

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY**  
(Appellate Jurisdiction)

**APPEAL No. 141 OF 2017**

Dated: 31.05.2024

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

**In the matter of:**

**TGV SRAAC LIMITED**

*Rep. by its Authorised Signatory*

Having its Registered Office At

Gondiparla, Kurnool District – 518004, A.P.

... Appellant

*Versus*

**1. ANDHRA PRADESH ELECTRICITY  
REGULATORY COMMISSION**

*Represented by its Secretary*

Having its Office at 11-4-660, 4<sup>th</sup> Floor,

Singareni Bhavan, Red Hills

Lakdikapul, Hyderabad-04

**2. SOUTHERN POWER DISTRIBUTION  
COMPANY OF A.P. LTD,**

*Rep. by its Chairman & Managing Director*

Having its Office at 19-13-65/A,

Vidyut Nilayam, Srinivasapuram, Tirupati, A.P.

... Respondent(s)

Counsel for the Appellant(s) : Alladi Ravinder Sr. Adv  
Hitendra Nath Rath

Counsel for the Respondent(s) : Gaichangpou Gangmei  
Arjun D Singh  
Ankita Sharma

Yashvir Kumar  
Maitreya Mahaley  
Yimyanger Longkumer for Res. 1

Purna Singh  
Udit Gupta for Res. 2

## **J U D G M E N T**

### **PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER**

1. The appellant is a company incorporated under the provisions of the Companies Act, 1956, and is in the business of manufacture of Caustic Soda (Chloro-Alkali Industry) situated in District Kurnool, Andhra Pradesh. It gets electricity supply from the 2<sup>nd</sup> respondent Southern Power Distribution Company of Andhra Pradesh Limited (in short "SPDCL") which is a distribution licensee in the State of Andhra Pradesh. The 1<sup>st</sup> respondent is Andhra Pradesh Electricity Regulatory Commission (in short "APERC").

2. The instant appeal has been preferred by the appellant against the order dated 31.03.2017 passed by APERC in O.P. No.28/2017 filed by the 2<sup>nd</sup> respondent for truing up of Financial Year (FY) 2015-16, approval of provisional Annual Revenue Requirement (ARR) for FY 2017-18 and determination of tariff for the FY 2017-18. Even though various reliefs have been sought by the appellant in the Memorandum of Appeal, yet, during the course of argument, it was canvased on behalf of the appellant that the appellant is pressing only one prayer i.e. a direction to include the appellant in the category of HT I(B) / energy intensive unit.

3. The factual background, in brief, leading to the filing of instant appeal is as follows.

4. In the petition for determination of tariff in the year 2016-17 as well as for approval of ARR, the 2<sup>nd</sup> respondent had, *inter alia*, proposed to enable rapid industrialization in the State of Andhra Pradesh by extending concessional tariff to the industries in the category HT I(B) which have the cost of electricity charges more than 30% of the total production cost. Ferro Alloys units, PV Ingots and Cell Manufacturing, Polysilicon Industry and Aluminum Industry were sought to be included in the said category.

5. During the public tariff hearing, a representation was made on behalf of Chloro-Alkali Industry to include the same in HT I(B) category at par with Ferro Alloy units. Accordingly, the APERC in its tariff order for the said year, directed the distribution companies to constitute a Committee of Experts to identify the criteria / data on which basis a consumer could be categorized or classified as an energy intensive industry.

6. Vide memo dated 17.06.2016, the SPDCL constituted a Committee of Experts comprising of various senior personnel for the said purpose. Vide letter dated 18.07.2016, the APERC directed the distribution companies to refer the application of the appellant to the said Expert Committee. Vide letter dated 19.09.2016, the Committee sought certain information from the appellant with respect to the FY 2014-15 and 2015-16. The appellant submitted the consumption details alongwith certificate from cost accountant on 24.09.2016. It also furnished a copy of its 24<sup>th</sup> Annual Report to the SPDCL.

7. On 18.01.2017, the SPDCL filed petition bearing O.P. No.28/2017 before the 1<sup>st</sup> respondent Commission for approval of ARR as well as tariff

proposal for retail supply business for the FY 2017-18. In the petition, the SPDCL proposed to continue to include in the Ferro Alloys Industry, PV Ingots and Cell Manufacturing, Polysilicon Industry and Aluminum Industry in the category HT I(B) / energy intensive consumers and not to include any additional industry in this category for the FY 2017-18. It was, further stated that the criteria for a consumer to be included in HT I(B) category would be – (a) such consumer’s electricity cost is greater than 30% of the total expenditure and (b) load factor of such consumer is greater than 70%.

