



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

I.A.No. 5 of 2018

in

O.P.No. 2 of 2013

Date: 02-06-2018

Present

Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member
Sri P. Rama Mohan, Member

Between:

M/s. Bharat Alloys & Energy Limited
(Presently known as M/s. VBC Industries Limited)
Dinnedavarapadu (V), N.H.No.44
Gooty Road, Kurnool, A.P. 518 002
Rep. by its General Manager – Finance
Sri Mutyala Babu Katta S/o. Subba Rao
With Service Connection No.HT KNL-288

... Applicant

A N D

Andhra Pradesh Southern Power Distribution Company Limited
A Company registered under the provisions of the
Companies Act, 1956, Having its Registered Office at
D.No.19-13-65/A, Srinivasapuram, Tiruchanoor Road
(Represented by its Managing Director), Tirupati – 517 503

... Respondent

This Interlocutory Application has come up for hearing finally on 19-05-2018 in the presence of Sri N. Phanindra, learned counsel representing Sri Challa Gunaranjan, learned counsel for the applicant and Sri P. Shiva Rao, learned Standing Counsel for the respondent. After carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

ORDER

A petition under Section 62 read with Section 86 of the Electricity Act, 2003, to declare the demand for deemed consumption charges by the respondent on the

contracted maximum demand for FY 2014-15 to be contrary to the tariff order for FY 2013-14 dated 30-03-2013 in O.P.No.1 of 2013.

2. The petitioner's case is that it is availing power supply from the respondent under Service Connection bearing S.C.No.SKL-082 under HT agreement with a contracted maximum demand of 12000 KVA since 2003. The petitioner requires continuous and uninterrupted power supply for its Ferro Alloy industry, which is highly power intensive with electricity amounting to 40 to 70% of the manufacturing cost. From FY 2009-10, the Commission prescribed Guaranteed Energy Off-take at 6701 units per KVA per annum (at 85% annual load factor) on average contracted maximum demand or average actual demand, whichever is higher and that the energy falling short of 6701 units per KVA per annum will be billed as deemed consumption. The same condition was stipulated even subsequently and it was stated in the tariff order for FY 2014-15 that the Ferro Alloy consumers, whether they consume or not, pay for 6701 units per KVA during the year without any other choice in energy usage and assuring revenue to the licensees. In FY 2012-13, power cuts were imposed under intimation to the petitioner and at the instance of the respondent, the Commission imposed restrictions under Section 23 of the Electricity Act, 2003 from 12-09-2012 onwards by its order dated 07-09-2012. Clause 12 (b) of the restriction order prohibits levy of any deemed consumption charges during the period of R & C measures and the R & C measures were continued upto September, 2013 by different orders from time to time. But, suddenly the Commission removed the restrictions with effect from 01-08-2013. The respondent deviated from the supply hours (number of scheduled and unscheduled outages) resulting in commercial losses to the petitioner and the details of the actual hours of load shedding as compared to the permitted hours of load shedding is

given in the tabular statement and the planning and coordination done by the petitioner were impacted by the sudden withdrawal of the R & C measures and even later, the respondent resorted to unscheduled load shedding. The load shedding increased and went in an unregulated manner. For FY 2014-15, huge demand was made against the petitioner on account of deemed consumption charges and the basic assumption that there would be continuous availability of power supply having gone wrong, the orders of the Commission deserve to be revisited. When even the R & C measures were not adhered to and the outages and unscheduled load shedding continued, the respondent is precluded from levying deemed consumption charges. When the formula for imposing deemed consumption charges took the entire year as a unit and due to acute shortage of available power, the respondent was not in a position to supply full and continuous power to Ferro Alloy industry throughout the FY 2013-14 and 2014-15, billing any shortfall in consumption is against the accepted principles. Emergency Load Relief and Load Relief continued throughout the year and the records of the respondent will disclose the same. Ferro Alloy industry is a continuous process industry and power cuts led to furnace being brought back to working temperature only after a long time. The Commission itself clarified deemed consumption as a penal provision and it is an estimated quantity and hence there is no loss of revenue and the Commission itself observed that the respondent was not in a position to ensure continuous power supply even for 4 months after 01-08-2013. The petitioner could not book export orders in advance and could not plan procurement of imported raw material to operate at a full capacity due to uncertain power supply and the petitioner's unit has to be closed depriving all the dependants on the industry of their livelihood and depriving the State and Central exchequer of duties, taxes and levies. Hence, the petition.

