IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT HYDERABAD

W P. No. 11626 of 2021

Between:

Budidha Nagulu  
S/o Narsaiah Aged about 54 years Occ Agriculture R/o Yadagiripalli Village Yadagirigutta Mandal YadadriBhuvanagiri District

… Petitioner

AND

1. Telangana State Southern Power Distribution company limited, (A Govt of Telangana undertaking), Office at 6-1-50, Mint Compound, Hyderabad. Represented by its Chairman.

2. The Divisional Engineer, Telangana State Southern Power Distribution Company Ltd, Bhuvanagiri.

…Respondents

COUNTER AFFIDAVIT FILED BY RESPONDENTS

I , S/o. , Age: years, Occ: , do here by solemnly affirm and state on oath as follows

I am working as SAO Operation Vikarabad Circle and well acquainted with the facts of the case and I am authorized to Swear this affidavit on behalf of Respondents 1 & 2.

1. It is submitted that the present Writ Petition is filed to issue a Writ of Mandamus or any other appropriate writ order or direction i questioning the notice No SE/OP/ RR/S/SAO /JAO/HT/ D No 1232/ 2015 dated 15 12 2015 in Form A with demand of Rs 3 88 11 228/ and another notice No SE/OP/RR/S/SAO/JAO/HT/D No 1464/1516 dated 21 03 2016 in Form B with demand of Rs 4 70 78 020/ and the subsequent notice No SE/OPNKB/SAO/JAO/HTNKB/D No 19 20/2015 dated 02 08 2019 in Form C demanding Rs 8 00 67 563 issued by the 5th Respondent against the Petitioner company contrary to his own proceeding vide Lr No SE/OP/RR/S/SAO/JAO/HT/D No 164 dated 31 05 2014 as illegal unjust and unreasonable and set aside the same ii declare the proceedings issued by the 5th Respondent addressed to the 8th Respondent vide letter dated 18 03 2021 as illegal arbitrary and unreasonable and without jurisdiction and set aside the same Meanwhile the 5th Respondent has addressed a letter dated 18 03 2021 not to allow any transfer of properties in respect of Survey No 36 38 41 and 43 at Jakkepally Village in Yalal Mandal Vikarabad District without any authority or powers and the said proceedings are without jurisdiction on the part of 5th and 8th Respondents as illegal arbitrary unreasonable and the same is liable to be set aside iii further declare the letter dated 06 03 2021 issued by the 5th Respondent to third parties as illegal arbitrary unreasonable without jurisdiction and set aside the same and iv declare the memo dated 19 03 2020 issued by the 2nd Respondent rejecting the request of the petitioner as unjust and set aside the same.

2. In reply to para 2 & 3 of the affidavit, It is submitted as the petitioner has failed to pay the amounts which are due for unauthorized use of power, Unscheduled Interchange (UI) charges. Hence notices were issued as stipulated in the Electricity Act 2003, The APSEB (Recovery of Dues) Act 1984 and the APSEB of (Recovery of Dues Rules) 1985 and the Revenue Record Act. for drawing power of Telangana State Southern Power Distribution Company Limited (TSSPDCL).

3.It is submitted that the petitioner has taken Low Tention (LT) Category- 3B Connection bearing SC No.2418000206 and power supply was release on 02.02.2011 with contracted Load of 149HP. The petitioner had applied to NREDCAP for sanction of 6 MW capacity Biomass energy based Co-generation power project (Non bagasse) for generation of electric power for captive consumption and the same was sanctioned by NREDCAP vide proceedings No. NREDCAP\RBOL\Biomass Co-gen.\2012\2937 Dated 21.01.2012**.** The petitioner has requested TSSPDCL for utilizing 51% of the installed plant capacity for captive use and the balance capacity for export under open access on temporary basis until the expansion of distillery unit is completed. By letter dated 23-06-2012 and also to permit them to synchronize their plant to the grid.

It is submitted that vide letter dated 06.12.2012 the petitioner informed that the works proposed by TSSPDCL has been completed and Permit them for synchronization with grid. The petitioner has submitted an undertaking Dated 07.12.2012 wherein they undertake not to draw any power for startup power or for auxiliary consumption. The service connection was converted from LT service connection to High Tention (HT) connection, as the Horse Power of the Petitioner was more than HP and a new HT service number was given that is HT SC. No RRS-1630. The petitioner has also undertaken not to draw any power during synchronization or after synchronization, not to claim any charges for the inadvertent power pumped into the grid during the period of synchronization and the said power shall be treated as the power of TSSPDCL. The power plant of the petitioner synchronized on 30-12-2012.

It is submitted that as per the request of the petitioner vide memo dated: 06-11-2013 the CGM Commercial has accorded approval for convertion for the existing HT service for auxiliary consumption under HT Cat-II at 33KV level for start up power and auxiliary consumption. The power supply was converted as per the above referred memo of the CGM Commercial from HT Cat-1 to HT Cat-II, at 33KV level on 12-06-2014.

It is submitted that the petitioner is claiming after termination of HT service connection bearing RRS-1630. There were no dues hence the present demand is baseless. The petitioner is deliberately suppressing the facts at their request the CGM commercial vide memo dated: 06-11-2013 has converted the service connection from HT Cat-I to HT Cat-II, at 33KV level and retained the same service connection number RRS-1630. Due to the formation of new districts, new circles have been formed and HT service connection RRs-1630 is allotted to the Vikarabad District and renumbered as SC.No. VKB1630.

