

(2011) 07 AP CK 0067

In the Andhra Pradesh High Court

Case No : Writ Appeal No's. 881 of 2003 and 1509 of 2004

The KCP Ltd. (Rama Krishan Cements)

APPELLANT

Vs

The APSEB, Vidhyut Soudha and Others
 The APSEB,
Vidhyut Soudha and Others Vs The KCP Ltd. (Rama Krishan
Cements)

RESPONDENT

Date of Decision : 19-07-2011

Acts Referred:

Electricity (Supply) Act, 1948 — Section 49

Citation : (2011) 07 AP CK 0067

Hon'ble Judges : P. Durga Prasad, J;Goda Raghuram, J

Bench : Division Bench

Advocate : Kodanda Ram, in W.A. No. 881 of 2003 and M. Vinobha Devi, SC for A.P. Transco in W.A. No. 1509 of 2004, for the Appellant; M. Vinobha Devi, SC for AP Transco in W.A. No. 881 of 2003 and Kodanda Ram in W.A. No. 1509 of 2004, for the Respondent

Final Decision : Allowed

Judgement

P. Durga Prasad, J.—Both the appeals are filed assailing the common Order passed in W.P. Nos. 10460 of 1988 and 5298 of 1990 by the learned single Judge on 05.02.2002.

2. The Appellant in W.A. No. 881 of 2003 is the Petitioner in W.P. No. 5298 of 1990 and the Appellants in W.A. No. 1509 of 2004 are the Respondent Nos. 1 to 3 in W.P. No. 5298 of 1990. The Appellant in W.A. No. 881 of 2003, who is the writ Petitioner has pleaded that the Petitioner company is a public limited company with registered office at No. 2 Victoria Crescent Road, Madras and having its Sugar Factory at Vuyyuru, Krishna District and with its Cement Factory at Macherla, Guntur District and that electrical energy for the Petitioner's cement unit at Macherla is being supplied at present under a revised H.T. Agreement entered into during the month of January, 1990 between the Petitioner and Respondent No. 1. The energy was being supplied by the Respondent No. 1 to

the Petitioner's plant at voltage of 11 KV from 24.06.1989 and the voltage of supply of energy was changed to 132 KV. The Petitioner has questioned the action of the Respondents in unjustly appropriating an amount of Rs. 89,18,508-04 purporting towards additional charges for the period 01.03.1983 to 26.05.1987 pursuant to the rejection of the representation of the Petitioner dated 27.04.1988 by the Respondent No. 1 by its letter No. SE (Commercial)/III/279/88-1, dated 14.12.1988 and arbitrarily withholding an amount of Rs. 45,11,289-55 representing additional charges for the period from 01.03.1982 to 28.03.1983, 15.07.1987 to December, 1987 and from January, 1988 to 17.04.1988 which was admittedly collected from the Petitioner without any basis and which amount is agreed to be refunded by the Respondent No. 1.

3. The Petitioner has further averred that B.P.Ms. No. 418 (Commercial) dated 02.06.1989 the Respondent No. 1 introduced the following condition (1) under part-A of H.T. tariffs i.e. Voltage of supply "the voltage of supply shall normally be 11000/33000 volts. The board reserves the right to supply at higher voltage of 66, 132 or 220 KV at its discretion taking into account the contracted demand of the consumer". Thereafter, by B.P.Ms. No. 607 dated 21.07.1981 the Respondent No. 1 replaced the above given condition (1) with a new condition (1) whereby all H.T. Consumers with a contracted demand of more than 5000 KVA were required to make necessary arrangements for changing their supply system within a period of six months so as to avail supply at the stipulated higher voltage. The said B.P.Ms also provided that failure to make such arrangements to take the energy at the stipulated higher voltages would attract additional charges at specified rates ranging from 10% to 15% of the normal tariff charges for compensating the Respondent No. 1, the transmission and transformation losses incurred by it consequent to the consumer taking supply at lower voltages. It is further averred that when the said B.P.Ms. 607 was issued the contracted demand for the Petitioner cement plant was 6200 KVA therefore the Petitioner was required to receive energy for its cement plant at either 132 KV or 220 KV as was to be decided by the board.

