

Sub : In the matter of providing grant of relief under Force Majeure condition under the clause 11.2 of the M.P. Electricity Supply Code, 2004

ORDER

(Date of hearing: 24th September, 2013)

(Date of order: 26th September, 2013)

M/s Vaishnav Fibre Ltd.,
9, Royal House G-1/A,
Press Complex, M.P.Nagar,
Zone-1, Bhopal-462 011

- Petitioner

V/s

MP Madhya Kshetra Vidyut Vitaran Co. Ltd.,
Nishtha Parisar, Govindpura, Bhopal

- Respondent

Shri S.J. Ajmera, Chairman of the petitioner company appeared on behalf of the petitioner.

Shri R.K.Sharma, SE(O&M), Rajgarh and Shri C.K.Valeja, Advocate appeared on behalf of the respondent.

2. The petitioner, M/s Vaishnav Fibre Ltd. has filed this petition for seeking review of the Commission's order dated 22.06.2013 in petition no. 26/2013 which was filed for getting relief under Force Majeure condition of clause 11.2 of the M.P. Electricity Supply Code, 2004.

3. **Facts of the case:**

(a) M/s Vaishnav Fibre Ltd., Pilukhedi is an HT consumer of respondent with a contract demand of 1100 kVA at 33 kV. The petitioner is a paper mill which requires a heavy quantity of water for processing and manufacturing Kraft paper.

(b) By order dated 15.01.2013 under "मध्यप्रदेश पेयजल परिरक्षण अधिनियम 1986 तथा संशोधन अधिनियम 2002", the Collector, Rajgarh had prohibited withdrawal of water for irrigation, industrial, commercial and other such uses except for drinking and hygiene purposes.

(c) On 18.02.2013, the HT connection to the petitioner was disconnected on account of non-payment of the dues outstanding as per bills issued by the respondent. On 19.02.2013, the petitioner had applied to the respondent for reduced supply under Force Majeure clause 11.2 of the M.P. Electricity Supply Code, 2004. The respondent declined the aforesaid request.

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- (d) Aggrieved by the above, the petitioner filed a petition no. 26/2013 before the Commission. The Commission found that the contention of the petitioner that water could not be arranged due to the aforesaid restrictions by the Collector was valid. The Commission also noted that the Force Majeure conditions after the date of disconnection under clause 11.2 of the M.P. Electricity Supply Code, 2004 could not be invoked. The petition was, therefore, dismissed vide order dated 22.06.2013.
- (e) The petitioner has filed this review petition on the following grounds:
- (i) The Ombudsman's order dated 17.06.2013 regarding change in contract demand to 1000 kVA w.e.f. December, 2011 was in favour of the petitioner. The disconnection of electricity on 18.02.2013 was against disputed arrears and the dispute was decided in favour of the petitioner. Therefore, the disconnection was unjust and illegal. Thus Ex-facto the consumer remained connected on 18.02.2013.
 - (ii) The petitioner has cleared all the bills till October, 2012 and the respondent has illegally disconnected power supply on 18.02.2013. Hence, the petition to grant relief under Force Majeure is admissible.
 - (iii) In its order dated 22.06.2013, the Commission took the view that "the contention of the petitioner that the required water could not be arranged this year due to aforesaid restrictions is valid."
- (f) In light of the above submissions, the petitioner has prayed the Commission to order the respondent to grant relief within permissible limits of contract demand at relevant voltage levels in view of clause 11.2 of the M.P. Electricity Supply Code, 2004 and to give interest on amounts to be credited due to reduction in contract demand and the proportionate amount of security deposit due to reduction in contract demand.

4. The matter was heard on 24.09.2013. Respondent made a written submission. During the hearing on 24.09.2013, the petitioner reiterated the contents of the petition and requested relief under Force Majeure conditions.

5. During the hearing, the respondent submitted that the local administration issued similar directives every year for non-withdrawl of water for irrigation, industrial, commercial and other such uses but water was arranged through other means and

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consumption was recorded. Also, the petitioner is not making payment of dues outstanding and was disconnected on 18.02.2013. The connection was reconnected on 22.06.2013 on the order dated 17.06.2013 passed by the Ombudsman. The petitioner did not make the payment of bills issued even on the basis of reduction in contract demand and adjustment of security deposit and hence the connection was again disconnected on 28.07.2013. During the hearing, Counsel for the respondent submitted copies of the judgements passed by the Hon'ble High Court and mentioned that this review petition cannot be entertained because the petitioner could not produce any document which satisfies the conditions for review of order i.e. either there is some error apparent on the face of the record or a new fact has emerged which could not be produced earlier. Counsel for the respondent also mentioned that a writ petition no. 10550/2013 was filed before the Hon'ble High Court Bench at Indore against the Ombudsman's order dated 17.06.2013. In its written submission, Counsel also mentioned that the order passed by Ombudsman on 17.06.2013 has since been modified by the order dated 27.08.2013. Hence, this review petition has no merit and may be dismissed.

6. On hearing the petitioner and the respondent and considering their written submissions, the Commission has noted that during the hearing on 18.06.2013 it was not possible for the petitioner to bring to the knowledge of the Commission the Ombudsman's order dated 17.06.2013. Subsequently, through the review petition, the petitioner submitted a copy of the aforesaid order dated 17.06.2013. Hence, this review petition was admitted as there was discovery of new material. However, by order dated 27.08.2013, the Ombudsman modified his order dated 17.06.2013 mentioning that it will not be applicable after 01.11.2012 and contract demand of 1100 kVA shall be effective from 01.11.2012 as per terms and conditions of the agreement dated 26.12.2012. As such, factum of disconnection on 18.02.2013 seems to have reappeared and Force Majeure conditions after 18.02.2013 under clause 11.2 of the M.P. Electricity Supply Code, 2004 cannot be invoked. Hence, this review petition is rejected.

7. The Commission has noted with concern that the petitioner is a consistent defaulter and

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should have settled his accounts with the distribution licensee. The petitioner is aware that Pilukhedi area is a water stressed area and if his industry is not viable, he should rework his requirement of contract demand and take necessary action.

For the distribution licensee, the Commission has already mentioned in its order dated 22.06.2013 that timely action for recovery of dues was not taken by it. This lethargic attitude should not be repeated in future. The Commission further directs that prompt action for disconnection of defaulting consumers on regular basis should be taken so that the consumers could take timely action for redressal of their grievances and take corrective measures.

Ordered accordingly.

(Alok Gupta)
Member

(A.B.Bajpai)
Member

(Rakesh Sahni)
Chairman