

(2014) 10 AP CK 0046

Andhra Pradesh High Court

Case No: Writ Petition No. 2142 of 2007

Vootla Krishna Prasad

APPELLANT

Vs

The A.P. Eastern Power
Distribution Company Limited

RESPONDENT

Date of Decision: Oct. 10, 2014

Citation: (2015) 3 ALD 588

Hon'ble Judges: A. Ramalingeswara Rao, J

Bench: Single Bench

Advocate: P. Narasimha Rao, Advocate for the Appellant; P. Anand Seshu, SC, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A. Ramalingeswara Rao, J.

Heard the learned counsel for and the learned Standing Counsel for respondents.

2. The petitioner is a Managing Partner of M/s. Sai Ganesh Rice Mill at Jagannadhagiri Village, Kazaluru Mandal, East Godavari District. The Petitioner's rice mill had 3 phase low tension supply under category-III with service connection No. 5315. They have been paying the monthly electricity charges as levied and demanded by the respondents. There were no disputes with the respondents with respect to power supplied under the said category and the power supply was 7 hours a day on the average. When the petitioner came to know that there was a separate offer by the respondents for providing continuous supply of electricity for 24 hours under a special agreement, it made an application to the respondents for sanction under the 24 hours supply scheme. The respondents issued a sanction vide proceedings No. 9424/2004 dated 08.11.2004. A detailed estimate was prepared for an amount of Rs. 4,84,400/- for extension of 24 hours supply by laying separate lines and transformers and the petitioner executed the said agreement. When the petitioner paid Rs. 2,42,200/- being the 50% of the estimated amount in terms of the

said scheme, the respondents erected 3.7 K.M. of 11 KV line provided with AAA conductor and 8 meters PSCC polls. It is the case of the Petitioner that under the said agreement, the respondents have to provide 24 hours power supply through separate lines except at the time of power failures from the distributing company. According to the said agreement, the petitioner had to consume 26290 units per month.

3. It is the case of the petitioner that it could not consume the required 26290 units of electricity per month as the respondents could not provide 24 hours power supply and they supplied only 18 hours per day on average and on many occasions when there was power cut, they supplied below 12 hours. Thus the respondents committed breach of conditions of the agreement. While so, the first respondent issued a notice demanding payment of the balance 50% of the estimated amount on the ground that the petitioner consumed only 216321 units within 12 months period as against the estimated 315480 units of electricity. The petitioner submitted a representation raising objections before respondents 2 and 3 and requested them to alter the estimates and demands corresponding to the level of actual power supplied, but they did not take any action. The present Writ Petition was filed challenging the demand noticed issued by the first respondent in letter No. ADE/O/R/KDA/ASO/F/DOC/D. No. 2514/06 dated 30.11.2006, calling upon the petitioner to pay the balance amount of Rs. 2,42,200/-.

4. A counter affidavit is filed on behalf of the respondents admitting the agreement for supply of 24 hours electricity on payment of 50% of the costs of Rs. 4,84,400/- for erection of separate line and transformer, etc. It was stated that the petitioner was provided with 24 hours of power supply, but failed to utilise the same and levelling the allegations against the respondents in order to avoid the payment of balance 50% of the amount. The sub-station maintains the log book with regard to the hours of supply and in the instant case also a separate log book was maintained at the sub-station. But, the petitioner never approached the concerned authority requesting the details of the hours of supply.

5. The learned counsel for the petitioner, while submitting that the petitioner need not pay the balance amount due to failure of the respondents to supply electricity for 24 hours, relied on [M/s. Raymond Limited and Another, Vs. Madhya Pradesh Electricity Board and Others, Etc. Etc.,](#) , [Northern India Iron and Steel Co. and Others Vs. State of Haryana and Another,](#) , [Man Industrial Corporation Vs. Rajasthan State Electricity Board and Others,](#) , [Raymond Ltd. and Another Vs. State of Madhya Pradesh and Others,](#) and [Gwalior Distilleries Ltd., Rairu Vs. Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Ltd. and Others,](#) . The learned Standing Counsel for the respondents, while submitting that the petitioner did not utilise the required units as per the agreement and hence is liable to pay the balance amount, relied on Sri Vishnu Cements Ltd. V. APSEB 1997 (2) ALD 588 (D.B.).

6. In the instant case, there is no dispute with regard to consumption of less units than the contracted units by the petitioner and the only dispute is with regard to the supply of electricity for 24 hours and the demand of the respondents for payment of balance amount due to non-utilisation of the contracted quantity by the petitioner.

