

THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION,
RANCHI

Case No. 04 of 2017

IN THE MATTER OF :An application for a direction upon the licensee to refund the estimated charge levied as supervision/survey charges and service tax from the petitioner for the purpose of grant of power supply.

AND

IN THE MATTER OF:

M/s Bharadwaj Steel Pvt. Ltd..... Petitioner
Versus
Damodar Valley Corporation & Another Respondents

P R E S E N T

Hon'ble Dr. Arbind Prasad, Chairperson

Hon'ble Mr. R.N.Singh, Member

Dated: 12th December, 2017

For the Petitioner : Mr. N.K.Pasari and Ms. Ranjana Mukherjee, Advocates
For the Respondents: Mr. Prashant Kumar Singh, Advocate

O R D E R

Advocates from both sides were heard at length.

From the records, documents and letters provided by the petitioner and respondent, the following facts emerge.

The petitioner has sought for a direction upon the respondent to forthwith refund an amount of Rs. 37,93,900/- realized from the petitioner as supervision / survey charges and service tax for the grant of power supply in terms of petitioner's application but having not supplied the power, as the amount realized beyond the provisions of Electric Supply Code Regulations is liable to be refunded, and also for a direction upon the respondents to grant interest for utilizing the money for a substantial period even after lapse of statutory period.

The submission of the petitioner in nutshell is that the petitioner M/s Bharadwaj Steels Pvt. Ltd., is a Re-Rolling Mill engaged in the manufacturing of M.S. Bar, with a production capacity of 600 M.T., at Mangrodih, Giridih, Jharkhand. In order to avail uninterrupted power supply during the production process, the petitioner thought it appropriate to avail the power supply from the

respondent, Damodar Valley Corporation (DVC), and submitted the application form in 2008 to the DVC along with the requisite application fee and the required documents in terms of the application for power supply, initially for 1 MVA, and after 1 year 4 MVA and after 2 years 7 MVA at 33KV from Giridih Substation of DVC. DVC accepted the application and informed the petitioner vide letter no. Compl. / PS / BSPL / GIRIDIH / - 3643 dated 11.02.2009 that DVC was facing shortage of power and would be able to supply power not before 2010-2011, which would be made available after building up of additional infrastructure at Giridih, and since the petitioner had agreed to wait for DVC power from 2010-2011, the application was to be forwarded to the concerned department for carrying out technical feasibility survey, outcome of which was to be intimated to the petitioner in due course.

Vide letter no. Compl. / PS / BSPL / Giridih / 2693 dated 06.11.2009 the petitioner was informed that since the respondent had received preliminary survey which required construction of 220 KV / 33 KV infrastructure at Giridih; the petitioner is required to deposit survey charge Rs. 27,500/- within fifteen days and further agreed to the terms and conditions for the supply of 7MVA power. A letter vide no. Compl. / PS / BSPL / Giridih / 2950 dated 31.01.2011 was sent to the petitioner conveying unconditional acceptance of the “Terms and Conditions “ for the supply of 5 MVA power at 33KV from Giridih substation of DVC for the existing plant, further informing that since the respondents had received the detailed survey report from the concerned department for the supply of power at 33 KV to the existing plant of the petitioner, the petitioner was liable to pay the estimated service charge and balance amount of survey charges amounting to Rs. 33,61,720/- and service tax amounting to Rs. 94,680/- within 30 days from the date of demand of respondent.

Once the petitioner unconditionally accepted the terms and condition and deposited Rs.37.94 lacs, DVC, vide its letter Compl. / PS / BSPL / Giridih - 1685 dated 28.06.2012, directed the petitioner to carry out the necessary construction for starting the power supply.

Vide letter no. BSPL/2013/001 dated 31.10.2013 the petitioner informed the respondent that after receiving the construction clearance, the petitioner started the construction work accordingly, but due to severe ROW problem in the line by the villagers, the construction work was stopped and could not be

restarted, thus leading to a financial crisis for the petitioner, as the banks had refused to provide any loan because of market downfall in steel sector. The petitioner informed the respondent that due to the inconvenience / problems caused by the villagers they were unable to construct the line for the power supply and since heavy financial crisis was being faced by the petitioner, the petitioner requested the respondents to refund the estimated charges and service tax paid by them.

