

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

APPEAL No.51 of 2014
AND
IA No.86 of 2014

Dated:22nd April, 2014

Present:

HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

In the Matter of:

- 1. M/s. Salasar Steel & Power Limited
1st Floor, Bhatia Complex,
Opp Rajkumar College, G.E. Road,
Raipur, Chhattisgarh-492 001**

...Appellant

Versus

- 1. Chhattisgarh State Load Despatch Centre,
Dagania, Raipur,
Chhattisgarh-492 013**
- 2. The Chhattisgarh State Electricity Regulatory Commission,
Irrigation Colony,
Shanti Nagar,
Raipur, Chhattisgarh-492 001**

...Respondent(s)

Counsel for the Appellant(s) : Mr.Raunak Jain

Counsel for the Respondent(s): -

ORDER

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. The Order Impugned dated 23.12.2013 passed by the Chhattisgarh State Commission rejecting the Preliminary Objections raised by the Appellant on Maintainability of the Petition filed by the State Load Despatch Centre (SLDC) is the subject matter of this Appeal.
2. The short facts are as under:
 - (a) M/s. Salasar Steel Power Limited is the Appellant. It is engaged in the production of sponge iron, billets, ingots and Ferro alloys besides generation of power.
 - (b) The Chhattisgarh State Load Despatch Centre (SLDC) is the First Respondent. Chhattisgarh State Commission is the second Respondent.
 - (c) The SLDC, the First Respondent filed a Petition No.70 of 2013 before the State Commission on 15.7.2013 as against 20 different private generating companies including the Appellant complaining about the non-compliance of 55 different Backing Down Instructions (BDIs) issued between the period April,

2012 and June, 2012 and praying for imposition of penalty for each non-compliance events.

(d) The State Commission, after entertaining the said Petition issued notices to all the Generating Companies including the Appellant.

(e) The Appellant appeared before the State Commission on 8.11.2013 and raised the objection regarding the Maintainability of the Petition filed by the SLDC.

(f) As directed by the State Commission, the Appellant filed a written Preliminary Objection on Maintainability on 2.12.2013 regarding the mis-joinder of parties and different causes of action.

(g) According to the Appellant, the different causes of action against each of the 20 Generating Companies with reference to 55 different Backing Down Instructions (BDIs) have arisen on different dates and different times and that therefore, the single Petition filed by the SLDC against all the Generating Companies is not maintainable.

(h) The State Commission ultimately after considering the objections regarding Maintainability has passed the

Impugned Order dated 23.12.2013 holding that the Petition filed by the SLDC is maintainable and thereby proceeded to go ahead with inquiry.

(i) At this stage, the Appellant challenging the Impugned order rejecting the Preliminary Objection raised by the Appellant, has filed this Appeal.

3. The main contention urged by the learned Counsel for the Appellant assailing the findings is as follows:

“As per Order 2, Rule 3 of the Code of Civil Procedure, the joinder of various parties and joinder of different causes of action are not permissible in a single suit. When there are two or more causes of action with reference to two or more defendants, the plaintiff may unite jointly only when the joint interest is involved. The present case filed by the SLDC pertains to instances of non-compliance of 55 different Backing Down Instructions (BDIs) issued to 20 different Companies over a period of three months and this would not mean that there are common questions of facts and law and that Companies are jointly interested in the litigation so as to permit Joinder of Defendants and Causes of Action. Therefore, the liability of different companies which are distinct and separate cannot be combined in

a single Petition which has been wrongly entertained by the State Commission in the Impugned Order”.

4. We have carefully considered the submissions made by the learned Counsel for the Appellant as referred to above in order to find out whether this is a fit case for admission especially when the main proceedings are pending before the State Commission.
5. Before dealing with this question, let us refer to the relevant findings given by the State Commission on this point:

“6. An objection related to misjoinder of various parties and cause of action in this petition is raised.

It is argued that several causes of action, arising at different time, against different defendants / generators, cannot be combined in a suit or proceedings. The petitioner has sought to do this, in the instant petition and therefore, the instant petition is not maintainable.

In this reference, the respondents have quoted the provisions of order II Rule 3 of the Code of Civil Procedure. The relevant provisions are as follows:-

"Joinder of causes of action: - (1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same

defendants jointly may unite such causes of action in the same suit.

(2) Where causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject matters at the date of instituting the suit."

After a simple reading of the provisions, it can be observed that, sub rule (2) is not applicable in this case, because there is no dispute regarding the jurisdiction of the Commission upon the matter.

