IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No.213 OF 2017

Dated: 18.03.2025

Present: Hon'ble Mr. Sandesh Kumar Sharma, Technical Member
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

M/s. KCP Limited.
Ramakrishna Buildings, No. 2,
Dr. P.V. Cherian Crescent, Chennai – 600 008.
Rep. by its Executive Director
Smt. Kavitha D Chitturi … Appellant

Versus

1. **Andhra Pradesh Electricity Regulatory Commission,**
   11-4-660, 4th Floor, Singareni Bhavan, Red Hills,
   Lakdikapool, Hyderabad 500004.
   Rep. by its Secretary.

2. **M/s. Transmission Corporation of Andhra Pradesh Ltd.,**
   Vidyut Soudha, Khairatabad, Hyderabad – 500 082.
   Rep. by its Chairperson & Managing Director.

3. **Southern Power Distribution Company of Andhra Pradesh Ltd.,**
   Represented by its Chairman & Managing Director,
   19-13-65/A, Srinivasapuram, Tirupati – 517 503.

4. **Superintendent Engineer,**
   Operation Circle, APSPDCL.,

Vidyut Bhavan, Ponnure Road, Guntur.

5. Senior Accounts Officer,
Operation Circle, APSPDCL.,
Vidyut Bhavan, Ponnure Road, Guntur. … Respondent (s)

Counsel on record for the Appellant(s)	:	Hitendra Nath Rath Sivaram Deepak Choudhary Laxmi
Counsel on record for the Respondent(s)	:	Gaichangpou Gangmei Arjun D Singh Ankita Sharma Yashvir Kumar Nisha Pandey Maitreya Mahaley Yimyanger Longkumer for Res. 1 Udit Gupta Anup Jain Kalyani Jha Vyom Chaturvedi Prachi Gupta Divya Hirawat Pragya Gupta Nishtha Goel for Res. 3

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. This appeal impugns the order dated 24.09.2016 passed by the 1st respondent Andhra Pradesh Electricity Regulatory Commission (hereinafter referred to as "the Commission") thereby holding the appellant liable to pay surcharge on reactive power drawn by it from the grid of Transmission

Corporation of Andhra Pradesh Ltd (in short "AP Transco") i.e. 2nd respondent herein.

2. The appellant M/s KCP Limited has set up a 3.75MW mini hydel power project of Guntur Branch Canal of Nagarjuna Sagar, Right Canal in Guntur District of the State of Andhra Pradesh and uses the power generated therefrom for its captive consumption.

3. In accordance with the Andhra Pradesh Electricity Reforms Act, 1998, the government of Andhra Pradesh incorporated AP Transco to replace and takeover the functions of erstwhile Andhra Pradesh Electricity Board.

4. The 3rd respondent Southern Power Distribution Company of Andhra Pradesh Limited is a distribution licensee operating in the State of Andhra Pradesh.

5. The appellant had initially entered into agreements dated 16.08.1994 and 18.01.1995 with the erstwhile Andhra Pradesh Electricity Board but later on, upon incorporation of AP Transco (2nd respondent), the appellant entered into Amended and Restated Power Purchase and Wheeling Agreement dated 17.03.1999 with it to be operative for the period of 20 years.

6. The 3rd respondent issued a bill dated 08.09.2010 for the first time to the appellant company claiming surcharge on reactive power drawn from the grid for the period from April 2010 to July 2010 for an amount of Rs.3,29,600/- and subsequently issued further bills with the arrears amounting to Rs.2,44,79,171/- with effect from January, 1998.

7. It appears that the 3rd respondent had claimed the surcharge on reactive power from several other generating companies owning and operating mini hydel projects and using the power generated therefrom for captive consumption. Accordingly, the appellant and other such generating companies had approached the Commission by way of separate petitions (petition filed by the appellant herein was numbered as 50/2013) challenging the levy of reactive power surcharge by the 3rd respondent stating it to be unauthorized and contrary to the agreements between them and the 2nd respondent. All those petitions have been disposed off by the Commission vide common order dated 24.09.2016, which is impugned in this appeal by the appellant, thereby holding the appellant and the other generating companies liable to pay surcharge on reactive power drawn by them from the grid of 2nd respondent AP Transco along with arrears of such surcharge for the period up to three years before the date of first demand made against

them for payment of such surcharge and to continue such payments so long as they continue to draw such reactive power from the grid of AP Transco.

8. We may note that the Commission had formulated various points for its consideration in the petitions filed before it by the appellant and other generating companies, out of which point Nos.1&2 only are relevant to this appeal and are extracted hereinbelow: -

> *"(i) Whether Explanation 2 and Explanation 3 to Article 1.13 (b) of the Amended and Restated Power Wheeling & Purchase Agreement entered into between the parties is an enforceable charging provision?*
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> *(ii) If so, do the Explanations to Article 1.13 (b) reconcile with the charging Article 2.15 of the said Agreement?"*

9. It was the contention of the appellant and the other generating companies before the Commission that no clause in the Amended and Restated Power Purchase and Wheeling Agreement dated 17.03.1999 empowered 2nd respondent to levy reactive power surcharge even though clause 1.13(b) of the agreement defines the said term (surcharge on reactive

power drawn by mini hydel scheme). Such contention of the appellant and the other generating companies was repelled by the Commission on the following reasoning: -

> *"11. Points (i) & (ii): The Power Wheeling and Purchase Agreement between the licensee and the petitioner as amended, restated and in force in each case defined the meaning of the terms used in the Agreement in Article 1. The Surcharge on Reactive Power drawn by Mini Hydel Scheme was defined in Article 1.13 (b) as meaning the charges leviable on the reactive power drawn by Mini Hydel Scheme at the rate of 10 paise (ten paise only) per unit of reactive energy drawn from AP Transco's grid. This definition did not stop there and was continued with three Explanations. The 1st Explanation stated that the induction generators used in Mini Hydel Scheme draw reactive power from AP Transco's grid during generator mode and motor mode. The 2nd Explanation mandated that the surcharge on reactive power drawn by Mini Hydel Scheme will be included in Current Consumption bills served on Scheduled Consumers using delivered energy for captive consumption in addition to low*

power factor surcharge, if any, leviable. The 3rd Explanation clarified that the surcharge on reactive power drawn by Mini Hydel Scheme will be levied on the developer instead on Scheduled Consumers in case of third party sale.

12. The Agreements amended, restated and superseded in their entirety, the earlier Agreements between the parties and the parties stated in the preamble that in consideration of the foregoing premises, their mutual covenants in the Agreements and for other valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agreed to the contents of the Agreements intending to be legally bound thereby. The Agreement has various Articles on different aspects. As already stated, the 1 st Article is styled to be definitions but Article 1.13 (b) also stated what will be charged for the reactive power drawn by Mini Hydel Scheme, in what manner and from whom. There is nothing in the Agreement to suggest that whatever is to be charged has to be specified in a particular place in the Agreement, in a particular fashion. Though definition of Surcharge on

Reactive Power, more particularly Explanations 2 and 3 thereof, do not exactly tally with the description of the same as a definition, any mis- description will not belittle or nullify the impact of the legally binding Agreement between the parties for valuable consideration. It is true that Article 2.15 of the Agreement provided for AP Transco billing for excess energy supplied in any billing month, at the effective tariff applicable to High Tension Category-1 consumers. Article 2.16 makes a voltage surcharge, which was defined in Article 1.21, applicable, if a Scheduled Consumer receives energy at a voltage lower than that prescribed by the AP Transco which will be billed and received by the AP Transco. Similarly, Article 2.17 provided for a Scheduled Consumer being liable for a Power Factor Surcharge, which was defined in Article 1.13 (a). Likewise tariff payable by AP Transco for the energy delivered by the company is provided in Article 4. The definitions under Article 1 did not have any charging provision except 1.13 (b) while all other aspects of sale or purchase or billing and payment are thus mentioned in the other Articles of the Agreements. However, there is no

particular format prescribed by law for such Agreements or such aspects of such Agreements. No provision or principle of law or judicial precedent has been placed before this Commission to suggest that a charging provision as agreed will be of no effect because of its location in the content of the Agreement. If Article 1.13 (b) is undisputedly a part of the Agreements between the parties and is thus otherwise legally and validly enforceable, the legality and binding nature of the provision does not become anything less due to its placement among the definitions.