3. The respondent in its counter affidavit stated that the petition seeking amendment of the tariff order for FY 2014-15 is barred by law of limitation. The Commission imposed the condition for Guaranteed Energy Off-take with any shortage being billed as deemed consumption in its tariff order for FY 2013-14 and 2014-15. However, it imposed restrictions with effect from 12-09-2012 upto 31-07-2013 during which no deemed consumption charges shall be billed against HT Cat-I (B) consumers. Restrictions were lifted with effect from 01-08-2013 and there were no specific orders of the Commission exempting Ferro Alloy industries from payment of deemed consumption charges for FY 2014-15. Hence, the respondent prayed for dismissal of the petition with costs.

4. The point for consideration is whether the petitioner is entitled to be relieved of from payment of deemed consumption charges for failure to have Guaranteed Energy Off-take at 6701 KVAH per KVA per annum on contracted maximum demand for FY 2014-15 ?

5. In the common order on I.A.No.1 of 2016 in O.P.No.4 of 2011 and batch dated 06-04-2016, this Commission dealt with the issue of deemed consumption charges for FY 2011-12 to FY 2013-14 in respect of consumers in the business of manufacture of Ferro Alloys. The power intensive nature of Ferro Alloy industry being admitted, it was recognized that R & C periods had to be excluded while calculating the deemed consumption charges as the imposition of deemed consumption charges was on the premise of the industry consuming power continuously. The Commission concluded that if the period of R & C measures is excluded and if the power holidays / power cuts / load reliefs which are admitted are taken into account, the basis for imposition of any deemed consumption charges

ceased to exist. As the distribution licensees could not supply power for significant periods during the relevant periods and as the formula on which the Commission based the imposition of deemed consumption charges is dependent on consumption of power for 8760 hours, it was concluded that the distribution licensees cannot claim to be deprived of any maintenance expenditure during the relevant periods due to nonpayment of the deemed consumption charges. As no loss due to non-consumption of energy was proved and as the actual charges were admittedly paid, the petitioners therein were declared not liable to pay any deemed consumption charges during the relevant periods.

6. Again in the order on I.A.No.1 of 2017 in O.P.No.1 of 2013 dated 25-02-2017 relating to FY 2014-15 dealing with an identical fact situation, it was found that interruptions and deficiencies in power supply were considerable and significant during the relevant periods and the decision of the Hon'ble Supreme Court in Amalgamated Electricity Company Limited Vs The Jalgaon Borough Municipality (1975) 2 SCC 508 holding that if the basic premise of readiness to supply energy is absent, as a logical consequence, the person receiving energy may not be liable to be burdened with an obligation of paying any minimum charges was followed and the consumer therein who was shown to have faced a similar situation in FY 2014-15 was held entitled to demand non-liability for payment of deemed consumption charges. Again, the order dated 26-08-2017 in I.A.No.7 of 2017 in O.P.Nos.1 & 2 of 2013 also reiterated the same conclusion in respect of a relief prayed for regarding FY 2014-15.

7. The present Interlocutory Application is also relating to FY 2014-15 which is squarely covered by the order dated 25-02-2017 in I.A.No.1 of 2017 and the order in

I.A.No.7 of 2017 dated 26-08-2017. While the earlier order dated 06-04-2016 concerns FY 2011-12 to FY 2013-14, the principle laid down by the Hon'ble Supreme Court in Amalgamated Electricity Company Limited's case squarely applies to the fact situation in all these years. In the orders in I.A.Nos.1 and 7 of 2017, the letters from the officers of the distribution licensees during the FY 2014-15 were specifically referred to and it was concluded that there were 126 power cuts leaving the days to be reviewed for deemed consumption at 239. The statement of load reliefs and various memos issued led to relief from deemed consumption charges being granted and in I.A.No.7 of 2017 memos dated 28-04-2014, 03-05-2014, 08-05-2014 and 24-05-2014 issued by the respondent herein were noted as referring to interruptions in power and restrictions. As the counter affidavit of the respondent did not specifically traverse these aspects, the Interlocutory Application needs to be allowed on an identical conclusion as in the earlier three orders. Though a feeble attempt was made in the counter affidavit to plead the bar of limitation, the respondent did not place before the Commission any provision or principle or authority in support of the plea. As the demand in question was dated 19-07-2016 and this application was filed on 13-12-2017, the petition ex-facie cannot be considered to be barred by time. Under the circumstances, the petitioner has to succeed.

8. Accordingly, the Interlocutory Application is allowed. No costs.

This order is corrected and signed on this the **2nd day of June, 2018.**

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman