

HONOURABLE SRI JUSTICE A. V. SESA SAI

WRIT PETITION No.14953 of 2017

ORDER:

This writ petition is filed, under Article 226 of the Constitution of India, for the following relief:

“to issue a Writ, one in the nature of a Writ of Mandamus declaring the action of the respondents in demanding Cross Subsidy Surcharge for the financial years 2005-06 based on the orders dated 19.11.2016 passed by APERC in O.P. No. 16 of 2005 in respect of the power generated and consumed by the petitioner company by Demand Notice No.SE/ O/ SKL/ SAO/ HT/ AAO/ JAO/ D.No.93/ 17, dated 08.03.2017, issued by the 2nd respondent as arbitrary, illegal, contrary to the provisions of Electricity Act, 2003 besides in violation of petitioners rights guaranteed under Art.14 & 19(1) (g) of the Constitution of India and consequently set aside the same and pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.”

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. When the matter is called, it is submitted by the learned counsel for the petitioner that the issue in the present writ petition is squarely covered by the order of this Court in W.P.No.42809 of 2016, dated 23.12.2016 and a copy of the same is also placed on record.

4. Paragraphs 4 to 6 of the above said order read as under:

“4. From the above, it is clear that the fourth respondent not only determined and decided the issue of cross subsidy surcharge but also quantified the amount payable by petitioner without even putting the petitioner on notice, affording an opportunity of being heard,

consider objections and then take a decision.

5. Learned standing counsel, after perusing the communication impugned in the writ petition, submits that the objection raised is tenable and the communication can be set aside, however, by leaving it open to respondents to take up cross subsidy surcharge if the fact and circumstances warrant, afford opportunity to petitioner and take a decision in this behalf.

6. The statement is placed on record. On the short ground that straightaway the communication impugned in the writ petition is sent demanding a sum of Rs.1,25,30,817/- without notice to petitioner, the communication is set aside, however, by granting liberty as prayed for by the learned standing counsel.”

5. Following the above said order and for the reasons recorded therein, this writ petition is also disposed of, setting aside the impugned demand notice issued by the Superintending Engineer, Operation Circle, Eastern Power Distribution Company of Andhra Pradesh Limited, Srikakulam, vide Lr.No:SE/ O/ SKL/ SAO/ HT/ AAO/ JAO/ D.No.93/ 17, dated 08.03.2017, with a liberty to take a decision afresh after affording reasonable opportunity to the petitioner herein.

6. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

A. V. SETHA SAI, J

April 25, 2017

KTL