7. In *M/s. Raymond Ltd.*'s case (supra), the issue was with regard to the payment of minimum guarantee charges for continuous supply of energy by the Board and it was held that failure of the Board to effect continuous supply does not make contract unenforceable against the consumer. The Hon''ble Supreme Court held in para-17 as follows.

"17. The further claim asserted on behalf of the consumers that since what was agreed to between the parties was to make the supply available continuously except during situations envisaged in clause 11 of the contract, the failure to effect such supply by the Board renders the very contract relating to the payment of minimum guaranteed charges unenforceable against them, does not merit acceptance in our hands. It cannot legitimately be contended that the word "continuously" has one definite meaning only to convey uninterruptedness in time sequence or essence and on the other hand the very word would also mean "recurring at repeated intervals so as to be of repeated occurrence". That apart, used as an adjective it draws colour from the context too, and in the light clause 23(b) and also Section 22-B of the 1948 Act and orders passed therein which are binding with equal force upon both the consumer and the Board, the word is incapable of being construed in such absolute terms as endeavoured by the learned counsel for the consumers."

8. In *M/s. Northern Indian Iron and Steel Co.*'s case (supra), the Hon''ble Supreme Court was considering the question whether the Haryana State Electricity Board is entitled to claim any demand charges from the consumers in respect of supply of energy to them and whether the Board is entitled to levy the demand charges. It was held therein that under clause 4(f), the consumer is entitled to a proportionate reduction of demand charges in the event of lock out, fire or any other circumstances considered by the supplier beyond the control of the consumer. In view of the same, it was held that the proportionate reduction will have to be made, if the Board was unable to supply electrical energy due to power cut or any other circumstance beyond its control as per the demand of the consumer. But, no such clause is existing in the instant case.

9. In *M/s. Man Industrial Corporation*'s case (supra), it was held that there should be reduction in the minimum charges in proportionate to the power-cut that has been imposed. While rendering such decision, the learned Single Judge of the Rajasthan High Court, followed the decision of the Hon''ble Supreme Court in *M/s. Northern Indian Iron and Steel Co.*'s case (supra). In *M/s. Raymond Ltd.*'s case (supra), it was held that where the Board supplies only 20% of the contracted demand and charges for the minimum 40% of the contract demand, the Board should not be allowed to collect such charges for the minimum 40% of the contracted demand and there

should be a proportionate reduction in minimum charges. The Division Bench of the Gwalior Bench of Madhya Pradesh High Court in M/s. Gwalior Distilleries Ltd., Rairu's case (supra) is also to the same effect.

10. The learned counsel for the petitioner, by citing the above decisions, proceeded on the assumptions that the respondents have not supplied 24 hours energy as agreed under the agreement and hence they should not have demanded for payment of the balance amount.

11. On the other hand, this Court in Sri Vishnu Cements Ltd.'s case (supra), considered all the above cases where proportionate reduction of the charges were allowed and held that there were no similar terms and conditions in the agreement entered by the APSEB. It further held that every consumer is required to pay the charges based on the 80% of the contracted demand, even though that much of the energy was not taken by them and whatever be the reason. For coming to that conclusion, this Court relied on [Bihar State Electricity Board and Others Vs. Allied Refractories \(Pvt.\) Ltd. and Others](#), [Grindwell Norton Ltd. Vs. Andhra Pradesh State Electricity Board, Hyderabad and Others](#), and [Orissa State Electricity Board and another etc. Vs. M/s. IPI Steel Ltd., etc.](#). This Court ultimately dismissed the case of the petitioner. The said decision is an answer to the contentions raised by the learned counsel for the petitioner relying on the above decisions. Even otherwise also, as pointed out by the respondents in their counter affidavit, the petitioner never approached the authorities requesting to furnish the details of hours of supply but alleged that no log book was maintained.

12. Admittedly, in this case, an agreement was entered by the petitioner with the respondents for availing 24 hours supply of electricity and agreeing to consume a minimum of 26290 units per month. The petitioner consumed only 216321 units in 12 months period as against the estimated level of 315480 units of electricity. Initially the petitioner was asked to pay 50% of the estimated amount, as the pay back period is more than 6 months (6, 7 months). Since the petitioner did not avail the electricity as agreed upon it resulted in recovering less amount from the consumer during the period of one year. In those circumstances only, the respondents demanded the petitioner to pay the balance estimated amount, as the estimated amount could not be recovered due to less consumption of electricity during past one year. The estimated amount was prepared based on the infrastructural facilities provided by the respondents to the petitioner and taking into consideration the pay back period.

13. In view of the above, there are no merits in the Writ Petition and is, accordingly, dismissed. There shall be no order as costs. Miscellaneous Petitions pending, if any in this Writ Petition, shall stand closed.