(2022) 04 TEL CK 0039

In the Telangana High Court

Case No : Writ Appeal No. 88 Of 2019

Central Power Distribution Company Of Andhra Pradesh Limited	APPELLANT
Vs	
Andhra Sinter Limited	RESPONDENT

Date of Decision : 11-04-2022

Acts Referred:

Citation : (2022) 04 TEL CK 0039

Hon'ble Judges : Satish Chandra Sharma, CJ;Abhinand Kumar Shavili, J

Bench : Division Bench

Advocate : R Vinod Reddy, Gyanam Sandhya Rani

Final Decision : Dismissed

Judgement

The present writ appeal is arising out of an order dated 13.07.2018 passed by the learned Single Judge in W.P.No.6794 of 2005.

The facts of the case reveal that the writ petition was preferred by the sole respondent herein (writ petitioner) being aggrieved by letter dated 09.03.2005 issued by the appellant No.2 herein. The facts further reveal that an agreement was executed between the writ petitioner and the appellants herein (respondents in the writ petition) on 05.09.1984 for supply of contracted maximum demand of 500 KVA. The writ petitioner, as it was facing power cuts, wanted to shift from electricity to gas, has submitted a letter of request on 25.09.1993 to reduce the contracted load from 500 KVA to 250 KVA. Its case was considered and it was also recommended by the Superintending Engineer (Operations) to the Divisional Engineer for reduction of contracted maximum demand. The writ petitioner also became a sick unit and in spite of the request made by the writ petitioner, the contracted maximum demand was not reduced and the appellants have sent the electricity bills by taking into account the maximum contracted demand of 500 KVA for the months from October, 1990 to August, 1993. The writ petitioner, being aggrieved by the same, preferred a civil suit i.e., O.S.No.1080 of 1993 and the same was dismissed. The civil suit was in respect of the demands raised for the period with effect from October, 1990 to August, 1993. Thereafter, the appellants herein, for the subsequent period, issued another bill on 13.03.2001 directing the writ petitioner to pay the arrears amount of Rs.38,27,818/-together with current consumption charges and the writ petitioner preferred a writ petition i.e., W.P.No.5518 of 2001. The writ petitioner came up with a plea that after it has submitted a letter of request on 25.09.1993 for reducing the contracted maximum demand from 500 KVA to 250 KVA, the question of billing the writ petitioner under the minimum billing clause by taking into account the contracted demand at 500 KVA is bad in law. The writ petition was disposed of on 13.09.2001 directing the respondents therein to decide the writ petitioner's request for reduction of the contracted maximum demand and finally by an order dated 09.03.2005 the writ petitioner's request was turned down. The subsequent order dated 09.03.2005 was subjected to judicial scrutiny and the learned Single Judge, placing reliance upon the judgment delivered in the case of Makkariya Cotton and Oil Trading Co. v. TRANSCO Ltd. 2000 (4) ALT 192, has disposed of the writ petition setting aside the said order.

Paragraphs 5 to 7 of the order passed by the learned Single Judge in W.P.No.6794 of 2005 are reproduced as under:-

"5. A perusal of the record, it is clear that it is totally lethargic attitude of the respondents in not acting immediately upon the representations of the petitioner due to which the petitioner was asked to pay charges without availing the electricity. When the petitioner categorically expressed about the irregular power cuts and it has become sick unit and requested the respondents to derate contracted maximum demand of 500 KVA to 250 KVA, it was not open to the respondents to sleep over the matter and they ought to have acted diligently. On one hand encouraging entrepreneurs by providing schemes and on the other hand overburdening the entrepreneurs with the overheads is unwarranted and the action of the respondents cannot be appreciated. If the respondents have acted diligently upon the representations of the petitioner, the petitioner would not have been notified as a defaulter.

6. Admittedly, the arrears are not actual consumption charges, but they are only calculation on paper in pursuance of the aforesaid agreement entered between the petitioner and the respondents. Insofar as the excess power used during the aforesaid six months is concerned, it is only a minimal and negligible amount of surplus power consumption out of 140 months.

7. Accordingly, the writ petition is disposed of setting aside the order of the second respondent in Lr.No.SE/OP/NLG/SAO/HT/D.No.516/04, dated 09.03.2005, with a direction to the respondents to consider the case of the petitioner for deration from 500 KVA to 250 KVA and also to refund the amount deposited in pursuance of the order in WP.No.5518 of 2001, dated 13.09.2001, by deducting the amount equivalent to consumption of electricity over and above 250 KVA. No costs. Miscellaneous petitions pending, if any, shall stand closed."

The learned Single Judge has disposed of the writ petition taking into account the fact that the request of the consumer for reducing the contracted maximum demand was made on 25.09.1993 and the appellants herein delayed the matter for the reasons best known to them in spite of there being a recommendation by the Superintending Engineer to reduce the demand and finally an order was passed only in the year 2005. In those circumstances, the learned Single Judge was certainly justified in disposing of the writ petition and setting aside the order dated 09.03.2005.

Learned counsel for the appellants is fair enough in informing this Court that three months period is provided for deciding the issue of reduction of the maximum contracted demand, provided that all other outstanding dues are cleared.

However, the fact remains that in the present case, the delay cannot be attributed to the consumer at all and therefore, no case for interference is made out in the matter and the order passed by the learned Single Judge is upheld.

The writ appeal is accordingly dismissed.

The miscellaneous applications pending, if any, shall stand closed. There shall be no order as to costs.