

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

ORDER

(Date of hearing: 18th June, 2013)

(Date of order: 22nd June, 2013)

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

V/s

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

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 Sunil Khare, GM, O/o CGM(BR) appeared on behalf of the respondent.

2. The petitioner, M/s Vaishnav Fibre Ltd. has filed this petition for seeking 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 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. On 15.03.2013, the respondent declined the aforesaid request. On 22.03.2013, the petitioner again made a request that the respondent declined. Hence, this petition.

(d) In its petition, the petitioner has submitted that non availability of water in river barrage is an ‘Act of God’ as it is due to shortfall in rains. Also, the order of the

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Collector, Rajgarh is an act of Government of Madhya Pradesh which is mandatory for the petitioner to obey. These conditions are beyond the petitioner's control and hence come under "Force Majeure".

(e) 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.

4. The matter was heard on 18.06.2013. Respondent made a written submission. During the hearing on 18.06.2013, the petitioner reiterated the contents of the petition and requested relief under Force Majeure conditions.

5. During the hearing, respondent submitted that non availability of water for industrial production is a foreseen event as water availability in Rajgarh district is low. The local administration issued similar directives every year for non-withdrawl of water for irrigation, industrial, commercial and other such uses. Also, the petitioner is not making payment of dues outstanding and is lying disconnected since 18.02.2013.

6. During the hearing, the Commission enquired from the petitioner whether such orders for restrictions in use of water were issued by the Collector, Rajgarh in previous years. The petitioner stated that almost every year orders for such restrictions were issued. In previous years, the restriction was made applicable in cases of withdrawl of water without the permission of the Collector. This year the restriction was imposed in all such cases except where permission was granted earlier. Hence, the required water could not be arranged this year due to aforesaid restrictions.

7. On hearing the petitioner and the respondent and considering their written submissions, the Commission has noted that the Pilukhedi is a water scarce area and orders for prohibition of withdrawl of water for industrial and other such uses under "मध्यप्रदेश पेयजल परिरक्षण अधिनियम 1986 तथा संशोधन अधिनियम 2002" are being issued almost each year. Under such circumstances, the industries are required to arrange water for industrial uses from other sources. However, this year the restriction was imposed in all such cases except where

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permission was granted earlier. Hence, the contention of the petitioner that the required water could not be arranged this year due to aforesaid restrictions is valid. In the instant case, the petitioner is lying disconnected since 18.02.2013 on account of non-payment of dues. The petitioner applied for reduced supply on 19.02.2013 i.e. after the date of disconnection of supply. The clause 11.2 of the M.P. Electricity Supply Code, 2004 provides:

“ If at any time during the continuance of the agreement between the licensee and the consumer, **if the use of electricity is not possible fully or partially by the consumer due to Force Majeure conditions**....., the consumer may, on giving 7 days’ notice in writing to the licensee about such a situation, take a reduced supply.....”

8. The Commission has noted that the petitioner was already disconnected on 18.02.2013 before submission of request on 19.02.2013 under Force Majeure conditions. Hence, Force Majeure conditions after the date of disconnection under clause 11.2 of the M.P. Electricity Supply Code, 2004 cannot be invoked. The Commission also noted that as per the details submitted by the respondent, the petitioner was in arrears since July, 2012 (June, 2012 bill payable in July, 2012) and timely action for recovery of dues was not taken by the respondent as per clause 10.18 of the M.P. Electricity Supply Code, 2004.

9. In view of the above, the prayer of the petitioner cannot be accepted and the petition no. 26/2013 is dismissed.

Ordered accordingly.

(Alok Gupta)
Member

(A.B.Bajpai)
Member

(Rakesh Sahni)
Chairman