4. Thereafter, the Petitioner has addressed a letter to the Respondent No. 2 on 27.08.1981 requesting to clarify whether the board wishes to supply energy at 220 KV or 132 KV, so that the Petitioner would begin work on the sub-station to be built by it in order to receive the supply at the higher voltage. Subsequently, the Petitioner issued reminders on 22.11.1981, 05.02.1982 and 10.02.1982 categorically stating that unless and until the point of supply is fixed by the Respondent board and the voltage at which the board intends to supply energy it is not possible for the Petitioner to take necessary steps to install equipments to receive energy at 132 KV or 220 KV as specified in B.P.Ms. No. 607 dated 21.07.1981. It is also represented by the Petitioner that the six months time given to install electrical system to receive energy at 132 KV is too short and a minimum of 18 months is required to do so. It is further averred that the transformers and other equipments required to construct 132 KV sub-station are not readily available in the market but the same are custom made on order and

as such a minimum time of 18 months is required to procure the same. The Petitioner also brought the said facts to the notice of the Respondent No. 1 by its letter dated 22.02.1982 followed by a reminder dated 13.03.1982. The Respondent No. 1 by its letter dated 17.03.1982 informed the Petitioner that the Respondent board cannot accede to the extension of time without mentioning the details regarding the clarifications sought by the Petitioner. It is further averred that the Commissioner of Industries, Government of Andhra Pradesh by letter No. 815/DSK.1 (3)/82, dated 20.04.1982 requested the Respondent board to consider the request of the Petitioner. The Respondent No. 1 after lapse of 10 months after issuance of B.P.Ms. No. 607 dated 21.07.1981 informed the Petitioner that the electrical energy to the Petitioner's cement unit would be extended at 132 KV voltage and the said letter was received by the Petitioner on 31.05.1982 and immediately thereafter the Petitioner started making concrete arrangements for erection of 132 KV sub-station. The Petitioner company has filed a writ petition No. 3564 of 1982 questioning the validity of the said B.P.Ms. No. 607 (Commercial) dated 21.07.1981. The Petitioner company also filed W.P.M.P. No. 5189 of 1982 for a direction to the Respondent No. 1 to desist from collection the additional charges at 10% in pursuance of the impugned B.P.Ms. during the pendency of the writ petition. This Court by its Order dated 26.05.1982 in the W.P.M.P. No. 5189 of 1982 stayed the said B.P.Ms on condition that the Petitioner furnishing full bank guarantee to the satisfaction of the Respondent board, for the additional current consumption charges within a period of six weeks from that date and continue to do so every month in respect of the additional current consumption charges as and when the bill is issued, and the Petitioner shall continue to pay all other charges according to rules and conditions of supply. In the months of March, April and May, 1982 the Respondents levied and collected an amount of Rs. 3,36,420-03 in cash. Therefore, the Petitioner furnished bank guarantees in respect of the additional charges till June, 1987 to the tune of Rs. 1,03,77,564-28. The Petitioner also paid an amount of Rs. 24,78,914-42 in cash by way of higher tariff for the period between 15.07.1987 to 17.04.1988 in addition an amount of Rs. 2,36,899-16 in cash was also paid as 10% additional charges which was included in the consumption bill of July, 1987 and paid in August, 1987. The learned single Judge of this Court has allowed the W.P. No. 3564 of 1982 on 26.10.1982. The Respondents herein have preferred writ appeal No. 984 of 1982 against the said judgment of the learned single Judge and sought for the suspension of the said order of the learned single Judge. The Division Bench of this Court made the following Order on 23.11.1982:

As and when the bills are submitted the admitted amount shall be paid and for the additional amount demanded the Respondent/Petitioner shall give bank guarantee once in a 3 months within 4 weeks from the date of issuance of the bill subject to the compliance of the above, conditions, the operation of the order under appeal shall stand suspended, pending disposal of the writ appeal.

5. In compliance of the said Order the Petitioner's company continued to furnish

bank guarantees for the requisite sums in respect of the additional charges up to 14.07.1987 when the said B.P.Ms. No. 607 (Commercial) was superseded by B.P.Ms. No. 671 (Commercial) dated 10.06.1987 which was brought into force from 15.07.1987. The Division Bench of this Court allowed the writ appeal No. 984 of 1982 by its judgment dated 25.06.1987 along with several writ appeals preferred by the board against other consumers of the Respondent No. 1.

6. Aggrieved by the said judgment of the Division Bench, the Petitioner herein preferred SLP (Civil) No. 7669 of 1987 before the Supreme Court of India. The Honourable Supreme Court of India granted Special leave and disposed off the Civil Appeals including that of the Petitioner by judgment dated 08.03.1988 by holding that the Respondent No. 1 had the power to require it's consumers to receive energy at higher voltage and therefore, upheld the validity of the said B.P.Ms. No. 607 dated 21.07.1981. However, the Honourable Supreme Court has observed:

After all the Respondent Board is an authority under a Statute and if the Appellants are able to satisfy the authority that the time of six months in the contest of the circumstances, when this notification was issued was not reasonable, it is open to the Board to consider from what date to enforce the enhanced rates for supply at lower voltage taking into consideration all the cases and also keeping in view the circumstances in connection with installation of transformers and laying the lines which have come during the course of these hearings. It is also open to the Board that in the special facts of any particular case to provide a separate date for enforcement of the higher rate.