13. It is true that since the date of the Agreement till the first demand in 2010, the reactive surcharge on reactive power was not billed and was billed for the first time only in 2010 but such omission or negligence or inaction in not billing the reactive power surcharge will not detract from the binding contract between the parties agreeing to pay such surcharge. The mere fact that Article 2 of the Agreement specifies the other charges that can be billed and demanded cannot be construed as excluding the possibility of any other

charges being agreed to be billed and paid under the Agreement. Any exclusivity of Article 2.15 as the sole repository of everything that can be billed and payable cannot be assumed in the absence of any such stipulation anywhere in the Agreement and though it is true that any such reactive power surcharge was not the subject of the earlier Agreement between the parties, it is not disputed that it is an agreed term under Article 1.13 (b) of the Agreement in subsistence and force.

…

15. Under the circumstances, it has to be concluded that Explanation 2 and Explanation 3 of Article 1.13 (b) of the Amended and Restated Power Wheeling and Purchase Agreement entered into between the parties is an enforceable charging provision and there is no conflict between Article 1.13 (b) and Article 2.15 of the Agreement which are independent clauses."

10. We have heard learned counsel for the appellant as well as learned counsels appearing for the respondents. We have also perused the entire impugned order as well as the written submissions filed on behalf of 3rd respondent.

11. Concededly, the rights and obligations of the parties i.e. appellant and the 2nd respondent are governed by the Amended and Restated Power Purchase and Wheeling Agreement dated 17.03.1999. Clause 1.13(b) of the said agreement, which is bone of contention between the parties, is quoted hereinbelow: -

> *"1.13 (b)* ***Surcharge on Reactive Power drawn by Mini Hydel Scheme:*** *means the charges leviable on the reactive power drawn by Mini Hydel Scheme at the rate of 10 paise (Ten paise only) per unit of reactive energy drawn from APTRANSCO's grid.*
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> ***Explanation 1:*** *Induction generators used in Mini Hydel Scheme draw reactive power from APTRANSCO's grid during generator mode and motor mode.*

Explanation 2: *Surcharge on reactive power drawn by Mini Hydel Scheme will be included in Current Consumption bills served on Scheduled Consumers using delivered energy for captive consumption in addition to low power factor surcharge, if any, leviable.*

Explanation 3: *Surcharge on reactive power drawn by Mini Hydel Scheme will be levied on the developer instead on Scheduled Consumers in case of third party sale."*

12. It is not disputed that no other clause in the entire agreement is with regards to the reactive power surcharge.

13. We may note that the above quoted clause 1.13(b) is contained in Article 1 of the agreement which provides definitions of various terms used in the agreement. It is in view of the same that the learned counsel for the appellant vehemently argued that in absence of any specific charging clause authorizing the respondents to levy reactive power surcharge, the clause which merely defines the "charge" cannot be enforced. It is further argued that there is no quantification of the amount towards reactive power surcharge

in the entire agreement dated 17.03.1999 and without such quantification / specification such surcharge cannot be levied on the appellant.

14. On behalf of the 2nd and 3rd respondent, it is argued that every clause of the agreement including the definitions clause is binding upon parties to the agreement and thus enforceable. It is argued that the clause 1.13(b) of the agreement dated 17.03.1999 not only defines the reactive power surcharge to be levied from mini hydel power projects but also prescribe the rate at which such surcharge is to be levied and therefore the same is clearly enforceable.

