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**Case No.28 of 2001**

amount from 22.2.1996 alleging deficiency in supply of power resulting in huge loss to the petitioner company.

2. The backdrop of the present petition is that the petitioner company, an Export Oriented Industrial unit manufacturing polished granite slabs entered into an agreement with erstwhile Orissa State Electricity Board (OSEB, for short) on 27.01.1996 for supply of power with a contract demand of 950 KVA at 33 K.V. Subsequently, the petitioner applied for reduced contract demand of 600 KVA and entered into a fresh agreement with Grid Corporation of Orissa Ltd. (GRIDCO, for short) on 28.05.1999 with provisions to supercede the earlier agreement and to have come into effect w.e.f. 01.05.1996 i.e. retrospectively. Alleging that there were frequent power cuts, supply at low voltage in violation of contractual agreements seriously affecting the production of the company and causing damages, the petitioner filed a writ Application in the High Court of Orissa vide O.J.C. No.10494 of 1996 claiming compensation. The petitioner also pleaded there inter alia that it is not liable to pay minimum charges as per clause 9.1.4 of the Industrial Policy Resolution, 1992 (IPR 1992) of the State Govt. due to power cuts and discontinuance/reduced supply of energy by the supplier company.
3. Considering the affidavit filed by the parties and after hearing at length, the Hon'ble High Court disposed of the said writ petition on 9.4.2001 with the following observations:

"17. The nature of the present dispute has already been discussed hereinbefore. It is not possible to decide the dispute in this writ jurisdiction. This Court is of the view that the petitioner should approach the Regulatory Commission for adjudication of his grievance.

18. So far as the claim for compensation is concerned, the petitioner is to approach the general Civil forum with its claim for compensation.

19. In the facts and circumstances stated above, this writ petition is disposed of with the following directions:

- i) The petitioner is given liberty to approach the Electricity Regulatory Commission constituted under the Orissa Electricity Reforms Act, 1995, with all necessary materials and particulars relating to the disputed bills and claim for exemption from payment on minimum charge basis within a period of three weeks from the date of this order.
- ii) If the petitioner raises the present dispute before the Electricity Regulatory Commission within the aforesaid period the Commission will determine the same in accordance with law within a period of three months from the date of reference/submission of grievance. The Commission will give opportunity of hearing to the petitioner, the licensee and allow the parties to adduce necessary evidence in support of their respective claims.
- iii) In case of any dispute arising after the date of this order the petitioner will have to raise dispute in accordance with paragraph 110 of the Supply Regulations, 1998.
- iv) The licensee will not employ any coercive measure for realisation of the demand raised in the impugned bills till disposal of the dispute by the Orissa Electricity Regulation Commission subject to the condition that the petitioner will pay a sum of Rs.5 lakhs to the licensee within a period of one month from the date of this order. In case the petitioner does not submit and/or raise the dispute before the Regulation Commission within the aforesaid period

and/or the petitioner fails to pay the aforesaid amount of Rs.5 lakhs within the prescribed period the licensee will be at liberty to take legally permissible steps to realise demand as per the impugned bills".

4. The petitioner company being aggrieved by the aforesaid order of Hon'ble single Judge preferred A.H.O. No.64/2001, which was disposed of on the following observations:

“Except the directions regarding payment of Rs.5 lakhs by the present appellant all other directions contained in judgement of the learned single judge shall remain unaltered. The appellant shall file its claim petition along with all other necessary materials before the Electricity Regulatory Commission after which the claim petition shall be registered as a case. xxxx xxxx xxxx xxxx. All other conditions are kept open.

5. Accordingly, the petitioner has filed the present application. But peculiarly the only prayer of the petitioner is for a direction to the respondent-CESCO to pay compensation as per annexed claim statement. The learned counsel appearing on behalf of the petitioner strenuously contended that in the final order passed on the A.H.O. 64/2001, there has been direction to the petitioner to file the claim petition and accordingly, he has filed the claim petition. Further, it is submitted that the benefit under IPR 1992 being a counterclaim on behalf of the respondent-CESCO, regarding disputed bills, the petitioner need not make any prayer therefor. But, we are not persuaded to accept the said contentions for the specific observations in the order in the A.H.O., that

“Except the directions regarding payment of Rs.5 lakhs by the present appellant all other directions contained in judgement of the learned single judge shall remain unaltered”.

The Hon'ble single Judge in paragraph 18 of the Judgment categorically observed that -

“So far as the claim for compensation is concerned, the petitioner is to approach the general civil forum with its claim for compensation”.

6. Thus, it has been contended on behalf of the respondents, that the present application not being in accordance with the direction of the Hon'ble High Court should be dismissed in limine. We are entirely in agreement with the contention of the respondent. The Hon'ble Single Judge had clearly and categorically given the direction that for the claim for compensation, the petitioner is to approach the Civil Forum. This direction has not been amended or altered in any way by the subsequent judgment in A.H.O. No.64/2001. Hence we find that the present application for compensation, as laid by the petitioner, is not maintainable in the present context. While recording this finding, we however would like to discuss another aspect of the dispute which the Hon'ble High Court has assigned us to adjudicate upon.
7. Now coming to the dispute of availability of the benefit of exemption under IPR 1992 to the petitioner and consequential disputed Bills, we are obliged under orders of the Hon'ble High Court to decide the same and we find that the matter can be decided on the materials available before us. Though the petitioner has not separately moved the Commission claiming exemption receipt from payment of minimum charges, he has claimed the same at para xvi of his petition before us.
8. The petitioner claims that in terms of clause 9.1.4 of IRP 1992, he has no obligation to pay minimum charge and to pay only for the actual quantity of energy consumed irrespective of contract demand. The relevant clauses of IPR 1992 read as follows:-

"9.1.4: Provided that during power cuts, discontinuance/ reduced supply, all industries irrespective of their contract demand shall not be liable to pay

minimum charge in accordance with the agreement, but shall only pay for the actual quantity of demand and/or energy consumed in lieu of the contract demand.

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**Explanation :**

Date of power supply means the date of power supply by the Orissa State Electricity Board for commercial production. In cases where power for construction and power for production are separately taken, the date of power supply will be arrived on the basis of power for commercial production”.

"23.1: No right or claim for any incentive under this policy shall be deemed to have been conferred merely on the ground of provision in this policy. The State Government may issue operational guidelines/instructions for administration of incentives contained in this policy. An industrial unit which considers itself eligible for any incentive, shall apply for the same in accordance with the operational guidelines/instructions and the same shall be considered and disposed of on merit."

9. It emerges from above that the benefit/incentive contemplated by the State Govt. in IPR 1992 not being a right or claim to be automatically conferred upon, the party claiming the incentive has to apply for it. But unfortunately, the petitioner in this case despite specific queries failed to produce any convincing material to establish that it had made any application in accordance with operational guidelines/instructions referred to in 23.1 of the IPR to avail of the benefit or that any certificate was issued in its favour by the appropriate authority granting the benefit. The petitioner heavily relied upon certain correspondences with the Director of Industries stating it to have been covered under IPR 1992. But those

are solicited replies and cannot be taken to be the certificate required under clause 23.1 of the IPR 1992.

10. It may also be mentioned here that the selfsame contentions were raised before the Hon'ble High Court and it has been categorically observed in paragraph 6 of the Judgement in O.J.C. No.10494/96 that :

"However, it is not clear whether the said certificates have been issued under paragraph 23.1 of the IPR 1992. It is thus for the petitioner to obtain necessary clarification from the Industry Department of the State Government whether the certificate dated October 19, 2000 has been issued under paragraph 23.1 of the IPR 1992 and if necessary to issue the necessary certificate under the aforesaid paragraph 23.1."

The petitioner seems to have made absolutely no effort as per the above observations or have failed therein. As observed earlier, no convincing evidence has been placed before us to show that the petitioner unit has been issued certificate under para 23.1 of IPR 92 which would have entitled it the benefit of exemption under paragraph 9.1.4 of IPR 1992. The clarificatory letter dated October 19, 2000 obtained from the Industry Deptt. of State Govt. cannot be treated as complete under para 23.1 of IPR 92 because the said solicited letter is not supported by any evidence that the industry had applied for certificate of exemption and that such a certificate had been issued. Once the industrial unit is not entitled to be exempted from minimum charges under IPR 92 due to deficiency in terms of para 23.1, the question of calculating the period of discontinuance/reduced supply in terms of para 9.1.4 of the IPR 92 does not arise.

11. Apart from the aforesaid latches on the part of the petitioner, as regards its genuine entitlement for the benefit, as per explanation to clause 9.1.4 of IPR 1992, in case where power for construction and power for production are separately taken, **the date of power supply will be arrived on the basis of**

**power for commercial production.** The petitioner in this case claims to have taken power supply on 22.02.1996. But being asked specifically, the petitioner failed to produce the initial Test Report of the Electrical Inspector, which would have shown the purpose of power supply and the confirmed date. On the other hand, the petitioner has produced a certificate from the Director of Industries dated 1<sup>st</sup> August, 1996 indicating that the petitioner is an Industry under large sector for manufacture of polished granite slabs and **its date of commercial production is 18.5.1996.** Thus the petitioner on its own document started commercial production w.e.f. 18.5.1996.

12. The specific requirement of the date of commercial production is for the reason that the IPR 1992 ceased to have any effect from 1<sup>st</sup> March, 1996 wherefrom IPR 1996 came into force. In IPR 1996, there was no facility for waiver of minimum charges. Thus, starting consumption of power for commercial production w.e.f. 18.5.96, the petitioner cannot claim benefit under IPR 1992. It cannot also be lost sight of that the petitioner company entered into a fresh agreement with GRIDCO on 28.05.1999, superseding the original agreement dt.27.01.1996 with a reduced contract demand and the agreement was given effect from 01.05.1996. It is rather strange that GRIDCO obliged the petitioner company to give retrospective effect of its agreement by as much as three years.
13. Keeping in view the facts and circumstances discussed above, we are of the view that the petitioner is not entitled to the benefit provided under clause 9.1.4 of the IPR 1992. Further as observed earlier, the petitioner's claim, as made for compensation, is to be before common Civil Forum as per direction of the Hon'ble High Court and hence, not maintainable in the present context.

Accordingly, the application is rejected.

**(H.S. SAHU)**  
**MEMBER**

**(D.K. ROY)**  
**CHAIRMAN**