7. It is averred by the Petitioner that during the pendency of the writ appeal No. 1003 of 1982 and batch preferred by the Respondents against the judgment of the learned single Judge the Respondent No. 1 issued B.P.Ms. No. 1014 (commercial) dated 13.12.1983 revising the tariffs and the same was brought into force from 15.01.1984. Under the said B.P.Ms. No. 1014 the additional charge applicable to the Petitioner from availing power at 11 KV instead of at the stipulated voltage of 132 KV was continued at 10%. Under the B.P.Ms. No. 1014 (commercial) dated 13.12.1983 No. option was left to the existing H.T. consumers and they were required to make arrangements for receiving supply of energy at the specified voltage and the Respondent No. 1 reserved its right to terminate the agreements of such consumers who were not availing supply at the stipulated voltages. It is averred by the Petitioner that he informed the Respondent No. 1 that it will take minimum time of 15 to 18 months for procuring the equipment and that the probable date from which the Petitioner could receive energy at 132 KV would be by June, 1984. The Respondent No. 2 for the first time demanded the Petitioner to pay an amount of Rs. 37,92,630/- as voluntary loan contribution for executing the connected works for extending supply at 132 KV, but by B.P.Ms. No. 693 (commercial) dated 19.09.1985 the voluntary loan contribution scheme as abolished and the H.T. consumers were required to bear the cost of service line charges on a non-refundable basis. The

Petitioner was asked to pay Rs. 45.72 lakhs towards service line charges. It is averred by the Petitioner that neither on the date of issuance of B.P.Ms. No. 607 dated 21.07.1981 requiring the Petitioner to change over to 132 KV nor on 11.06.1982 the date of the Petitioner categorically gave concurrence for taking supply of 132 KV nor on the date of demand of voluntary loan contribution on 17.05.1985, nor on the date of demand of service line charges, were the Respondents ready or had the necessary infrastructure facilities to supply energy at 132 KV to the Petitioner unit. The issuance of the said B.P.Ms. No. 607 dated 21.08.1981 was solely aimed to collect additional charges in the guise of compensating for transmission and transformation losses in supplying energy to the Petitioner's unit at lower voltage. It is also averred by the Petitioner that a meeting was convened by the Chief Minister on 26.05.1978, the Chairman of APSEB had agreed to allow the Petitioner and other H.T. consumers to avail electrical energy at existing voltages on condition that the consumers agree to pay additional charges towards any consequential stepping down and transmission losses. Pursuant to the said agreement, the Respondent No. 1 has addressed a letter dated 13.11.1978 informed that the Petitioner will be required to pay an additional amount at a maximum of 0.70 % for availing energy at 11 KV instead of at 132 KV. It is also averred that on 17.05.1985 the Respondents did not have their distribution required to supply energy at 132 KV, ready.

8. It is only on 25.03.1985 for the first time the administrative sanction was made for the estimates towards extension of supply at 132 KV to the Petitioner's cement unit. As per the estimate various switchgears, control panels, bus bars, structures, isolators etc., have to be procured and installed, which goes to show beyond doubt that the distribution main of the Respondent board is not ready. In fact No. service line charges can be demanded under the provisions of the electricity Act unless and otherwise licensee (assuming Electricity Board to be a licensee) has laid and its distributing main is ready. It is averred by the Petitioner that the Respondents' distribution main was not ready till early 1988 and the erection of actual service line was completed in the first quarter of 1989, whereas the Petitioner's 132 KV sub-station for receiving energy supply at 132 KV voltage was erected, installed, tested and ready even by 1986. Chief Electrical Inspector had categorically stated that inspection of the Petitioner's newly installed 132 KV sub-station cannot be approved till the incoming service line of the Respondent No. 1 board was ready in all respects, but that the statutory approval was not accorded, as the incoming 132 KV overhead line and point of commencement of supply in the Petitioner's premises as per IER was not available and as such expressed his unwillingness to conduct the inspection.

9. It is further averred by the Petitioner that in pursuance of the judgment of the Supreme Court dated 08.03.1988 the Petitioner has made a detailed representation to the Respondent No. 1 by a letter dated 27.04.1988 requesting to refund to the Petitioner company an amount of Rs. 1,07,13,932-27 collected towards additional charges for not availing supply at 132 KV as proposed by B.P.Ms. No. 607 dated 21.07.1981 and B.P.Ms. No. 1014 dated 13.12.1983 in

view of the special facts relating to the Petitioner and because the Respondent No. 1 was not ready to supply energy at 132 KV to the Petitioner's cement plant at Macherla. The Respondent No. 1 without considering the facts and circumstances raised by the Petitioner, by its letter dated 14.12.1988 directed to pay additional charges for the period from 01.03.1983 to 26.05.1987. It is also averred by the Petitioner that the Respondent did not take into consideration the special facts and circumstances relating to the Petitioner in deciding to collect the additional charges from 01.03.1983 instead of from 01.03.1982 as originally stipulated under B.P.Ms. No. 607 dated 21.07.1981. It is further averred that the decision of the Respondent No. 1 dated 14.12.1988 in so far as it is against the Petitioner in not considering the representations of the Petitioner and levying additional charges for the period 01.03.1983 to 26.05.1987 is contrary to law, arbitrary, unreasonable and without any basis and directly runs against the orders of the Honourable Supreme Court in its judgment dated 08.03.1988 and is liable to be set aside.