The petitioner earlier had preferred an application before this Commission registered as Case No. 11/2015 for a direction upon the Respondent to refund the estimated charges levied as Supervision Charges and Service tax, deposited for the purpose of grant of power supply. During the pendency of the application certain developments took place. The respondent agreed to grant power supply to the petitioner at 5MVA by taping Jamua Feeder and the petitioner thought it appropriate to avail power supply and as such on the basis of the Supplementary Counter Affidavit filed, the petitioner withdrew its application filed before this Hon'ble Commission vide order dated 14.10.2015 but till today power supply to the petitioner has not been provided.

The Ld. Counsel for the petitioner submits that under similar circumstance, in the case of M/s Khalari Cement Limited vs. Damodar Valley Corporation, Jharkhand State Electricity Regulatory Commission vide order dated 13.10.2012 has been pleased to direct the licensee being Damodar Valley Corporation to calculate the man hours expended by the workers engaged by the petitioner in carrying out work related to estimation of the cost of the work to be constructed and its approval thereof and, after deduction of such costs, should refund the balance amount to the petitioner realized as supervision charges.

The judgment has obtained finality as it was never challenged by the respondent in any superior Court and was infact complied with by DVC. The above judgment is binding on the present coordinate bench for which he cited Hon'ble Supreme Court Judgment, (2016) 6 SCC 391 in which Supreme Court decided that another Coordinate Bench should not venture into the issues raised and even attempt to express any opinion on the merits of either of the views expressed. In Union of India & Ors. Vs. Bombay Tyre International Ltd. & Ors. And in Commissioner of Central Excise Vs. Acer Ltd. (2014) 9 SCC 407 Hon'ble Supreme Court decided that as observed by the Constitution Bench of

the Hon'ble Supreme Court in the case of Union Of India v. Raghuvir Singh, 178 ITR 548 (SC), the pronouncement of law by a Division Bench of the same or a smaller number of Judges and in order that such decision is binding, it is not necessary that it should be a decision rendered by a Full Court or a Constitution Bench of the Supreme Court and also cited (2001) 1 SCC 748 in which it was held that the subsequent Bench of tribunal could not have reopened the main judgment.

The Ld. Counsel for respondent submits that the petitioner has not approached this Hon'ble Commission with clean hands and has suppressed the material facts in a distorted manner and respondent emphasized on unconditional acceptance from the petitioner towards terms and conditions vide letter dated 31.01.2015 wherein under point 4, it is clearly mentioned that, if any back out at any stage, the charges already deposited by the firm would be forfeited and on the basis of the letter of unconditional acceptance of terms and conditions, the respondent issued Construction clearance wherein it is clearly noted that if you back out at any stage, the charges already deposited by the petitioner would be forfeited.

He further submits that the present petition is not exactly similar to M/s Khalari Cement Ltd. Vs DVC in as much as in the present case DVC is now ready to supply connection to the petitioner which he does not want to take anymore.

The Ld. Counsel to the petitioner submits that the unconditional acceptance of terms and conditions cannot run as estoppels against statute which is a settled proposition of law. He further submits that terms and conditions which DVC requires every applicant to sign is one sided and not as per the provisions of the relevant Electric Supply Code.

FINDINGS

We find the present case is of the nature decided by the Commission in M/s Khalari Cement Ltd. Vs Damodar Valley Corporation. The Commission has found in the said case that the stand of the DVC to forfeit the service charge / supervision charge even in the case the applicant withdrew the application as unreasonable. The basic principle remains the same that since DVC did not perform the supervision of construction of the line for which the service charge /

supervision charge was levied; DVC need to refund the amount after deduction of the survey charge related to work that the DVC actually did.

Actually it is ordered that DVC should calculate the man hours expended in carrying out the work related to estimation of the cost work to be constructed and its approval thereof and after deduction of such reasonable cost should refund the balance amount. DVC has submitted that it has already deposited to the relevant authority the service tax claimed from the petitioner and therefore it would not be proper to order, the refund of the amount deposited towards service tax.

As regards interest on the amount deposited, in the circumstances of the case, and also considering the fact no such payment was ordered in M/s Khalari Cement Vs DVC, we don't order payment of any interest.

With this the case is disposed off without any cost.

Sd/-
Member (Engg.)

Sd/-
Chairperson