

Record of proceedings dated 06.05.2024

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 35 of 2023 & I. A. No. 8 of 2023 & I. A. No. 9 of 2023	M/s. Kakatiya Cement Sugar & Industries Ltd.	TSNPDCL & TSTRANSCO

Petition filed questioning the recovery of grid support charges and other reliefs.

I. A. filed seeking interim direction to the respondent not to take any coercive steps against the petitioner in pursuance to the notice dt. 11.02.2021 including recovery of the grid support charges for FY 2002-03 to FY 2008-09 along with interest from the power purchase bills due and payable by R-2 to the petitioner.

I. A. filed seeking interim direction to the respondent not to insist upon payment of the grid support charges for the period FY 2002-03 to FY 2008-09 along with interest as demanded vide notice dt.07.01.2021 issued by R-1 and consequently not to reflect the demanded amount as arrears in relation to the petitioner.

Sri. Vikram Pooserla, Senior Advocate along with Ms. Achala Siri, counsel for petitioner and Sri. Mohammad Bande Ali, Law Attaché being the representative of the respondents have appeared in the matter. The counsel for petitioner stated that the matter arises out of the demand raised by the respondents towards grid support charges for the period from 2002 to 2009. The petitioner is put on notice in the year 2021 demanding payment of grid support charges from the year 2002 to 2009 and interest for the period from 2002 to 2021. The counsel for petitioner explained in detail the correspondence set forth between the petitioner and respondents with regard to the claim.

The counsel for petitioner stated that the Hon'ble Supreme Court had already decided about the authority of the Commission to determine the levy of grid support charges. The erstwhile Andhra Pradesh Electricity Regulatory Commission (APERC) had in the year 2002 determined the grid support charges for the first time. The consumers and generators being aggrieved by the determination approached the Hon'ble High Court questioning the said determination by way of appeals and writ petitions. By order dated 02.05.2003 the Hon'ble High Court of Andhra Pradesh had set aside the order of the APERC with regard to levy of grid support charges. The

respondents had preferred appeal before the Hon'ble Supreme Court questioning the order passed by the Hon'ble High Court of Andhra Pradesh as it then was. Ultimately, the Hon'ble Supreme Court upheld the determination of grid support charges by the APERC on 29.11.2019.

The counsel for petitioner stated that from the correspondence, it is noticed that the present levy of grid support charges is pursuant to the decision of the Hon'ble Supreme Court and accordingly notice has been issued to the petitioner. However, it is his case that the respondents ought to have issued notice in the year 2002 itself, which never happened. The respondents now cannot seek to levy the original amount as also interest on the amount due in the guise of recovery of the grid support charges. It is appropriate to state that the grid support charges itself was considered for levy upto the year 2009, but now the respondents are seeking the same with interest also for the entire period from 2002 to 2021.

The counsel for petitioner stated that since the respondents have claimed the original amount belatedly, they have no right of claiming the interest thereon for the period from 2002 to 2021. It is his case that notice ought to have been given in the year 2002 itself after the Commission had passed orders. Having failed to do so, the respondents have no right to claim the interest for the entire period. In terms of the judgement of the Hon'ble Supreme Court, the respondents are entitled to recover the amount as per the determination made by the APERC as adopted by the Commission. However, had the respondents initiated the claim in time and if no payment is made, certainly the petitioner would be liable to pay the interest. The respondents having failed to issue notice, cannot now claim the principal amount towards grid support charges along with interest for the amount thereof.

The counsel for petitioner relied on and referred to judgments of the Hon'ble Supreme Court in the matter of Andhra Pradesh Power Coordination Committee and others Vs. Lanco Kondaplli Power Limited and others with regard to amount due etc. arrears of rent, recovery of claims and period of limitation. He has also referred to judgment of the Hon'ble Supreme Court in the matter of Consolidated Engineering Enterprises Vs. Principal Secretary, Irrigation Department and others with regard to applicability of section 14 of the Limitation Act, 1963. By citing the above judgments,

he stated that the claims raised by the respondents are time barred. Therefore, he has sought for setting aside the claims made by the respondents.

The representative of the respondents stated that the claim is raised in the year 2021 after the decision of the Hon'ble Supreme Court. At the relevant time, the claim was not made owing to the fact that the order of the Commission had been stayed by the Hon'ble High Court. The respondents understood that it cannot bypass the Hon'ble High Court, which had stayed the order of the APERC. As such, action was initiated soon after the Hon'ble Supreme Court confirmed the order of the APERC. Since the petitioner has withheld the amount due to the respondents, as and when the claim is raised, the respondents have chosen to recover the amount along with interest thereon. As the matter was under adjudication and being sub-judice, the respondents did not initiate any action to recover the amount from the petitioner. It does not constitute a time barred debt for the reason that the issue is pending adjudication before the Hon'ble Supreme Court. The representative of the respondents would endeavour to submit that the petitioner cannot claim that it is not liable to pay the same, merely because it has not challenged the order of the APERC or that no claim was made by the licensee at the relevant time. Thus, the petitioner cannot seek any relief in the matter and is only trying to circumvent the order of the Hon'ble Supreme Court and deny the payment.

