



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**

Vidyut Niyantrana Bhavan, Dinnedevarapadu Road, Kurnool - 518 002, Andhra Pradesh

WEDNESDAY, THE NINETEENTH DAY OF JUNE,  
TWO THOUSAND AND TWENTY FOUR  
(19-06-2024)

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:Present:

**Justice C.V. Nagarjuna Reddy, Chairman**  
**Sri Thakur Rama Singh, Member**  
**Sri P.V.R.Reddy, Member**

**O.P.No.5 of 2024**

Between:

M/s Kakatiya Cement Sugar & Industries Ltd.

A company incorporated under the Companies Act, 1956,

Having its registered office at;

1-10-140/1, "GURUKRUPA", Ashok Nagar,

Hyderabad, Telangana -500 020,

Rep. by its Managing Director,

Sri P. Veeraiah, S/o Late Sri P. Venkateswarlu.

... Petitioner

And:

Central Power Distribution Corporation of Andhra Pradesh  
Limited (APCPDCL),

A company incorporated under the Companies Act, 1956,

Having its registered office at: Corporate Office, APCPDCL,

Beside Polytechnic College. ITI Road,

Vijayawada, Andhra Pradesh - 520 008,

represented by its Chairman and Managing Director.

... Respondents

This Original Petition has come up for hearing before us today in the presence of Ms. D.Achala Siri, learned Counsel for the Petitioner; and Sri P.Shiva Rao, learned Standing Counsel for the respondent, that after carefully considering the material available on record and after hearing learned counsel for both the parties, the Commission passed the following:

## **ORDER**

The short point that arises for consideration in this O.P. is whether the petitioner is liable to pay Late Payment Surcharge (LPS) on the sum of Rs.55,15,496/- which was finally found due on 14-06-2023 and in respect of which a final notice of payment was issued on 22-06-2023. The facts lie in a narrow compass. The petitioner is a manufacturer of Cement and Sugar. It has established its Captive Generation plant at Peruvancha Village, Kalluru Mandal, Khammam Dist., Telangana State. A power purchase and captive wheeling agreement was entered on 19-02-2002 with the then Transmission Corporation of A.P (presently TS Transco, post bifurcation). While the petitioner's Cement Industry is situated in Telangana, the colony for employees is situated in the state of Andhra Pradesh. By order dated 24-03-2002, this Commission has enhanced the wheeling charges for the year 2002-03. A huge litigation has ensued thereon. A Division bench of the erstwhile High court of Andhra Pradesh vide its judgement dated 18-04-2003 set aside the order of the Commission. However, the said judgement was reversed by the judgement dated 29-11-2019 of the Hon'ble Supreme Court. Following the said judgement which upheld levy of wheeling charges, a notice was issued by the respondent on 24-08-2020 calling upon the petitioner to pay a sum of Rs.1,52,17,427/- towards differential wheeling charges as per APERC Tariff Orders from FY2002-03 to FY2014-15. In reply, the petitioner addressed a

letter on 26-08-2020 requesting the respondent to furnish complete details of the claim made, the calculation data, the calculation methodology etc. A notice was also issued by Northern Power Distribution Company of Telangana on 25-09-2021, asking the petitioners to pay a sum of Rs.80,08,854/- purportedly towards Grid support charges to the respondent. A suitable reply was given by the petitioner on 01-10-2021. By a notice dated 12-10-2021, the respondent has requested the petitioner to pay Rs.80,08,854/- with interest at 18% per annum. As proper details were not furnished, the petitioner which statedly received the said notice on 23-10-2021 gave a reply on 26-10-2021 requesting the respondent to furnish proper details apart from pointing out certain lacune in the notice, and annexures thereto. After further lengthy correspondence in this regard, the petitioner has received demand notice dated 13-06-2023 on 14-06-2023 for a sum of Rs.55,15,496/- along with applicable surcharge. Within about two weeks of receipt of said demand notice i.e. on 03-07-2023 the petitioner has paid the entire demand amount of Rs.55,15,496/-. After receiving the said amount, the respondent has sent further demand notice dated 22-07-2023 for a sum of Rs.30,61,100/- towards surcharge for the alleged belated payment, it is this notice which is assailed in this O.P.