10. Counter was filed on behalf of the Respondent No. 1, pleading that in terms of B.P.Ms. No. 607 dated 21.07.1981, all existing HT consumers who are availing supply at a voltage less than that is specified, have to make necessary arrangements for changing their supply system within a period of 6 months, so as to avail supply at the prescribed voltages. Failure to do so attracts additional charges for low voltage at the rates indicated therein from 01.03.1982 to 14.07.1987. According to the said orders, an amount of Rs. 1,09,40,745.11p, has been levied towards additional charges at 10% from 01.03.1982 to 14.07.1987 from the Petitioner since the Petitioner has availed 11 KV instead of 132 KV. The consumer has made a representation in their letter dated 27.04.1988 to the Board, pursuant to the orders of the Supreme Court in Civil Appeal No. 803 of 1988, in the matter of higher voltage prescribed by the Board in B.P.Ms. No. 607 dated 21.07.1981. The Board, in its letter No. SE(Comml)/III/279/88-I dated 14.12.1988, has agreed to levy additional charges only from 01.03.1983 to 26.05.1987, and after deducting the amounts already paid, the Petitioner-company has to pay a balance amount of Rs. 27,84,598.85p. The writ petition is filed challenging the decision of the board dated 14.12.1988 and to direct the Board to refund or adjust towards future consumption charges an amount of Rs. 45,11,289.55p representing the excess additional charges from 01.03.1982 to 17.04.1988 excluding the period between 01.03.1983 to 26.05.1987. The Supreme Court of India, while upholding the validity of B.P.Ms. No. 607 dated 21.07.1981 opined of giving an opportunity to the consumers like the Petitioners to make a representation. According to them, as per the orders issued in B.P.Ms. No. 1014 dated 13.12.1982, the tariff was revised with effect from 15.01.1984 and the additional charges applicable to the Petitioner for availing power at 11 KV instead of 132 KV was at 10%. It was also specified that the existing HT consumers who are availing supply at a voltage less than that specified above have to make necessary arrangements for clarifying their supply system for the prescribed voltage and failure to make such arrangements to

receive supply at the specified voltage will attract additional charges for low voltages for compensating the Board against transmission and transformer losses and the costs of additional capital incurred at the rates specified. The Board also reserved the right to terminate the agreements of such consumers who are not availing supply at the stipulated voltages. The Petitioner was informed by their office letter dated 28.05.1982 that the Board can extend supply at 132 KV only. The Petitioner-company vide their letter dated 11.09.1982 and 28.10.1982 had given consent for availing supply at 132 KV. It was also stated that the Board used to take up works on 100% voluntary loan contribution earlier and switched on to new system vide B.P.Ms. No. 693 dated 19.09.1985 wherein the payment of service line charges is incorporated and there is No. relevance between the voluntary loan contribution and service line charges. It was also further stated that arrangements were made by the Board for necessary infrastructure required to give supply at 132 KV to the Petitioner and the administrative approval for extending the supply at 132 KV to the Petitioner's cement factory was given vide B.P.Ms. No. 234 dated 23.03.1985. It was stated that the Board cannot lay the line unless the consumer's installations are ready as per the Rules in vogue and 132 KV line was laid simultaneously as the consumer's installations were getting ready. The delay in extending 132 KV potential to the Petitioner's company is on account of the fact that there was a hold up in giving approval for the Petitioner's installations by the CEIG, Hyderabad. It was also further averred that the arrangements for laying 132 KV could be initiated by the Board only after payment of service line charges. Since the Petitioner's company could not pay the service line charges, there was delay in supplying the 132 KV potential to the Petitioner's company. Hence, the writ petition is liable to be dismissed.

11. The said writ petition was disposed of by the learned single Judge on 05.02.2002 by passing a common order in W.P. No. 5298 of 1990 and W.P. No. 10460 of 1988, by setting aside the impugned orders in both the writ petitions and the matters were remanded back to the Board for the purpose of reconsidering the matter again afresh in the light of the observations made by the Court. The writ petitions were allowed to the extent indicated above, but however, in the peculiar facts and circumstances of the case, without costs.

12. Aggrieved by the said order of the single Judge, both the Petitioner and Respondents in the writ petition No. 5298 of 1990 filed the present appeals.

13. The parties in both the writ appeals are referred to as parties mentioned in the writ petition. Sri. C. Kodanda Ram, learned Counsel for the writ Petitioner has contended that, in pursuance of the orders passed by the Supreme Court in Civil Appeal No. 7669 of 1987, they made a representation to the Board and the Board without taking into consideration the contents raised in the representation, passed the impugned order on 14.12.1988 ordering to pay additional charges from 01.03.1983 to 26.05.1987, even though the Board was not ready to supply the power at 132 KV during the said period and the Board was ready to supply the power at 132 KV only on 23.06.1989 as such the Petitioner's company is not

liable to pay the additional charges for the said period, as such the impugned order is liable to be set aside.

14. Sri. C. Kodanda Ram, learned Counsel for the writ Petitioner further contended that the Respondent-Board, for the first time, has demanded for the payment of Rs. 37,92,630/- on 17.05.1985 towards the voluntary loan contribution to the Board for executing the connected works for extending supply at 132 KV, but the said procedure of voluntary loan contribution was abolished vide B.P.Ms. No. 693 dated 19.09.1985 and thereafter the Board, by letter dated 23.04.1987 has demanded for the first time for payment of service line charges at Rs. 45,72,000/- and the Petitioner has paid the said amount in instalments and the first instalment was paid on 27.05.1987 and the last instalment on 17.11.1987. In spite of payment of service line charges, the Board was not ready to supply the 132 KV power to the Petitioner's company even though the Petitioner was ready with the necessary infrastructure to receive the said supply at 132 KV in their company's premises by 1986 itself, and the obligation for the Petitioner to pay the additional charges commences only after the Board was ready to supply 132 KV to the Petitioner's company.

15. Sri.N.Subba Reddy, learned senior counsel on behalf of the Respondent-Board has contended that the installation of service line depends upon the payment of service charges by the consumer and as the Petitioner could pay the service charges only by 17.11.1987, the delay in supplying 132 KV was occurred due to the acts of the Petitioner. Unless and until the consumer has paid the service line charges and service line was made ready, the Board cannot make necessary arrangements for supply of 132 KV for the Petitioner's company. The learned senior counsel further pleaded that even though the Board has informed the Petitioner by their letter dated 28.05.1982 to supply 132 KV to the Petitioner's company, the Petitioner's company delayed the matter by approaching the Court by filing writ petitions and due to the pendency of the said litigation, the Board could not take further steps and thereafter the Petitioner was not ready to receive 132 KV supply due to non-payment of service line charges, as such the Petitioner's company is liable to pay the additional charges as per the impugned order of the Board dated 14.12.1988.

16. The Petitioner is a Public Limited Company having a cement factory at Macherla, Guntur District and they are receiving the voltage at 11 KV from 24.06.1989 under agreement with the Respondent-Board. The Respondent-Board by B.P.Ms. No. 607 dated 21.07.1981 directed the HT consumers with a contracted demand of more than 5000 KVA who were receiving energy at a lesser voltage, were required to make necessary arrangements for changing their supply system within a period of 6 months so as to avail the supply at the stipulated higher voltage of 132 KV or 220 KV. The said B.P.Ms also provides that failure to make such arrangements to take energy at the stipulated higher voltage would attract additional charges at specified rates ranging from 10% to 15% of the normal tariff charges for compensating the Board the transmission

and transformer losses incurred by it consequent to the consumer taking supply at lower voltages. Since the Petitioner's cement factory is receiving 6200 KVA, they are required to receive energy either at 132 KV or 220 KV as per B.P.Ms. No. 607. Thereafter, the Petitioner company has addressed a letter dated 27.08.1981 requesting the Board to clarify whether they will supply 132 KV or 220 KV, and further requested for granting time for atleast 15 to 18 months for installation and commissioning their equipment in their unit, as it was impossible for them to install the said equipment within a period of 6 months from 27.08.1981. Thereafter, the Petitioner issued reminders on 22.11.1981, 05.02.1982 and 10.02.1982 requesting the Board to inform them about voltage at which they are going to supply the Petitioner's company so as to enable them to place order for required equipment for erection in their premises. Then the Respondent-Board by their letter dated 28.05.1982 informed the Petitioner's company that they are going to supply at 132 KV only and requested to make necessary arrangements to receive the supply at 132 KV. Thereafter the Petitioner's company has filed W.P. No. 3564 of 1982 questioning the B.P. No. 607 dated 21.07.1981 and the same was allowed by the learned single Judge on 26.10.1982 and the Respondent-Board has preferred Writ Appeal No. 984 of 1982 before the Division Bench of this Court and the same was allowed on 25.06.1987, by setting aside the order of learned single Judge. Thereafter, the writ Petitioners along with others, have preferred SLP (Civil) No. 7669 of 1987 before the Supreme Court and the Supreme Court has disposed of the same along with other cases on 08.03.1988 upholding the validity of B.P.Ms. No. 607 dated 21.07.1981, by observing that:

After all the Respondent-Board is an authority under a Statute and if the Appellants are able to satisfy the authority that the time of six months in the contest of the circumstances, when this notification was issued was not reasonable, it is open to the Board to consider from what date to enforce the enhanced rates for supply at lower voltage taking into consideration all the cases and also keeping in view the circumstances in connection with installation of transformers and laying the lines which have come during the course of these hearings. It is also open to the Board that in the special facts of any particular case to provide a separate date for enforcement of the higher rate.

17. In pursuance of the said observations made by the Supreme Court, the Petitioner's company made a representation dated 24.07.1988 narrating the circumstances and their difficulties and also not complying with the necessary formalities by the Board for supply of 132 KV energy requesting not to levy additional charges towards transmission and transformer losses in such a manner and levy as was being done before the promulgation of B.P.Ms. 607. The Respondent-Board has disposed of the said representation by order dated 14.12.1988 deciding to levy additional charges from 01.03.1983, instead of 01.03.1982 as originally stipulated, extending 6 months time to 18 months and directed the Petitioner's company to pay additional charges from 01.03.1983 to 26.05.1987. Aggrieved by the said order, the present writ petition is filed by the

Petitioners.

18. According to the writ Petitioners, the obligation to pay additional charges is a reciprocal obligation of both the Board as well as the consumer and the obligation of the consumer commences only when the Board is ready and in a position to supply the energy at higher voltage up to distribution main. The consumer has an obligation to pay the service line charges from the distribution main in terms of Supply Clause (b) to the Proviso of Clause (1) of Schedule (6) to Electricity Act of 1910; and if the consumer is not ready to receive the additional supply at higher voltage, then only the Board is entitled for receiving additional charges.

19. According to the Respondent-Board, the writ Petitioners themselves have not paid the service line charges till 17.11.1987 for laying service lines which is the primary obligation on their part to receive the 132 KV power at their end, as such the Respondent-Board could not make the necessary arrangements for supply of 132 KV to the Petitioner's company, as such the Petitioner's company is liable to pay the additional charges as demanded in the impugned order.

The B.P.Ms. No. 607 dated 21.07.1981 reads:

B.P.Ms. No. 607 (Commercial) Dated 21-7-1981 Read the following: B.P.Ms. No. 418 (Comml), dated 2-8-81.

Proceedings:

As per the existing tariff provisions under H.T. tariffs notified in the Board proceedings read above, the voltage of supply to H.T. consumers shall normally be 11000 volts/33000 volts and the Board reserves the right to supply at higher voltage of 66, 132 or 220 KV at its discretion taking into account the contracted demand of the consumer. In order to ensure that H.T. consumers with different contract demand avail supply at specified voltages, the Andhra Pradesh State Electricity Board has decided to bring forth necessary amendment to the existing H.T. tariff provisions.

2. In exercise of the powers conferred by Section 49 of the electricity (Supply) Act, 1948 (Central Act 54 of 1948) and all contractual, statutory and other powers hereunto enabling the Andhra Pradesh State Electricity Board doth hereby notify the following amendment.

AMENDMENT

The existing condition (1) under part-of H.T. tariff is deleted and is substituted by the following:

Condition(1).: The voltage at which supply has to be availed by HT/HT consumers shall be:

For contracted demand upto and including 1500 KVA

11000 Volts

For contracted demand from 1501 KVA upto and including 5000 KVA

33000 Volts

For contracted demand from 5001 KVA

and above

132000 Volts or

220000 Volts as

Decided by Board.

Existing H.T. Consumers who are availing supply at a voltage less than that specified above have to make necessary arrangements for changing their supply system within a period of 6 months so as to avail supply at the above voltages. Failure to make such arrangements to receive supply at the specified voltages within the specified period will attract additional charges for low voltages for compensating the Board against transmission and transformation losses and cost of additional capital incurred at the rates indicated below.

Contracted

Voltage at

Voltage at

Additional

Demand of

which supply

which is

charge to

Consumer

is to be availed

availed

be levied

Upto and including

11 KV

6.6 KV

5%

1500 KVA

3.3 KV

1501 KVA to

33 KV

11 KV

2.5%

5000 KVA

6.6 KV

3.3 KV

7.5%

Above 5000 KV

132 KV or 220 KV

66 KV

5%

33 KV

7-5%

11 KV

10%

6.6 KV

3.3 KV

15%

The percentage of additional charge is leviable only on "Demand plus energy charges" billed during the month in respect of H.T. consumers covered by the two part tariff and on "Energy charges" in respect of consumers billed on energy basis.

