

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

WRIT APPEAL No.1074 of 2016

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed in W.P. No. 28453 of 2012 dated 1.7.2016.

The appellant herein is the second respondent in the writ petition. They invoked the jurisdiction of the 4th respondent herein, aggrieved by the action of respondent Nos. 1 to 3 herein in calling upon them to pay 80% of the Contracted Maximum Demand (CMD) of 4500 KVA. Respondent Nos.1 to 3 herein had declared power holiday of twelve (12) days in the month of March, 2012, resulting in all H.T. consumers being supplied electricity only for nineteen (19) days in the said month.

On the ground that they were a processing unit, and required electricity throughout, the appellant herein requested respondents 1 to 3 to restrict the load supply to 70% of the CMD, and provide uninterrupted power supply to them. Respondent Nos. 1 to 3 accepted their request, and supplied 70% of the CMD in the month of March, 2012. The appellant herein invoked the jurisdiction of the 4th respondent contending that, while supply of electricity for the month of March, 2012 was restricted to 70% of the CMD, they were illegally charged 80% of the CMD as minimum charges. The fourth respondent, in its order dated 9.8.2012, held that the action of respondent Nos. 1 to 3 was illegal, and directed them to levy electricity charges only for 70% of the original contracted maximum

demand of 4500 KVA. Aggrieved thereby, respondent Nos. 1 to 3 invoked the jurisdiction of this Court under Article 226 of the Constitution of India.

In the order under appeal, the learned Single Judge observed that, since they were not in a position to supply power for the CMD of 4500 KVA, respondent Nos. 1 to 3 herein had called upon the appellant to avail 12 day power holiday for the month of March, 2012; the appellant had made a counter proposal to restrict the load supply to 70% CMD, and had requested them to provide uninterrupted power supply; the request of the appellant could not be treated as altering the power supply agreement between the parties or that, for the month of March, 2012, Condition 2.2.38 of the GTCS was changed to infer that the CMD was 3150 KVA; the terms and conditions in the HT agreement were 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 distribution company to revise the bills of the appellant; the reasoning of the Forum (4th respondent herein) that the appellant was ready to consume the CMD, but the distribution company was not in a position to supply, was unsustainable; CMD is dependent on various factors, including establishment and operation of transmission lines provided to the appellant; due to certain exigencies, restricted power supply was imposed; neither could the distribution company change the facilities commensurate to the restricted demand, nor could the appellant be asked to pay afresh for restoration of facilities once 4500 CMD was restored; the complaint of the appellant

was misconceived; and the direction issued by the Forum was unsustainable.

Clause 2.2.38 of the General Terms and Conditions of supply fixed the maximum supply to 4500 KVA. It required the consumer to pay a minimum of 80% thereof, whether or not they consumes electricity for the CMD of 4500 KVA. The Distribution Company restricted supply of electricity, in the month of March, 2012, to all H.T. consumers only to 19 days, and had declared a power holiday for 12 days. It is not even the case of the appellant that they have been discriminated against or that consumers, who accepted the power holiday and consumed electricity during the remaining 19 days in the month of March, 2012, were treated differently. It is evident from the order under appeal that the appellant had, instead of accepting the power holiday of 12 days, requested the Distribution Company to ensure continuous power supply at 70% of the CMD. The Distribution Company acceded to their request, and extended them the benefit of 70% of the CMD with electricity being supplied to them daily, though the other HT consumers were denied supply ofn electricity for 12 days in the month of March, 2012. The mere fact that the appellant's request was accepted, and they were permitted to consume electricity at 70% of the CMD would not confer on them any right to claim that they should be charged only for the electricity actually consumed by them notwithstanding Clause 2.2.38 of the General Terms and Conditions of Supply which require them to pay 80% of the CMD of 4500 KVA.

We asked Sri G. Vidya Sagar, learned Senior Counsel appearing on behalf of respondent Nos. 1 to 3 herein whether the other HT consumers, who were also denied supply of electricity during the power holiday period of 12 days in the month of March, 2012, were also charged 80% of the CMD. The learned Senior Counsel stated that all HT consumers, whether they were covered under the power holiday of 12 days or those like the appellant who were given continuous power supply at 70% CMD, were all treated alike and were charged for 80% of the CMD of 4500 KVA.

It is only if the order under appeal suffers from a patent illegality would this Court, in the exercise of its jurisdiction under Clause 15 of the Letters Patent, interfere in an intra-court appeal. The order of the learned Single Judge is not one such. We see no reason, therefore, to interfere with the order under appeal.

The appeal fails and is, accordingly, dismissed. The miscellaneous applications shall stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A. SHANKAR NARAYANA, J)

24th October, 2016

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Date: 24.10. 2016

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