(2024) 09 TEL CK 1121

In the Telangana High Court

Case No : Writ Petition No.21052 Of 2011

Mahavir Ferroalloys — APPELLANT

Vs

Central Power Distribution Company of A.P.Ltd., & others — RESPONDENT

Date of Decision : 30-09-2024

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2024) 09 TEL CK 1121

Hon'ble Judges : Sujoy Paul, J;Renuka Yara, J

Bench : Single Bench

Advocate : Lakshmi Narasimha, Ramesh Chilla

Final Decision : Disposed Of

Judgement

Surepalli Nanda, J

1. Heard Sri M.P.Chandramouli, learned senior designated counsel appearing on behalf of the petitioner and Sri R.Vinod Reddy, learned standing counsel appearing on behalf of the respondents.

2. The petitioner approached the Court seeking prayer as under:

"........to issue a writ in the nature of Writ of Mandamus or any other appropriate writ direction or order declaring the action of the respondents in Levying and Demanding Penal Charges from the petitioner for the billing month June 2011 relying on Clause-5 of the Tariff Order for the FY 2011-2012 and as illegal without jurisdiction and void and pass….."

3. The case of the petitioner, in brief, as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present writ petition, is as under:

a) It is the case of petitioner that, the petitioner is FerroAlloy Industry and the Tariff applicable is under H.T.I.B. As per Clause 5 of the Tariff Order for HT.I Category, it is evident that in any month if the recorded maximum demand

(RMD) of the consumer exceeds his contracted maximum demand (CMD), depending upon the percentage of excess RDM the consumer if liable has to pay the penal charges as prescribed. Moreover, if the RMD is 100 to 120 % over CMD the demand charges are levied 2 times the normal charges and there is no penal levy on energy charges. However, as the petitioner is a ferro alloy unit there is no demand charges and when there is no demand charges there cannot be any penal charges.

b) However, the respondents, for the billing month of June 2011 levied penal charges on the full energy at 1.15 times of normal charges i.e., on 42,39,326 units and levied a sum of Rs.16,85,132.08 ps. This levy is in addition to the usual levy of Rs.1,12,34,213.90. The petitioner herein had paid the normal demand charges but had not paid the penal charges. Aggrieved by the said excess charges the petitioner filed representations dated 28.06.2011 and dated 04.07.2011. In reply to the same, the 2nd respondent vide reply dated 16.07.2011 stated that the RMD for the month of 06/2011 is 6506.4 KVA which exceeded CMD 5400 KVA by 1106.4 KVA and this excess KVA is more than 120% of CMD as such 15% extra of normal rate i.e., R 0.40 ps for unit is levied as penal charges.

c) Subsequently, the petitioner sent another representation dated 20.07.2011, stating that there was already penalty stipulated in condition number- I for the ferro alloy units, that when there are no demand charges and penalty, there cannot be any penalty on the energy and that the RMD is not more than 20% and therefore the penal charges as per condition No:5 cannot be invoked. However, the said representation was not considered and the field staffs threatened disconnection of power supply. Aggrieved by the said action of the respondents, the present Writ Petition is filed.

4. The interim prayer sought for by the petitioner in W.P.M.P.No.25622 of 2011 in the present Writ Petition is extracted hereunder:-

" …pleased to stay the demand of Rs.16,85,132.08 ps as penal charges levied in the C,C,bill dated 26.06.2011 and pass such other and further orders.."

5. This Court on 27.07.2011 in W.P.M.P.No.25622 of 2011 in W.P.No. 21052 of 2011 passed orders in favour of the petitioner observing as under:-

There shall be interim stay as prayed for Post the WPMP after four weeks.

6. PERUSED THE RECORD :

A. The specific averments of the petitioner at para No.5 of the affidavit filed by the petitioner in support of the present Writ Petition are extracted hereunder:-

5. I submit that referring to my representation dated 04.07.2011, the 2nd respondent gave a reply dated

16.07.2011 stating that the RMD for the month of 06/2011 is 6506.4 KVA which exceeded CMD 5400 KVA by 1160.4 KVA and this excess KVA is more than 120%

of CMD as such 15% extra of normal rate i.e., R 0.40 ps for unit is levied as penal charges. On receipt of the said reply, I filed further representation dated 20.07.2011 stating that there is already penalty stipulated in condition number I for the ferro alloy units, and when there are no demand charges and penalty, there cannot be any penalty on the energy. It is also stated that the RMD is not more than 20% and therefore the penal charges as per condition No:5 cannot be invoked. There is no reply for the said representation, but the field staff are threatening disconnection of power supply. Hence, this Writ Petition.

B. Counter affidavit filed on behalf of the respondent Nos. 1 to 3, relevant para Nos. 3, 6 and 7 are extracted hereunder:-

3. In reply to the averment made in Para 2 of the affidavit it is submitted that the power supply was released to the Petitioner's company under HT cat-1 (B) with a CMD of 100 KVA on 21-04-05. Subsequently additional CMD of 2900 KVA on 13-05-05, 400 KVA on 24-05-10 and 2000 KVA on 17-07-2010 was released making total CMD of 5400 KVA with 33 KV supply voltage through Dedicated Feeder. As per the HT agreement executed by the Petitioner company, the respondents' company (APCPDCL now TSSPDCL) is entitled to recover penal energy charges whenever RMD is exceeded by MD in addition to the applicable tariff charges as per the tariff order issued by the Electricity Regulatory Commission from time to time. The RMD of the petitioner company for the month of 06/2011 being 6506.4 exceeded by 1106.4 KVA since the CMD of Petitioner Company is 5400 KVA. As per Clause 5 of General Conditions of HT supply "If in any month the recorded maximum demand (RMD) of the consumer exceeds his contracted demand with Licensee, the consumer will pay the following charges on excess demand and energy"

The RMD of the petitioner company for the month of 06/2011 consumption is exceeded by 1106.4KVA i.e., 120.48% of CMD, as such 15% extra of normal rate i.e., 0.40 Ps/KVAH (energy charges 2.65 x 15%) is levied as penal charges on the total units consumed for the above month. Therefore, the bill issued for the month of 06/2011 consumption is in order.