3. The above amendment comes into force with effect from 1st September, 1981.

20. As per the above said B.P.Ms., all the existing HT consumers have to make necessary arrangements for receiving supply at the specified voltages within a period of 6 months, failing which they are liable to pay additional charges for receiving the low voltages for compensating the Board against transmission and transformer losses and the cost of additional capital incurred at the rates indicated therein. Immediately after promulgation of the B.P.Ms. 607 by the Board, the Petitioner's company addressed a letter on 27.08.1981 requesting the Board to clarify whether they will supply 132 KV or 220 KV to the company so as to make necessary arrangements for receiving the energy as specified by them. But No. reply was received from the Board and thereafter the Petitioner

had issued reminders on 22.11.1981, 05.02.1982 and 10.02.1982, and finally the Respondent-Board, by their letter dated 02.05.1982, informed the Petitioner's company that they will supply 132 KV and requested to make necessary arrangements for receiving the said supply of 132 KV. Thereafter, the Petitioner has addressed a letter dated 11.06.1982 to the Board informing their readiness and willingness to receive 132 KV load and requested time for 15 to 18 months to acquire the required equipment and transformers for installation and commissioning of the equipment. Thereafter, the Petitioner filed the writ petition and the same was allowed on 26.10.1982 and the Respondent-Board has filed W.A. No. 984 of 1982 and during the pendency of the writ appeal, the Respondent-Board addressed a letter to the Petitioner's company on 17.05.1985 demanding to pay Rs. 37,92,630/- towards voluntary loan contribution for executing the connected works. But the said voluntary contribution scheme was abolished by the Board vide B.P.Ms. No. 693 dated 19.09.1985; and thereafter the Respondent-Board has kept quiet and only on 23.04.1987 has requested the Petitioner's company to pay Rs. 45,72,000/- towards service line charges on non-refundable basis; and the Petitioner has sought for payment of the said amount in installments and the Respondent-Board has granted 6 installments and the Petitioner has paid the first installment on 25.07.1987 and paid the last installment on 17.11.1987. Even by the date of payment of last installment, the Respondent-Board was not ready to supply 132 KV; as the required infrastructure was not ready at their end. The administrative sanction for the supply of the machinery was approved by the Board by M.P.Ms. No. 254 dated 25.03.1985 and the Petitioner sub-station to receive 132 KV was made ready by 1986 and by their letter dated 23.11.1986 requested the Board to inspect their transformers and approve the same by paying the necessary inspection fee of Rs. 2038/-. But the Chief Electrical Inspector has informed the Petitioner's company that the inspection of the newly installed 132 KV sub-station can be considered only after completion of laying of service line by APSEB from its feeding point to the newly completed sub-station. Even though the Petitioner's company was ready to receive the supply of 132 KV by making necessary arrangements at their end, the Respondent-Board was not ready to supply 132 KV. The above facts were brought to the notice of the Respondent-Board by the Petitioner's company in their representation dated 21.07.1981. But the Respondent-Board without considering the contentions raised by the Petitioners in their representation, passed the impugned order, by only extending the period of levy of additional charges from 01.03.1982 to 01.03.1983, and directed to make the payment of additional charges from 01.03.1983 to 26.05.1987 i.e. till the date of first installment paid by the Petitioner's company towards service line charges. Therefore, from the above, it is evident that the Respondent-board is claiming payment of additional charges on the ground of non-payment of service line charges by the Petitioner's company till 27.05.1987. But as observed above, by that date also, the Respondent-Board was not ready to make the supply of power at 132 KV. The Board was ready to supply 132 KV only from 23.06.1989 as evident from the letter dated 23.06.1989 of the Assistant Divisional Engineer

to the Petitioner company. Even as per the B.P.Ms. No. 607, the Petitioner has to make necessary arrangements to receive the supply at the specified voltage i.e. 132 KV within 6 months and the said time was extended by the Respondent-Board up to 01.03.1983. Admittedly, by that date also, the Respondent-Board was not ready to supply the higher voltage at 132 KV to the Petitioner's company; and they were ready to supply higher voltage only on 23.06.1989. In The Associated Cement Companies Ltd., Mancherial Cement Works, Adilabad Dist. Rep. by its The Associated Cement Companies Ltd. Vs. Andhra Pradesh State Electricity Board, the Division Bench of this Court held that imposition of additional charges on the Petitioner under condition No. 1 for the period from 01.03.1983 to 21.03.1984 is unfair, unreasonable and arbitrary because admittedly, the Respondent-Board was not in a position to supply energy at 132 KV to the Petitioner during that period. It was also observed that there may be very good reasons and real difficulties to complete all the erections, installations, laying the lines and arrangements necessary for the purpose of supplying energy to the Petitioner at 132 KV, but the Board cannot be oblivious of the fact that the Petitioner must have also faced similar problems and difficulties in acquiring necessary transformers and other equipment. It would not be unreasonable to include the Petitioner's problem in getting ready for the change over. It cannot be assumed that the Petitioner wantonly delayed in placing itself in a position to receive supply of energy at 132 KV; and thereby, set aside the imposition of additional charges from 01.03.1983 to 21.03.1984, particularly in view of the fact that for the subsequent period i.e. from 23.3.1984 to 09.11.1984, the Board had not levied additional charges on the very ground that the Board was not in a position to supply energy at 132 KV to the Petitioner till 09.11.1984.

