

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Dated: March 2, 2006

Present:

**Hon'ble Mr.Justice Anil Dev Singh, Chairperson
Hon'ble Mr.H.L.Bajaj, Technical Member**

Appeal No.173 of 2005

Nava Bharat Ferro Alloys Ltd. Appellant

V/s

A.P. Electricity Regulatory Commission Respondent

Appeal No.174 of 2005

The A.P. Paper Mills Ltd. Appellant

V/s

A.P. Electricity Regulatory Commission Respondent

Appeal No.178 of 2005

Sri Dhanalakshmi Cotton & Rice Mills Pvt. Ltd. Appellant

V/s

A.P. Electricity Regulatory Commission Respondent

Appeal No.182 of 2005

Zuari Cement Ltd. & Anr. Appellants

V/s

A.P. Electricity Regulatory Commission Respondent

Appeal No.183 of 2005

Kusalava International Ltd. Appellant

V/s

A.P. Electricity Regulatory Commission Respondent

&

Appeal No.184 of 2005

Precot Mills Ltd. Appellant

V/s

A.P. Electricity Regulatory Commission Respondent

For Appellants : Mr. K. Gopal Chaudhary

For Respondents : Mr. P. Sri Raghuram, Standing
Counsel, &
Mr. Ananga Bhattacharyya for
APERC

JUDGMENT

Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson

1. These appeals have been preferred by the appellants against the order of the Andhra Pradesh Electricity Regulatory

Commission dated September 27, 2005, whereby every distribution licensee, captive power consumer, open access consumer and scheduled consumer have been directed to purchase electricity to the extent of at least 5% of their consumption of electricity from non conventional energy sources through open access within the area of distribution licensee.

2. The appellants are captive power consumers. They have their own generators, which generate electricity for captive consumption. The grievance of the appellants is that the commission without providing an opportunity of hearing to them have passed the impugned order which adversely affects them. The learned counsel for the appellants pointed out that the Andhra Pradesh Regulatory Commission (for short 'Commission') by a public notice dated May 28, 2005, proposed to specify the percentage of non conventional energy to be purchased by the distribution licensees out of the total consumption of electricity within their area of supply. The learned counsel alluded to the fact that the proposal was only

for the distribution licensees and the captive power consumers were not mentioned in the public notice at all. It was submitted that the appellants, therefore, did not have any opportunity before the commission to show that compelling the captive power consumers to purchase 5% of their electricity consumption from non conventional energy sources, will visit them with adverse consequences.

3. On the other hand, the learned counsel for the respondent submitted that there has been no violation of the principles of natural justice in as much as the Commission by a notice dated May 28, 2005 not only invited comments/suggestions from public with regard to the matter of purchase of electricity by the distribution licensees from non-conventional energy sources, but comments were also invited with regard to other matters raised in the discussion paper referred to in the notice, which, *inter alia*, included the question relating to the manner in which the captive consumers be asked to comply with the requirements. In this regard, the learned counsel invited our attention to para 6 of

the discussion paper in general and the following portion thereof in particular:

“In view of the foregoing, the Commission seeks views/ comments on the following issues; the list is not exhaustive and the respondents may feel free to offer their views on other relevant issues too, should they consider them to be relevant/ important:

1)

.....

5) *whether the obligation to purchase NCE power also devolves on third party (open access) consumers as well as the captive consumers? If so, in what manner should the third party consumers and/ or captive consumers be required to comply with this requirement?”*

The discussion paper, according to the learned counsel, was placed on the website of the commission.

4. We have considered the submissions of the learned counsel for the parties. We find that the Commission did not provide any opportunity to the appellants, to have their say in

the matter. This position clearly emerges from the public notice dated May 28, 2005. The public notice reads as under:

“ Pursuant to the provisions of Section 86(1)(e) of the Electricity Act, 2003, the Commission proposes to specify the percentage of Non-Conventional Energy to be purchased by Distribution Licensees, out of the total consumption of electricity within their area of supply.

A Discussion paper prepared by Commission on this matter is placed on the website of the Commission www.ercap.org. A copy of this Discussion paper will be supplied to interested persons on written request addressed to Secretary, APERC at the above address.

