

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.5436 of 2007

(Arising out of order dated 14-6-2007 of the learned Electricity
Ombudsman in Representation Case No.25/2007)

Ultra Tech Cement Limited, a Public Limited Company incorporated under Companies Act, 1956, having its Registered Office at A Wing, Ahura Centre, 1st Floor, Mahakali Caves Road, Andheri (East), Mumbai and having its Cement factory at P.O. Hirni, Tahsil Simga, District Raipur (C.G.) through its Power of Attorney holder Subodh Kumar Agrawal, S/o Shri S.K. Agrawal, Senior Supervisor (Accounts), Ultra Tech Cement Ltd., PO Hirni, Tahsil Simga, District Raipur (C.G.)

---- Petitioner

Versus

1. Chhattisgarh State Power Distribution Co. Ltd., Sunder Nagar, Dangania, Raipur (C.G.), Through its Managing Director, Raipur (C.G.)
2. Chief Engineer (Commercial), Chhattisgarh State Electricity Board, Sunder Nagar, P.O. Dangania, Raipur, District Raipur (C.G.)

---- Respondents

ANDWrit Petition (C) No.5861 of 2007

(Arising out of order dated 14-6-2007 of the learned Electricity
Ombudsman in Representation Case No.24/2007)

Samruddi Cement Limited, a Public Limited Company incorporated under Companies Act, 1956, having its Registered Office at Birlagram, Nagda – 456 331 (M.P.) & having Cement Manufacturing Unit at Rawan Cement Works, District Raipur (C.G.) through its Constituted Special Power of Attorney Prasham Jain, S/o Dr. P.K. Jain, aged 37 years, Occupation Service, presently working as Sr. Officer (F&A), R/o PO Grasim Vihar, District Raipur (C.G.)

---- Petitioner

Versus

1. Chhattisgarh State Power Distribution Co. Ltd., Sundar Nagar, P.O. Dangania, Raipur (C.G.) through its Secretary
2. Chief Engineer (Commercial), Chhattisgarh State Electricity Board, Sundar Nagar, P.O. Dangania, Raipur, District Raipur (C.G.)

---- Respondents

For Petitioners:	Mr. Ashish Shrivastava, Advocate.
For Respondents:	Mr. Alok Bakshi, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

18/01/2018

1. Since common question of law and facts are involved in both the writ petitions, therefore, they are heard together and are being disposed of by this common order.
2. In these writ petitions, the petitioners have called in question the orders passed by the Electricity Ombudsman whereby the learned Ombudsman has rejected the application filed by the petitioners maintaining the orders dated 28-2-2007 passed by the Electricity Consumers' Grievances Redressal Forum, Raipur. These petitions have principally been filed on the ground that the petitioners are not liable to pay electricity supply arranging charges, as earlier, the petitioners raised contract demand of 40,000 KVA for a period of two years from April, 2002 to April, 2004 which was later-on reduced and now, again, it is a case of enhancement of contract demand for which additional infrastructure is not required therefore, no supply arranging charges are required to be paid. The writ petitions have been opposed by the respondents that levy of supply arranging charges is in accordance with law.
3. Mr. Ashish Shrivastava, learned counsel appearing for the petitioners, would submit that the petitioners were consumers of MPEB with a sanctioned contract demand of 40 MVA in the old name of Larsen & Toubro Ltd.. The petitioner (Ultra Tech Cement

Limited) paid entire cost of 132 KV DCSS line for a length of about 25 Kms. along with cost of 132 KV feeder bay erected at Bhatapara Substation at MPEB. The cost paid by the petitioner as per demand of MPEB was ₹ 220 lacs which was later on revised to ₹ 251.13 lacs due to MPEB changed the planning and proposed to lay 220 KV line of length 16 Kms. from Suhela to the petitioner plant as per demand and later-on it was reduced to 29 MVA with effect from 16-6-1996 and further reduced its contract demand to 23 MVA with effect 16-7-1997. Subsequently, the contract demand of the petitioner was reduced to 14 MVA with effect from 14-6-2005 and the petitioner applied for enhancement of contract demand from 14 MVA to 25 MVA on 20-4-2006 which was granted by the CSEB subject to condition that as per existing norms, the petitioner would be required to pay ₹ 71.50 lacs towards supply arranging charges. Mr. Shrivastava would further submit that the petitioner protested the payment of supply arranging charges by memo dated 30-6-2006, but ultimately, the supply arranging charges were paid under protest to the extent of ₹ 71.50 lacs by Ultra Tech Cement Limited and ₹ 32.50 lacs by Grasim Cement Limited (now Samruddi Cement Limited), but considering the fact that the Electricity Board has decided not to supply electricity, the supply arranging charges were paid and there, application was filed before the Electricity Consumers' Grievances Redressal Forum, Raipur, claiming refund, which declined to interfere and thereafter, against that order, a representation was made to the Electricity Ombudsman and both the authorities have completely and legally erred in rejecting the applications of the petitioners for refund of the said amount. Mr.

Shrivastava would also submit that the impugned orders passed by the two authorities are contrary to facts and law available on record and therefore, they are liable to be set aside.

4. Mr. Alok Bakshi, learned counsel appearing for the respondents, would submit that the two authorities have concurrently held that it is a case of enhancement of contract demand from 14 MVA to 25 MVA and it is not restoration of contract demand earlier granted and therefore both the authorities are justified in rejecting the applications of the petitioners for refund of said amount. Mr. Bakshi would further submit that no document has been placed on record to show that the petitioners have protested and contested the alleged demand, particularly when the contract demand has been availed by the petitioners, they cannot turn around and claim refund on the enhancement of contract demand which has been supplied to them in view of the provisions contained in clause 7.6(c) of the Chhattisgarh State Electricity Supply Code, 2005 (for short, 'the Code') read with the tariff order.
5. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the records with utmost circumspection.
6. Petitioner M/s. Ultra Tech Cement Limited, undisputedly, was granted contract demand of 40 MVA in the old name of Larsen & Toubro Ltd. by the erstwhile MPEB on 1-4-1992 and later-on it was reduced to the extent of 14 MVA and thereafter, application was made for enhancement of contract demand from 14 MVA to 25 MVA on 20-4-2006 which was accepted by the Electricity Board on

19-6-2006 subject to the condition that the petitioner is required to pay ₹ 71.50 lacs towards supply arranging charges at the rate of ₹ 650/- per KVA for 11,000 KVA HT power supply and additional security deposit was also demanded based on 1½ months estimated electricity charges for the aforesaid additional HT power supply which the petitioner opposed stating that earlier the contract demand was increased to 40,000 KVA for a period of two years for additional infrastructure which has already been paid and therefore for further enhancement, no supplying arranging charges are not required to be paid.

7. Application was made by the petitioners in terms of clause 7.6(c) of the Code which reads as follows: -

“7.6 If the supply of enhanced load is feasible, the consumer shall:

- (a) xxx xxx xxx
- (b) xxx xxx xxx
- (c) pay additional security deposit, cost of addition or alteration required to be made to the system, if any, and the supply arranging charges, if applicable.
- (d) xxx xxx xxx”

8. The aforesaid provision would clearly show that if the supply of enhanced load is feasible, the consumer will have to pay additional security deposit, cost of addition or alteration required to be made to the system, if any, and the supply arranging charges.
9. It is the case of the respondent Electricity Board that they have taken only the supply arranging charges and additional security

deposit and no charges have been taken for additional infrastructure. In the Code under which the supply arranging charges have been levied to the petitioners for enhancement of load, there is no enabling provision in case earlier, the consumer was availing the enhanced load and later-on it was reduced and when further enhancement of load is sought, then he will not be liable to pay the supply arranging charges.

10. The Chhattisgarh State Electricity Supply Code, 2005 has been enacted by the Chhattisgarh State Electricity Regulatory Commission in exercise of powers conferred by Section 43(1) read with Section 181(t), Section 44, Section 46 read with Section 181(1), Section 47(1) read with Section 181(v), Section 47(4) read with Section 181(w), Section 47(2), (3) and (5), Section 48(b) and Section 50 read with Section 181(x) and Section 56 of the Electricity Act, 2003 and the Electricity (Removal of Difficulties) Order, 2005 issued by the Ministry of Power, Government of India on 8-6-2005, to govern distribution and supply of electricity and the procedures thereof, such as the systems of billing, modality of payment of bills, the powers, functions and obligations of the distribution licensees and the rights and obligations of consumers, etc. and as such, the Supply Code is statutory in nature.

11. Thus, in absence of enabling provision and in absence of exemption from payment of supplementary charges in the Supply Code applicable to the petitioners and in view of the fact that there is no provision for restoration of load in the Electricity Supply Code, 2005, merely on the basis that the petitioners were earlier availing

higher contract demand, it cannot be said that the petitioners are not liable to make payment of supply arranging charges while seeking enhancement of contract demand, particularly when the original contract demand was granted by the erstwhile State of Madhya Pradesh way back on 1-4-1992 and presently the petitioners had applied for enhancement of contract demand on 20-4-2006, as it is now a case for enhancement of contract demand. Therefore, it cannot be said that the petitioners are not liable to pay supply arranging charges.

12. There is one more aspect of the matter. The petitioners' application for enhancement of load was granted by the Chhattisgarh State Electricity Board on 19-6-2006 and the petitioners replied on 30-6-2006 in which it has been said that the petitioners are not liable to pay charges, however, thereafter, charges have been paid on 28-7-2006. It is the case of the petitioners that the petitioners have protested and thereafter, made payment of demand to avail the load benefit under protest, but no document has been placed on record before this Court to establish that such a protest was made it was the real protest, in fact, it is only an eyewash to subsequently make claim for refund of such amount. At present, the petitioners had already availed the benefit of contract demand. Apart from this, two authorities have examined the matter thoroughly and concurrently held that the petitioners are not entitled to claim refund, as there is no provision for restoration of load in the Supply Code which was already made earlier.

13. In view of the aforesaid legal analysis, I do not find any merit in the petitions, both the petitions are liable to be dismissed and they are hereby dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma