



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

I.A.No.1/2016 in O.P.No.4/2011
I.A.No.21/2015 in O.P.No.1/2012
I.A.No.22/2015 in O.P.No.1/2013
I.A.No.23/2015 in O.P.No.3/2012
&
I.A.No.24/2015 in O.P.No.2/2013

Dated: 06-04-2016

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

Between:

Rhodium Ferro Alloys Ltd.	... Applicant
AND	
Andhra Pradesh Southern Power Distribution Company Limited	... Respondent
A.P. Ferro Alloys Producers Association & another	... Applicants
AND	
Andhra Pradesh Eastern Power Distribution Company Limited	... Respondent
A.P. Ferro Alloys Producers Association & 12 others	... Applicants
AND	
Andhra Pradesh Eastern Power Distribution Company Limited	... Respondent
A.P. Ferro Alloys Producers Association & 6 others	... Applicants
AND	
Andhra Pradesh Southern Power Distribution Company Limited	... Respondent
A.P. Ferro Alloys Producers Association & 6 others	... Applicants
AND	
Andhra Pradesh Southern Power Distribution Company Limited	... Respondent

All the interlocutory applications have come up for hearing finally on 27-02-2016 in the presence of Sri T. Vijay Babu, learned counsel representing Sri Challa Gunaranjan, learned counsel for the applicants 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 learned counsel for both parties, the Commission passed the following:

ORDER

I.A.No.1/2016 is an application by the petitioner challenging the demand by the Southern Power Distribution Company of Andhra Pradesh Limited for deemed consumption charges for the FY 2011-12.

2. I.A.No.21/2015 is an application by A.P. Ferro Alloys Producers Association and M/s. GMR Vasavi Industries Limited against the Eastern Power Distribution Company of Andhra Pradesh Limited in respect of identical demand for the FY 2012-13.

3. I.A.No.22/2015 is an application by the A.P. Ferro Alloys Producers Association and 12 others against the Eastern Power Distribution Company of Andhra Pradesh Limited for an identical relief concerning the FY 2013-14.

4. I.A.No.23/2015 is an application by the A.P. Ferro Alloys Producers Association and 6 others against the Southern Power Distribution Company of Andhra Pradesh Limited for an identical relief relating to the FY 2012-13.

5. I.A.No.24/2015 is an application by the A.P. Ferro Alloys Producers Association and 6 others against the Southern Power Distribution Company of Andhra Pradesh Limited for an identical relief for the FY 2013-14.

6. The contentions of the petitioners which are more or less identical in all the cases are that the petitioners are in the business of manufacture of Ferro Alloys with their manufacturing units at the specified places availing power supply from the respondents respectively under HT agreements for respective Contracted Maximum Demands. Electricity is a major input for the power intensive industry amounting to 40 to 70% of the manufacturing cost. Ferro Alloys industry was specified as a separate category from 2002-03 with the tariff being fixed on the premise that there would be continuous and un-interrupted power supply. From 2009-10, the Commission fixed the format as *“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. The energy falling short of 6701 units per kVA per annum will be billed as deemed consumption”*. From FY 2011-12, the respondents imposed power cuts on the petitioners under intimation as per the General Terms and Conditions of Supply and the respondents later got restrictions under Section 23 of the Electricity Act, 2003 imposed by the Commission. Since 2012-13, the Commission ordered that during R & C measures, no deemed consumption charges should be levied. The respondents deviated even from the supply hours fixed by R & C orders, with a number of scheduled and unscheduled outages causing commercial loss to the petitioners. The rationale and premise on which the tariff orders were passed were rendered nugatory as probablised by the logbooks of the petitioners. The respondents are threatening disconnection if the huge demands are not met but when the basic assumption that there would be continuous availability of power supply proved to be wrong, the orders of the Commission about deemed consumption charges need to be revisited. The entire year was taken as a unit for

working out the formula and the load factor has to be arrived at on an annual basis when full and continuous power is made available for all the 24 hours and 365 days. The reciprocal duty of the Discoms was not in a position to be discharged and the emergency load relief and load relief restrictions continued throughout. Extra weekly power holidays were imposed and the records of the respondents would disclose the power cuts. The power which was not consumed by the petitioners was always sold to others, thus causing no loss to the respondents. The Ferro Alloys industry is a continuous process industry and the furnace cannot be brought back to the working temperature suddenly. Carbon electrodes can be brought back to the required size only after 48 to 72 hours. A single power cut thus makes the furnace take atleast two days to reach optimum level. In O.P.No.1/2013, the Commission held that the respondent was not entitled to deemed consumption charges when it was unable to supply 100% continuous power. The petitioners were disabled from procuring the imported raw material or booking export orders to operate at full capacity to achieve the Load Factor of 85% and the power cuts already resulted in financial losses and loss of market for the petitioners. Therefore, any demand for payment of deemed consumption charges is contrary to the respective tariff orders and hence the petitioners sought for setting aside the respective demands against respective petitioners.

7. The petitioner in I.A.No.1/2016 was served a demand for ₹1,68,08,707/= dated 10-07-2012. After exchange of correspondence, the petitioner filed W.P.No.9479/2014 and W.A.No.696/2014. The petitioner was since issued demands for the subsequent years 2012-13 and 2013-14 in respect of which I.A.No.23/2015 and I.A.No.24/2015 were filed before the Commission.