21. In another decision in A.P. State Electricity Board and Another Vs. Andhra Sugars Ltd., , the Division Bench of this Court has observed that:

From the aforesaid correspondence, it is clear that the Petitioner has been intimating the Respondents about the requirements to be fulfilled by them from time to time and even with regard to the supply point, there was any mount of correspondence on this aspect. In the meanwhile, the litigation was commenced making challenge to B.P.Ms. No. 607 which was ultimately allowed by the learned Single Judge against which Writ Appeal was filed and the Writ Appeal was allowed and therefore, and ultimately the Supreme Court has cleared the matter. In this process both the parties did not take any action as the matter was sub-judice before the Division Bench. Soon after setting at rest the dust and din of the controversy with regard to the power of the Board to lay down the conditions of supply by the judgment of the Supreme Court in Civil Appeal No. 793 of 1988 and Batch, the Respondents started making a demand for the additional charges. The Respondents have been only stating that already double line was erected and therefore, the Petitioner failed to receive the energy and under those circumstances, he is liable to pay the additional charges. As already observed, mere availability of line is not sufficient to release 132 K.V. supply. Necessary change over equipment has to be fixed duly erecting supply point. Moreover, the

Board did not state that by the time B.P.Ms. No. 607 was issued they were in a position to supply 132 K.V. supply. They have been only asking the Petitioner to switch over to 132 K.V. energy without making available the required facility to receive the supply. For the extension of the existing 132 K.V. tower line, number of other alterations have to be made such as insulation of first span of line and last span of line for transmitting 132 K.V. energy and 132 K.V. isolators, circuit breakers and other instruments. Till such alternatives are made, it cannot be said that the Board was in a position to supply the energy at 132 K.V. The availability of 132 K.V. supply at the supply point is the sine qua non for claiming additional charges. Unless it is satisfactorily established that the Board was ready with the supply of 132 K.V. energy to the Petitioner unit, it cannot be said that the Petitioner was not ready to receive the energy. We find that Board has not discharged its obligation to make available the supply of 132 K.V. energy. Even by February, 1988, the supply point was not constructed. By July, 1988 also the Respondents had clearly admitted that for their equipment operation 400V three phase supply was not available at their sub-station and requested the Petitioner to allow the Board to utilize the 400V-3 phase of the Petitioner till the Board arranges its own supply. It is also noticed that by 8-4-1988 the Petitioner was ready to receive the energy 132 K.V. voltage but it was supplied only from 24-6-1988 and this was not disputed by the Board and the additional charges were levied only for the period from 1-3-1983 to 7-4-1988 little realizing that 132 K.V. energy was actually supplied with effect from 24-6-1988; and thereby found that the imposition of additional charges from 01.03.1983 to 07.04.1988 is only unwarranted and arbitrary.

22. In the present case also, as already observed above, the Respondent-Board was not ready to supply 132 KV of energy to the Petitioner's company even though the Petitioner's company was ready to receive the same by making necessary infrastructure at their end by 1986 and the Respondents were only ready to supply 132 KV only in June 1989, but they had imposed payment of additional charges from 01.03.1983 to 26.05.1987. Admittedly, during which period the Respondent-Board was not in a position to supply 132 KV. When the Respondent-Board was not in a position to supply 132 KV, the question of failure on the part of Petitioner to receive the same does not arise even though there is delay in making the payment of service line charges. Thus, the action of the Respondent-Board in demanding the payment of additional charges when they are not in a position to supply 132 KV to the Petitioner during that period, is unjust and unreasonable and the arbitrary action of the Respondent Board is not sustainable in law. As such, the Respondent-Board is not entitled to levy the additional charges from 01.03.1983 to 26.05.1987 as demanded in the impugned order dated 14.12.1988. Thus, there is No. necessity for remanding the matter to the Board once again for reconsideration of the issues again, since it is the clear case that the Board, without being ready to supply 132 KV, insisting the HT consumer to receive the voltage at 132 KV and on their failure, demanding to pay additional charges. Hence, the order of the learned single

Judge to the extent of remanding back the matter to the Board for reconsideration is liable to be set aside.

23. In the result, W.A. No. 881 of 2003 is allowed to the extent of remanding the matter to be Board for the purpose of reconsideration and W.A. No. 1509 of 2004 is dismissed. In the circumstances, both the parties are directed to bear their own costs.