



TELANGANA ELECTRICITY REGULATORY COMMISSION
'Vidyut Niyamtran Bhavan', G.T.S. Colony, Kalyan Nagar, Hyderabad 500 045

O.P.No.29 of 2023

Dated 28.10.2024

Present

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

Between

M/s Zuari Cement Limited,
(Formerly known as Sitapuram Power Limited),
having its unit at Sitapuram, Dondapadu,
Nalgonda District, Telangana 508 246.

... Petitioner

AND

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

This petition came up for hearing on 14.12.2023, 11.01.2024 and 25.01.2024. Sri Deepak Chowdary, Advocate representing Sri Challa Gunaranjan, counsel for the petitioner appeared on 14.12.2023 and 11.01.2024. Sri Challa Gunaranjan, counsel for the petitioner along with Sri Deepak Chowdary, Advocate appeared on 25.01.2024. Sri Mohammad Bande Ali, Law Attaché for respondents appeared on 14.12.2023, 11.01.2024 and 25.01.2024. The petition having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s Zuari Cement Limited (petitioner) has filed a petition under section 86(1)(f) of the Electricity Act, 2003 (Act, 2003) r/w Regulation No.1 of 1999 questioning the levy of penalty towards reverse power relay mechanism and surcharge thereof for the period 11.09.2007 to 18.10.2023 and other consequential reliefs. The averments in the petition are extracted below:

- a. It is stated that the petitioner is a company incorporated under the provisions of Companies Act, 1956, engaged in the business of generation and sale of electricity. The petitioner is wholly owned subsidiary of M/s Zuari Cement Limited, which is part of M/s Heidelberg Cement Group engaged in the business of manufacture of cement. In the year 2020, upon amalgamation of the company, the name of the company that is M/s Sitapuram Power Limited was changed to M/s Zuari Cement Limited. It is stated that M/s Zuari Cement Limited has one of its units located at Sitapuram, Dondapadu, Nalgonda district, state of Telangana (Sitapuram plant) and also at its cement plant situated at Yerraguntla, YSR Kadapa district in the state of Andhra Pradesh (Yerraguntla plant). It is stated that, the petitioner being 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 generating plant was to be captively consumed by the plants of Zuari Cement Limited at Sitapuram and also Yerraguntla. In the year 2007, the petitioner had initially entered into an HT agreement with the then Central Power Distribution Company Andhra Pradesh Limited (APCPDCL) for availing power supply at 132 kV with the contracted maximum demand (CMD) of 3125 kVA, under the exclusive condition that, the petitioner shall not receive/utilize the power supplied by the DISCOM beyond the contracted capacity and except for its start-up and shut down operations. Further, under the contract/agreement the petitioner had also agreed that it shall not affect any change in the CMD without prior intimation to the Transmission Corporation of Telangana (TGTransco). Pursuant to the same, the petitioner was granted HT service connection vide SPT-543, previously NLG-543. The 132 kV switching

station of TGTransco at Dondapadu Village, Mellacheruvu Mandal, Nalgonda district, Telangana, was constructed by the petitioner and handed over to TGTransco.

- c. It is stated that the respondent No.1 is the TGTransco, constituted under section 39 of the Act, 2003. The TGTransco undertakes various functions including but not limited to planning, construction, and maintenance of the transmission network in the state of Telangana. TGTransco has been designated as the nodal agency for receiving and processing applications, grant of long-term open access (LTOA) within the state of Telangana. The petitioner being connected to 132 kV switching station of TGTransco at Dondapadu Village, Mellacheruvu Mandal, Nalgonda district, Telangana.
- d. It is stated that the 2nd respondent, the Southern Power Distribution Company of Telangana Limited (TGSPDCL), is a government owned company entrusted with the function of distribution and retail supply of electricity in certain districts of the state of Telangana. Subsequent to the bifurcation of the states, the petitioner which was falling under the distribution area of erstwhile APCPDCL has come within the jurisdiction of the TGSPDCL.
- e. It is stated that prior to the commissioning of the petitioner's plant, the petitioner had sought for open access approval. The Chief Engineer (Commercial), Transmission Corporation of Andhra Pradesh as is then was (APTransco) vide Lr.No.CE/Comml.DE/AP.Transco/F.OA-Sitapuram/D.No.5/07 dated 9.1.2007, had issued certain directions/conditions to the petitioner for setting up of 1) special energy meters (ABT), dedicated CT and PT's, 2) that there shall not be any parallel operation two sources of supply that is APCPDCL and Sitapuram Power Limited to M/s Sri Vishnu Cements Limited, 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 as well as 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.

- f. It is stated that pertinently, the petitioner had started its trial run operations from July, 2007 onwards prior to the commercial operation date (COD) and grant of 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.
- g. It is stated that, in situations such as these, the reverse power relay has been setup to ensure the drawl of power by the auxiliaries limiting to the contracted capacity. It is pertinent to mention that, had the Chief Engineer (Commercial), APTransco ensured that the reverse power relay was properly setup/functioning, the same would not have effected in the over drawl by the petitioner's plant beyond its contracted capacity. In fact in the brochure provided by the manufacturer for reverse power relay, the functioning of the relay mechanism, which is explained as hereunder for sake of convenience:

"5.2 Setting Procedure

5.2.1 Pickup Value for Power increase (P>), power decrease (P<) and reverse power (Pr).

After setting of the Pickup value to supervise power increase, (P>), power decrease (P<) and reverse power (Pr), the display indicates a value that is related to three phase nominal power (P_N) of the unit.

This means:

Pickup value = indicated value X nominal power ($P_N = \sqrt{3} \times U_N \times I_N$ with U_N = phase to phase voltage. Push Buttons <+> or <-> can be pressed to change, < enter > to store the indicated value.

It is also possible to use the power decrease relay (P<) as a second reverse power relay. If applied for reverse power protection, the parameters for P< have to be adjusted to "negative values".

In the MRP2-R (Reverse Power Relay with increased precision) unit version, the value for a power increase in forward direction P> can only be set to $0.5 \times P_n$ and must therefore – as a role – be blocked by means of setting "EXIT".

The functions P> and P_r are blocked each by incrementing via push-button <+> until "EXIT" appears on the display and storage with push-button <ENTER>. P< is deactivated by incrementing the set value via

push-button <-> until "EXIT" appears on the display. This entry as well has to be stored via push-button <ENTER>.

If trip time is set to exit button so the threshold belonging to it, tripping is blocked. In case of failure, the belonging alarm relay picks up nevertheless.

Tripping takes place if the sum total of individual loads exceeds or drops below the set value.

[...]

5.2.3 Tripping times for Power increase (P>), power decrease (P<) and reverse power (Pr)

After setting of the tripping times a value indicated in seconds is shown on the display. The required time delay can be entered by means of push-buttons <+> and <-> and is stored via <ENTER>."

- h. It is stated that in reference to the clauses 5.2.1 and 5.2.3 of the brochure, it is very clear as to the operation and setup of reverse power relay was set value in forward direction, that is P> from 132 kV Sitapuram switching station (TGTransco) to Sitapuram Power Limited to limit the drawl to the contracted capacity. As this relay plays a vital role by acting as a prompt, whenever the petitioner plant trips, it ensures the prevention of excess drawl of petitioner from TGSPDCL. This action would have ensured that the petitioner does not draw any excess power beyond the contracted capacity, thus resulting in preventing any potential penalizations. It is pertinent to note here that, upon the request made by the TGTransco official as a precursory condition; the petitioner had provided the reverse power relay.
- i. It is stated that consequently the TGSPDCL 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/-. 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. The petitioner had complied with the orders and said writ petition was pending adjudication. The preliminary grounds raised by the petitioner in the aforesaid writ petition was that: 1) due to the fault in reverse power relay setup by the TGTransco which resulted in excess drawl of power by the petitioner, 2) without issuance of any notice of demand or calling upon the petitioner on any objections, the demand was directly included in the petitioner's CC bill.

j. It is stated that, after issuance of the interim orders, hitherto the respondents having noticed the fact that the relay was not setup properly, the official of the TGTransco had issued a letter dated 10.07.2007 stating that,

“At 132 kV Sitapuram Switching Station (of APTransco), Reverse Power relay had 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 is not meant for limiting the maximum demand of M/s Sitapuram Power Limited. M/s Sitapuram Power Limited shall make their own arrangements at plant end to limit their maximum demand.”

It appears so that, the respondents have issued this letter as merely an afterthought and in order to cover the lacunas on their part. Further, inasmuch as, the contention raised by the respondents was not issued as part of the pre-conditions for grant of connectivity to the grid nor subsequent grant of open access.

k. It is stated that the writ petition had come up for final hearing on 21.06.2023, the Hon'ble High 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 TGSPDCL 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.

l. It is stated that, in compliance to the orders of this Hon'ble Court, the TGSPDCL 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 carry the representation and relevant records and appear before it on 17.08.2023 for taking further necessary action. Upon receipt of the said notice, the petitioner immediately addressed a letter dated 17.08.2023 to the TGSPDCL, seeking extension of time for further period of two weeks in order to collect the data way back from 2007 onwards. In furtherance, the TGSPDCL had issued Lr. No.SE/OP/SRPT/DE(T&C)/Comml/F./D.No.1419/2023-24, dated 22.08.2023 informing the petitioner that the date of personal hearing was scheduled to

05.09.2023, but due to the non-availability of concerned officer of TGSPDCL the meeting was adjourned to 06.09.2023. On the date of personal hearing that is 06.09.2023, which comprised of representatives of the petitioner and TGSPDCL, the petitioner had submitted a representation dated 06.09.2023, reiterating its submissions as under:

“In accordance with your letter under reference (4) and the order of Hon’ble High Court of TS under reference (1), we submit our representation on the matter as under:

On 29th June 2007, we have contracted with APCPDCL (now TSSPDCL) for the maximum demand of 3125 kVA for the purpose of our start up power requirement and shutdown activities.

We were surprised to receive a CC bill dated 26.08.2007 from the APCPDCL (now TSSPDCL) for the month of August 2007, for an amount of Rs 1,18,26,046/- that includes the penalty for the excess drawl of power over CMD, without seeking any explanation from our end.

However, we have furnished our representation dated 7th Sep 2007, a copy of the same is attached to this for your quick reference, intimating that there is a malfunctioning of reverse power relay (RPR) mechanism, which is placed at your 132 kV Sitapuram Switching Station located at Sitapuram. As you are well aware that we do not have any access or control over the SPL feeder operations with all the protection systems including RPR mechanism.

The said RPR mechanism is functionally intended to restrict the power supply in the event of the drawl of power of more than CMD (in our case it is 3125 kVA/2500 kW) it should be acted at the Transco switching station end and trip SPL feeder. The functionality of RPR is clearly mentioned in para 5.2.1 (page No.8) of its manual.

Further, we draw your attention to the Section 4.7(c) of the Indian Grid Code 2005 (as applicable from 1st April, 2006), which deals with the protection responsibilities, stipulates it is the responsibility of the electricity authorities and not the consumers.

RMD on NLG-543 was recorded as 21287.5 kVA due to malfunction of the Reverse Power Relay which is located at 132 kV Sitapuram Switching station (Presently it is 220 kV/132 kV Sitapuram Substation) and its operations were fully controlled by Transco authorities.

Our plant at that point of time was under commissioning stage and the commercial operations started effective from 1st March, 2008. We write to inform you that our company is neither intend to draw the power over our CMD nor intended to extend the power to M/s Vishnu Cement Limited (VCL). Further, we wish to inform you that M/s Vishnu Cement Limited has already recorded an MD of 18314 kVA for the HT service number NLG206 (SPT-206) for the month of August 2007. The fact of recorded MD of NLG-206 (VCL) shows that slippage of power is not intentional and in fact, it is accidental.

Hence, it is clear to state that there is no parallel operation, and there is no intention to supply GRID power to M/s Vishnu Cements through M/s Sitapuram Power Limited.

After the incident of malfunctioning of RPR mechanism, we were in receipt of letter Lr.No.CPS/Sp/111/SPL/Vol.1/D.No.351/07, dated 10.10.2007 from the Chief Engineer/Power Systems/APTransco/Vidyuth Soudha Hyderabad, informing that the Reverse Power relay has been provided on 132 kV Sitapuram plant feeder for ensuring Power system security of AP Transco Grid and the same will be utilized as per the requirement of APTransco. M/s SPL can also take measures at their end to regulate inflow. Here we wish to inform you that we have supplied and handed over the RPR mechanism at our cost to the APTransco as per their directions and understood that our incoming feeder at 132 kV Sitapuram switching station was equipped with all the protection & safety measures that were tested and commissioned in all respects to avoid any sort of disturbances and overrides to the limits. Therefore, with a bonafide belief, we have not put any protection measures at our end. The above referred APTransco letter dated 10.10.2007 to M/s Sitapuram Power Limited was sent post the incident of malfunctioning of RPR mechanism. If the same was informed to us at the time of commissioning of RPR mechanism, we should have made our own arrangements for limiting the MD at our end.

We would like to draw your attention that, the incident happened due to the malfunction of the Reverse Power Relay, not by any means of an intentional act of either the supplier or the consumer.

Therefore, the drawal of power over our CMD is a direct result of the malfunctioning of RPR mechanism, which is not in our control and is located in your 132 kVA Sitapuram Switching Station, where we do not have any access.

In view of the above, we request your good offices to consider our request to close the matter without imposing any penalties for exceeding the CMD during the said period, which is technical in nature and not an intentional act of our company.

We write to inform you that we have made the payment of Rs.49,90,710/- in accordance with the interim order dated 04.10.2007 of Hon'ble High Court of Andhra Pradesh, vide cheque No.688923, dated 16th October, 2007 drawn on UCO Bank, the break-up of the same is as under:

- a) Rs.30,00,000/- (Rupees Thirty Lakhs only) as per the interim order directions of Hon'ble AP HC.
- b) Rs.19,90,710/- towards the payment of the bill for HT power supply for the month of August 2007.

We request you to refund or adjust the amount of Rs.30,00,000/- (rupees thirty lakhs only) deposited with you in accordance with the Hon'ble High Court of Andhra Pradesh interim order dated 04.10.2007, against our future CC bills."

- m. It is stated that on conclusion of the hearing on 06.09.2023, the 1st hearing date, the petitioner was informed that the respondents shall depute technical experts for finding the reasons for the aforesaid facts and once again conduct the

personal hearing along with the technical experts of the TGTransco. Thereupon, the technical team of respondents have visited and inspected the premises of the petitioner, the 132 kV substation of TGTransco 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.

- n. It is stated that hitherto, the TGSPDCL on 19.09.2023, 2nd hearing date, without any further hearing on the technical report had pass Impugned 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 TGSPDCL/TSTransco and declared such action as illegal. Further, they also went on to reiterate their 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 TGSPDCL 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 principal demand of Rs.68,35,336.0/- under protest as they were threatened with disconnection.
- o. It is stated that consequently, the TGSPDCL vide Lr.No.SE/OP/NLG/SAO/HT/D.No.138/23, dated 19.10.2023, received by the petitioner on 27.10.2023, called upon the petitioner 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 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 TGTransco and TGSPDCL 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.

p. It is stated that the TGSPDCL in the impugned order while referring to letter dated 09.01.2007 which was issued by CE (Comml), APTransco to the petitioner which related to permission for synchronization had placed reliance on part of the said letter which reads as under:

“ii) As per above single line diagram, an outgoing 132 kV line to M/s Sri Vishnu Cements Limited is indicated. M/s SVCL, a HT consumer of APCPDCL is presently connected by a 132 kV Tap line from 132 kV Mattampally – Chillakallu line. Parallel operation of above two sources at M/s SVCL is not acceptable.”

However conveniently TGSPDCL omitted to consider and/or deal with crucial and important aspect of said letter relating to installation of reverse power relay which reads as under:

“iii) As overpower (Reverse Power) relay has to be provided at the proposed 132 kV Switchyard of APTransco on 132 kV Sitapuram line, if it is required to limit the drawl by Sitapuram Power Plant to its station auxiliaries i.e., 2500 kW during the outage of their unit depending on the commercial agreement between M/s SVCL & APCPDCL/APTransco.”

The plain reading of aforesaid contents clearly indicates that the very purpose and purport of TGTransco and TGSPDCL insisting installation of reverse power relay was to limit the drawl of power from the grid by petitioner’s power plant during the outage of the unit. In other words, the CE (Comml), APTransco categorically stated that installation of reverse power relay is a pre-condition for

grant of synchronization. It is an admitted fact that the reverse power relay equipment was procured and handed over to TGTransco much before synchronization of the power plant and it was the duty and obligation of TGTransco and TGSPDCL to ensure installation of the same at 132 kV Sitapuram switching station and not that of the petitioner. When the TGTransco and TGSPDCL have abdicated from their aforesaid duty and obligation, the petitioner cannot be penalized for excess drawl of power beyond the CMD during the outage of power plant. The TGTransco and TGSPDCL ought to have billed only for the actual demand charges and energy charges on the recorded maximum demand and energy consumed rather than applying penal charges.

- q. It is stated that the CE (Power Systems), APTransco in letter dated 10.10.2007, while replying to the petitioner's letter admitted and acknowledged that reverse power relay was provided to them and the same would be utilized as per their requirement, however informed that the same was not meant for limiting the maximum demand which is clearly in contradiction with the earlier letter dated 09.01.2007 referred to supra. The TGTransco cannot take inconsistent and contrary stands to cover their laches and fault of discharging the obligation of installing the reverse power relay even before synchronization.
- r. It is stated that without prejudice to the above, even assuming without admitting that the purported Impugned demand of penal demand charges is held to be valid against the petitioner, the consequent demand of surcharge is illegal, unreasonable, untenable and contrary to law. It is stated that the penal demand charges were made on the petitioner for the very first time on 24.09.2007, admittedly these demands were set aside by the Hon'ble High Court of Telangana in its Judgment dated 21.06.2023 in W.P.No.20732 of 2007. Consequently, even if it is to be considered that the demand arrived by the respondents by Impugned order dated 19.09.2023 is held to be valid and binding, it has to be construed that these demands are made against the petitioner for the very first time.
- s. It is stated that it is an admitted fact that when the original Impugned demand was set aside by the Hon'ble High Court, the admitted dues of penal demand charges have attained finality only on 19.09.2023 and any delay payment of interest shall arrive against the petitioner from the date of issuance of consequential order.

2. Therefore, the petitioner has sought the following reliefs in the petition.
- a. To set aside the demand of Rs.68,35,336/- against the petitioner purportedly on account of penal demand charges vide Lr.No.SE/OP/SRPT/SAO/JAO/HT/D.No.113/23, dated 19.09.2023.
 - b. To set aside the demand of Rs.2,08,71,014.94 against the petitioner on account of surcharge vide consequential demand notice vide Lr.No.SE/OP/NLG/SAO/HT/D.No.138/23 dated 19.10.2023.
 - c. To direct the respondents to refund the amount of Rs.90,81,250/- already paid by the petitioner on account of impugned demand of penal demand charges.”

3. The TGTransco has filed its counter affidavit and the averments thereof are extracted as below:

- a. It is stated that the petitioner filed W.P.No.20732/2007 before the Hon’ble High Court of Andhra Pradesh disputing the C.C. bill for the month of August, 2007. The Hon’ble High Court of Andhra Pradesh vide interim order dated 04.10.2007 directed the respondents not to disconnect the power supply in respect of petitioner premises subject to condition of petitioner depositing an amount of Rs.30,00,000/- (Rupees Thirty Lakhs only) within a period of three (3) weeks from the date of the said order. Accordingly, the petitioner has paid the amount.
- b. It is stated that the Hon’ble High Court of Telangana by order dated 21.06.2023, disposed off W.P.No.20732/2007. The operative portion of the order is extracted below:

“The Writ Petition is allowed setting aside the demand raised through bill, dated 26.08.2007, and the matter is remitted back to the respondent No.3, and then pass orders afresh, on merits. In case, if respondent No.3 is not competent authority to deal with the matter, the matter be made over to the competent authority to deal with the matter, as directed herein above. The entire exercise, as directed above, shall be completed, within a period of three (3) months from the date of receipt of a copy of this order. The amount of Rs.30,00,000/- deposited pursuant to the interim order, dated 04-10-2007, passed by this court shall be subject to result of the orders to be passed by respondent No.3/competent authority.”

- c. It is stated that on careful examination and consideration of the points raised by the petitioner the competent authority/SE issued the following order as per the direction of Hon’ble High Court of Telangana vide order dated 19.09.2023:

“a) The Power Supply to H.T. Consumer SPT 543 (NLG 543) was released on 10-07-2007 for the purpose of Startup Power with a Contracted Maximum Demand of 3125 kVA at 132 kV. H.T. Agreement for availing Power Supply was entered on 29-06-2007.

- b) (i) Clause (2) of H.T. Agreement which deals with Load/Maximum Demand reads as follows:
“We agree to take from the company, electric power for a Maximum Load not exceeding 3125 kVA which shall be taken to be our Contracted Demand for our exclusive use for the purpose above mentioned, at our plant situated at Dondapadu Village, Mellacheruvu Mandal, Nalgonda Dist. Our contracted load shall be 3125 kVA and/or 2500 kW, we shall not effect any change in the Maximum Demand or Contracted Load without prior intimation to the company.”
- (ii) Clause (3) of H.T. Agreement deals with Resale of Electric Power and the same reads as follows:
“We undertake that we shall not sell electrical energy obtained under this agreement without the sanction in writing of the company.”
- (iii) Clause (4) of H.T. Agreement deals with the Obligation of the petitioner company to comply with Requirements of Electricity Act 2003 (the Act) and General Terms and Conditions of Supply (GTCS) and the same reads as follows:
“We further undertake to comply with all the requirements of the Electricity Act, 2003, the Rules and Regulations framed there under, provisions of the Tariffs scale of miscellaneous and General Charges and the General Terms and Conditions of Supply prescribed by the company with approval of the AP Electricity Regulatory Commission (herein after called as Commission) from time to time and agree not to dispute the same.”
- c) 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 shall not draw power more than the approved CMD (as the agreement for CMD is arrived based on total capacities of motors existing in power plant).
- d) The consumer has drawn maximum power of 20,010 kW in the 73rd block i.e 18.15 Hrs on 13-08-2007 from grid. The consumer in their letter Dt. 07-09-2007 stated that “during our trial runs, we tried to give power to M/s SVCL our consumer by opening APTransco breaker at M/s SVCL i.e., Supply from the captive power plant and at 6 PM the unit tripped. During this period the supply to the station failed, everything was dark and could not visualize what is happening. After some time it was found that 132 kV SVCL feeder was getting power due to malfunctioning of Reverse Power Relay at 132 kV Switching station of Transco and the same implies that the Reverse Power Relay did not act. Your H.T. Consumer M/s SVCL drew the supply from our feeder even though our unit tripped and hence the MD of Sri Vishnu Cements Ltd was recorded in our meter.” It thus becomes clear that, M/s Sitapuram Power Ltd.

- extended the APCPDCL supply to M/s Sri Vishnu Cements Ltd., without permission/intimation to APCPDCL/APTransco which is totally illegal.
- e) Further, in connection with feeding arrangements to M/s Sri Vishnu Cements Ltd., the APTransco has intimated vide letter dated 09-01-2007 as follows: -
- “As per the single line diagram, an outgoing 132 kV line to M/s Sri Vishnu Cements Ltd. is indicated M/s Sri Vishnu Cements Ltd., a H.T. Consumer of APCPDCL is presently connected by a 132 kV Tap Line from 132 kV Mattampally-Chillakallu line. Parallel operation of the above two sources at M/s Sri Vishnu Cements is not acceptable.” The consumer has not followed the above instructions, which is a violation.”*
- f) Thus, there remains no doubt about the MD Recorded at M/s Sitapuram Power Ltd and that they have availed maximum demand of 20.010 MW (21.28 MVA) as per the energy meter readings against their Contracted Maximum Demand of 3.125 MVA. Billing was done as per the APCPDCL schedule of Retail Tariff Rates approved and notified by Hon’ble APERC for H.T. Category-II and bill was issued to M/s Sitapuram Power Ltd. for an amount of Rs. 1.18 crore.
- g) Two Services i.e., M/s Sri Vishnu Cements Ltd. (Now M/s Zuari Cement Ltd.) & M/s Sitapuram Power Ltd (Now M/s Zuari Cement Ltd.) are having Separate H.T. Service connections with H.T. SC. Nos. SPT206 & SPT543 and are being billed separately. Hence the consumption of one service cannot be compensated with the consumption of other service.
- h) As per the Tariff Order for the F.Y-2007-08 issued by APERC, “The Billing Demand shall be the maximum demand recorded during the month or 80% of Contracted Maximum Demand whichever is higher” and “Energy Charges will be billed on the basis of actual energy consumption or 25 units per kVA of Billing Demand, whichever is higher.” Accordingly, the bill was issued duly applying the Tariff. The calculation sheet is enclosed.
- i) Clause 12 of H.T. Agreement executed by the consumer, reads as follows: -
- “We hereby agree that if we are found indulging in theft of electricity or unauthorized use of electricity in respect of use of electrical energy, we shall pay additional charges as may be levied by the company. We also agree that in such an event the company shall in addition to levy of additional charges have right to disconnect supply of electricity to our premises for such period as may be decided by the company.”*
- j) Hence, as explained above, the C.C. Bill issued for the month of August-2007 in respect of H.T.SC.No.SPT543 (NLG543) is in order as per the Tariff Order notified by APERC and it is requested to arrange the balance payment of Rs.68,35,336/- along with applicable belated payment surcharge within 15 days, failing which the H.T.S.C.No.SPT543 M/s Zuari Cement Ltd. will be ordered for disconnection of supply.”
- d. It is stated that, the petitioner has paid the principal amount arrears of Rs.68,35,336/- on 18.10.2023. Since the petitioner is liable to pay surcharge on

belated payment from the month of August, 2007, TGSPDCL issued demand notice for payment of an amount of Rs.2,08,71,014.94 within 15 days vide letter dated 19.10.2023.

- e. It is stated that aggrieved by the demand notice dated 19.10.2023 the petitioner filed W.P.No.31189/2023 and sought the following prayer

“questioning the action of the respondent Nos.2 to 4 in levying and demanding surcharge on penal demand charges for the period from 11.09.2007 to 18.10.2023 vide Lr.No.SE/OP/NLG/SAO/HT/D.No.138/23 dated 19.10.2023 issued by the TGSPDCL and directing the petitioner to pay the alleged dues within a period of 15 days, failing which threatening to disconnect power supply, despite the fact that stay petition and original petition pending consideration before the 1st respondent, as arbitrary illegal, unauthorized, contrary to provisions of the Electricity Act, 2003, besides being un-constitutional and violative of the petitioner’s rights guaranteed under Articles 14 and 19(1)(g) of the Constitution of India.”

But when the matter came up for hearing, the learned counsel for the petitioner submitted that they have filed an Original Petition along with stay petition before the Commission challenging the notice dated 19.10.2023 issued by the TGSPDCL demanding payment of surcharge for the period from 11.09.2007 to 18.10.2023 vide Lr.No.SE/OP/NLG/SAO/HT/D.No.138/23 to the tune of Rs.2,08,71,015/-, but, as on today the said petition is not numbered and no stay is granted. He further submitted that a representation dated 07.11.2023 was submitted requesting the Commission to take up the matter as early as possible in view of the urgency in this matter and that as on that day, no proceedings were initiated by Commission and therefore prayed the Hon’ble High Court to direct the Commission to dispose of the matter within a stipulated period.

- f. It is stated that the Hon’ble High Court of Telangana by order dated 09.11.2023 while directing the petitioner to deposit 1/4th of Rs.2,08,71,015/- as demanded within a period of two weeks from the date of receipt of this order directed Commission to take up the matter and dispose of the same within a period of (04) weeks from the date of receipt of copy of the order. The petitioner paid 1/4th of belated payment surcharge amount of Rs.2,08,71,015/- that is Rs.52,17,754/- on 21.11.2023. Now the matter is due for hearing before the Commission.
- g. It is stated that erstwhile APTransco had accorded approval for power evacuation from the petitioner’s proposed 43 MW coal fired power plant at

Dondapadu village, Mellacheruvu mandal, Nalgonda district through 132 kV line connecting to proposed 132 kV Sitapuram switching station. The APTransco had accorded approval for start-up power to the petitioner's power plant through the power evacuation line. Accordingly, the petitioner had entered HT agreement with TGSPDCL for extension of HT supply for a CMD of 3125 kVA with connected load of 2500 kW at 132 kV level for the purpose of startup power for their coal based captive generation plant.

- h. It is stated that the petitioner applied for LTOA for transmission of 26 MW of power from their proposed 43 MW coal fired power plant to their cement plant located at Yerraguntla, Kadapa district under captive use. In reply, APTransco had informed the petitioner vide letter dated 09.01.2007 to set up special energy meters (ABT) at entry point that is at the proposed 132 kV switchyard of APTransco for open access and also suggested to setup reverse power relay at the proposed 132 kV switchyard of APTransco on 132 kV Sitapuram line. It was also intimated that

“As per the single line diagram, an outgoing 132 kV line to M/s Sri Vishnu Cements Ltd. is indicated. M/s Sri Vishnu Cements Ltd., a H.T. Consumer of APCPDCL is presently connected by a 132 kV Tap Line from 132 kV Mattampally-Chillakallu line. Parallel operation of the above two sources at M/s Sri Vishnu Cements is not acceptable.”

- i. It is stated that however, the consumer has not followed the above instructions. It is stated that though Transco has only suggested the consumer to install reverse power relay, the TGTransco/TGSPDCL shall not restrict any consumer for drawl of power beyond their CMD and the responsibility lies with the consumer to limit their maximum demand to avoid any additional penal charges for their consumption beyond CMD. As per the condition 2 of agreement of supply, the responsibility of limiting the drawl of power beyond CMD lies with the bulk load consumer. It is pertinent to mention that the petitioner has not adopted proper operational and safe measures while extending the power supply from their captive power plant to M/s SVCL resulting in tripping of unit and also inadvertant power flow from 132 kV Sitapuram switching station. Therefore, the role of reverse power relay is not criteria in the present case and taking the pretext of reverse power relay for exceeding demand beyond their CMD is not valid and correct. In general, the reverse power relay in power system networks is provided for ensuring the grid security. The assumption of

the petitioner that the reverse power relay will restrict the drawl of power beyond CMD is not correct.

j. It is stated that, the recorded maximum demand for the month of August, 2007 was 21,287.50 kVA which is in excess of their contracted maximum demand. Hence, penal demand charges and monthly minimum units were billed in the C.C. Bill by the respondent No.3 for the month of August, 2007 as per the provisions of tariff order passed by the APERC.

k. It is stated that the power supply to H.T. consumer SPT 543 (NLG 543) was released on 10.07.2007 for the purpose of start-up power with a contracted maximum demand of 3125 kVA at 132 kV level. The consumer has drawn maximum power of 20,010 kW on 13.08.2007 from grid. The petitioner in their letter date 07.09.2007 stated that -

“On 13-08-2007, during our trial runs, we tried to give power to M/s SVCL our consumer by opening APTransco breaker at M/s SVCL i.e., supply from the captive power plant and at 6 PM the unit tripped. During this period the station supply failed, everything was dark and could not visualize what is happening. After some time it was found that 132 kV SVCL feeder was getting power due to malfunctioning of Reverse Power Relay at 132 kV Switching station of Transco implying the Reverse Power Relay has not acted. Your H. T. Consumer M/s SVCL drew the supply from our feeder even though our unit tripped and hence the MD of Sri Vishnu Cements Ltd was recorded in our meter.”

l. It is stated that the petitioner is abdicating the responsibility in over drawl of power and blaming the relay which is not intended for that purpose. The same was informed to the petitioner by the Chief Engineer/Power System/APTransco vide letter dated 10.10.2007 that the reverse power relay has been provided at 132 kV Sithapuram switching station of APTransco on 132 kV Sithapuram Power Limited feeder for ensuring the power system security of APTransco grid and the same will be utilized as per the requirement of APTransco. It is evident from their statement that, the petitioner failed to adopt proper operational and safe procedures in extending their power generation to M/s SVCL, resulting in huge drawl of power from Sithapuram switching station stressing the upstream EHV transmission network. Suppression of these facts on one side and taking the pretext of above relay for avoiding the payment of penal demand charges/surcharges is untenable and technically incorrect.

- m. It is stated that all the charges were levied by the TGSPDCL as per the provisions of the tariff orders notified by the Commission from time to time. The petitioner may please be ordered to pay the balance amount of belated payment surcharge at the earliest.
- n. Hence, it is prayed the Commission to dismiss the petition.

4. The TGSPDCL has filed counter affidavit and the averments stated there in are extracted as below:

- a. It is stated that, the power supply to H.T.SC.No.SPT 543 M/s Zuari Cement Ltd. (erstwhile M/s Sitapuram Power Limited) was released on 10.07.2007 with a CMD of 3125 kVA at 132 kV voltage under H. T. category - 2 for the purpose of startup power for their coal captive generation plant. The generation from their plant is intended for the utilisation in their cement plants located at Dondapadu Village, Mellacheruvu Mandal, Nalgonda district. and at Yerraguntla, Kadapa district.
- b. It is stated that the recorded maximum demand for the month of August, 2007 was 21,287.50 kVA which is in excess of their contracted maximum demand. Hence, penal demand charges and monthly minimum units were billed in the the C.C. bill for the month of August, 2007 as per the provisions of tariff order passed by the APERC.
- c. It is stated that disputing the C.C. bill for the month of August, 2007, the petitioner filed W.P.No.20732/2007 before the Hon'ble High Court of Andhra Pradesh. The Hon'ble High Court of Andhra Pradesh vide interim order dated 04.10.2007 directed the respondents not to disconnect the power supply in respect of petitioner premises subject to condition of petitioner depositing an amount of Rs.30,00,000/- (Rupees Thirty Lakhs only) within a period of three (3) weeks from the date of said order. Accordingly, the petitioner paid the amount.
- d. It is stated that the Hon'ble High Court of Telangana by order dated 21.06.2023, disposed of W.P.No.20732/2007. The operative portion of the order is extracted below:

"The Writ Petition is allowed setting aside the demand raised through bill, dated 26.08.2007, and the matter is remitted back to the respondent No.3, and then pass orders afresh, on merits. In case, if respondent No.3 is not competent authority to deal with the matter, the matter be made

over to the competent authority to deal with the matter, as directed herein above. The entire exercise, as directed above, shall be completed, within a period of three(3) months from the date of receipt of a copy of this order. The amount of Rs.30,00,000/- deposited pursuant to the interim order, dated 04-10-2007, passed by this court shall be subject to result of the orders to be passed by respondent No.3/competent authority.”

- e. It is stated that, as per the orders of Hon'ble High Court of Telangana mentioned above, the petitioner H.T.SC.No.SPT 543 M/s Zuari Cement Limited. (erstwhile M/s Sitapuram Power Limited) was requested to attend for personal hearing at the office of the Superintending Engineer/Operation Circle/Suryapet on 17.08.2023 with their records and representation for taking further necessary action.
- f. It is stated that the representatives of petitioner attended the office of the Superintending Engineer/Operation Circle/Suryapet on 17.08.2023 and requested for extension of time for 2 weeks for collecting all data from 2007 onwards and for attending personal hearing. The request of petitioner was considered, and they were requested to attend for personal hearing on 05.09.2023 (rescheduled to 06.09.2023).
- g. It is stated that the representatives of petitioner attended the office of the Superintending Engineer on 06.09.2023 and submitted their representation. The main points in the representation are reproduced below:
- a) *On 29th June 2007, we have contracted with APCPDCL (now TSSPDCL) for the Maximum Demand of 3125 kVA for the purpose of our start up power requirement and shutdown activities.*
 - b) *We were surprised to receive a C.C. Bill dated 26.08.2007 from APCPDCL (now TSSPDCL) for the month of August 2007, for an amount of Rs.1,18,26,046/- that includes penalty for the excess drawl of power over CMD, without seeking any explanation from our end.*
 - c) *We have furnished our representation dated 07.09.2007, intimating that there is a malfunctioning of Reverse Power Relay (RPR) mechanism, which is placed at your 132 kV Sitapuram Switching Station located at Sitapuram. As you are well aware that we do not have any access or control over the SPL Feeder operations with all the protection systems including RPR mechanism.*
 - d) *The said RPR mechanism is functionally intended to restrict the power supply in the event of the drawl of power of more than CMD (in our case it is 3125 kVA/2500 kW) it should be acted at the Transco switching station end trip the SPL Feeder. The functionality of RPR is clearly mentioned in para 5.2.1 (Page No.8) of its manual.*
 - e) *Our plant at that point of time was under commissioning stage and the commercial operations started effective from 1st March 2008. We write to inform that; our company is neither intend to draw the power over our*

CMD nor intended to extend the power to M/s Sri Vishnu Cements Ltd. Further, we wish to inform that, M/s Sri Vishnu Cements Ltd. has already recorded an MD of 18314 kVA for the H.T. Service Number NLG 206 (SPT 206) for the month of August-2007. The fact of recorded MD of NLG 206 shows that slippage of power is not intentional and in fact, accidental.

- f) Hence, it is clear to state that there is no parallel operation, and there is no intention to supply Grid Power to M/s Sri Vishnu Cements Ltd. through M/s Sitapuram Power Ltd.
- g) After the incident of malfunctioning of RPR mechanism, we were in receipt of letter No.CPS/SP/111/SPL/Vol.1/D.No.351/07 dated 10.10.2007 from CE/Power Systems/APTRANCO/Vidyut Soudha/Hyderabad, informing 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. M/s SPL can also take measures at their end to regulate inflow. Here we wish to inform that, we have supplied and handed over the RPR mechanism at our cost to the APTransco as per their directions and understood that our incoming feeder at 132 kV Sitapuram switching station was equipped with all the protection and safety measures that were tested and commissioned in all respects to avoid any sort of disturbances and overrides to the limits. Therefore, with a bona fide belief we have not put any protection measures at our end. If the same was informed to us at the time of commissioning of RPR mechanism, we should have made our own arrangements for limiting the MD at our end.
- h) In view of the above, we request to consider our request to close the matter without imposing any penalties for exceeding the CMD during the said period, which is technical in nature and not an intentional act of our company. Further, requested to adjust the amount of Rs.30 Lakhs which was paid as per the interim directions of the Hon'ble High Court dated 04.10.2007 against our future C.C. bills.'

h. It is stated that on careful examination and consideration of the points raised by the petitioner the competent authority/SE issued the following order as per the direction of Hon'ble High Court of Telangana vide order dated 19.09.2023:

- 'a) The Power Supply to H.T. Consumer SPT 543 (NLG 543) was released on 10-07-2007 for the purpose of Startup Power with a Contracted Maximum Demand of 3125 kVA at 132 kV. H.T. Agreement for availing Power Supply was entered on 29.06.2007.
- b) (i) Clause (2) of H.T. Agreement which deals with Load/Maximum Demand reads as follows:

"We agree to take from the company, electric power for a Maximum Load not exceeding 3125 kVA which shall be taken to be our Contracted Demand for our exclusive use for the purpose above mentioned, at our plant situated at Dondapadu Village, Mellacheruvu Mandal, Nalgonda District. Our contracted load shall be 3125 kVA and/or 2500 kW, we shall not effect any change in the Maximum

- Demand or Contracted Load without prior intimation to the company.”*
- (ii) *Clause (3) of H.T. Agreement deals with Resale of Electric Power and the same reads as follows:
“We undertake that we shall not sell electrical energy obtained under this agreement without the sanction in writing of the company.”*
- (iii) *Clause (4) of H.T. Agreement deals with the Obligation of the petitioner company to comply with Requirements of Electricity Act 2003 (the Act) and General Terms and Conditions of Supply (GTCS) and the same reads as follows:
“We further undertake to comply with all the requirements of the Electricity Act,2003, the Rules and Regulations framed there under, provisions of the Tariffs scale of miscellaneous and General Charges and the General Terms and Conditions of Supply prescribed by the company with approval of the AP Electricity Regulatory Commission (herein after called as Commission) from time to time and agree not to dispute the same.”*
- c) *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 Ltd. Further, irrespective of functioning of the Reverse Power Relay, the consumer shall not draw power more than the approved CMD (as the Agreement for CMD is arrived based on total capacities of motors existing in power plant).*
- d) *The consumer has drawn maximum power of 20,010 kW in the 73rd block i. e 18.15 Hrs on 13.08.2007 from grid. The consumer in their letter dt. 13.08.2007 stated that “during our trial runs, we tried to give power to M/s SVCL our consumer by opening APTransco breaker at M/s SVCL i.e., Supply from the captive power plant and at 6 PM the unit tripped. During this period the supply to the station failed, everything was dark and could not visualize what is happening. After some time it was found that 132 kV SVCL feeder was getting power due to malfunctioning of Reverse Power Relay at 132 kV Switching station of Transco and the same implies that the Reverse Power Relay did not act. Your H.T. Consumer M/s SVCL drew the supply from our feeder even though our unit tripped and hence the MD of Sri Vishnu Cements Ltd was recorded in our meter.” It thus become clear that, M/s Sitapuram Power Ltd. extended the APCPDCL supply to M/s Sri Vishnu Cements Ltd., without permission/intimation to APCPDCL/APTransco which is totally illegal.*
- e) *Further, in connection with feeding arrangements to M/s Sri Vishnu Cements Ltd., the APTransco has intimated vide letter dated 09-01-2007 as follows: -
“As per the single line diagram, an outgoing 132 kV line to M/s Sri Vishnu Cements Ltd. is indicated M/s Sri Vishnu Cements Ltd., a H.T. Consumer of APCPDCL is presently connected by a 132 kV Tap Line from 132 kV Mattampally-Chillakallu line. Parallel*

operation of the above two sources at M/s Sri Vishnu Cements is not acceptable.” The consumer has not followed the above instructions, which is a violation.

- f) *Thus, there remains no doubt about the MD Recorded at M/s Sitapuram Power Ltd and that they have availed maximum demand of 20.010 MW (21.28 MVA) as per the energy meter readings against their Contracted Maximum Demand of 3.125 MVA. Billing was done as per the APCPDCL schedule of Retail Tariff Rates approved and notified by Hon’ble APERC for H.T. Category-II and bill was issued to M/s Sitapuram Power Ltd. for an amount of Rs.1.18 crore.*
- g) *Two Services (i.e., M/s Sri Vishnu Cements Ltd. & M/s Sitapuram Power Ltd) are having Separate H.T. Service connections with H.T.SC.Nos. SPT 206 & SPT 543 and are being billed separately, hence the consumption of one service cannot be compensated with the consumption of other service.*
- h) *As per the Tariff Order for the FY 2007-08 issued by APERC, “The Billing Demand shall be the Maximum Demand Recorded during the month or 80% of Contracted Maximum Demand whichever is higher” and “Energy Charges will be billed on the basis of actual energy consumption or 25 units per kVA of Billing Demand, whichever is higher.” Accordingly, the bill was issued duly applying the Tariff. The calculation sheet is enclosed.*
- i) *Clause 12 of H.T. Agreement executed by the consumer, reads as follows: -*
“We hereby agree that if we are found indulging in theft of electricity or unauthorized use of electricity in respect of use of electrical energy, we shall pay additional charges as may be levied by the company. We also agree that in such an event the company shall in addition to levy of additional charges have right to disconnect supply of electricity to our premises for such period as may be decided by the company.”
- j) *Hence, as explained above, the C.C. Bill issued for the month of August-2007 in respect of H.T. SC. No.SPT 543 (NLG 543) is in order as per the Tariff Order notified by Hon’ble APERC and it is requested to arrange the balance payment 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 Cement Ltd. will be ordered for disconnection of supply.”*
- i. It is stated that the petitioner has paid the principal amount arrears of Rs.68,35,336/- on 18.10.2023. The petitioner is liable to pay of belated payment surcharge from the date of due date for payment for the C.C. bill for the month of August-2007. The petitioner was requested to pay an amount of Rs.2,08,71,014.94 within 15 days vide letter dated 19.10.2023.
- j. It is stated that aggrieved by the demand notice dated 19.10.2023 the petitioner filed W. P. No.31189/2023

‘questioning the action of the respondent Nos. 2 to 4 in levying and demanding surcharge on penal demand charges for the period from 11.09.2007 to 18.10.2023 vide Lr.No.SE/OP/NLG/SAO/HT/D.No.138/

23, dated 19.10.2023 issued by the 4th respondent/SE/Op/Suryapet and directing the petitioner to pay the alleged dues within a period of 15 days, failing which threatening to disconnect power supply, despite the fact that stay petition and original petition pending consideration before the 1st respondent, as arbitrary illegal, unauthorized, contrary to provisions of the Act, 2003, besides being un-constitutional and violative of the petitioner's rights guaranteed under Articles 14 and 19(1)(g) of the Constitution of India.'

