THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition No.2140 of 2007

ORDER:

In this writ petition, under Article 226 of the Constitution of India, by the petitioner-rice mill, the challenge is to the demand notice issued by the 1st respondent, The Eastern Power Distribution Co., ltd., rep., by Assistant Divisional Engineer (Operation), Rural sub division, Kakinada, (hereinafter, 'APEPDCL'), dated 30.11.2006, calling upon the petitioner-rice mill to pay Rs.1,47,640/- as the balance of 50% of estimate charges on the ground that the petitioner-rice mill had not consumed 1,12,812 units of current in 12 months period under the scheme of extending 24 hours supply as per the departmental policy to encourage industrial activity.

2. I have heard the submissions of *Sri P. Narasimha Rao,* learned counsel appearing for the writ petitioner-rice mill, and of *Sri M. Ravindra,* learned Standing Counsel for APEPDCL representing the respondents. I have perused the material record.

3. From the pleadings of the parties and the submissions made on their behalf, the facts that come to the fore, in brief, are as follows:

3.1 The petitioner-rice mill is a partnership firm. The petitioner-rice mill obtained electricity service connection no.213 from the respondents for the purpose of running the rice mill. It is a trading concern and converts paddy into rice, for sale. Originally, the power supply was sanctioned under low tension category-III, industrial. The petitioner-rice mill is regularly paying the electricity consumption charges as being levied and demanded by the respondents. There are no disputes in regard to power supply under the said category. The respondents used to supply power on an average @7 hours per day. While so, the APEPDCL has introduced a policy vide proceedings in EO.O.RT (Comm) M.S.No.80, dated 10.07.2003, for providing 24 hours supply of electricity to industrial consumers subject to certain terms. The petitioner-rice mill proposed to expand its business operations provided there is availability of continuous power supply to the rice mill. Therefore, the petitioner-rice mill applied to the APEPDCL for sanction of 24 hours supply under the said scheme. The respondents sanctioned the proposal vide CR.No.377/2004-05 through separate estimate for a value of Rs.2,95,290/- as per policy of the department, which is intended to encourage industrial activity. As per the said sanction, the petitioner-rice mill is required to consume 1,12,812 units within a period of 12 months and is further required to pay half the estimated amount. In compliance of the sanction orders with conditions, the petitioner-rice mill paid Rs.1,47,640/- that is 50% of the total estimated amount. According to the estimate and to implement the scheme of 24 hours of continuous power supply to the rice mill, erection of 11 KV line with 34 square MM AAA conductor over proposed 8.00 mts PSCC poles at an average span length of 60 meters, erection of DP for mounting of line AB switch was required. Therefore, the respondents got erected a 2.15 KM of 11 KV line to be tagged on to 11 KV industrial feeder starting from 33/11 KV Aryavatam SS to facilitate 24 hours 3 phase supply to the petitioner-rice mill. On behalf of the petitioner-rice mill, the managing partner executed an agreement as per the sanction and estimate. The said agreement is with the APEPDCL. Under the terms of the said scheme, the respondents are required to provide 24 hours of power supply to the rice mill and the petitioner-rice mill is required to consume 1,12,812 units of energy within 12 months period; and, in case of fall of level of consumption below the estimated level, the petitioner-rice mill is required to pay the balance estimated charges of Rs.1,47,640/- to the respondents provided the condition of supply remains the same at 24 hours a day except at times of power failure from APEPDCL.

3.2 In the above stated setting of facts, the 1st respondent issued notice, dated 30.11.2006, to the petitioner-rice mill informing that the petitioner-rice mill consumed electricity of 41,934 units only within 12 months period and that, therefore, the petitioner-rice mill is liable to pay the balance estimate charges of Rs.1,47,640/- in favour of Divisional Electrical Engineer, Operation, Kakinada, within 15 days from the date of receipt of the said notice. In reply to the said notice, the petitioner-rice mill addressed a letter, dated 14.12.2006, to the Superintending Engineer (Operation circle), APEPDCL, that is, the 2nd respondent, *inter alia*, stating as follows: - 'The respondents failed to furnish the data with regard to consumption of electricity units every month with corresponding number of hours of supply of electricity to the rice mill. The power supply was not made for 24 hours continuously by excluding the times of power cuts by the APEPDCL. The supply was for not more than 16 hours in the day coverage during the 12 months period. At times the supply was even less. There is violation of the terms of the scheme by the department. Had the power supply been made available to the petitioner-rice mill for 24 hours, the rice mill would have attained the required volume of units, 1,12,812, within the 12 months period. The shortfall in the level of required consumption of electricity is due to non supply of electricity for 24 hours during 12 months period. The shortfall in the consumption of required volume of electricity is only due to non supply of the electricity continuously by the department. There are no lapses on the part of the petitioner-rice mill.' In the said reply, the petitioner-rice mill requested to revise the estimate to the required level of consumption of electricity with the volume of power actualised to the rice mill and further undertaken that if there is any shortfall of units of consumption, the petitioner-rice mill is ready to pay the same on the basis of number of hours of supply of power to the rice mill. Finally, the liability to pay the balance estimated amount was denied. Despite such reply, according to the petitioner-rice mill, the respondents insisted upon payment of the balance estimated amount. Therefore, the writ petition is filed.

