



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

I.A.No. 7 of 2017  
in  
O.P.Nos. 1 & 2 of 2013

Dated: 26-08-2017

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

**Between:**

Andhra Pradesh Ferro Alloys  
Producers Association & 12 Others

... Applicants / Petitioners

**A N D**

1. Eastern Power Distribution Company of  
Andhra Pradesh Limited
2. Southern Power Distribution Company of  
Andhra Pradesh Limited

... Respondents

This Interlocutory Application has come up for hearing finally on 19-08-2017 in the presence of Sri Subhodh, learned counsel representing Sri O. Manohar Reddy, learned counsel for the petitioners and Sri P. Shiva Rao, learned Standing Counsel for the respondents. After carefully considering the material available on record and after hearing the arguments of the learned counsel, the Commission passed the following:

**ORDER**

A petition to declare the demand for deemed consumption charges by the respondents for the FY 2014-15 to be contrary to the earlier order of the Commission dated 06-04-2016 and the tariff order dated 30-03-2013 in O.P.Nos.1 & 2 of 2013 and set aside the demand raised by the respondents on the petitioners and further direct the respondents to implement the order of the Commission dated 18-02-2016 not to levy deemed consumption charges during disconnection period and for other appropriate orders. Petitioners 2 to 9 are the consumers of the 1<sup>st</sup> respondent and petitioners 10 to 13 are the consumers of the 2<sup>nd</sup> respondent.

2. The petitioners' case is that they are in the business of manufacture and sale of Ferro Alloys and electricity is one of the major components in the production of Ferro

Alloys. Their manufacturing units are located at the specified places. Members of the 1<sup>st</sup> petitioner Association are availing power supply under HT Category 1 (B) with individual H.T. Service Connection numbers mentioned in the cause title for their respective Ferro Alloys manufacturing units from the respondent concerned and also availing power supply from private sources. As the Ferro Alloys units were one of the major consumers of electricity, the erstwhile APSEB came up with a proposal that power would be supplied to members of the 1<sup>st</sup> petitioner Association on certain conditions. The Commission in its Order dated 26-09-2002 passed in I.A. No. 10 of 2002 in O.P. Nos. 29-33 of 2002 fixed tariff for Ferro Alloys units as a separate category without demand and minimum charges subject to condition that the Ferro Alloys units draw entire power required by them from DISCOMs alone and surrender their source of cheaper power from NTPC and APGPCL and also maintain a load factor of 85% on annual basis. In case the annual load factor is less than 85%, the Ferro Alloys units have to pay deemed consumption charges to the extent of shortfall. From the Financial Year 2009-10, the liability was altered stating that energy falling short of 6701 kVA units per annum will be billed as deemed consumption charges in such cases. The respondents were not in a position to supply power and even though there is failure on their part in giving power to the consumers, still the respondents were charging deemed consumption charges from the members of the 1<sup>st</sup> petitioner Association. Therefore, the 1<sup>st</sup> petitioner Association and the individual Ferro Alloys producers approached the Commission challenging the demand for such charges in respect of financial years 2011-12, 2012-13 & 2013-14 and after taking into consideration all the material available on record and after hearing the parties concerned, this Commission was pleased to grant relief to the members of the 1<sup>st</sup> petitioner Association, vide its order dated 06-04-2016. As the tariff order for the Financial Year 2013-14 was also made applicable for the Financial Year 2014-15, the waiver of deemed consumption charges for FY 2013-14 by deleting the deemed consumption charges clause by the Commission also applies for FY 2014-15. The respondents also imposed power cuts / power holidays and power shedding till September, 2014 due to power shortage and there were power outages for many more days due to Hudhud cyclone. There was lot of disruption in power supply and the same is evident from the letters issued by the Divisional Engineer / Operation / Anapakalli to one of the petitioners with regard to load restrictions on the various dates. At the time of filing the earlier petition, the issue of deemed consumption charges for FY 2014-15 has not arisen and therefore, the petitioners could not claim

any relief in the earlier petition. On a representation from the 1<sup>st</sup> petitioner, the Commission passed orders dt.18-02-2016 to allow deration of contracted demand without reference to clearance of pending bill arrears and not to levy deemed consumption charges during disconnection period. Hence, the present petition.

3. The respondents did not file any formal counter.

4. The point for consideration is whether the petitioners are entitled to be relieved of the liability to pay deemed consumption charges for the tariff year 2014-15 and consequently the respondents are not entitled to make any demand for the same from the petitioners.

5. It is not in dispute that the subject matter of the present petition is identical to the fact situation dealt with in the orders dated 06-04-2016 in I.A.No.1 of 2016 in O.P.No.4 of 2011, I.A.No.21 of 2015 in O.P.No.1 of 2012, I.A.No.22 of 2015 in O.P.No.1 of 2013, I.A.No.23 of 2015 in O.P.No.3 of 2012 & I.A.No.24 of 2015 in O.P.No.2 of 2013. Therein also, the Ferro Alloys Producers Association as well as individual Ferro Alloys Producers approached this Commission against the demand by the two distribution companies of the State respectively for deemed consumption charges for the financial years 2011-12, 2012-13 and 2013-14 respectively. The contentions of the petitioners therein are identical to the contentions of the petitioners herein. The distribution companies contested the said applications and a verification of the power supply position to Ferro Alloy units during non R & C periods of the financial years 2012-13 and 2013-14 showed that the percentage of days with interruptions in power supply even went upto 67% and deficit power supply was found to be significant during the relevant periods.

6. The situation was compared with the facts forming the subject of *Amalgamated Electricity Company Limited vs. The Jalgaon Borough Municipality* (1975) 2 SCC 508 which presented a converse situation and it was observed 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. After a detailed analysis of the admitted factual scenario, the petitioners therein were found to be justified in resisting the demands for deemed consumption charges during the relevant periods. The success of the petitioners therein in denying any liability to pay any deemed consumption charges to the distribution companies

during the relevant periods has been stated to have been not questioned before the Hon'ble Appellate Tribunal for Electricity or any other Forum and the said orders have become final. The present Interlocutory Application relating to the financial year 2014-15 covers an identical situation and is claimed to be contrary to the tariff order dated 30-03-2013 in O.P.Nos.1 & 2 of 2013 of the then Commission for the financial year 2013-14. As the proceedings of the then Andhra Pradesh Electricity Regulatory Commission in Proceedings No.504/Secy/EAS/S-96/2014 dated 29-03-2014 directed that the existing tariffs shall continue from 01-04-2014 until further orders, the tariff order that can be taken as a benchmark for compliance or violation is the tariff order of the Commission for the financial year 2013-14. The Statement of load reliefs issued by the 1<sup>st</sup> respondent for the period from 01-04-2014 to 31-08-2014 and memoes dated 28-04-2014, 03-05-2014, 08-05-2014 and 24-05-2014 issued by the 2<sup>nd</sup> respondent would refer to interruptions in power and restrictions imposed. If that is the factual situation, the principle of the order dated 06-04-2016 of this Commission squarely applies to this Interlocutory Application and in the absence of any contradictory pleading, the contention of the petitioners has to be accepted, following an identical conclusion reached on identical facts and circumstances in I.A.No. 1 of 2017 in O.P.No. 1 of 2013 in the orders of the Commission dated 25-02-2017.

Therefore, the Interlocutory Application is allowed. No costs.

This order is corrected and signed on this the 26<sup>th</sup> day of August, 2017.

**Sd/-**  
**P. Rama Mohan**  
Member

**Sd/-**  
**Dr. P. Raghu**  
Member

**Sd/-**  
**Justice G. Bhavani Prasad**  
Chairman