Our Analysis: -

15. "Reactive power" is the component of electrical power that flows back and forth between the source and the load without doing any actual work. It is measured in Volt-Amperes Reactive or VARs and arises in systems with inductive and capacitive loads, where there is a phase difference between the voltage and current leading to the storage and release of energy in the system rather than its conversion to useful work. Although, reactive power does not perform actual work, it is necessary for the functioning of certain types of electrical equipment such as motors and transformers. "Reactive power

surcharge" is a fee levied by electricity utilities on consumers who consume reactive power beyond certain limit in order to incentivize such consumers to improve their power factor and reduce reactive power consumption.

16. In the instant case, as already noted hereinabove, clause 1.13(b) of the agreement dated 17.03.1999 executed between the parties relates to reactive power surcharge. As per this clause of the agreement, "surcharge on reactive power drawn by mini hydel scheme" means the charges leviable on reactive power drawn by a mini hydel scheme @ 10 paise per unit of reactive energy drawn from AP Transco grid. Three explanations are attached to this clause. Explanation-I merely mentions that the induction generators used in mini hydel scheme draw reactive power from AP Transco's grid during generator mode and motor mode. The 2nd explanation requires that the surcharge on reactive power drawn by mini hydel scheme will be included in the current consumption bills served on the scheduled consumers using delivered energy for captive consumption in addition to low power factor surcharge, if any, leviable. The third explanation clarifies that the surcharge on reactive power drawn by mini hydel scheme will be levied on the developer instead of scheduled consumers in case of third-party sale.

17. Thus, the said clause 1.13(b) of the agreement not only states the meaning of reactive power surcharge but also provides the rate at which such surcharge is to be levied, in what manner and from whom. Therefore, even though the said clause finds its place in Article 1 of the agreement which relates to the definitions of various terms used in the agreement yet it qualifies as a full-fledged charging clause authorizing the 2nd respondent AP Transco to levy surcharge on reactive power drawn by mini hydel power projects from its grid @ 10 paise per unit.

18. There is no rule or law in support of the proposition that a "definition" clause in an agreement is not enforceable. A "definition" clause in an agreement is very much enforceable as any other clause of the agreement in case it is in clear or unambiguous language, has contextual relevance and is not contrary to public policy. In other words, such a definition clause sought to be enforced must be clearly / unambiguously worded to avoid confusion, must be relevant to the context of the agreement, not contradictory to other provisions and must not be contrary to the public policy or statutory provisions. The courts / tribunals would be loath to enforce the definition clause in an agreement if it is found to be vague or ambiguous, in conflict with any other provisions in the agreement and is unconscionable or oppressive.

19. In the instant case, we do not find any ambiguity in clause 1.13(b) of the agreement dated 17.03.1999 executed between the parties. It is certainly not contrary to public policy and does not contradict any other provision of the agreement or any other statute / rule / regulation. In fact, levy of reactive power surcharge helps the utilities / discoms to recover the cost of energy losses due to reactive power and incentivizes the consumers to improve their power factor and to reduce reactive power consumption.

20. Thus, the said clause 1.13(b) of the agreement dated 17.03.1999 between the parties fulfills all the essential ingredients of a binding and enforceable clause of the agreement. Merely because it is placed in the Article 1 of the agreement which relates to definitions, would not change its binding and enforceable nature. We concur with the observation of the Commission that a charging provision of an agreement would not become unenforceable only because of its location in the agreement.

21. Hence, we uphold the conclusion reached by the Commission that Article 1.13(b) of the Amended and Restated Power Wheeling Agreement entered between the parties is an enforceable charging provision. The appellant has been rightly held liable to pay surcharge on reactive power drawn by it from the grid of AP Transco.

22. In view thereof, no merit is found in the appeal. The same is hereby dismissed.

Pronounced in open court on this the 18th day of March, 2025

(Virender Bhat)	(Sandesh Kumar Sharma)
Judicial Member	Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~

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