HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.28453 OF 2012

ORDER:

The petitioners pray for writ of Certiorari to call for the records leading up to and inclusive of order dated 09.08.2012 in C.G.No.23/2012-13/Vijayawada Circle of the Forum for Redressal of Consumer Grievances of Southern Power Distribution Company of A.P., Limited, Tirupati and quash the same as illegal and without jurisdiction.

The 1st respondent through order 09.08.2012 directed the writ petitioners as under:

i) Revise the bills of 2nd respondent's service number VJA 535 for the period during which the demand was restricted to 70% i.e., 3150 KVA by the petitioners within 15 days from the date of this order.

ii) Report compliance of the above within 21 days from 09.08.2012.

Hence, the writ petition.

The circumstances relevant for the disposal of the writ petition are as follows.

The 1st petitioner is a power distribution company and petitioners 2 and 3 are the officers working in the 1st petitioner company. The 2nd respondent is an HT consumer with Service No.VJA 535 with contracted maximum demand (CMD) of 4500 KVA. Due to shortage of power supply, the petitioners called upon all the consumers, including 2nd respondent herein, to avail power holiday for 12 days in the month of March, 2012.

On 26.02.2012, the 2nd respondent represented to petitioners that the 2nd respondent industry, being a continuous process industry, stopping of industrial activity for 12 days in a month is not feasible and practicable, hence in lieu of 12 day holiday for power consumption, requested to continue the existing system of 70% of CMD during non-peak load hours and 30% of CMD during peak load hours and allow the industry to avail 3150 KVA, being 70% of 4500 KVA. On 01.03.2012, the request of 2nd respondent was considered and the following communication was sent by the Chief General Manager, Operations to the Superintending Engineer, Operations, Vijayawada:

> Lr.No.CGM/Opn/SPDCL/TPT/DE-LD/F.No. /D.No.134/12 dt.01.03.12.
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> Sub: Elecy – Operation Vijayawada Circle – HT SC.No.535/VJA – Request for opting to 70% of CMD restriction – Reg.
>
> Ref:- Lr.No.SE/O/VIJ/Tech/SBE-I/F.No. /D.No.3811/11, dt.29.02.12.
>
> The consumer HT Sc.No.535/VJA (M/s Prakasa SG Iron Castings Ltd, Enikepadu) requested for restriction of their load to 3.15 MVA (70% of CMD) for month of March 2012 to utilize continuously instead of 10 days power holidays.
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> The CMD of the HT Sc.No.535/VJA is 4.5 MVA. The consumer can avail supply as follows.
>
> The 70% of the CMD = 3.15 MVA for March 2012
>
> Hence, the Superintending Engineer/Operation/ Vijayawada is requested to intimate the consumer about the above restriction and intimate the revised schedule.
>
> The consumer is requested to provide an undertaking to limit his drawal to above schedule. Any over drawl entails disconnection of the power supply."

Thereafter, the petitioners raised demand for CMD at 3600 KVA and called upon the 2nd respondent to pay the amount. On 02.04.2012, the 2nd respondent requested for revising the bill on the ground that for the month of March, 2012, the load was restricted to 70% of CMD. On 10.04.2012, the petitioners replied to 2nd respondent rejecting the request for treating the load at 70% of CMD. The petitioners through the reply relied upon General Terms and Conditions of Supply (GTCS) in tariff order 2011-12 which reads as follows:

> Tariff Order 2011-12
> GENERAL CONDITIONS OF HT SUPPLY
>
> Clause No.(4): MONTHLY MINIMUM CHARGES
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> Every consumer whether he consumes energy or not shall pay monthly minimum charges calculated on the billing demand plus energy charges specified for each category in this part to cover the cost of a part of the fixed charges of the licensee.
>
> General Terms And Conditions Of Supply:
>
> 2.2.38 "minimum charges" means the charges payable by the consumer even if no electricity is actually consumed for any reason whatsoever and also when the charges for the quantum of electricity consumed are less than the minimum charges specified by the Commission.
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> Hence, as per the above, the minimum charges is 80% of CMD or RMD whichever is higher has to be paid by the consumer. Accordingly, the March, 2012 bill has been issued to the consumer. Moreover, it is to submit that the demand charges are not variable charges which depend upon the quantum of supply. Instead they are fixed charge means they shall be paid whether the supply is utilized or not. Clause 16 of General Terms and Conditions of Supply provides the following regarding Restrictions on Usage of Electricity.
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> Clause No.16 of G.T.C.S: Restrictions on use of Electricity.
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> The company shall endeavour to afford continuous supply and to restore interrupted supply as early as possible. The company shall be entitled to stagger or curtail supply of electricity to any consumer or a class of consumers in accordance with the directions issued by the statutory authorities including commission from time to time for maintaining efficient supply and securing equitable distribution of electricity.

