facts and also on law. While the respondent DISCOM is required to ensure compliance of Rule 63 before releasing the power sofar as their duty and obligation to be ready to supply energy on requisition in terms of the duty imposed to supply power, under Section 43 also give a power subject to approval of the Regulatory Commission to frame terms and conditions to demand minimum charges. It is the duty of the petitioner before making a requisition to arrange the time-frame within which its installations would be ready in all respects including the statutory approvals required under the Indian Electricity Act (as was applicable then) and the Rules made thereunder or for that matter, any statutory requirements to be complied with. Under the Regulations made by the Electricity Regulatory Commission, a distribution licencee is duty bound to comply with the requisition under the pain of inviting penalties/cancellation of licence. In the case on hand, it is not the case of the petitioner that at any point of time, the respondent DISCOM had sought time to comply with the requisition of the petitioner. The necessary compliance under Rule 63 is only in relation to actual release of energy and not in relation to the application of a distribution licencee to comply with a requisition made for supply. It is only as a matter of fact, the distribution licensee is not ready to release the energy in spite of the fact that a consumer is ready in all respects to receive the supply, the obligation of the consumer to pay minimum charges gets released.

So far as the judgment of the learned Single Judge in Writ Petition No.3691 of 2002 is concerned, in the said case, a specific contention was raised on behalf of the petitioner therein that the distribution licensee was not ready to release the 2nd phase demand and in that context, the requirement of issuance of notice even for release of additional load was held to be mandatory. The decision rendered is purely based on the facts of the said case and as such, the same has no application to the facts of the present case.

For all the above-said reasons, the demand notice dated 08.08.2007 cannot be said to be arbitrary or illegal. This Court is therefore, of the opinion that there are no reasons to interfere with the said notice.

Accordingly, the Writ Petition, with this order, stands dismissed. No costs.

Consequently, the miscellaneous Applications, if any shall also stand dismissed.

CHALLA KODANDA RAM, J

21st December 2016

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