6. In reply to the averment made in Para 6 of the affidavit, it is submitted that the petitioner unit was levied penal energy charges as per the Clause No.5 of General Terms & Conditions of supply. The petitioner is liable to pay an amount of Rs.1685132.08 levied towards penal energy charges.

7. In reply to the averment made in Para 9 of the affidavit, it is submitted that the petitioner's RMD is 6506 KVA which is exceeded by over 120.48% of CMD 5400 KVA without prior approval from the competent authority as such penal energy charges Rs. 16,85,132.08 was levied in accordance to the Tariff Order 2011-12. It is submitted that the Honourable Court by interim order dated 27.07.2011 has granted interim stay of the demand of Rs. 16,85,132.08 as penal charges levied in CC bills dated 26.06.2011. The petitioner is liable to pay the demanded amount. If the order dated 27.07.2011 is not vacated, the

Respondent company is bound to suffer irreparable financial loss and injury.

It is submitted that all the allegations made by the petitioner that are not specifically dealt with herein are denied and the petitioner is put to strict proof of the same.

DISCUSSION AND CONCLUSION:

7. It is the specific case of the petitioner that in pursuance to the C,C bill dated 26.06.2011, petitioner made a representation, dated 04.07.2011 and the 2nd respondent gave a reply, dated 16.07.2011 stating that the RMD for the month of June, 2011 is 6506.4 KVA which exceeded CMD 5400 KVA by 1106.4 KVA and this excess KVA is more than 120% of CMD as such 15% extra of normal rate i.e., R 0.40 ps for unit is levied as penal charges, and that on receipt of the said reply of the 2nd respondent, dated 16.07.2011, the petitioner had filed another representation, dated 20.07.2011 contending that there cannot be any penalty on the energy and the penal charges as per condition No:5 cannot be invoked when RMD is not more than 20%, but however the said representation had not been considered and petitioner did not receive any reply to the said representation of the petitioner, dated 20.07.2011 and the field staff threatened to disconnect the power supply and at that stage petitioner approached this Court and obtained interim orders in favour of the petitioner which are in force as on date.

8. The learned standing counsel Sri. R.Vinod Reddy, appearing on behalf of the respondents placing reliance on the averments made in the counter affidavit filed on behalf of the respondent Nos. 1 to 3 (referred to and extracted above) contends that the petitioner is not entitled for the relief as prayed for by the petitioner herein as per clause No.5 of General Terms and Conditions of supply, but however submits that in view of the fact as borne on record that counter filed by the respondent Nos. 1 to 3 does not indicate consideration of the pleas put-forth by the petitioner vide petitioner's representation, dated 20.07.2011, the Writ Petition could be disposed of

directing the 2nd respondent to consider the pleas put-forth by the petitioner there under within reasonable period.

9. This Court without going into the merits of the rival contentions put-forth by both the learned counsel on record, and duly considering the specific averments made by the petitioner at para No.5 of the affidavit filed by the petitioner (referred to and extracted above), and duly taking note of the fact as borne on record that the averments made in the counter affidavit filed by the respondent Nos. 1 to 3 does not in fact indicate any consideration of the pleas put-forth by the petitioner vide petitioner's representation, dated 20.07.2011, opines that the 2nd respondent is bound to consider petitioner's grievance and the pleas put-forth by the petitioner vide petitioner's representation, dated 20.07.2011.

10. Taking into consideration:-

a) The aforesaid facts and circumstances of the case

b) The submissions put-forth by both the learned counsel on record.

c) The averments made in the counter affidavit filed on behalf of the respondent Nos. 1 to 3 in particular at para Nos. 3, 6 and 7 (referred to and extracted above)

d) The averments made at para No.5 of the affidavit filed by the petitioner in support of the present Writ Petition (referred to and extracted above).

e) Duly considering the interim orders, dated 27.07.2011 passed in favour of the petitioner vide W.P.M.P.No.25622 of 2011 in the present Writ Petition which are in force as on date and upon consent of both the parties represented through their learned counsel on record.

The Writ Petition is disposed of directing the 2nd respondent to consider all the pleas put-forth by the petitioner vide petitioner’s representation, dated 20.07.2011, in accordance to law, in conformity with principles of natural justice by giving an opportunity of personal hearing to the petitioner within a period of six (6) weeks from the date of receipt of copy of the order and duly communicate the decision to the petitioner.

Till the above exercise is concluded by passing appropriate orders on petitioner’s representation, dated 20.07.2011 by the 2nd respondent herein duly following the directions as issued above within the period as mentioned above, the interim orders, dated 27.07.2011 passed in W.P.M.P.No.25622 of 2011 in present W.P.No. 21052 of 2011 shall remain in force. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

