

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.13646 OF 2007

ORDER:

This writ petition is filed seeking to declare the levy and collection of voltage surcharge at 15% of the energy charges i.e., 5% under the head of line losses and 10% under head of voltage surcharge from May, 2005 to December, 2006 as illegal, arbitrary, unjust and contrary to Tariff Order for the year 2005-06 issued by the A.P. Electricity Regulatory Commission and consequently set aside the order dated 24.5.2006 of the Forum for Redressal of Consumers' Grievance, the Eastern Power Distribution Company of A.P., Limited, Visakhapatnam as confirmed by the order of the 4th respondent in Appeal No.14/2006 dated 30.10.2006 and to direct the respondents to collect voltage surcharge at 10% for the period from May, 2005 to December, 2006 on voltage charges by revising the bills accordingly.

2. It is the case of the petitioner that it is a private limited company and it had two industrial units i.e., Unit-I at Kothavalasa Village and Mandal, Vizianagaram District and Unit-II at Garbam Village, Meraka Mudidam Mandal, Vizianagaram District and they are having H.T. service connection bearing Nos.33 and 92 respectively obtained from the Eastern Power Distribution Company of A.P. Limited and both of them have been engaged in manufacture of High Carbon Ferro Chrome. The said meters measure the maximum demand in Kilo Volt Amperes (hereinafter referred to as "KVA").

3. It is further stated that in respect of Unit-II, initially the power supply was obtained with a Contracted Maximum Demand (CMD) of 3400 KVA. However, in the month of May, 2005, the petitioner got enhanced CMD to 7400 KVA. As per the tariff orders issued from time to time, all the H.T. consumers up to 5000 KVA shall avail power supply at 33 KV voltage and over and above they should avail power at 132 KV voltage level. In the year 2002, the petitioner approached A.P. Electricity Regulatory Commission (herein after referred to as "APERC") for fixing lower tariff for the petitioner industry. The APERC passed order in I.A.No.1/2002 in OP Nos.29-33/2002, dated 26.09.2002, framing special tariff to the petitioner company, providing tariff at the rate of Rs.2.12 Ps., per unit. The said tariff is applicable to all the units of the petitioner company with 132 KV voltage.

4. It is further stated that while the matter stood thus, the first respondent issued proceedings No.CGM/C&R/APEPDCL(VSP)/F-HT-VZM/D.No.1195/03, dated 1.07.2003 directing the petitioner to pay 5% additional tariff towards voltage surcharge. It is stated in the said proceedings that as per the tariff orders issued from time to time, the consumer up to 5000 KVA shall avail power at 33 KV voltage level and that as the petitioner obtained additional load of 4000 KVA by making its CMD to 7400 KVA with effect from 13.05.2005 from billing month of April, 2005 onwards, it has to pay the voltage surcharge as applicable to consumers availing power supply at 132 KV voltage level which is at 10% of the energy charges billed as per the tariff orders from the year 2005-06.

5. It is further stated that the 3rd respondent issued bills from May, 2005 onwards and collected voltage surcharge at 15%. However, the petitioner protested for the same as the said bills are not in consonance with the tariff orders issued by the APERC. The petitioner approached the Forum for Consumer Grievance of APEPDCL and the said Forum passed orders dated 4.5.2006 holding that the petitioner's request cannot be acceded to, as the petitioner had entered into the revised agreement for 7400 KVA and agreed to pay voltage surcharge. Aggrieved by the said order, the petitioner approached the 4th respondent and by order dated 30.10.2006 in Appeal No.14 of 2006, the 4th respondent rejected the case of the petitioner. Hence, the petitioner filed the present writ petition.

6. The first respondent filed a counter affidavit denying the allegations in the writ petition. It is stated that the contract demand of the petitioner should be above 5000 KVA as per the tariff order issued by the APERC to 132 KV voltage level, then only, the special rate of Rs.2.12 Ps., is applicable. At the request of the petitioner only, the first respondent issued proceedings dated 01.07.2003 to supply power with a condition that the transformation losses from 132 KV to 33 KV level i.e., 5% will be added to the actual reading recorded in the meter at 33 KV level for the billing purpose as the petitioner was sanctioned power at the lowest tariff special rate of Rs.2.12 Ps., subject to availing the supply by 132 KV only. The 15% additional charges includes 5% additional charges towards transformation losses and 10% additional charges towards voltage surcharge. The 5%

additional tariff towards transformation losses and 10% additional tariff towards voltage surcharge are different from each other and bills were issued accordingly based on tariff order, terms and conditions of supply and the agreements concluded by the petitioner. Soon after the petitioner switched over to 132 KV, levying of additional charges of 5% towards transformation loss and 10% towards voltage charges in regular bills have been stopped on 10.12.2005. It is further stated that no excess amount was collected from the petitioner and hence, the question of revision of bills and refund of the amount does not arise and therefore prayed to dismiss the writ petition.

7. Heard.

8. It is the case of the petitioner that it is transmission, but not transformation and there is no transformation charges and in respect of Unit-II, initially the power supply was obtained with CMD of 3400 KVA. However, in the month of May, 2005, the petitioner got enhanced CMD to 7400 KVA and as per the tariff orders issued from time to time, all the H.T. consumers up to 5000 KVA shall avail power supply at 33 KV voltage and over and above, they should avail power at 132 KV voltage level. The petitioner approached APERC in the year 2002 for fixing a lower tariff for its industry and the APERC passed order in I.A.No.1/2002 in OP Nos.29-33/2002, dated 26.09.2002 providing special tariff to the petitioner company at the rate of Rs.2.12 Ps., per unit. Thereafter, the first respondent issued proceedings No.CGM/C&R/APEPDCL(VSP)/F-HT-ZM/D.No.1195/03, dated 1.07.2003 directing the petitioner to pay 5% additional

tariff towards voltage surcharge, as the petitioner obtained additional load of 4000 KVA by making its CMD to 7400 KVA with effect from 13.05.2005 and also to pay the voltage surcharge as applicable to consumers availing power supply at 132 KV voltage level which is at 10% of the energy charges billed as per the tariff orders from the year 2005-06. The 3rd respondent issued bills from May, 2005 onwards and collected voltage surcharge at 15% and the petitioner paid the said bills under protest.

9. As could be seen from the tariff order issued by the APERC, the consumer availing power supply at 33 KV voltage of above 5000 KVA shall pay the voltage surcharge at 10% energy charges billed, but the respondents have collected voltage surcharge at 15% under the heads of line losses at 5% and voltage surcharge at 10% from the petitioner from May, 2005 to December, 2005. The respondents fixed low tariff for the petitioner unit at Rs.2.12 Ps., per unit and the said tariff is applicable to all the units of petitioner. The action of the respondents in collecting the transmission losses at 5% and voltage surcharge at 10% is unjust and cannot be sustained. The APERC passed order in I.A.No.1/2002 in OP Nos. 29-33/2002, dated 26.09.2002, providing special tariff to the petitioner company at the rate of Rs.2.12 Ps., per unit and therefore, the respondents are not entitled to revise the tariff and demand the petitioner to make payment of the bills as per the revised order. The petitioner has paid the bills under protest and the excess amount collected from the petitioner by the

respondents towards transmission losses at 5% are liable to be refunded to the petitioner.

10. It is contended by the petitioner that an amount of Rs.38.16 lakhs was collected in excess by the respondents and the same is liable to be refunded with interest at the rate of 24% per annum.

11. In view of the observations made above, it is needless to observe that the respondents are directed to compute the amount excess collected and refund the same.

12. Accordingly, the writ petition is allowed, setting aside the order dated 24.5.2006 of the Forum for Redressal of Consumers' Grievance, the Eastern Power Distribution Company of A.P., Limited, Visakhapatnam, and directing the respondents to collect voltage surcharge at 10% for the period from May, 2005 to December, 2006 on voltage charges by revising the bills from the petitioner. No order as to costs. As a sequel, the miscellaneous petitions pending if any shall stand closed.

Date: 14-09-2018
Shr

T.AMARNATH GOUD,J