> As per the above clause, APSPDCL is entitled to initiate restrictive and control measures as and when necessary. In view of the above, the request to reduce demand charges proportionately for the period supply has not been considered.

The 2nd respondent thereafter raised consumer grievance against the demand for payment at 80% of CMD before the 1st respondent. As already noted, the grievance was answered in favour of 2nd respondent and the petitioners were directed to revise the bill. Hence, the writ petition.

Mr.G.Vidyasagar contends that the 1st respondent cannot and could not have entertained the grievance raised by 2nd respondent, for according to him, the petitioners had option to insist upon accepting holiday for supply of power for 12 days in March, 2012. The 2nd respondent keeping in mind the continuous nature of operations requested for restricting the load to 3.15 MVA, being 70% of CMD for the month of March, 2012. This request was accepted by petitioners and the 2nd respondent was enabled to continuously utilize 3150 KVA uninterrupted power supply. The 2nd respondent, in fact, consumed 3245 KVA and was agreeable to pay actual consumption charges and in the alternative agreed to pay the minimum charges on 80% of restricted load i.e., 3150 KVA. On receipt of notice, the petitioners filed their objections. The petitioners while replying to the grievance petition filed by 2nd respondent placed strong reliance upon Condition No.2.2.38 of GTCS viz., the minimum charge is 80% of CMD or RMD (regular meter demand), whichever is higher but not on the one time arrangement accommodated in this case. According to petitioners, the 2nd respondent is under contractual obligation to pay 80% of CMD i.e., 4500 KVA X 80/100=3600 KVA or as per RMD which is 3245 KVA.

Learned counsel appearing for the parties have substantially repeated the stand taken before the 1st respondent.

I have perused the material available on record and noted the submissions of learned counsel appearing for the parties.

Now, the point for consideration is - whether the petitioners can demand 80% of CMD i.e., 4500 KVA or 80% of restricted load consumed for the month of March, 2012.

The petitioners due to power scarcity have imposed a few conditions on all the consumers in the State for the month of March, 2012. The petitioners gave option to 2nd respondent to avail holiday of 12 days in the month of March, 2012. Had the 2nd respondent proceeded to accept the regulation imposed by the petitioners, the minimum charges would have been determined in accordance with the GTCS. In the case on hand, the 2nd respondent instead of utilizing the CMD availed holiday for 12 days, and preferred to avail uninterrupted power supply at restricted load of 3150 KVA. The request of 2nd respondent was accepted and the petitioners supplied uninterrupted power and have raised the bill for the month of March, 2012. Before proceeding further, this Court would like to examine the findings recorded by the 1st respondent. The findings did not consider the legal effect of Condition No.2.2.38 of the GTCS, but proceeded on the premise that the 2nd respondent was in a position to avail power supply and the petitioners were not in a position to supply and, therefore, directed that the CMD shall be taken as 3150 KVA. As the actual consumption has exceeded the CMD, the petitioners shall raise energy charges for 3245 KVA, but not 3600 KVA.

The issue can be appreciated and findings recorded by prefacing the following circumstances.

- For service connection No.535, the CMD was and is 4500 KVA.
- The petitioners did not consider it necessary to alter the CMD of 2nd respondent for the month of March, 2012.

The petitioners were not in a position to supply energy at 4500 KVA but called upon the 2nd respondent to avail 12 day power holiday for the month of March, 2012. The 2nd respondent made counter proposal to restrict load supply to 70% CMD and requested for uninterrupted power supply by the petitioners. Therefore, the request of 2nd respondent cannot and could not be treated as altering the power supply agreement between the petitioners and the 2nd respondent or that for the month of March, 2012 Condition 2.2.38 of the GTCS is changed to infer that CMD is 3150 KVA.

The terms and conditions in the HT agreement are binding and enforceable even for the month of March, 2012. The rationale and logic behind imposition of minimum charges cannot be lost sight of in directing the petitioners to revise the bills of 2nd respondent. The reasoning of 1st respondent that the 2nd respondent was ready to consume CMD but the petitioners were not in a position to supply, is unsustainable. The above issue can be examined from yet another point viz., that the CMD etc., are dependant on various factors, including establishment and operation of transmission lines provided to the 2nd respondent. Due to exigency, restricted power supply was imposed. Neither the petitioners could change the facilities commensurate to restricted demand nor the 2nd respondent be asked to pay afresh for restoration of facilities once 4500 CMD is restored. The complaint of 2nd respondent is misconceived and the direction issued by the 1st respondent is unsustainable. For the reasons recorded above, the order of 1st respondent is set aside.

The writ petition is, accordingly, allowed. There shall be no order as to costs.

Consequently, pending miscellaneous petitions, if any, also stand disposed of.

S.V.BHATT, J

Date:01.07.2016
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