It can be observed from the provisions of sub rule (1) that the plaintiff has liberty to unite several causes of action against the same defendant or defendants jointly. There is no specific norm prescribed for such unionizations. It means, if the plaintiff chooses to unite different causes of action, he must have a reasonable ground for the same.

If we go through the petition, it appears that, the petitioner has preferred this petition against the different respondents for their disobedience of the backing down instructions, issued to them on different dates and different time, but in a specific three successive month's period of a specific year / financial year. This is the common factor in all backing down instructions given to different respondents in different dates and time. This specific time is also not so large, which may create any doubt about the action.

The respondents have referred the Commission's order dated 06.11.2013 passed in P.No.59 of 2012(M). That petition was dismissed by us with giving liberty to the

petitioner to file separate petition according to the procedural law.

The law of procedure may be defined as that branch of law which governs the process of litigation. It is the law of actions and all the residue is substantive law and relates, not to the process of litigation but to its purposes and subject matter.

Facts of that petition are quite different from the facts of this petition and both cannot be compared with each other. In that petition, all backing down instructions, issued within such period which contains more than three years duration, were included, without giving any reasonable justification.

The term 'procedure' has to be taken in its widest meaning. It includes among other things "limitation of action or other proceedings'.

This petition is related to the backing down instructions issued in particular three successive months of a particular financial year. This period is also quite reasonable.

With this observation, we dismiss this objection, since it is not sustainable in our view”.

6. On going through the Impugned Order, it is clear that the State Commission gave a finding with reference to the Maintainability of Petition holding that the SLDC filed this Petition against the different Companies for non-compliance of the Backing Down Instructions (BDIs) within a specific

period of three months and as such, this is a common factor in all Backing Down Instructions (BDIs), which is not so large and hence the Petition is maintainable and consequently it warrants for further inquiry to analyse the question as to whether various Companies including the Appellant had complied with the Backing Down Instructions (BDIs) issued by the SLDC or not.

7. As mentioned above, the main contention urged by the learned Counsel for the Appellant is that the several causes of action cannot be combined in single proceedings as provided under Order 2 Rule 3 of the CPC.
8. At the outset, it shall be mentioned that the Electricity Act by itself is a complete Code under which the disputes are resolved between the parties. Even though there are some provisions in the Electricity Act by which Civil Court powers have been conferred on the State Commission to deal with some aspects under some sections of the Electricity Act, it is not mandatory for the State Commission to follow all the procedures contained in various provisions of the CPC. Therefore, the procedure contemplated in the CPC is not binding on the State Commission while exercising the powers under the Electricity Act.

9. On the other hand, the State Commission can follow its own procedure to have the inquiry and decide the issues.
10. Even assuming that the provisions of Order 2 Rule 3 would be applicable to the present proceedings, the said provisions permit the plaintiff to unite several causes of action against the defendants or defendants jointly raising the causes of action in which they are jointly interested.
11. As correctly pointed out by the State Commission, in the Impugned Order, the SLDC filed a Petition against different Companies for the non-compliance of the Backing Down Instructions (BDIs) issued on different dates for a specific period of three months raising the common factor relating to the non compliance of the Backing Down Instructions (BDIs) issued to the different Companies.
12. When the State Commission has got the special powers to follow its own procedure, there is nothing wrong in entertaining the single Petition to have a common inquiry by deciding the common issue with reference to non compliance of Backing Down Instructions (BDIs) by the Companies.
13. In these proceedings, the Companies have to establish before the State Commission that they have not violated the Backing Down Instructions and even assuming that there

were some violations, this was not the case for imposing penalty under the facts and circumstances of the case.

14. Therefore, when the proceedings with regard to the violations of the Backing Down Instructions are pending before the State Commission in the Petition filed by the SLDC, it would be appropriate to allow the State Commission to proceed with the common inquiry to decide about the common factor by permitting the parties to furnish the materials. Thereupon, the State Commission at the end on the basis of the materials furnished by the parties may decide the common issue on the basis of the respective pleas made by the parties.
15. In view of the above, we feel that this is not a fit case for admission and as such, we are not inclined to admit this Appeal.
16. Consequently, the Appeal is dismissed at the admission stage itself.
17. Eventually, the State Commission is allowed to proceed with the matter and decide the case on merit in accordance with the law.

18. Registry is directed to send the copy of this Order to the Chhattisgarh State Commission forthwith.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated:22nd April, 2014

✓ ~~REPORTABLE/NON-REPORTABLE~~