

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.3317 OF 2017

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the alleged action on the part of the respondents in de-rating the CMD of the petitioner as requested vide representations dated 05.05.2016 and 05.11.2016, in terms of clause 5.9.4.2 of the General Terms and Conditions of Supply.

2. Heard Sri M.P.Chandramouli, learned counsel for the petitioner and Smt. J.Koteswari Devi, learned standing counsel for the respondents.

3. According to the petitioner, it is a small scale industry established in Prakasam District, for recycling rubber scrap and preparing rubber granules, which will be used for manufacturing reclaimed rubber. Petitioner herein applied to the 1st respondent for supply of 330 KVA power in a phased manner i.e., 230 KVA and 100 KVA in the 2nd phase. The Chief General Manager/Operation – 2nd respondent herein, by virtue of Memo dated 23.07.2013, communicated the approval of the proposal of the Chief Engineer, Vijayawada, for release of the power in phased manner and according to the petitioner, they complied with the formality of providing line charges, Security Deposit etc., and entered into

agreement for the 1st phase of supply and the respondents have released the power of 230 KVA on 17.08.2013 and the production was started from 01.09.2013. According to the petitioner, it requested the Divisional Engineer to cancel the 2nd phase of supply, which was to be released on 01.12.2013 and the said application was forwarded to the Superintendent Engineer – 3rd respondent and the 3rd respondent, by way of letter dated 28.11.2013, recommended for cancellation of the 2nd phase supply and sought necessary approval from the Chief Engineer. The Chief Engineer, by way of letter dated 30.11.2013, also recommended favourably and requested the Chief General Manager, Operation, Tirupati – 2nd respondent, to issue necessary instructions. It is further stated in the writ affidavit that the Chief General Manager seems to have rejected the request, but agreed for rescheduling/postponing the release of 2nd phase by six months on willingness. The 2nd respondent – Superintendent Engineer, by way of letter dated 14.02.2014, communicated the decision of the Chief General Manager. It is also the case of the petitioner herein that respondents started levying the demand charges on 100 KVA, the 2nd phase power, which was not released and supplied and questioning the said action, the petitioner herein filed W.P.No.24106 of 2014 and in the said writ petition, this Court, on 25.08.2014, directed that no coercive steps shall be taken in respect of 2nd phase demand charges and the said writ petition is pending. According to the

petitioner, petitioner herein filed an application before the Superintendent Engineer on 05.05.2016, with a request for de-rating CMD from 230 KVA to 175 KVA and as no action was taken, petitioner herein filed another application on 05.11.2016 and a remainder was also given on 30.11.2016.

4. According to the learned counsel for the petitioner, no action has been taken on the said representations dated 05.05.2016 and 05.11.2016. While referring to clause 5.9.4.2 of the General terms and conditions of Supply, it is submitted by the learned counsel for the petitioner that it is obligatory on the part of the respondents to take action on the said representations. The said clause reads as under:

“For clause 5.9.4.2, the following clause shall be substituted, namely:-

“5.9.4.2 Deration of CMD or Termination of Agreement in respect of HT Supply: *The consumer may seek reduction of contracted maximum demand or termination of the HT Agreement after the expiry of the minimum period of the Agreement by giving not less than one month notice in writing expressing his intention to do so. However, if for any reason the consumer chooses to derate the CMD or terminate the Agreement, before the expiry of the minimum 2 year period of the Agreement, the CMD will be derated or the Agreement will be terminated with effect from the date of expiry of the initial 2 year period of the Agreement or after expiry of one month notice period whichever is later. The Company can also terminate the HT Agreement, at any time giving one*

month notice if the consumer violates the terms of the HT Agreement, or the GTCS or the provision of any law touching the Agreement including the Act and rules made thereunder and AP Electricity Reforms Act, 1998. On termination of the HT Agreement the consumer shall pay all sums due under the Agreement as on the date of its termination.””

5. It is also submitted by the learned counsel for the petitioner that the petitioner herein has also asked for recovery of amount collected by the respondents herein.

6. Since there is no dispute as regards submission of representations by the petitioner on 05.05.2016 and 05.11.2016 and pendency of the same before the respondents, having regard to the submissions made by the learned counsel for the petitioner and learned standing counsel and taking into consideration the material available on record, this Court deems it appropriate to dispose of the writ petition with a direction to the respondents to consider and pass appropriate orders on the said representations by fixing some timeframe.

7. For the aforesaid reasons, the writ petition is disposed of, directing the respondents herein to consider and pass appropriate orders on the representations dated 05.05.2016 and 05.11.2016, said to have been submitted by the petitioner herein, within a period of one month from the date

of receipt of a copy of this order, after giving notice and opportunity to the petitioner. Till such exercise attains finality, the respondents shall not levy and collect the demand charges on CMD 175 KVA. It is further made clear that the petitioner herein is permitted to make an application, claiming refund of the amount, as per law and if any such application is made, the same also be considered and appropriate orders be passed, in accordance with law.

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

01.02.2017
SS



A.V.SESHA SAI, J