8. The appellant filed objections / suggestions dated 17.02.2017 to the said petition thereby objecting to its categorization as HT I(A) on the ground that Caustic Soda Industry also is a power intensive industry on account of cost of electricity charges constituting 76% of the cost of production.

9. The SPDCL filed its reply dated 25.02.2017 to the objections of the appellant wherein it was stated as under:-

*“As per the directions of the Honourable Commission, the licensee constituted a committee of experts to identify the criteria for classification of energy intensive industries. The committee decided to include **industries whose electricity cost is greater than 30% of the total expenditure and whose load factor is greater than 70% in the energy intensive category.** Subsequently, the committee has sought information from industries regarding the electricity cost, total expenditure and annual turnover. The committee has analysed the data various industries in the State. The*

*licensees have submitted the suo-motu report of the Energy Intensive Industries to the Honourable Commission. **The committee did not find any other industry that fits into this criterion and the licensee proposes to not include any additional industry in this category for FY 2017-18 and continue to include only Ferro Alloy Industries, PV ingots and cell manufacturer Polysilicon industry and aluminium industry in the category.***

**10.** Ultimately, the Commission passed an impugned order dated 31.03.2017 wherein it endorsed the proposal of SPDCL based on the report of the Expert Committee and rejected the request of the appellant for its inclusion in category HT I(B).

**11.** Accordingly, the appellant has approached this Tribunal by way of instant appeal.

**12.** We have heard learned senior counsel appearing on behalf of the appellant as well learned counsels appearing on behalf of the respondents, and have also considered the impugned order as well as the written submissions filed on behalf of the appellant and the 2<sup>nd</sup> respondent.

**13.** It is vehemently argued by learned senior counsel appearing on behalf of the appellant that the relevant portion of the impugned order is clearly non-speaking for the reason that there is no discussion on the contentions of the appellant as well as documents submitted by it. It is pointed out that the impugned order does not specify the reasons for not classifying the appellant

as an energy intensive industry. It is argued that even the Expert Committee set up by the 2<sup>nd</sup> respondent has also not considered the case of the appellant for its inclusion in category HT I(B) which is manifest from the relevant portion of the report quoted by SPDCL itself in Paragraph 5 of its reply to the grounds of appeal filed before this Tribunal. It is the submission of the learned senior counsel that neither the Committee nor the Commission has considered or adjudicated upon the contentions of the appellant for its inclusion in category HT I(B), and therefore, the impugned order cannot be sustained. It is his submission that the appellant has made a very good case for its categorization as energy intensive consumer which is manifest from the documents submitted by it to the Committee as well as to the Commission.

**14.** On behalf of respondents, it is argued that the approach of SPDCL for categorization of industries was based on analytic and empirical analysis of the Committee of Experts, and therefore, no arbitrariness or unreasonableness can be found in the same. It is submitted that on the basis of documents, facts, and data provided by the appellant, it was found that the appellant does not fulfill the criteria for being categorized as HT I(B) industry.

**15.** In order to analyze the rival submissions made on behalf of the parties, we find it necessary to quote the relevant portion of the impugned tariff order dated 31.03.2017 of the Commission, which is germane for this appeal, hereunder:-

***“j) Energy Intensive Industries***

*Sri P. Narendranath Chowdary, Managing Director, The Andhra Sugars Limited, Kovvur, W.G. Dist. Stated that Commission may consider Chloro Alkali Industries under HT-I(B) Energy Intensive Industrial category on par with Ferro Alloys Industries as 70% of the production cost is towards Electricity Consumption and power is also one of the raw materials.*

*DISCOMS may be directed to introduce load factor based tariff incentive for Chloro Alkali Energy Intensive Industrial as power will play major role in cost of production.*

*M/s Teamec Chlorides Ltd., Gundlapalli, Prakasam Dist., requested to consider their unit as Energy Intensive Unit as it fully meets the requirement of energy input cost higher than 30% of total cost of production.*

*Sri R. Kishore, Deputy Manager, M/s Amara Raja Batteries Ltd. requested that DISCOMs should be directed to look for options to provide low tariff for Energy Intensive Industries having high load factors.*

*Sri Rayalaseema Alkalies and Allied Chemicals Ltd., have requested to include Chloro-Alkali Industry in the Category of Energy Intensive Industries under HT Category I (B). The State shall always to treat equals to equal and any*

*discrimination will amounts violation of fundamental rights guaranteed under Article 14 of constitution of India.*

**Discoms Response:** *As per the directions of the Commission, the licensees constituted a committee of experts to identify the criteria for classification of energy intensive industries. The committee has decided to include industries whose electricity cost is greater than 30% of the total expenditure and whose load factor is greater than 70%, in the Energy Intensive Industries category.*

*Subsequently, the committee has sought information from industries regarding their electricity cost, total expenditure and annual turnover and analyzed the data of various industries in the State. As M/s Teamec have already sought HT Category-I(B) and submitted relevant documents, the industry was not asked to provide information in this regard. The licensees have submitted the suo motu report of the Energy Intensive Industries to the Commission.*

*The committee did not find any other industry that fits into these criteria and proposes to not include any additional industry in this category for FY 2017-18 and continue to include only Ferro-Alloy Industry in this category for FY 2017-18 and continue to include only Ferro-Alloy Industries,*



PV ingots and cell manufacturing, Polysilicon industry and aluminum industry in this category.

*Inclusion of any other new industry in the sub category during the financial year will lead to revenue loss which has to be transferred to some other category of consumers.*

However, industries who qualify the above criteria can send relevant documentary proofs to the licensees. The committee shall analyze such requests and if the industry meets the said criteria, they may be included in the Energy Intensive Industry in the subsequent tariff year.”

*(Emphasis supplied)*

**16.** As noted hereinabove, the relevant portion of the report dated 26.01.2017 submitted by the Committee of Experts has been quoted by the 2<sup>nd</sup> respondent SPDCL in Paragraph No.7 at page 5 of the reply to the grounds of appeal filed before this Tribunal and the same is reproduced hereunder:-

*“The Committee submitted its report on 26.01.2017, wherein it made the following recommendations:*

- To continue with existing industries as considered in Tariff Order for retail sales of electricity for FY 2016-17 under HT Cat-I(B) energy intensive industries i.e. Ferro Alloy Units, PV Ingots & Cell Manufacturing,*

*Poly Silicon Industry and Aluminium Industry in this category*

- *If any consumer represents for inclusion into HT Cat-I(B) duly fulfilling the following conditions, such industry (not consumer) will be considered for proposing to include in the next tariff filings providing that:*
  - *The total electricity charges of any industry is beyond 30% of expenditure of industry*
  - *The load factor shall be more than 70%*

*The Committee further opined not to include any other industry into HT Cat-I(B) energy intensive industries for FY 2017-18.”*

**17.** It is manifest from the perusal of the report of the Committee as well as the impugned order that neither the Committee nor the Commission has dwelled upon the contentions of the appellant as well as documents filed by it in support thereof regarding its inclusion in the category HT I(B). It was incumbent upon the Committee to study and analyze the facts, figures and documents of different industries including the appellant to see whether or not did they satisfy the necessary criteria for being classified as the energy intensive units. It has nowhere discussed the case of the appellant or any other industry specifically. It has simply stated that if any consumer represents for inclusion into the HT I(B) category the case of such consumer would be considered in the next tariff filing provided it fulfills the requisite

conditions. The report nowhere explains why the case of the appellant was not considered for inclusion in HT I(B) category for the FY 2017-18.

**18.** The Commission also, on its part, has fallen into error in founding its conclusion on the said report of the Committee alone without proceeding to analyze the contentions of the appellant as well as documents filed by it. It was obligatory on the Commission to scrutinize the claim of the appellant on the basis of facts / figures coming out of the documents submitted by it in order to decide whether it can be included in the category HT I(B). In not doing so, the Commission has clearly abdicated its essential responsibility towards consumers thereby causing acute hardship to them.

**19.** The impugned order of the Commission *prima facie* appears to have been passed in a casual and arbitrary manner, which is unacceptable. Manifestly, the order is bereft of specific reasons for rejecting the appellant's claim. It cannot be permitted to stand.

**20.** Hence, we are unable to sustain the impugned order of the Commission.

**21.** We have carefully perused the documents submitted by the appellant in support of its claim that its business qualifies as Energy Intensive Industry. The documents clearly show that appellant fulfils both the parameters specified by the Committee of Experts. Its electricity charges are more than 30% of its total expenditure and its load factor is more than 70%.

**22.** Hence, the impugned order is hereby set aside to the extent it has been impugned in this appeal, as noted hereinabove. The appeal is hereby

allowed. We direct inclusion of the appellant's manufacturing units in category HT I (B) Energy Intensive Industry for the year 2017-18.

**Pronounced in the open court on this the 31<sup>st</sup> day of May, 2024.**

(Virender Bhat)  
Judicial Member

(Sandesh Kumar Sharma)  
Technical Member (Electricity)

√  
REPORTABLE / ~~NON-REPORTABLE~~

*tp*