The Commission invites the comments and suggestions of all interested persons and other stakeholders on this matter. The comments/ suggestions may be sent by 5.00 p.m. on 20.06.2005 to the Secretary at the above address. The Commission will hold a hearing on this matter at 11.00 a.m. on 30.06.2005 in the Court Hall of APERC. The persons who are desirous of being heard by the Commission in person may mention so in their written response to this notice and attend the hearing on 30.06.2005. No further notice is required for attending the hearing.

*Dated 02.05.2005
Place: Hyderabad*

*Sd/
Secretary,
APERC”*

5. A reading of the public notice shows that the commission proposed to specify the percentage of non conventional energy to be purchased by the distribution licensees out of the total

consumption of electricity within their area of supply. But there was no similar proposal for the captive consumers spelt out in the notice. Merely, inviting views of public through discussion paper, placed on the website of the Commission, with regard to the question as to whether the obligation to purchase power from NCE sources also devolves on captive power consumers and if so, in what manner should the captive consumers be required to comply with the requirements, was not sufficient for directing the captive power consumers to buy at least 5% of their consumption from non conventional energy sources, when the notice did not propose to specify the percentage of electricity to be purchased from non conventional energy sources.

6. The impugned order clearly affects the interests of the Captive Power Consumers in an adverse manner. By the impugned order they are compelled to buy 5% of their total consumption of electricity from non conventional sources. The impugned order even affects a captive power consumer who may not be purchasing electricity from any outside source.

That means even when he does not need to purchase power, he is compelled to do so. Undoubtedly, the captive power consumers have been affected by the impugned order as it is against their interests.

7. It is well settled that an affected party must have its say before an adverse order is passed against it. Every order or decision affecting the interests of a party should be taken only after providing him with an opportunity of hearing. A person must know what case he has to meet and he must have an effective opportunity of meeting the same. Principles of natural justice are implicit in the statute even when they are not incorporated specifically therein. In case, no hearing is given to a person by a judicial, quasi judicial or an administrative authority before making an adverse decision against his rights/ interests, it would be violative of the principles of natural justice.

8. Natural justice is a concept which has succeeded in checking the tendency to act arbitrarily. Principles of natural

justice have helped in preserving the rule of law. In *National Textiles Workers' Union Vs P.R. Ramakrishnan*, (1983) 1 SCC 228, it was held that natural justice is not exclusively a principle of administrative law. It is a universal principle and is that part of the judicial procedure which is imported into the administrative process because of its universality. It will be a travesty of justice to deny natural justice.

9. In *Charan Lal Sahu Vs Union of India*, (1990) 1 SCC 613, the Supreme Court held that principles of natural justice are fundamental in the constitutional set up of this country and no man or no man's right should be affected without an opportunity to ventilate his views.

10. The Supreme Court in the case of *Udit Narain Singh Malpharia Vs Addl. Member, Board of Revenue, Bihar*, AIR 1963 SC 786, held that a tribunal, exercising a judicial or quasi-judicial function cannot decide against the rights of a party without giving him a hearing or an opportunity to represent his case in the manner known to law. The Supreme

Court, reiterating the principle, in the aforesaid case held as under:

“A tribunal, therefore, exercising a judicial or quasi-judicial function cannot decide against the rights of a party without giving him a hearing or an opportunity to represent his case in the manner known to law. If the provisions of a particular statute or rules made thereunder do not provide for it principles of natural justice demand it. Any such order made without hearing the affected parties would be void.”

11. In view of the aforesaid discussion, we are of the view that the Commission has failed to issue any notice to the Appellants like the one it had issued in respect of the distribution licensees. It also did not provide any opportunity to the appellants, who are captive power consumers, to represent their case. Since no notice, opportunity or hearing was given to them, the impugned order to the extent it affects them is violative of the principles of natural justice.

12. Accordingly, the impugned order of the Andhra Pradesh Electricity Regulatory Commission dated September 27, 2005 directing the Appellants to purchase electricity to the extent of at least 5% of its consumption of electricity from non

conventional energy sources is set aside. It will, however, be open to the Commission to issue a public notice to the captive power consumers on the lines of the notice dated May 28, 2005 issued in respect of the distribution licensees and to proceed according to law.

13. The appeals are allowed to the extent indicated above.

**(Justice Anil Dev Singh),
Chairperson**

**(H.L.Bajaj),
Technical Member**
