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HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 409 of 2018

- Ultra Tech Cement Limited A Public Limited Company Incorporated Under The Companies Act 1956, Having Its Registered Office At A Wing Ahura Chambers, 1st Floor, Mahakali Caves Road, Andheri (East) Mumbai-400 093 (Maharashtra) And A Cement Factory At P. O. Hirmi, Tahsil Simga District- Raipur (Now Baloda Bazar) Chhattisgarh.

---- Appellant

Versus

1. Chhattisgarh State Power Distribution Co. Ltd. Sundar Nagar, P. O. Dangania, Raipur Raipur, (Chhattisgarh), Through Its Secretary

2. Chief Engineer (Commercial), Chhattisgarh, State Electricity Board, Sundar Nagar, P. O. Dangania, Raipur, District- Raipur, Chhattisgarh.

---- Respondent

WA No. 411 of 2018

- Samruddhi Cement Limited (Now Ultratech Cement Ltd.) A Public Limited Company Incorporated Under The Companies Act 1956, Having Its Registered Office At Birlagram, Nagda, 456331 (Madhya Pradesh) And Having Cement Manufacturing Unit At Rawan Cement Works, District Raipur Chhattisgarh.

---- Appellant

Versus

1. Chhattisgarh State Power Distribution Co. Ltd, Sundar Nagar, Po Dangania, Raipur (Chhattisgarh) Through Its Secretary

2. Chief Engineer (Commercial), Chhattisgarh State Electricity Board, Sundar Nagar, P.O. Dangnia, Raipur, District Raipur Chhattisgarh.

---- Respondent

For Appellant : Shri Ashish Shrivastava, Advocate.

WA No. 409 of 2018 & WA No. 411 of 2018

Hon'ble Shri P.R. Ramachandra Menon, CJ &
Hon'ble Shri Prashant Kumar Mishra, J

Judgment On Board By Prashant Kumar Mishra, J

07/05/2019 :

1. Challenge in the Writ Application was to the demand of Supply Arranging Charges to the tune of Rs.71.50 lakhs and Rs.32.50 lakhs for obtaining enhancement of contract demand from 14 MVA to 25 MVA, which was allowed in favour of the petitioner on 14.8.2006.

2. The Writ Applications have been dismissed referring to para-7.6 (c) of the Chhattisgarh State Electricity Supply Code, 2005 (henceforth 'the Code') holding that once enhanced load is found feasible and the contract demand is increased, a consumer is liable to pay supply arranging charges on the rate applied by the Board.

3. Assailing the order of dismissal of the Writ Applications by the learned Single Judge, Shri Ashish Shrivastava, learned counsel for the appellant would refer to the amendment incorporated in the supply Code with effect from 16th April, 2007, particularly para-16 thereof introducing a new clause 7.8A in the original supply Code. Newly introduced clause 7.8A is reproduced hereunder:-

> "**7.8A** If a consumer who has reduced his connected load/contracted demand due to any reason, desires to restore the load within one year of such reduction, up to the sanctioned load prior to the reduction, he shall be liable to pay only the actual expenditure incurred in restoration of load applied for. If such restoration of load involves a load which is more than the load sanctioned earlier, supply arranging charges shall be payable on the difference between the load applied for and the load sanctioned earlier. Restoration of load after a period of one year shall attract supply

> arranging charges as fixed by the Commission from time to time. Such restoration shall be subject to the condition that reduction of load/demand shall not be permitted again within the next one year of supplementary agreement."

4. Referring to the above newly inserted provision, it is argued that when the sanctioned load is sought to be restored within one year and if the said restoration of load is not more than the earlier load, a consumer is not liable to pay the supply arranging charges.

5. The argument is based on the fact that the appellant was earlier availing 40 MVA load which was reduced to a different lower load from 1992 to 2005 when it was sought to be enhanced from 14 to 25 MVA.

6. We are not convinced that the subject amendment would come to the rescue of the appellant for twin reasons, firstly, the amendment itself was introduced on 16th April, 2007 whereas the impugned demand was raised for enhancement of the load with effect from 14.8.2006 i.e. much prior to the introduction of the amendment, and secondly, even if the argument is accepted, the last reduction of load up to 14 MVA was on 14.6.2005 and increase in contract demand up to 25 MVA was on 14.8.2006 i.e. after a year from the reduction of load.

7. At this stage, learned counsel for the appellant would draw attention of the Court to the facts available in Writ Appeal No. 411 of 2018 to argue that in the said case, initially contract load was 24 MVA which was reduced in due course and lastly from 16 to 13 MVA on 17.11.2005 and thereafter the load was enhanced from 13 to 18 MVA on 16.6.2006, therefore, it is well within one year.

8. We are not convinced with the said submission also for the reason that we have found that the amendment in the supply Code was not retrospective and it would not affect the demand raised by the respondents for the period much prior to 16th April, 2007.

9. Learned counsel would next argue that the language contained in para-7.4 (c) and 7.6 (c) would imply that the supply charges are to be borne by the consumers only when some additional cost in providing infrastructure is borne by the respondents. Therefore, there being no material produced by the respondents to demonstrate incurring of additional infrastructure, demand is not justified.

10. In the counter filed by the respondents before the Writ Court, it is mentioned that the Board has issued a circular on 10.2.1998 (Annexure-R/1) clarifying that prospective consumers/existing consumers availing the supply at 132 KV/220 KV, who require additional power, will have to pay the supply affording charges @ Rs.550/- per KVA or actual supply arranging charges whichever is higher. The rates of supply affording charges have now been revised @ 650 per KVA.

11. In view of the above circular, whenever contract load is enhanced, a consumer is required to pay charges for the reason that on enhancement of contract demand, the Board pre-supposes raising of additional infrastructure. It would be important to bear that the appellants have not assailed the validity of the particular provisions of the Code or circulars through which the load enhancement charges

have been introduced and the rate thereof has been fixed.

12. For the foregoing, we are satisfied that there is no error in the order passed by the learned Single Judge refusing to interfere with the demand for supply arranging charges from the appellants.

13. The Writ Appeals are therefore liable to be and are hereby dismissed.

Sd/-	Sd/-
(P.R. Ramachandra Menon)	(Prashant Kumar Mishra)
Chief Justice	**Judge**

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