3.3. The case of the respondents in answer to the contentions in the writ petition and the reply notice of the writ petitioner-rice mill, in brief, is this:

A concession has been given to the persons requesting 24 hours supply under the policy and as per the said concession, the persons availing 24 hours supply under the policy would be entitled to waiver of 50% of the estimate charges in the event of consuming the estimated units of energy within a period of 12 months; however, if the said consumer fails to do so, the balance 50% of the estimate charges have to be paid without any demur. The petitioner-rice mill requested for 24 hours supply and its request was accepted. The petitioner-rice mill was directed to deposit Rs.1,47,640/- being 50% of the estimated cost for erection of separate line and transformer etcetera. The petitioner-rice mill deposited the said amount and 24 hours supply was provided. The contention that the supply was not available for 24 hours per day and at times it was available for less than 12 hours per day is absolutely false and incorrect. The petitioner-rice mill was provided with 24 hours supply but the petitioner-rice mill failed to utilise the power supply and is throwing the blame on the respondents with the only view to avoid payment of the balance 50% of the estimated charges, which were demanded by the respondents. The petitioner was required to consume 1,12,812 units within 12 months as per the scheme; but, the petitioner rice mill has consumed 41,934 units only within the said 12 months period. There are different feeders such as industrial feeder and other feeders. Under one industrial feeder, there may be so many industrial consumers who receive supply for utilisation through Distribution transformers. The substation maintains log books for recording the hourly current readings for each hour, that is, round the clock, and also records the daily consumed units of each consumer. Supply hours provided for 24 hours service were recorded in a separate log book maintained at the substation. In the said log book details have been maintained with regard to hours of supply and the hours during which the supply was not available throughout the year. The petitioner-rice mill has never approached the authorities concerned requesting the details of hours of supply and is now making false and frivolous allegations. The factual disputes cannot be adjudicated in a writ petition under Article 226 of the Constitution. Unless the demanded balance amount of estimated charges is paid, the service connection is liable to be disconnected. The writ petition may be dismissed.

4. At the hearing, learned counsel for the petitioner-rice mill while reiterating the contentions of the petitioner placed reliance on the following decisions.

(i) M/s. Man Industrial Corporation v. Rajasthan State Electricity Board[1]. The facts of the cited case show that there is an arbitration clause in the agreement entered into between the electricity board and the petitioners-consumers for supply of electricity. The question that fell for consideration was whether the relief can be denied to the petitioners-consumers on the ground that their relationship is governed by the agreements. On facts, it was held that the relief cannot be denied.

(ii) M/s. Gwalior Distilleries Ltd., v. Madhya Pradesh Madya Kshetra Vidyut Vitaran[2]. The facts of this cited case disclose that in the show cause notice issued by the Board it did not mention that it had supplied electricity energy to the consumer company or what amount of electricity energy was supplied to the company during the period when the company had failed to utilise minimum guarantee supply.

[1] AIR 1986 Rajasthan 137
[2] AIR 2012 (NOC) 213 (MP)

(iii) In M/s. Raymond Ltd., v. M.P. Electricity Board[3], the Supreme Court considered the relevant clause relating to minimum guarantee charges as well as the tariff notification relied upon and held that the same would go to show that what was guaranteed was not the payment of a flat sum amount of money to be calculated with reference to a particular number of percentage of units, dehors the quantum of electrical energy distributed and supplied by the Board and that in other words the guarantee was of such minimum consumption as when calculated at the tariff and that as per terms of agreement between the consumer company and the State Electricity Board, an obligation has been cast on the consumer to pay minimum tariff of 40% of the contract load and that whenever the contracted supply falls short of 40% of the contract load then the Board shall be entitled to charge only for reduced energy actually supplied.

(iv) M/s.Northern Indian Iron and Steel Co., and others v. the State of Haryana and another[4]. The facts of this cited case show that the Board was unable to supply electrical energy due to power cut and other circumstances beyond its control as per the demand of the consumer and according to the contract; therefore, the consumer was prevented from consuming electricity as per contract and to the extent it wanted to consume. In the said circumstances, it was held that the monthly demand charge for a particular month will have to be assessed in accordance with sub-clause (b) of clause 4 of the tariff and therefrom a proportionate reduction will have to be made as per sub-clause (f) and that in the light of the judgment, there will be no difficulty in working out the figures of the proportionate reduction in any of the cases and for any period and that in case of any difference as to the quantum of demand charge or the proportionate reduction, parties would be

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[3] AIR 2001 SC 238
[4] AIR 1976 SC 1100

at liberty to pursue their remedy as may be available to them in accordance with law.