But when the matter came up for hearing, the learned counsel for the petitioner submitted that challenging the notice dated 19.10.2023 issued by the TGSPDCL demanding payment of surcharge for the period from 11.09.2007 to 18.10.2023 vide Lr.No.SE/OP/NLG/SAO/HT/D.No.138/23 to the tune of Rs.2,08,71,015/-, he filed an original petition along with stay petition before the Commission but, as on today the said petition is not numbered and no stay is granted. He further stated that a representation dated 07.11.2023 was made requesting the Commission to take up the matter as early as possible in view of the urgency in this matter and that as on that day, no proceedings were initiated by the Commission and therefore prayed the Hon'ble High Court to direct the Commission to dispose of the matter within a stipulated period.

k. It is stated that the Hon'ble High Court of Telangana by order dated 09.11.2023 while directing the petitioner to deposit 1/4th of Rs.2,08,71,015/- as demanded within a period of two weeks from the date of receipt of this order directed respondent No.1 to take up the matter and dispose of the same within a period of (4) weeks from the date of receipt of copy of the order. The petitioner has arranged 1/4th of belated payment surcharge amount of Rs.2,08,71,015/- that is Rs.52,17,754/- on 21.11.2023.

l. It is stated that all the charges were levied as per the provisions of the tariff orders notified by the Commission from time to time. The petitioner may be ordered to pay the balance amount of belated payment surcharge at the earliest.

m. Hence, it is prayed the Commission to dismiss the petition in the interest of justice.

5. The Commission has heard the parties and considered the material available to it. The submissions made by the parties on various dates 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.”

Record of proceedings dated 11.01.2024:

“... .. The counsel for petitioner stated that the counter affidavit insofar as respondent No.1 is yet to be filed. The representative of the respondents sought time to file counter affidavit of the respondent No.1 by next date of hearing.

However, the Commission has pointed out that the Commission is under directions of the Hon'ble High Court to dispose of the matter within a period of one month from the receipt of copy of the order. Therefore, the Commission is constrained not to grant further time in the matter. The parties shall ensure completion of the pleadings by the next date of hearing and submit arguments in the matter without fail. Accordingly, the matter is adjourned.”

Record of proceedings dated 25.01.2024:

“... .. The counsel for petitioner stated that the issue relates to the year 2007 wherein the licensee has raised demand towards penalty for exceeding the contracted demand. The petitioner had established a CPP and had availed a demand of 3125 kVA for its plant where the captive power plant (CPP) is co-located. The CPP was under trial run after synchronization with the grid at the relevant time. The petitioner has a sister unit at Yerraguntla.

The counsel for petitioner stated that during the course of trial run as the CPP was being tested for the capacity, it had opened the breakers and allowed power supply to be made available to its sister unit for the month of August, 2007. Resultantly, the RMD recorded by the petitioner at the location where the power supply is availed, has exceeded the contracted demand and the total RMD recorded was 21287.5 kVA against the CMD 3125 kVA. Thereby, it exceeded the demand by 18,152.5 kVA. Consequent liability is Rs.1,18,26,046/-.

The counsel for petitioner stated that aggrieved by the demand, the petitioner had approached the Hon'ble High Court by filing a writ petition questioning the levy of amount as penalty for exceeding the CMD. There was a threat of

disconnection and as such had obtained stay of the demand made by the DISCOM.

The counsel for petitioner stated that the writ petition had been disposed of by order dated 21.06.2023 with a direction that the licensee shall give an opportunity of being heard and thereafter, decide the matter on merits. The opportunity was given on 06.09.2023, an order was passed subsequently determining the penalty as well as interest thereon at Rs.68,35,336/- being the balance amount and Rs.2,08,71,014/- towards surcharge, respectively. It is stated that an issue relating to reverse power relay is also clubbed to this aspect. The petitioner has complied with the technical requirements to the satisfaction of the officers of the licensee as well as TSTransco.

The counsel for petitioner stated that pursuant to the said order, the petitioner has been threatened with disconnection of its power supply. Therefore, the petitioner had approached the Commission with this petition. However, in view of the threat of disconnection, the petitioner had also approached the Hon'ble High Court and obtained interim protection by filing writ petition in W. P. No.31189 of 2023 on 09.11.2023. Subsequently, the Commission has taken up the matter and passed interim order dated 16.12.2023.

The counsel for petitioner stated and relied on the judgment of the Hon'ble Supreme Court reported in 2005 (7) SCC 615 with regard to levy of penalty and in the other case reported in 1962 (2) SCC 627 with regard to imposition of penalty. It is stated that penalty will not attract further penalty or surcharge thereon. The CPP unit was under trial run and all the parameters were required to be tested. Therefore, an attempt was made to generate and supply to the sister unit. In that process, there occurred exceeding of demand contracted. Moreover, during the trial run no penalty can be imposed.

Thus, the counsel for petitioner sought interference by the Commission towards levy of penalty and further surcharge on such penalty.

The representative of the respondents stated that the petitioner has not made out a case for interference in the matter. The claim is with regard to penalty imposed towards exceeding the contracted demand in terms of the tariff order passed by the Commission. As the petitioner had exceeded the contracted demand, it attracted penalty. The penalty so levied got stayed by the Hon'ble High Court and is now sought to be realised, hence surcharge is imposed.

The representative of the respondents stated that penalty is not surcharge and surcharge is not penalty. The petitioner had withheld the amount due to the licensee and thus, incurred the levy of surcharge. The Hon'ble High Court, while disposing of the writ petition in the earlier round, had fairly required licensee to give an opportunity and decide the matter, which has been complied with. Under the conditions of supply, the petitioner is estopped from undertaking sale or supply to another consumer and such action also invites penalty. Further, the petitioner ought to have obtained proper permission before undertaking testing of the CPP including but not limited to LTOA. The petitioner is liable to pay the penalty as it had exceeded the contracted demand, which is not denied by the petitioner. Also, the petitioner could not have interfered with the equipment of the licensee in the process of testing of its CPP.

Thus, the representative of the respondents endeavoured to submit that the petitioner is not entitled to any relief as submitted earlier. Therefore, the petition is liable to be dismissed.

The counsel for petitioner stated that the claims made by the licensee are contrary to the principle of non-levying surcharge on penalty. The exceeding of RMD on the supply extended to the other unit is not at all concerned with the demand availed from the licensee. The petitioner was seeking to extend supply from its CPP. Further, while deciding the applicable penalty, the respondents resorted to taking the applicable rates as of present day and not the rates applicable in the year 2007. Thus, the claims made are liable for dispute. The counsel for petitioner stated that the claims made towards penalty and consequential surcharge cannot be said to be in accordance with applicable tariff and regulations. Inasmuch as levying penalty itself is erroneous and further levy of surcharge is contrary to law. Therefore, the Commission may consider setting aside the demand raised by the respondents. Having heard the parties to the petitioner, the matter is reserved for orders.”

6. The petitioner has raised the issue of levy of penalty as also surcharge for exceeding the contacted maximum limit in August, 2007. The petitioner initially challenged the demand notice towards penalty for exceeding the CMD by way of writ petition in W.P.No.20732 of 2007 and obtained interim orders subject to payment of Rs.30,00,000/-. The said writ petition came to be disposed of in the year 2023 with a direction to the licensee to provide opportunity and decide the matter.

7. The Commission also notices that the petitioner before approaching the Commission had approached the Hon'ble High Court by way of a writ petition in W.P.No.31189 of 2023 and obtained orders of the Hon'ble High Court not to disconnect the power supply upon payment of 1/4th of amount that is Rs.52,17,754/- claimed vide demand notice of the TGSPDCL dated 19.10.2023. The amount has been paid on 21.11.2023 according to the counter affidavit of the respondents.

