



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

I. A. No. 7 of 2023
in
O. P. No. 29 of 2023

Dated 16.12.2023

Present

Sri. T. Sriranga Rao, Chairman
Sri. M. D. Manohar Raju, Member (Technical)
Sri. Bandaru Krishnaiah, Member (Finance)

Between:

M/s. Zuari Cement Limited,
Unit at Sitapuram, Dondapadu,
Nalgonda District – 508 246.

.... Applicant / Petitioner.

AND

1. Transmission Corporation of Telangana Limited,
Vidyut Soudha, Khairatabad Road,
Near Eenadu Officer,
Hyderabad – 500 082.
2. Southern Power Distribution Company of Telangana Limited,
Corporate Office, # 6-1-50, Mint Compound,
Hyderabad – 500 063.
3. Superintending Engineer, Operation Circle,
TSSPDCL, Suryapet – 508 213. Respondents / Respondents.

The application came up for hearing on 14.12.2023 in the presence of Sri. Deepak Chowdary, Counsel for applicant / petitioner and Sri. Mohammad Bande Ali, Law Attaché for respondents, having been heard and having stood over for consideration to this day, the Commission passed the following:

INTERIM ORDER

M/s. Zuari Cement Limited (applicant / petitioner) has filed an interlocutory application under section an application under section 94 (2) of the Act, 2003 r/w APERC Conduct of Business Regulation, 1999 seeking interim direction pending disposal of the original petition with respect to stay of the demand of surcharge made by the respondent No. 3 vide letter dated 19.10.2023 on the demand of penalty for excess drawl of power. The submissions in the application are extracted below.

- a. It is stated that the applicant / petitioner is a limited company incorporated under the provisions of Companies Act, 1956, *inter-alia* engaged in the business of generation and sale of electricity. One of its units is situated at Sitapuram, Dondapadu, Nalgonda district, state of Telangana (Sitapuram plant). It is stated that, the petitioner being a highly energy intensive industry, wherein the energy costs alone comprise about 40% of the manufacturing costs.
- b. It is stated that due acute shortage of power situation prevailing in the state, the petitioner has envisaged to setup 43 MW coal based captive Power Plant at Dondapadu, Nalgonda district (presently Suryapet district). The power generated by the petitioner captive generating plant was to be captively consumed by its plant situated at Sitapuram. In the year 2007, the petitioner had initially entered into an HT agreement with APCPDCL for availing power supply at 132 kV with the contracted maximum demand (CMD) of 3125 KVA, under the exclusive condition that, the applicant / petitioner shall not receive / utilize the power supplied by the DISCOM except for its startup and shut down operations. Pursuant to the same, the petitioner was granted HT service connection vide SPT-543 (previously NLG-543). The 132 kV switching station of TSTRANSCO at Dondapadu village, Mellacheruvu mandal, Nalgonda district, Telangana, was constructed by the petitioner and handed over to TSTRANSCO.
- c. It is stated that prior to the commissioning of the applicant / petitioner's plant, the applicant / petitioner had sought for open access approval. The Chief Engineer (Commercial), APTRANSCO vide Lr. No. CE / Comml.DE / AP. TRANSCO / F-OA-Sitapuram / D. No. 05 / 07, dated 09.01.2007, had issued certain directions / conditions to the petitioner

for setting up of 1) special energy meters (ABT), dedicated CT & PT's, 2) that there shall not be any parallel operation two sources of supply i.e., APCPDCL and Sitapuram Power Limited (now the petitioner) to M/s. Sri Vishnu Cements Limited (now the Sitapuram plant of the petitioner), 3) set up of reverse power relay. The requirement for the petitioner to be furnish the reverse power relay was to limit the drawl by petitioner's power plant to its station auxiliaries upto that is 3125 KVA or 2500 KW (contracted capacity) during the outage of their unit. Hitherto, the petitioner has provided reverse power relay, energy meters and CT and PT's. The reverse power relay was to be envisaged to be setup on the 132 KV switch yard of TSTRANSCO / (then APTRANSCO) in order to ensure that the petitioner's feeder shall not draw excess power beyond the contracted capacity of 3125 KVA or 2500 KW.

- d. It is stated that pertinently, the applicant / petitioner had started its trial run operations from July, 2007 onwards prior to the commercial operation date and grant of long term open access (LTOA). In particularly on 13.08.2007, while the petitioner was trying to supply power to its captive consumer, M/s. Sri Vishnu Cements Limited on trial basis, due to the tripping of the power plant, the CMD has been recorded as 21287.5 KVA, out of which a portion of power was extended to the petitioner's power plant auxiliaries limiting to the contracted capacity of 3125 KVA and balance excess of power that is 18,162.5 KVA was slipped to the captive consumer of the petitioner that is M/s. Sri Vishnu Cements Limited. During the failure of power supply by the petitioner's generating station and consequential blackout, there was absolutely any chance of monitoring of supply activity by the petitioner, which resulted in over drawl beyond the contracted capacity.
- e. It is stated that consequently the 2nd respondent had calculated the charges payable by the petitioner for the excess drawl of the demand and imposed a penal charge accounting to Rs. 90,81,250/- which reflected in the CC Bill of the Petitioner for the month of August, 2007 dated 26.08.2007. Aggrieved by the same, the petitioner had approached the Hon'ble High Court of Telangana vide W. P. No. 20732 of 2007. The Hon'ble High Court at the stage of admission was pleased

to grant interim stay to the demands subject to the condition that the petitioner shall pay penal demand charges for an amount of Rs. 30,00,000/- vide orders dated 04.10.2007 in W. P. M. P. No. 26874 of 2007.

- f. It is stated that the writ petition had come up for final hearing on 21.06.2023, the Hon'ble Court while hearing the submissions made by both the opposing parties was pleased to dispose of the writ petition by setting aside the impugned demand of penal charges which were included in the petitioner's CC bill, holding that these demands are made on the petitioner without following the due process of law and in violation of the principles of natural justice and further directed the 3rd respondent to afford the petitioner an opportunity of hearing to make its stand and pass orders afresh on merits and the said exercise was to be completed within a period of 3 months from the date of the order. It is pertinent to note here that, the preliminary demand made against the petitioner was without any notice and calling for reasons to explain the excess drawl.
- g. It is stated that, in compliance to the orders of the Hon'ble High Court, the 3rd respondent had issued a letter vide Lr. No. SE / OP / SRPT / SAO / JAO / HT / D. No. 88 / 23 dated 10.08.2023 and called upon the petitioner to submit a representation and relevant records, if any, and appear before it on 17.08.2023 for taking further necessary action. Upon receipt of the said notice, the petitioner had submitted its detailed representation vide letter dated 06.09.2023 and personal hearing was conducted on the very same day. Upon conclusion, the respondents have deputed their technical experts on 12.09.2023. Thereupon, the technical team of respondents have visited and inspected the premises of the petitioner, the 132 kV Sub-station of TSTRANSCO in which the reverse power relay is installed and also the 132 kV feeder of M/s. Sri Vishnu Cements Limited on 12.09.2023. The copy of the said inspection report was not furnished to the petitioner, but whereas, it was informed that they shall conduct another hearing on a subsequent date and pass appropriate orders.
- h. It is stated that the 3rd respondent on 19.09.2023 (2nd hearing date) without any further hearing on the technical report had passed an order

holding that, the petitioner despite agreeing under the HT service agreement that, it shall not draw power beyond the contracted capacity, held that the petitioner's had extended DISCOM's power to its captive consumer without any permission / intimation to TSPDCL / TSTRANSCO and declared such action as illegal. Further, the respondents also went on to re-iterate its adversarial stand that the reverse power relay has been provided on 132 kV Sitapuram plant feeder for ensuring power system security of APTRANSCO Grid and the same will be utilized as per the requirement of APTRANSCO. The reverse power relay installed at Sitapuram plant feeder is not meant for limiting the maximum demand of M/s. Sitapuram Power Limited. Further, irrespective of functioning of the reverse power relay, the consumer should not draw power more than the CMD approved (as per the agreement for CMD is arrived based on total capacities of motors existing in power plant). Having said that, the respondent officials went on to hold that the Impugned demands made are based on the tariff order issued by the APERC and further called upon the petitioner to pay the balance amount of Rs. 68,35,336/- along with applicable belated payment surcharge within 15 days, failing which the H. T. SC. No. SPT 543 M/s. Zuari Cements Limited, will be ordered for disconnection of power supply. The petitioner on receipt of the impugned order immediately paid the demand of Rs. 68,35,336/- under protest as they were threatened with disconnection.

- i. It is stated that consequently, the 3rd respondent vide Lr. No. SE / OP / NLG / SAO / HT / D. No. 138 / 23 dated 19.10.2023 (received by the petitioner on 27.10.2023) stated that the payment of principal demands has been received, whereas the applicable belated payment surcharge as per the tariff orders notified by the Commission from time to time is not arranged and further directed the petitioner to pay an amount of Rs. 2,08,71,015/- towards belated payment surcharge from 11.09.2007 onwards within a period of 15 days from the date of receipt of this notice and upon failure of the same, threatened to disconnect power supply without any further notice. Thereupon, the petitioner once again submitted representation dated 30.10.2023 stating that, on the

subsequent date of hearing the petitioner was not furnished with a copy of the technical report nor called upon to make any further submissions / reasoning on the same. It is pertinent to mention that despite petitioner making detailed objections, the respondents have failed and omitted to address the objections raised by the petitioner. Therefore, the demand dated 19.09.2023 were not a speaking order of a standard expected from an instrumentality of the state insofar as all the objections of the petitioner were not considered, addressed and dealt with expressly in the order. The demand is therefore bad in law and liable to be set aside.

- j. It is stated that the initial demand made by the 2nd respondent has been set aside by the Hon'ble High Court vide its order dated 21.06.2023. As such, once the demand of 2007 is set aside, there can be no question of levying interest for the interregnum. The issue has been adjudicated afresh and the alleged demand has been made only on 19.09.2023, and which has been paid in full on 18.10.2023 under protest. As such, there cannot be any interest levied by the 3rd respondent.
- k. It is stated that, despite the petitioner making several representations, the respondents have absolutely failed to consider these objections and arrived at the purported demands. The petitioner aggrieved by the impugned demand of the respondents has challenged the demands by way of the present original petition.
- l. It is stated that presently, on account of the consequential demand of surcharge purported to be on account of delay payment of principal demands, the petitioner is under the threat of disconnection of power supply. The petitioner is running a manufacturing unit which is totally dependent on the power generated by the Sitapuram plant, and any coercive action of disconnection of power supply would cause irreparable loss to the petitioner. Further, the livelihood of nearly 250 people directly employed by the petitioner would also be put at stake. The petitioner has a good prima facie case and balance of convenience is in its favour, if the Commission does not grant interim order in its favour, the petitioner will be put to irreparable loss and severe hardship.

2. The applicant / petitioner has sought the prayers pending disposal of the original petition in the application is as given below:

“To stay the demand of Surcharge made by the 3rd Respondent vide Lr. No. SE / OP / NLG / SAO / HT / D. No. 138 / 23 dated 19.10.2023, and consequently direct the Respondents not to take any coercive action, including disconnection of power to the petitioner’s service connection HT No. SPT-543.”

3. The Commission has heard the counsel for petitioner and the representative of the respondent and also considered the material available to it. The submissions on the date of hearing are noticed below, which are extracted for ready reference.

Record of proceedings dated 14.12.2023:

“...The counsel for petitioner stated that the petition is filed questioning the claim of penalty towards demand charges and interest thereof with a threat to disconnect the power supply to the petitioner if not paid the same. The petitioner has also filed an interlocutory application seeking stay of the said demand.

Since there is a threat of disconnection of power supply to the petitioner, the petitioner has approached the Hon’ble High Court. The Hon’ble High Court in W. P. No. 31189 of 2023 had safeguarded the interest of the petitioner by requiring it to deposit 1/4th of the amount claimed towards interest and not to disconnect the power supply thereof for a period of two weeks from the date of receipt of the order. Now, the petitioner had already deposited the amount as directed by the Hon’ble High Court.

The representative of the respondents stated that the matter is coming up for hearing for the first time. He needs time for filing counter affidavit. Also the interim order passed by the Hon’ble High Court needs to be confirmed including instructions thereof. The counsel for petitioner has insisted on the interim orders in the matter.

The Commission, having considered the arguments of the counsel for petitioner and the request of the representative of the respondents, has reserved orders on the interlocutory application. The main petition stands adjourned. The main matter will be finally heard on the said date by which time the pleadings have to be completed without fail.”

4. The Commission notices that the application along with original petition is filed on 07.12.2023 and the original petitioner due to urgency had approached the Hon'ble High Court in W. P. No. 31189 of 2023, as the matter is yet to be taken up by the Commission. The Hon'ble High Court had disposed of the writ petition with the following directions.

“ ...

4. Having regard the submissions on both sides and in view of the urgency expressed by the learned counsel for the petitioner, the petitioner is directed to deposit 1/4th of Rs. 2,08,71,015.0/- as demanded in the notice dated 19.10.2023, within a period of two weeks from the date of receipt of this order.

5. Further, the respondent No. 1 is hereby directed to take up this matter and dispose of the same within a period of (04) weeks from the date of receipt of copy of this order.”

5. In the arguments before the Commission, the counsel for petitioner stated that though interim protection has been given by the Hon'ble High Court, there is still a threat of disconnection of power supply to the petitioner. The counsel for petitioner has placed on record the acknowledgement obtained towards payment of the amount made and the payee invoice in terms of the direction of the Hon'ble High Court. Also, the Commission has to hear the original petition and dispose of the same, which may take some time. In view of the same, he sought necessary orders on the interlocutory application now being considered by the Commission.

6. The Commission having considered the submissions of the counsel for petitioner sought to know as to the stand of the respondents. The representative of the respondents as noted above sought time for filing counter affidavit in the original petition as well as in the interlocutory application. Though representation is made about payment of the amount as per the directions of the Hon'ble High Court, the representative of the respondents did not comment on the same. The Commission is not inclined to grant time for counter affidavit in the interlocutory application. Accordingly, the Commission directs that the respondents shall not take any coercive steps in the matter until the matter is finally decided by the Commission.

7. The interlocutory application is disposed of. The original petition is directed to be listed for hearing on 11.01.2024, by which time the parties shall complete the

pleadings and should be ready for arguments in the original petition in view of the directions given in the above said writ petition by the Hon'ble High Court.

This Order is corrected and signed on this the 16th day of December, 2023.

Sd/- (BANDARU KRISHNAIAH) MEMBER	Sd/- (M. D. MANOHAR RAJU) MEMBER	Sd/- (T. SRIRANGA RAO) CHAIRMAN
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