(v) Anil Kumar Diwaker v. Principal Judge, Family Court, Dehradun[5] is relied upon in support of the proposition that once the writ petition is admitted, matter must be decided on merits and the petition cannot be dismissed on the ground that alternative remedy is available and is not pursued before filing the writ petition.

5. I have carefully gone through the pleadings and I have given earnest consideration to the submissions. I have also gone through the decisions cited. Under a scheme, the petitioner-rice mill entered into an agreement with the electricity department for supply of 24 hours electricity to its rice mill. As per the said scheme, a concession would be given to the consumers requesting for 24 hours supply; and, such consumers would be entitled to waiver of 50% of the estimate charges in the event of consuming the estimated units of energy within a period of 12 months. However, if the said consumer fails to do so the balance 50% of the estimated charges have to be paid. In the case on hand, the petitioner-rice mill having requested for 24 hours of supply of electricity and having accepted the scheme and the policy deposited Rs.1,47,640/- being 50% of the estimated cost. Accordingly, the board has undertaken the task of erection of separate line and transformer etcetera. The petitioner-rice mill which was required to consume 1,12,812 units within 12 months period has consumed only 41,934 units within the said 12 months period. Therefore, the respondents are now demanding the petitioner-rice mill to pay the balance 50% amount of Rs.1,47,640/- out of the estimated cost. The case of the petitioner-rice mill is that as per the scheme electricity was not made available for 24 hours continuously by excluding the power cuts by the APEPDCL and the supply was not for more than 16 hours in

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[5] AIR 2010 Uttarakhand 120

the day during the 12 months period and that at times the supply was even less than 12 hours per day. However, the respondents deny the said allegations of the petitioner-rice mill and would submit that the supply was made continuously except during power cuts or power failure from APEPDCL and that there are different feeders such as industrial feeder and other feeders and that the sub station maintained log books for recording the real current readings per hour, that is, round the clock, and also recorded the daily consumed units of each consumer under the said feeder and that supply hours provided for 24 hours service have been recorded in a separate log book maintained at the sub station and that in the other log books details have been maintained with regard to hours of supply and the hours during which the supply was not available throughout the year. Thus, the dispute is about the number of hours of power supply per day to the petitioner-rice mill during the 12 months period and the failure, if any, on the part of the petitioner-rice mill in utilising the energy despite supply of power as per the scheme and non consumption of the required volume of energy and number of units. Further, on the ground that there was no continuous power supply for 24 hours the petitioner-rice mill claims that it is entitled to proportionate reduction in the balance estimated charges payable having regard to the electrical energy supplied and consumed by the petitioner-rice mill and the energy that was not supplied on account of imposition of power cuts. Thus, the controversy also centres on the question whether the petitioner-rice mill is entitled to a corresponding reduction in the balance 50% of the estimated charges in proportion to the power cut imposed other than the power cut on account of the power failure from APEPDCL. Neither of the parties produced any material to show the supply hours provided for the petitioner-rice mill which were said to have been recorded in a separate log book maintained in the sub station. Admittedly, the substation maintains log books for recording the hourly current readings, round the clock, and also for recording the daily consumed units of each consumer under the feeder. Unless the necessary information is before this Court, it is not possible to resolve the complex factual issue. Simply because the writ petition is admitted, if a decision is to be rendered on the complex factual issue even in the absence of required evidence, any such decision cannot be termed as a fair and just decision in the matter.

6. Viewed thus, this Court finds that the writ petition can be disposed of with appropriate directions.

7. Accordingly, the Writ Petition is disposed of directing the petitioner-rice mill to submit a representation to the officer concerned among the respondents, within three weeks from the date of receipt of a copy of this order, with a request to examine the records like log books and other records maintained at the substation and re-determine the proportionate consumption charges payable by the petitioner-rice mill by considering its request for proportionate reduction having regard to the actual supply hours to the petitioner-rice mill during the 12 months period and also the power cuts and power failures excluding the times of power failures and power cuts from APEPDCL and other relevant parameters. The petitioner-rice mill is at liberty to produce, along with its representation, any statutory registers maintained by it to aid the process of determination of the proportionate charges. Any such representation submitted by the petitioner-rice mill shall be disposed of as expeditiously as possible and preferably within two months thereafter. It is needless to mention that after such revised estimate is made based on facts and figures, the petitioner-rice mill shall pay the revised estimated amount to the respondents. However, in case of any difference as to the quantum of the charges demanded or the proportionate reduction, the petitioner-rice mill would be at liberty to pursue the remedy as may be available to it in accordance with law.

Miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

JUSTICE M. SEETHARAMA MURTI

20.04.2017
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