It is submitted that the Divisional Engineer, Operations Vikarabad has inspected the service connection on inspection in the month of june 2014 to take note of the meter reading, and found that the petitioner is drawing power to facilitate the power generation (Bio Mass co- generation) plant unauthorisedly without any sanction by the TSSPDCL. The same was informed to the ”Divisional Engineer, High Tention detection of pilferage of energy” who conducted inspection on 12-06-2014 and found that the co-generation plant of the petitioner was synchronized on 30-12-2012 without sanction of any startup and auxiliary power by TSSPDCL totally in contravention of the undertaking given by them. The petitioner was found drawing power from the grid unauthorisedly hence a notice dated 19-07-2014 was served on the petitioner Under Section 126 of the Electricity Act 2003 for unauthorized use of power and the petitioner was direct to pay a sume of Rs.117,21,158.00. The petitioner was further informed if they have any objection to the said notice they may make a representation to the Superintending Engineer/Assessment within 15 days from the date of service of the notice dated 19-07-2014.

It is submitted that the petitioner did not submit any representation and has not paid the demanded amount, hence the service connection bearing VKB1630 was disconnected on 30-07-2014 and terminated on 30-11-2014 as per the clause 5.9.4.3 of General Terms and Conditions of the Supply (GTCS).

It is submitted that the petitioner has without any sanction schedule power to Indian Electricity Exchange (IEX) from January 2013 to June 2014 without generating power and has collected the power cost from IEX by directly settling the same with them. The IEX as per the agreement entered in to between the Generator i.e., the petitioner herein and the Purchaser has scheduled the power as if it is generated by the petitioner and sold to the purchaser. The IEX acts as a exchange and settles the amount payable by the purchaser to the seller. The said conduct of the petitioner clearly demonstrates that without generating power the petitioner has entered the agreements with IEX to sell power and sold the power which is generated by the TSSPDCL. The IEX being under the impression that the petitioner is generating the power has drawn the power of TSSPDCL from the grid and scheduled the same to the purchaser.

It is submitted that the petitioner is liable to pay Unscheduled interchange charges (UI Charges) for scheduling the power without obtaining the NOC and approval of the power schedules by SLDC.

It is submitted that for scheduling the power without obtaining required approvals the UI charges have been assessed from 28-01-2013 to 01-06-2014 the petitioner paid the UI charges up to 22-12-2013 and after the said date has failed to pay the UI charges. The said conduct of the petitioner clearly demonstrates that they are liable to pay UI charges for violating the grid code. The total amount due towards UI charges up to 01-06-2014 is Rs.2,42,34,007. The petitioner was repeatedly issued the notices from the month of October 2013 to the month of August 2014.

It is submitted that as the petitioner failed to pay the amount the notices in form-A, B & C for issued under APSEB of (Recovery of Dues Rules) 1985. The final amount payable by the petitioner was mentioned in the form – C notice dated: 02-08-2019 for Rs.8,00,67,563 as on 31-07-2019 including such as for late payment.

It is submitted that the contention of the petitioner that the dues cannot be recovered as they are barred by limitation Under Section 56(2) of Electricity Act 2003 is incorrect. The Respondents have been continuously demanding the amounts payable by issuing the notices repeatedly from the year 2013 onwards and the petitioner has been received the said notices. The petitioner by letter dated 02-03-2019 has requested for withdrawal of the UI charges and Penalties and agreed to pay only a sum of Rs.1,17,31,158/- which was demanded in the provisional assessment notice dated 19-07-2014 issued under Section 126 of the Electricity Act 2003 in Installment basis.

It is submitted that the petitioner is having their office at H.No.8-2-120/86/A/4, Road.No. 14, Banjara Hills, hence a notice dated 20-11-2019 was issued to the petitioner to pay the total demanded amount of Rs.8,26,00,069 as shown in form-C if not the service connection bearing SC.No. A 5030269 situated at the above premises as treated as link service and disconnected as per clause 4.8.1 of regulation 7 of 2013 issued by TSERC.

It is submitted that another notice under the regulation 7 of 2013 was issued to M/S Venkata Padmavathi, Paddy Rice Mill of Agganuru Village of Yalal Mandal, Vikarabad District as directors of the Petitioner company and the said company are same.

It is submitted that the respondents in order to recover the dues have issued a letter dated Sub-Registrar, Seetharampet, Thandur Village, Vikarabad District, not to transfer the land of the petitioner in Sy.No. 36,38,41 & 43 of Jakkepally village and Yalal mandal, Vikarabad District. The petitioner has filed the present Writ Petition to set aside form-A, B & C issued under APSEB of (Recovery of Dues Rules) 1985 and the letter dated 18-03-2021 issued to the Registrar.

The total amount due as on 31-07-2021 is as under



The total amounting due Rs.9,53,97,998 (Rupees Nine Crores Fifty Three Lakhs Ninety Seven Thousand Nine Hundred and Ninety Eight only) including surcharge as on 31.07.2021, and the petitioner is liable to pay the entire amount.

It is submitted that all the allegations made by the petitioner that are not specifically dealt with herein are denied and the petitioner is put to strict proof of the same.

It is therefore prayed that this Honorable Court may Vacate the interim order dated: 29-04-2021 in WP.No.11626 of 2021, pleased be to dismiss the writ petition with costs in the interest of Justice.

Sworn and signed before me DEPONENT

On this day of July, 2021

At Hyderabad

Advocate: Hyderabad

VERIFICATION

I G. Srinivasulu, S/o. Krishnamurthy, Age: 45 years, Occ: ADE Operation Aler, Bhuvanagiri do hereby verify and declare that the facts stated in the above paragraphs of the affidavit are true to my personal knowledge, belief, information and also legal advise from my counsel.

Hence verified on this the day of July 2021 at Hyderabad.

DEPONENT

Counsel for the Respondent