On receipt of the notice, the respondent has filed a counter to which the petitioner has filed its rejoinder. We have heard D. Achala Siri, Learned

counsel for the petitioner and Sri P.Shiva Rao, Learned Standing Counsel for the Respondent.

From the sequence of events noted above, it is clear that the respondent has been demanding late payment surcharge from 07-07-2020 when the first of the notices for payment of money was allegedly sent, up to the date of payment. While the petitioner denies receipt of any such notice dated 07-07-2020, it has however admitted receiving its first notice on 24-08-2020. Be that as it may, It is not in dispute that a demand of Rs.1,52,17,427/- initially made has been eventually brought down to Rs.55,15,496/- for the first time in June 2023. It is thus clear that the actual liability of the petitioner was for the first time quantified only in the demand notice dated 13-06-2023 which was received by the petitioner through email on 14-06-2023. In the interregnum, the respondent kept on changing the figures from Rs.1,52,17,427/- to Rs.80,08,854/- and finally to Rs.55,15,496/-. Thus the respondent was prevaricating on the quantum of the petitioner's liability. As noted above, it was only on 13-06-2023 that the respondent finally quantified the petitioner's liability.

The learned counsel for the petitioner has placed reliance on the judgement of the Hon'ble Supreme Court in *National Thermal Power Corporation Limited Vs Madhya Pradesh State Electricity Board*<sup>1</sup> and that of the Patna High Court in the *Commissioner of Income Tax and others Vs*

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<sup>1</sup> (2011) 15 Supreme Court cases 580

*Ranchi Club Limited*<sup>2</sup>. In *National Thermal Power Corporation Limited Vs Madhya Pradesh State Electricity Board (1 supra)*, the Supreme Court relying upon its earlier judgement in *CST Vs Hindustan Aluminium Corporation*<sup>3</sup> held that, when there was a dispute pending regarding assessment of Income Tax, there was no liability on the dealer for the amount of tax unpaid until the dispute was resolved and that consequently there could be no liability of interest until assessment was finalised.

The Patna High Court (2 supra) relied upon the judgement of the Hon'ble Supreme Court of *JK Synthetics Limited (1994) 94 STC 422*, and has extracted the relevant portion of the judgement of the Supreme Court, which is usefully extracted hereunder:

*“Therefore, so long as the assessee pays the tax which according to him is due on the basis of information supplied in the return filed by him, there would be no default on his part to meet his statutory obligation under section 7 of the Act and, therefore, it would be difficult to hold that the ‘tax payable’ by him ‘is not paid’ to visit him with the liability to pay interest under clause (a) of section 11B. It would be a different matter if the return is not approved by the authority but that is not the case here. It is difficult, on the plain language of the section to hold, that the law envisages the assessee to predict the final assessment and expect him to pay the tax on that basis to avoid the liability to pay interest. That would be asking him to do the near impossible.”*

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<sup>2</sup> (2013) 15 supreme court cases 545

<sup>3</sup> (2011) 15 SCC 596 : (2002) 127 STC 258

As rightly submitted by the Learned Counsel for the petitioner, since the liability of the petitioner has got crystallised only on 13-06-2023, and within a few days thereafter the petitioner paid the entire demanded amount, it is not liable to pay the late payment surcharge. This submission of Learned Counsel for the petitioner is amply supported by the aforementioned judgments of APEX court and the Patna High Court.

For all the above reasons, the impugned demand is set aside and the OP is allowed.

Order pronounced on this the 19th day of June, 2024.

Sd/-  
**P.V.R.Reddy**  
Member

Sd/-  
**Justice C.V. Nagarjuna Reddy**  
Chairman

Sd/-  
**Thakur Rama Singh**  
Member