The counsel for petitioner stated that the petitioner is not shirking away from the liability, but at the same time the respondents are estopped from claiming the same having not claimed the amounts immediately after the order of the APERC. Thus, neither the original claim nor the interest thereon would be liable to be recovered by the respondents. The counsel for petitioner stated that as the respondents were not inclined to extend the PPA that has been subsisting between the parties and were insisting the payment of the amounts due for facilitating extension of PPA, the petitioner had no option but pay a part of the amount to enable itself for securing the extension of the PPA. The Commission may consider the prayers in the petition.

The counsel for petitioner sought for permission to file written arguments in the matter. Similar request is made by the representative of the respondents. The

Commission directs the parties to file written submissions, if any on or before 06.06.2024. Accordingly, the matter is adjourned.

Call on 06.06.2024 at 11.30 A.M.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 36 of 2023 & I. A. No. 10 of 2023 & I. A. No. 11 of 2023	M/s. Kakatiya Cement Sugar & Industries Ltd.	TSSPDCL

Questioning the recovery of wheeling charges and consequential reliefs

I. A. filed seeking interim direction to the respondent not to take any coercive steps against the petitioner including disconnection of HT service connection No. SPT 427 belong to the petitioner in pursuance to the notice dt. 07.07.2023 issued by the respondent pending disposal of the main O. P.

I. A. filed seeking interim direction to the respondent not to insist upon payment of balance differential wheeling charges as demanded against the petitioner vide notice dt. 07.07.2023 issued by the respondent and consequently not to reflect the demanded amount as arrears in relation to the petitioner pending disposal of the main O. P.

Sri. Vikram Pooserla, Senior Advocate along with Ms. Achala Siri, counsel for petitioner and Sri. Mohammad Bande Ali, Law Attaché being the representative of the respondents have appeared in the matter. The counsel for petitioner stated that the matter arises out of the demand raised by the respondents towards wheeling charges for the period from 2002 onwards. The petitioner is put on notice for the first time in the year 2021 demanding payment of wheeling charges from the year 2002 onwards. The counsel for petitioner explained in detail the correspondence set forth between the petitioner and respondent with regard to the claim.

The counsel for petitioner stated that pursuant to the notice, the petitioner made a representation towards dropping of surcharge and non-liability of wheeling charges, as the respondent has not considered the representation, the petitioner had

approached the Hon'ble High Court. The Hon'ble High Court disposed of the writ petition filed by the petitioner with a direction that the petitioner may be given an opportunity of hearing in the matter, consider the representation made by it and then decide the matter.

The counsel for petitioner stated that the Hon'ble Supreme Court had already decided about the authority of the Commission to determine the levy of wheeling charges. The erstwhile APERC had in the year 2002 determined the wheeling charges for the first time in the year 2002. The consumers and generators being aggrieved by the determination approached the Hon'ble High Court questioning the said determination by way of appeals and writ petitions. By order dated 18.04.2003 the Hon'ble High Court of Andhra Pradesh had set aside the order of the APERC with regard to levy of wheeling charges. The respondent had preferred appeal before the Hon'ble Supreme Court questioning the order passed by the Hon'ble High Court of Andhra Pradesh as it then was. Ultimately, the Hon'ble Supreme Court upheld the determination of wheeling charges by the APERC on 29.11.2019.

The counsel for petitioner stated that from the correspondence, it is noticed that the present levy of wheeling charges is pursuant to the decision of the Hon'ble Supreme Court and accordingly notice has been issued to the petitioner. However, it is his case that the respondent ought to have issued notice in the year 2002 itself, which had never happened. The respondent now cannot seek to levy the original amount as also interest on the amount due in the guise of recovery of the wheeling charges. The respondent is demanding wheeling charges and the petitioner has no objection for the original amount as it is settled law by the Hon'ble Supreme Court, however, the levy of interest on the wheeling charges is the issue, as there was no notice earlier.

The counsel for petitioner stated that since the respondent has claimed the original amount belatedly, it has no right of claiming the interest thereon for the period from 2002 onwards. It is his case that notice ought to have been given in the year 2002 itself after the Commission had passed orders. Having failed to do so, the respondent has no right to claim the interest for the entire period. The petitioner has no knowledge of the levy of wheeling charges till the notice was issued in the year 2021. In terms of the judgement of the Hon'ble Supreme Court, the respondent is

entitled to recover the amount as per the determination made by the APERC as adopted by the Commission. However, had the respondent initiated the claim in time and if no payment is made, certainly the petitioner would be liable to pay the interest. The respondent having failed to issue notice, cannot now claim the principal amount towards wheeling charges along with interest for the amount thereof.

The counsel for petitioner relied on and referred to judgments of the Hon'ble Supreme Court in the matter of National Thermal Power Corporation Limited Vs. Madhya Pradesh State Electricity Board and others with regard to specific provision of payment of interest on amount that is crystallized and not otherwise. He has also referred to judgment of the Hon'ble Supreme Court in the matter of Commissioner of Income Tax and others Vs. Ranchi Club Limited, wherein it was held that unless tax liability is finally determined, interest is payable in future only. By citing the above judgments, he stated that the claims raised by the respondent is time barred. Therefore, he has sought for setting aside the claims made by the respondent.

The representative of the respondent stated that the claim is raised in the year 2021 after the decision of the Hon'ble Supreme Court. At the relevant time, the claim was not made owing to the fact that the order of the Commission had been stayed by the Hon'ble High Court. The respondent understood that it cannot bypass the Hon'ble High Court, which had stayed the order of the APERC. As such, action was initiated soon after the Hon'ble Supreme Court confirmed the order of the APERC. Since the petitioner has withheld the amount due to the respondent, as and when the claim is raised, the respondent has chosen to recover the amount along with interest thereon. As the matter was under adjudication and being sub-judice, the respondent did not initiate any action to recover the amount from the petitioner. It does not constitute a time barred debt for the reason that the issue is pending adjudication before the Hon'ble Supreme Court. The representative of the respondent would endeavour to submit that the petitioner cannot claim that it is not liable to pay the same, merely because it has not challenged the order of the APERC or that no claim was made by the licensee at the relevant time. Thus, the petitioner cannot seek any relief in the matter and is only trying to circumvent the order of the Hon'ble Supreme Court and deny the payment.

The representative of the respondent stated that this petition is not maintainable for the reason that the petitioner had already approached the Hon'ble High Court and the Hon'ble High Court was pleased to direct disposal of the representation made by the petitioner. If at all, the petitioner is aggrieved by the decision of the respondent, then the Commission is not the appropriate forum for the reason that the decision is taken pursuant to the directions of the Hon'ble High Court and any issue can be decided by only the Hon'ble High Court, when the decision of the respondent is challenged. Therefore, the Commission may be pleased to dismiss the present petition as without jurisdiction.

The counsel for petitioner stated that the petitioner is not shirking away from the liability, but at the same time the respondent is estopped from claiming the same having not claimed immediately after the order of the APERC. Thus, neither the original claim nor the interest thereon would be liable to be recovered by the respondent. It is noticed that the respondent had no static figure as to the dues that are to be recovered in the context of wheeling charges or interest thereof. The correspondence shows that the respondent oscillated between several figures from one notice to other notice without crystalizing the actual figures. The petitioner in the face of threat of disconnection had paid part of the amount as per the directions of the Hon'ble High Court as also earlier to retain the connection. The Commission may consider the prayers in the petition.

The counsel for petitioner sought for permission to file written arguments in the matter. Similar request is made by the representative of the respondent. The Commission directs the parties to file written submissions, if any on or before 06.06.2024. Accordingly, the matter is adjourned.

Call on 06.06.2024 at 11.30 A.M.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman

Case No.	Name of the Petitioner(s)	Name of the Respondent(s)
O. P. No. 3 of 2024 & I. A. No. 1 of 2024	M/s. Hyderabad MSW Energy Solutions Private Limited	TSSPDCL & TSTRANSCO

Petition filed seeking directions to the respondents for payment of outstanding bills along with interest towards sale of energy in terms of PPA and other reliefs. 09.05.2023 to 16.05.2023 and consequential reliefs.

I. A. filed exparte ad interim order directing the respondent No. 1 to make an upfront payment of 50% of the amount outstanding to the tune of INR 26,20,03,853/- as on 08.12.2023.

Sri. Shashwat Dubey, counsel for petitioner and Sri. Mohammad Bande Ali, Law Attaché being the representative of the respondents have appeared in the matter. The counsel for petitioner stated that the counter affidavit is filed and he needs to file rejoinder in the matter. He sought time of three weeks and scheduling the hearing thereafter. In view of the request of the counsel for the petitioner, time is extended for filing rejoinder by four weeks. The rejoinder may be filed on or before 06.06.2024 and hearing will be scheduled thereafter. Accordingly, the matter is adjourned.

Call on 06.06.2024 at 11.30 A.M.

Sd/-
Member

Sd/-
Member

Sd/-
Chairman