8. The first petitioner in I.A.No.21/2015, I.A.No.22/2015, I.A.No.23/2015 and I.A.No.24/2015 is a registered association of the companies engaged in the business of manufacture and sale of Ferro Alloys in the States of Andhra Pradesh and Telangana. In all the four Interlocutory Applications, the petitioners claimed that the tariff was fixed on the formula $1 \text{ kVA} \times 365 \text{ days} \times 24 \text{ hours} \times 85\% \text{ LF} \times 0.9 \text{ PF} = 6701 \text{ kWh per kVA}$ and as the formula was worked out taking the entire year as a unit, it cannot be applied for the balance period when for the R & C periods and other periods of power cuts, the power could not be supplied.

9. The respondents in their identical replies were referring to restriction orders passed by the Commission for different periods under which no deemed consumption charges should be levied during the period of restriction and control measures. The restrictions were revoked by the Commission when the Discoms reported availability of power. While the Ferro Alloys consumers are not paying the demand charges and ToD tariff unlike the other industrial consumers due to their paying deemed consumption charges, any waiver of deemed consumption charges requires an amendment to the tariff orders. Hence the respondents desired dismissal of the applications with costs.

10. The respondents have made available the power supply position to Ferro Alloys units during the non R & C periods of FYs 2012-13 and 2013-14 which details show that the percentage of days with interruptions in supply went even upto 67% of the period and varying periods of interruptions show that except in respect of three services, there were considerable interruptions in the supply. The petitioners filed similar details furnished by Load Monitoring Cell for 2013-14 and

other statements furnished by the respondents show that the deficit power supply was significant during the relevant periods.

11. On the above material, the point for consideration is whether the petitioners are entitled to be relieved of the liability to pay the deemed consumption charges for the relevant periods and consequently the respondents are not entitled to make any demand for the same from the petitioners.

12. The decision reported in *Amalgamated Electricity Company Limited vs. The Jalgaon Borough Municipality* (1975) 2 SCC 508 was also a case which arose out of an agreement for supply of electrical energy and there was a demand for minimum charges, even when the electrical energy was not consumed. The Hon'ble Supreme Court found with reference to clauses 2 and 3 of the agreement and Section 22 of the Indian Electricity Act, 1910 that a provision for a minimum guarantee for supply of electricity was ensured and in that case the liability for payment of minimum charges was upheld as the supplier kept the power ready for being supplied as and when required. The present case presents a converse situation where the supplier was not in a position to supply the power for a significant period of year including during restriction & control periods and the power cuts periods. If that basic premise of readiness to supply energy is absent, the person receiving energy as a logical consequence may not liable to be burdened with an obligation of paying any minimum charges.

13. The factual scenario is not in dispute and all the petitioners who run Ferro Alloys units have their industries totally dependent upon the reliable and continuous supply of power. The power intensive nature of the industry is recognized by the distribution companies themselves as such, in their ARR & FPT

filings for FY 2016-17. The industry received such recognition from the Commission and the State Government as long back as in 2002 and the replacement of deemed consumption charges in the place of demand charges and minimum charges was on the premise of the industry consuming power continuously. The Commission itself recognized the necessity to exclude R & C periods while calculating the deemed consumption charges for the subsequent years and the sudden restoration of full power from 31-07-2013 was stated to have made Ferro Alloys industry unable to use the same due to non-availability of raw material and physical disability to procure raw material upto three months. The annual Load Factor of 85% therefore could not be physically achieved and there was again subsequent shortage of power. The calculations given by the petitioners in their Note dated 20-02-2016 showing annual Load Factor and the minimum hours of supply of power required to achieve 85% LF are not factually disputed and if the period of R & C measures is excluded as directed by the Commission 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 ceases to exist. As the respondents admittedly could not supply power for significant periods during the relevant years and as the formula on which the Commission based the imposition of deemed consumption charges is dependent on consumption of power for 8,760 hours, the distribution companies cannot claim to be deprived of any maintenance expenses during the relevant years due to petitioners not paying the deemed consumption charges. When energy intensive industries like Ferro Alloys cannot be subjected to vagaries in supply and when such industries cannot suddenly re-gain their ability to consume the contracted load of power or their capacity to achieve optimum production on any sudden uninformed resumption of power supply, the request of

the petitioners to be exempted from the liability to pay the deemed consumption charges is but just. Apart from the distribution companies not projecting or proving any actual loss due to non-consumption of energy by the petitioners during the relevant periods and when the distribution companies realized actual consumption charges for the power supplied to the petitioners even during the relevant periods, the deemed consumption charges ought not to have been imposed and collected from the petitioners. For the said reasons the petitioners appeared to be clearly justified in resisting the demands for deemed consumption charges during the relevant periods.

14. Consequently, the petitioners are declared to be not liable to pay any deemed consumption charges to the respondents respectively during the relevant periods for the relevant connections and hence the respondents respectively are not entitled to raise any demands against the petitioners for the same. The Interlocutory Applications are allowed accordingly and the parties shall bear their own costs in these Interlocutory Applications.

This order is corrected and signed on this the 6th day of April, 2016.

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman