(2014) 10 AP CK 0089

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25687 of 2013

Patancheru Steels Pvt. Ltd. APPELLANT

Vs

APCPDCL Ltd. RESPONDENT

Date of Decision : 28-10-2014

Acts Referred:

Citation : (2015) 2 ALD 110

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

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

Judgement

C.V. Nagarjuna Reddy, J.—This Writ Petition is filed for a mandamus to declare the action of the respondents in raising bill for payment of minimum charges for 680 KVA and 34,000 units for the months of October to December 2012, January to March 2013 and raising a demand for April to July 2013 as illegal and arbitrary.

2. The petitioner is a consumer under HT Category-1 of respondent No. 1 with a Contracted Maximum Demand (CMD) of 850 KVA. Respondent No. 1 has issued Restriction and Control (R & C) order on 7-9-2012 w.e.f., 12-9-2012 whereunder it has imposed restrictions on the consumption of electricity by its consumers. Sub-clause (a) of Clause 12 of the said order reads as under:

The Billing Demand shall be the maximum recorded demand during the month and clause 213.6(6) of Tariff Order shall not apply during these R & C measures.

3. It is the pleaded case of the petitioner that despite the R & C order dated 7-9-2012, the respondents have raised bills from September 2012 to December 2012 at 80% of the CMD towards minimum charges and that for non-payment of the C.C. charges, the supply was disconnected. According to the petitioner, the supply was disconnected on 19-1-2013 while it is the case of the respondents that the supply was disconnected on 13-12-2012. However, nothing much turns out on this dispute. After the disconnection of power supply, the respondents

continued to levy minimum charges till July 2013. On 20-4-2013, the respondents terminated the supply agreement of the petitioner for non-payment of C.C. charges.

4. A counter affidavit is filed wherein the respondents have admitted that under a mistake of fact, bills were raised at 80% of the contracted CMD towards minimum charges and that R & C order exempts consumers from payment of the minimum charges. However, the respondents have pleaded that on account of the said mistake, the minimum charges levied for the period from September 2012 to December 2012 were withdrawn. It is also averred that in view of termination of the petitioners agreement w.e.f. 20-4-2013, bills raised from April 2013 to July 2013 were also withdrawn. The respondents, however, sought to justify the imposition of minimum charges from January 2013 till the date of termination of agreement on the ground that the consumers whose services are under disconnection are liable to pay minimum charges.

5. In view of the withdrawal of minimum charges for the period between September and December 2012 and withdrawal of bills from April to July 2013, the only dispute that remains to be considered is whether the petitioner is liable to pay the minimum charges for the period from January 2013 till 20-4-2013 i.e., the date on which the agreement was terminated.

6. In the counter-affidavit the respondents have averred that due to non-payment of C.C. charges, FSA charges to the extent of Rs. 21,13,916/- power supply was disconnected. The learned Counsel for the petitioner seriously disputed the claim of the respondents that the power supply was disconnected not only for non-payment of electricity charges but also FSA charges. This Court however feels that it is not necessary to deal with this controversy for the reason that even assuming that the supply was disconnected for non-payment of the FSA charges, the respondents are not entitled to demand minimum charges as the service is under disconnection under R & C period. Though the counter-affidavit placed reliance on condition No. 213.6 of Tariff Order for 2012-13 to justify imposition of minimum charges, the said condition does not envisage payment of minimum charges even during R & C period in respect of disconnected service connections. When a general order was passed by respondent No. 1 that charges are payable only on recorded maximum demand, such order is applicable to all the consumers including those whose services are under disconnection. The concept of imposition of minimum charges pre-supposes that the licencee is in a state of readiness to supply power to its consumers. When respondent No. 1 has itself expressed its inability to supply power to the extent of contracted demand of the consumers, it is wholly unreasonable for respondent No. 1 to claim minimum charges from the consumers whose services are under disconnection during the R & C period. The R & C order dated 7-9-2012 does not contain exemption from payment of minimum charges on the CMD in respect of the disconnected units.

7. For the above mentioned reasons, I do not find any justification to levy

minimum charges on the petitioner from January 2013 till the date of termination of the agreement i.e., 20-4-2013. The Writ Petition is accordingly allowed.

8. As a sequel to the disposal of the Writ Petition, WPMP No. 31709 of 2013 filed for interim relief is disposed of as infructuous.

