
(2013) 04 AP CK 0066

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3707 of 2012

Maruti Ispat and Energy Private Limited

APPELLANT

Vs

The Central Power Distribution Company Limited and Others

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Citation : (2013) 5 ALD 739 : (2013) 5 ALT 289

Hon'ble Judges : P.V. Sanjay Kumar, J

Bench : Single Bench

Advocate : M.P. Chandramouli, for the Appellant; O. Manohar Reddy, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Sanjay Kumar, J.—The short issue that arises for consideration in this writ petition is whether the petitioner company is to be charged for consumption of power at the rate applicable to 11 KV (Rs. 3.52 Ps) or 33 KV (Rs. 3.25 Ps).

By order dated 14.02.2012, this Court directed the Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL) to charge the petitioner company for consumption of power at Rs. 3.25 Ps. per unit, being the rate applicable to 33 KV, with effect from 26.06.2010. WVMP No. 1270 of 2012 was filed in April, 2012 by the APCPDCL and its officers, the respondents in the writ petition, to vacate the said order.

Though the matter was listed before this Court for admission along with the vacate stay petition, comprehensive arguments were advanced by the learned counsel on the core issue. The writ petition itself is therefore taken up for final disposal.

The petitioner company has a sponge iron factory at Madhavaram Village, Mantralayam Mandal, Kurnool District. It entered into an agreement with the APCPDCL for supply of power of 1501 KVA under HT-1 category on a 33 KV transmission line. The power was however to be released in a phased manner.

The first phase of 400 KVA was released on 09.02.2010. The Memo dated 14.06.2010 issued by the Chief General Manager, Operations, APCPDCL, Kurnool Zone, reflects that the second phase of 500 KVA was re-scheduled from two months from the date of release of supply to four months and fifteen days, i.e. with effect from 25.06.2010. The third phase of 601 KVA was re-scheduled from 01.08.2010 to one year from the date of supply i.e. 09.03.2011. However, having drawn the second phase of 500 KVA on 25.06.2010, the petitioner company is yet to avail the third phase of 601 KVA despite the re-scheduling reflected in the Memo dated 14.06.2010. The genesis of this litigation is the following statement contained in the Memo dated 14.06.2010:

Billing shall be done at 11 KV tariff upto 2nd phase demand i.e. 900 KVA

The petitioner company's contention is that APCPDCL should bill it at 33 KV tariff and not 11 KV tariff after 25.06.2010, when it availed the second phase demand of 900 KVA. The petitioner company also placed reliance on the letter dated 05.10.2010 addressed to it by the Superintending Engineer, Operation Circle, APCPDCL, Kurnool, wherein he informed it that billing shall be done at 11 KV tariff upto second phase demand i.e. 900 KVA. As the APCPDCL billed it for the months of February, March, April, May, June and July, 2010 at the tariff rate applicable to 11 KV, the petitioner company addressed letter dated 20.08.2010 requesting it to look into the matter and revise the energy bills by charging it at 33 KV tariff rate. It followed up with reminders dated 13.09.2010 and 06.10.2010.

2. Thereupon, the APCPDCL responded under letter dated 21.12.2010 informing that as per the clarification received from the Chief General Manager, Kurnool Zone, the petitioner company would be billed at 11 KV tariff as its contracted demand was less than 1500 KVA. The petitioner company replied by letter dated 28.01.2012, referring to the Memo dated 14.06.2010 and the letter dated 05.10.2010 and requesting the APCPDCL to charge it only on 33 KV tariff. It again asked the APCPDCL to revise the bills at least with effect from 25.06.2010. As there was no action upon this request, the petitioner company approached this Court.

3. In its counter filed in support of the vacate stay petition, the APCPDCL pointed out that the petitioner company applied for release of power of 1501 KVA under HT-1 category, but requested release of the same in a phased manner. The first phase was released on 09.02.2010, while the second phase was released on 25.06.2010. The third phase is yet to be released. The APCPDCL contested the claim of the petitioner company that the Memo dated 14.06.2010 required billing at 11 KV tariff only upto the release of the second phase. Its contention, on the other hand, is that billing at 11 KV tariff, as per the said Memo, was to continue till the release of the third phase, which would increase the power supply to the petitioner company to more than 1500 KVA, automatically attracting the 33 KV tariff. The APCPDCL justified this stand by explaining that supply upto 1500 KVA would normally be made from 11 KV lines while supply from 1501 KVA to 5000

KVA is made from 33 KV lines. It further clarified that billing under 33 KV tariff would be implemented in this case only on release of the third phase demand of 601 KVA, taking the total contracted demand of the petitioner company above 1500 KVA.

4. No reply was filed by the petitioner company to this counter.

Sri. M.P. Chandramouli, learned counsel for the petitioner company, contended that the Memo dated 14.06.2010 demonstrated that the petitioner company was to be billed at 11 KV tariff upto the second phase demand and therefore, the literal meaning of this phrase had to be given effect to. He argued that the APCPDCL could not be permitted to alter its commitment in this regard and charge the petitioner company at the tariff applicable to 11 KV when it was entitled to be billed at the tariff applicable to 33 KV, which was marginally lesser.

On the other hand, Sri O.Manohar Reddy, learned standing counsel for the APCPDCL, contended that as the petitioner company contracted for power supply at 1501 KVA, the supply was no doubt being made to it over 33 KV lines but as long as it did not exceed 1500 KVA, it would be liable to be billed at 11 KV tariff. As the third phase was yet to be released and the petitioner company was availing only 900 KVA as on date, he asserted that it was bound to pay charges at the 11 KV tariff only.

The issue therefore turns upon the language used by the APCPDCL in its Memo dated 14.06.2010. There is no doubt some ambiguity in what was the intent and import of the phrase -

... upto 2nd phase demand i.e. 900 KVA.

The issue is whether "upto" would mean the commencement of the second phase demand or the end of the second phase demand. Though the Memo dated 14.06.2010 does not shed much light on this aspect, the letter dated 05.10.2010 addressed by the APCPDCL to the petitioner company clarified it beyond doubt. Though the petitioner company relied upon the sentence therein to the effect that billing shall be done at the 11 KV tariff upto the second phase demand i.e. 900 KVA, the later part of the letter contains this statement: "...In this connection it is to be informed that as per the orders/instructions under reference 3rd cited, the HT billing is being done under 11 KV voltage which is in order and the same will be confirmed up to release of 3rd phase demand".

This statement clearly demonstrated that the intention was to continue the billing at 11 KV tariff till the commencement of the third phase which would put the total contracted demand of the petitioner company above 1500 KVA, thereby automatically attracting the tariff applicable to 33 KV.

The APCPDCL also filed additional documents, one of which is the Memo dated 13.08.2008 which related to release of a contracted maximum demand of 2000 KVA to one M/s. Gayatri Cements, Gadivemula, Bilakala Gudur. The said company also opted for a phased release of power, as in the present case, and

the Memo stated as under in this regard:

1st Phase

500 KVA

immediately

2nd Phase

800 KVA

w.e.f. 1st Oct'08

3rd Phase

1000 KVA

w.e.f. 1st April'09

4th Phase

2000 KVA

w.e.f. 1st Oct'09

a) The consumer shall install 33 KV VCB at consumer premises before releasing the 1st Phase CMD of 500 KVA.

b) Billing shall be done at 11 KV tariff up to 3 phases demands i.e. 1000 KVA.

Sri. O. Manohar Reddy, learned standing counsel, asserted that even in the case of M/s. Gayatri Cements, the billing was continued at the tariff applicable to 11 KV up to the end of the third phase demand. Pertinent to note, the language used in this Memo is similar to that used in the Memo dated 14.6.2010, in as much as the words "up to" are used in both the Memos, without indicating whether they relate to the commencement or the conclusion of the phase. Learned standing counsel would therefore contend that the petitioner company, being identically situated, is equally liable to continue to pay the tariff applicable to 11 KV until the release of its third phase demand.

This Court finds merit in this contention. Admittedly, until and unless the third phase demand is released, the petitioner company would not reach the contracted maximum demand of 1501 KVA. Until such time, though it is being supplied power over 33 KV lines, it is bound to be billed at 11 KV tariff as it is availing less than 1500 KVA. There is no logic in applying the 11 KV tariff to the first phase demand of 400 KVA, supplied over 33 KV lines, on the ground that it is less than 1500 KVA but restricting it only till the release of the second phase demand of 500 KVA. Even upon such release, the petitioner company still continued to avail less than 1500 KVA. Therefore, if the 11 KV tariff was applicable to the first phase demand of 400 KVA, it would be only logical and rational that it continue to apply even after the release of the second phase

demand of 500 KVA, which brought the contracted demand only upto 900 KVA as on that date.

Lack of clarity in the Memo dated 14.06.2010 to the effect that billing shall be done at 11 KV tariff upto 2nd phase demand does not outweigh the logic of the arrangement as aforestated. The petitioner company therefore cannot seek to take advantage of the vagueness, if any, in the language used. The phrase as set out in the Memo dated 14.06.2010 must inevitably be construed to mean that the billing at 11 KV tariff would continue upto the end of the second phase demand. The contention of the petitioner company that it should be billed at 33 KV tariff from 25.06.2010, upon the release of the second phase demand of 500 KVA, therefore lacks merit.

The writ petition is accordingly dismissed. The interim order dated 14.02.2012 shall stand vacated. WPMP No. 4662 of 2012 and WVMP No. 1270 of 2012 shall stand closed in the light of this final order. No order as to costs.