8. Prima facie upon seeing the prayers of the petitioner they would seem to be a billing dispute for which the Commission is not the appropriate forum. However, since the issue involved is with reference to a generator against and licensee the petition is maintainable before the Commission. The issue has arisen due to exceeding the CMD of 3125 kVA availed for the purpose of start-up power for the power generating unit. The issue is practically about 17 years old. However, the matter is before the Commission pursuant to and subsequently to the disposed of two writ petitions filed by the petitioner one of which was pending from 2007 to 2023. This has resulted in penalty being imposed withheld by the petitioner which was payable in the year 2007 and consequently surcharge thereof for delaying the payment which is about two and half times the original penalty.

9. The petitioner sought to rely on the judgements reported vide reference 1962 (2) SCC 627 relating to Venkata Reddi and Others Vs Pothi Reddi as also in the matter of State of U.P Vs Sukhpal Singh Bal reported in 2005 (7) SCC 615. Neither of these judgements aid the petitioner. The first judgment arises out of insolvency coupled with divorce and the second judgement is arising out of motor vehicle taxation. In the first case there is no issue of penalty and surcharge thereof except change of law towards sale of property pending proceedings of the insolvency and divorce. The other case is questioning the provisions of the motor vehicle taxation where in while interpreting tax laws strict interpretation is made and no discretion is availed by the court. In those circumstances the Commission is constrained not to accept the contentions of the petitioner.

10. The Commission notices the judgement rendered by the Hon'ble High Court of Andhra Pradesh as it then was, had decided a matter on the issue of levy interest and surcharge filed by M/s Venkateshwara Rice Mill Vs Superintending Engineer, APSEB, Hyderabad and otheRs.as reported in 1998 (4) ALD 101. It has been held by raising the following points-

- “(1) *When the electricity charges are permitted to be paid in instalments, whether in addition to interest under para 34 of the Terms and Conditions of Supply, additional charge (also called as 'surcharge') as contemplated by para 32.2.1 is payable simultaneously on the outstanding amount ?*
- (2) *How and in what manner the interest has to be calculated under para 34 i.e., whether the entire amount payable on the date of grant of instalments should bear interest and surcharge at the prescribed rate till the last date of payment or whether it should be calculated with reference to the remaining amount payable after deducting the amount paid in instalments from time to time ?”*

It has been observed as follows in the findings.

“The learned Counsel for the petitioners have cited certain decisions in a bid to make good their submission that the contracts entered into by the State or its instrumentalities especially the contracts superimposed by the statutory provisions are not immune-from attack on the ground of infraction of Article 14, that is to say, on the ground that the contractual clause is arbitrary and unreasonable. We are spared of the necessity to probe into this aspect as we are not in a position to say that an element of arbitrariness or unreasonableness will be writ large on the face of clause 34 if we reject the interpretation placed by the learned Counsel on the said clause.

In this context, we must bear in view the nature of functions and modus operandi of the Electricity Board as highlighted by the Supreme Court in Ferro Alloys case (supra) apart from other considerations adverted to supra. An infraction of Article 14 does not arise merely because a

customer is visited with a penalty or extra liability of being called upon to pay interest and surcharge which together works out to a high-rate to enable him to defer the payment and at the same time avail of the electricity supply without interruption. The reasonableness of such extra payment cannot be judged from the stand point of a set formula or uniform yardstick. It is pointed out that under the terms and conditions of the supply of Tamil Nadu State Electricity Board, the liability to pay surcharge on the amounts allowed to be paid in instalments is not fastened on the consumer. But, the degree of fairness with which a consumer is treated may vary from State to State and would also depend upon the peculiar problems of the particular Board. The fact that the A.P.S.E.B. could have been more fair to the consumer by falling in line with its counter-part in Tamil Nadu does not per se give rise to violation of Article 14. The reasonableness of the impugned clause cannot, in our view, be judged by the Law Court on its own notions or relative standards of fairness. It is not necessary for us to go into the question whether unreasonableness by itself, without a potential for discrimination would be a ground of attack under Article 14 as we have not been able to perceive an element of palpable unreasonableness in clause 34 as interpreted by us.

... ..

In the result, we answer question No.1 formulated by us against the writ petitioners and Question No.2 as per the discussion in the judgment. The bills impugned in the writ petitions shall be duly revised taking into account the legal position enunciated by us with reference to Question No.2.”

11. As noticed earlier the petitioner in this case was liable for penalty for exceeding the CMD. The petitioner had raised question about the penalty by invoking technical aspect of malfunctioning of reverse power relay mechanism. The TGTransco and TGSPDCL have emphatically pointed out in their submissions that exceeding contracted demand is not related to reverse power relay mechanism. It is their case that they never object to a consumer exceeding the CMD but it is for the consumer to have control over the recorded maximum demand to avoid attracting penalty for exceeding the CMD. The Commission notices that the petitioner has specifically agreed to the conditions that it will not exceed the demand contracted for and also would not undertake sale of energy to any other concern, which is perceived by the TGSPDCL in this case.

12. Obviously the petitioner, advertently or inadvertently not only exceeded the contracted demand but went on to supply such excess demand to its sister concern in the guise of the experimenting or testing its captive power plant at its synchronization or trial run stage. The petitioner having exceeded the demand contacted power for the

purpose of startup power and allowing the power to be drawn by the sister unit cannot now turn round and state that it cannot be mulcted with penalties and consequential surcharge for nonpayment of the penalties.

13. Taking cues from the judgement rendered by the Hon'ble High Court as extracted above if instalments properly granted would attract interest, there is no gain say in imposing surcharge for nonpayment of the penalty which was not the making of the TGTransco or TGSPDCL but due to the litigation kept pending by the petitioner itself. Inasmuch as imposition of surcharge is sort of a penalty as the revenue which was due long ago stood withheld by the petitioner. The levy of surcharge is prime facie the loss of revenue caused by the petitioner at the relevant time, thus it has become a carrying cost for the delay in payment of the original penalty.

14. It is also worth mentioning that the petitioner got fair opportunity at the hands of the TGSPDCL interms of the directions of the Hon'ble High Court. The competent authority has elaborately discussed the issues raised by the petitioner interms pf the subsisting regulations and guidelines apart from pointing out the conditions accepted by the petitioner. The petitioner has not shown any ground which would force the Commission to hold that the demand raised by the TGSPDCL is contrary to the subsisting conditions of supply and also the agreement of supply. For whatever reason the petitioner has already paid the principal penalty due under the original demand raised in the year 2007. Therefore, the Commission cannot unsettle the actions taken in view of the lapses pointed out by the TGTransco and TGSPDCL. It also cannot be said that the impugned order does not provide for the reasoning on the contentions of the petitioner.

15. Noticing the omissions on part of the petitioner itself, the Commission cannot allow the petitioner to claim the benefit of accidental spillage or inadvertent action of undertaking sale of electricity without proper authority. Though, it is a momentary exercise, since the quantum of power drawn or purported to have been drawn is several times more than the contracted capacity for particular purpose of startup power, such action cannot be accepted as it is detrimental to the electrical system as whole.

16. Having given the utmost consideration to the submissions of the parties, the Commission is not inclined to interfere in the matter for the basic reason that interference in this case in so far as exceeding the CMD would not only jeopardise the functioning of the transmission and distribution licensees but also would send a wrong signal that consumer can indulge in inadvertent activities and canvas later that it was not within their control for such acts to escape penalties or punishment as the case may be.

17. In view of the forgoing discussion the Commission is not inclined to grant any relief to the petitioner in this petition and accordingly the same is dismissed. Parties shall bear their own costs.

This order is corrected and signed on this the 28th day of October, 2024.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

Sd/-
(M. D. MANOHAR RAJU)
MEMBER

Sd/-
(T. SRIRANGA RAO)
CHAIRMAN

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