



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

I.A.No. 17 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:

M/s. Sree Radhe Kripa Conast (Ind) Private Ltd. ... Applicant / Petitioner

A N D

1. The Andhra Pradesh Southern Power Distribution Company Limited
2. The Andhra Pradesh Eastern Power Distribution Company Limited ... Respondents

This Interlocutory Application has come up for hearing finally on 19-08-2017 in the presence of Sri Suresh Kumar for the petitioner 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 orders of the Commission dated 06-04-2016 and 25-02-2017 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 petitioner 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.

2. The petitioner's case is that it is availing power supply under HT Category 1 (B) with H.T. Service Connection No. ATP - 448 for its Ferro Alloys Manufacturing

Unit in APIIC Industrial Area at Hindupur, Andhra Pradesh. It entered into an agreement with the 1st respondent for a CMD of 7500 kVA to meet its requirement of continuous and uninterrupted power supply. 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 Ferro Alloys 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. Therefore, the A.P. Ferro Alloys Producers 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 that there were considerable interruptions / power cuts / power holidays during 2011-12 to 2013-14, which went upto 67% and deficit power supply was found to be significant during the relevant periods, this Commission was pleased to grant relief to the Ferro Alloys Industry, 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. There was lot of disruption in power supply and the same is evident from the memo dated 08-05-2014 issued by the CMD of the 1st respondent with regard to load restrictions. The CGM / Operation of the 1st respondent also issued another memo dated 24-05-2014 imposing restrictions on the industrial consumers. In view of such disruption in power supply for number of days, members of Ferro Alloys Industry could not consume power and thereby production of the industry has suffered. The Commission after taking into

consideration the factual situation, passed the order dated 06-04-2016 in respect of the tariff order 2013-14 and the principle laid down therein is applicable to tariff year 2014-15 also. On a representation from the Association of Ferro Alloys producers, 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.

3. The respondents did not file any formal counter.

4. The point for consideration is whether the 1st respondent cannot enforce the demand for deemed consumption charges against the petitioner for the relevant period.

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 petitioner herein. The distribution companies contested the said applications and a verification of the power supply position to Ferro Alloys 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.No.1 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 memos and fax messages of the 1st respondent refer to interruptions in power supply and the 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 petitioner 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 26th day of August, 2017.

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman