
**Shiva Sagar Paper and Chemicals Ltd. Vs Transmission Corporation of
A.P. Limited (A.P. Transco) and Others**

Writ Petition No. 7436 of 2002

Court: Andhra Pradesh High Court

Date of Decision: June 27, 2002

Acts Referred:

Electricity Act, 1910 " Section 24

Citation: (2002) 6 ALT 395

Hon'ble Judges: V.V.S. Rao, J

Bench: Single Bench

Advocate: Duba V. Nagarjunababu, for the Appellant; K.N. Jwala, S.C., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

V.V.S. Rao, J.

The petitioner is a private limited company engaged in the manufacture of Craft paper and Duplex paper. The company

went in production from 3-12-2000. The petitioner filed a writ petition being W.P.No. 15791 of 2001 before this Court praying for a writ of

Mandamus declaring the action of the Transmission Corporation of Andhra Pradesh, the Chief Engineer and the Superintending Engineer of the

said Corporation in not extending 25% rebate on power tariff for the initial three years period in terms of G.O.Ms.No.108, Industries and

Commerce (IP) Department, dated 20-5-1996 and the eligibility certificate issued by the General Manager of the District Industries Centre,

Srikakulam as illegal, arbitrary and quite unjust. Be it noted that by G.O.Ms.No.108, dated 20-5-1996 the Government declared Target-2000

New Industrial Policy and also formulated a scheme by giving certain incentives for setting up of new industries in the State of Andhra Pradesh.

The scheme inter alia vide paragraph 6.04 provides for 25% rebate in electricity charges. All the eligible and qualified industries will be eligible for

25% rebate in power bills for a period of three years from the date of commencement of commercial production.

2. This Court by a judgment dated 21-1-2002 in W.P.No.15791 of 2001 allowed the petitioner's writ petition declaring that the petitioner

company is entitled for grant of rebate of 25% of the monthly bills for a period of three years from the date of release of power supply i.e. from 3-

12-2000 to 2-12-2002 or a total rebate of the amount as contemplated in G.O.Ms.No.108 dated 20-5-1996. W.P.No.7436 of 2002 dated 19-

4-2002 giving liberty to the 1st respondent to approach the learned Single Judge in W.P.No.7436 of 2002.

3. Aggrieved by the above said judgment, the respondents herein filed an appeal being W.A.No.780 of 2002 before a Division Bench of this

Court. The Division Bench comprising their lordships Honourable the Chief Justice Dr. AR. Lakshmanan and the Honourable Sri Justice Tamada

Gopalakrishna also passed interim order dated 25-4-2002 in W.A.M.P.No.1479 of 2002 suspending the judgment of the learned Single Judge in

W.P.No.15791 of 2001. In the meanwhile, it appears that the respondents disconnected the power supply to the petitioner company on 2-3-

2002, challenging which the present writ petition being W.P.No.7436 of 2002 is filed. This Court while adjourning the matter on 19-4-2002

directed the respondents to restore the power supply to the petitioner company on condition of the petitioner paying an amount of Rs. 2,00,000/-.

The power supply was restored, but again notice of disconnection was given. Hence the petitioner filed a contempt case being C.C.No. 610 of

2002. In the Contempt application C.A.No.564 of 2002, the petitioner prayed for a direction to the respondents not to disconnect the power

supply pursuant to the letter-dated 1-5-2002 addressed by the second respondent. This Court in C.A.No.564 of 2002 issued interim directions as

prayed for. Be that as it may, the Division Bench in the Interlocutory order dated 25-4-2002, referred to hereinabove, also observed that the 1st

respondent herein shall comply with the orders passed by the learned Single Judge in W.P. No. 7436 of 2002 dated 19-4-2002 giving liberty to

the 1st respondent to approach the learned Single Judge in W.P. No. 7436 of 2002.

4. When the matter was called for admission on 11-6-2002, the learned counsel for the respondents, Sri N. Subba Reddy, submitted that in view

of the interlocutory order passed by the Division Bench in W.A.M.P. No. 1479 of 2002, the present writ petition has become superfluous and no

adjudication of the issues involved is required. Sri. D.V. Nagarjuna Babu, learned counsel for the petitioner, however, submits that in view of the

categorical and clear declaration given by the learned Single Judge of this Court in W.P.No. 15791 of 2001, the disconnection of power supply by

the respondents on 2-3-2002 is clearly illegal and therefore the writ petition survives and is maintainable.

5. The short question that falls for consideration is whether by reason of G.O.Ms.No.108, dated 20-5-1996 and by reason of the eligibility

certificate given by the Department of Industries, an industry is automatically entitled to claim rebate or for adjustment in the bills and refuse to pay

the current consumption charges to the respondent? Incidentally a question would also arise whether in the absence of specific directions by the

higher authorities like the Superintending Engineer, granting rebate the electricity revenue office can allow 25% rebate in tariff bills as per

G.O.Ms.No.108 dated 20-5-1996.

6. Sri Nagarjuna Babu has placed before me two Circular Memos bearing Nos. 394/ DSK.1 (3)/77 dated 15-3-1977 and 1445/ DSK.10(1) 84

dated 10-2-1986 which contain the procedure for conferring the benefit of 25% rebate in power bills. Be it noted that by reason of a note

appended below paragraph 6.04 in G.O.Ms.No.108 dated 20-5-1996, the procedure for grant of eligibility certificates and grant of 25% rebate in

power bills as laid down in Memo dated 15-3-1977 and 10-2 1986 is made applicable in relation to G.O.Ms. No. 108 also.

7. In the two memos referred to hereinabove, there is nothing to suggest, as contended by the learned counsel for the petitioner that the moment

the eligibility certificate is given by the Deputy Director of Industries or any other officer of the Industries Department, the electricity company is

bound to allow 25% rebate in power bills. The Government Order in G.O.Ms.No.108, dated 20-5-1996 as well as the procedure for claiming the

rebate could only enable the eligible industry to claim rebate. As and when such a claim is made, the Superintending Engineer has to consider the

claim, the eligibility certificate given by the Industries Department and pass appropriate orders granting the lower officials and electricity revenue

office to allow 25% rebate in power bills. An industrial company which files an application claiming such a rebate cannot on its own assume the

grant of 25% rebate in power bills and refuse to pay the current consumption charges or request the Transmission Corporation to adjust the 25%

rebate in the bills. Such procedure is not contemplated by any of the executive orders. On the contrary, all the executive orders contain sufficient

precautions to be taken to avoid spurious and false claims of 25% power rebate.

8. The question, however, would be as to what is the effect of the declaration given by this Court in W.P.No. 15791 of 2001. This Court declared

that the petitioner company is entitled for grant of rebate at 25% of the monthly bills. This declaration gives a right to the petitioner company to

seek grant of rebate from appropriate authority. The confirmation of right on the petitioner by reason of the declaration by this Court throws a

corresponding duty on concerned official of the Transmission Corporation, say, the Superintending Engineer to act upon such declaration and pass

appropriate orders. Indeed, admittedly, the petitioner approached the Superintending Engineer, the 2nd respondent herein on 28-1-2002 and 9-2-

2002 requesting the latter to issue orders for implementing the orders of the High Court. It is better to extract the letter addressed by the petitioner

on 9-2-2002 to the Superintending Engineer.

A Xerox copy of the order rendered by the Honourable High Court of A.P. in W.P.No. 15791 of 2001 dated 2-1-2002 filed by M/s Shiv Sagar

Paper and Chemicals Limited is enclosed herewith. According to the said order our medium scale industrial units located at Akkurada village,

Jalumuru Mandal is entitled for a rebate at 25% on the power consumed by the said unit for a period of three years commencing from 3-12-2000

to 2-12-2003.

I submit that in view of the orders of the Honourable High Court referred to above, it is just and necessary that the rebate of 25% in all fairness

should commence from the consumption bill payable in this month and in that wise, the amounts already paid by us earlier, may kindly be ordered

to be adjusted in the future bill amounts to be payable by us.

I request you to be so good, as to kindly issue orders for implementing the orders of the High Court referred to above for which act of your

kindness I shall ever remain grateful to you.

9. Sri Nagarjuna Babu, strenuously contends that the moment this Court declared the right of the petitioner to claim rebate, the petitioner is

entitled, as of right, to refuse the payment of 100% power bills and request the Transmission Corporation to adjust the bills as per the petitioner"s

ipse dixit. I am afraid, I cannot agree with the submission of the learned counsel for the petitioner. This view is also supported by the observations

made by the Division Bench in the order - dated 25-4-2002 in W.A.M.P. No.1479 of 2002, which reads as under:

Heard both sides

There will be suspension of the order impugned in this appeal viz., order dated 21-1-2002 passed by the learned Single Judge in W.P.No. 15791

of 2001.

However at the time of hearing our attention was drawn to the interim order dated 19-4-2002 passed by the another learned Single Judge in

W.P.No. 7436 of 2002 wherein the learned Single Judge issued an interim direction to the respondents therein i.e., the appellants herein to restore

the power supply to the petitioner therein, that is, the respondent herein on condition of the petitioner therein paying Rs. 2.00 lakhs.

Now that interim suspension of the impugned judgment under the present appeal has been granted the appellant - A.P. Transco shall comply with

the orders passed by the learned Single Judge in W.P.No. 7436 of 2002. It is however open to the A.P. Transco to approach the learned Single

Judge in the case of W.P.No. 7436 of 2002 for any appropriate further orders.

10. In the present writ petition, the petitioner refused to pay the bills in an amount of Rs. 7,13,033/-. It only made a request to adjust the bill.

Therefore, the power connection was disconnected on 2-3-2002. Though there is some haste on the part of the respondents, it must be

remembered that every hasty decision cannot be branded as illegal or arbitrary. Under the terms of contracts or under the conditions of supply as

well as Section 24 of the Indian Electricity Act, 1910 the Electricity utility is entitled to stop the power supply to the consumer who has not paid

the bills. The petitioner admits in Writ-affidavit that when he approached the 2nd respondent, he was informed that the file regarding the grant of

rebate of 25% is circulated to higher-ups and that the matter is under consideration. Instead of waiting for further orders, the petitioner chose to file

the present writ petition in which the interim order was passed to restore power supply on payment of Rs. 2.00 lakhs.

11. The declaration given by the learned Single Judge, as on to-day, stands suspended by reason of the order passed by the Division Bench in

W.A.M.P. No. 1479 of 2002 in W.A. No. 780 of 2002, dt. 25-4-2002. Therefore, the respondents are entitled to take such action in accordance with law and conditions of supply. Sri Nagarjunababu, however, submits that u/s 24 of the Indian Electricity Act, 1910 the negligence

on the part of the consumer only entitles the electricity company to disconnect the power supply. He would further urge that as the petitioner was

under a bonafide impression that by reason of the declaration given by this Court, the respondents would adjust the rebate in the bills, he did not

pay the amounts and therefore disconnection of the power supply is contrary to law. I have already held supra that unless an appropriate order is

passed by an appropriate authority the petitioner cannot assume or presume the grant of 25% rebate and on that ground refuse to pay the bills.

Therefore, I cannot agree with the submission made by the learned counsel. Be it also noted that by reason of the interim orders of this Court

dated 19-4-2002, the power supply is restored. Subject to the petitioner continuing to pay the monthly current consumption charges as claimed by

the respondents, and subject to further condition that the petitioner also deposits the balance of Rs. 19,83,882/- within a period of four weeks the

power supply shall not be disconnected from to-day. I would, however, hasten to add that the petitioner is entitled to file an application for

instalments under condition No. 34 of the terms and conditions of Corporation and the Chief Engineer or the Board is entitled to pass appropriate

orders on the same.

12. In the result, subject to the above observations and directions, the writ petition is disposed of. No order as to costs.