**HIGH COURT FOR THE STATE OF TELANGANA**

**AT HYDERABAD**

**W.P.No.1258 of 2021**

Between:

1. MS Agarwal Foundries Pvt., Ltd.,(MDK-893)

Regd.Office, Rama Towers, R/o 5-4-83,

Mahatma Gandhi Road,

Secunderabad, Rep. by its Director,

Sri.Pramod Agarwal

1. Agarwal Foundries (MCL-620)

Pet basheerabad, Quthbullapur Mandal,

Ranga Reddy District, Rep., by its proprietor

Sri.Pramod Agarwal

1. M/s.Jeevaka Industries (P) Ltd., (MDK-1150),

Chegunta Village & Mandal, Medak District,

Rep., by its Director, Anil Agarwal

S/o.Mohan Agarwal, aged 54 years,

Plot No.27/A, MLA Colony, Banjara Hills,

Hyderabad-500034.

1. M/s.Suguna Metals Ltd.,(VKB-1247)

Survey No.141 to 143, Lakshmidevarapalli Road,

Narayanpur Village, Pargi Mandal,

Vikarabad District – 501501.

Rep., by its Director, Sri.Bharat Kumar Agarwal.

….. Petitioner

AND

1. The Southern Power Distribution Company Ltd., of Telangana state,

Rep., by its Chairman and Managing Director,

Mint Compound, Hyderabad

1. The Chief General Manager-IPC,

TSSPDCL, Mint Compound, Hyderabad.

1. Telangana State TRANSCO,

Vidyut Soudha, Hyderabad rep., by its

Chairman and Managing Director..

1. The State Load Despatch Centre (SLDC),

TSTRANSCO, Vidyuth Soudha, Hyderabad.

Rep., by it’s the Chief Engineer.

..Respondents

**COUNTER AFFIDAVIT FILED BY RESPODENTS NO. 3 AND 4**

I,S.V. Kumar Raju, S/o S. Rajaratnan, Aged: 57 years, Occ: Chief Engineer, SLDC, Hyderabad, do hereby solemnly affirm and state on oath as follows:

I am working as Chief Engineer, SLDC, Hyderabad, and well acquainted with the facts of the case and I am authorized to swear this affidavit. I have gone through the contents of the petition, and having understood the same, I hereby deny various allegations made against these respondents except those which are specifically admitted hereunder. The petitioner is put to strict proof of the same.

* + - 1. It is submitted that the writ petition bearing WP. No. 1258 of 2021 has been filed to issue a writ in the nature of a Writ of Mandamus or any other appropriate writ direction, order or orders declaring the action of the 1st respondent in rejecting the applications and the SLDC in not considering the Bilateral Open access applications of the petitioners as wholly arbitrary, illegal without jurisdiction, offending the principles of natural justice and void, and consequently direct the respondents to consider the bilateral open access applications of the petitioners and pass such orders .
      2. In reply to para 4 and 7 of the petition, the respondent submits that Petitioners are existing consumers of the TSDISCOM and want to purchase power in different mode of transactions i.e power purchase through power Exchange under collective transactions and power purchase through Bilateral transactions.

As per Central Electricity Regulatory Commission (Open Access in inter-State Transmission) Regulations, 2008, Clause 8.3 While processing the application for concurrence or ‘no objection’ or prior standing clearance, as the case may be, the State Load Dispatch Centre shall verify

1. existence of infrastructure necessary for time-block-wise energy metering and accounting in accordance with the provisions of the Grid Code in force, and
2. Availability of surplus transmission capacity in the State network.

**And as per TSERC Regulation 2 of 2005**

**Clause 3: Extent of application**

This Regulation shall apply to open access to intra-state transmission and distribution systems of licensees in the State, including when such systems are used in conjunction with inter-state transmission system(s).

**Clause 5.2**

For short-term open access transactions, the Nodal Agency for receiving and processing applications shall be the State Load Dispatch Centre (SLDC). The SLDC shall, however, allow short-term open access transactions only after consulting the concerned transmission and/or distribution licensee(s) whose network(s) would be used for such transactions.

As per the above clauses in the Regulation TSSLDC will process the application only after obtaining technical clearance from TSSPDCL, and accordingly No-Objection Certificate will be issued to purchase power through Power Exchange under collective transactions.

Respondent respectively submits that, M/s. Manikaran Power Limited as a trader on behalf of petitioners submitted an Inter State Short term Open Access applications under Bilateral transactions to draw power from M/s. Raipur Energen Limited (REL), Chhattisgarh State to M/s.MS Agarwal Foundries (Pvt) Limited, M/s. Agarwal Foundries, M/s. Jeevaka Industries(P) Ltd and M/s. Sugna Metals Ltd for the month of October-2020 & November-2020.

As per the CERC and TSERC regulations, the applications were communicated to TSSPDCL to furnish technical clearance. After obtaining technical clearance from TSSPDCL, TSSLDC has issued concurrence for the same.

M/s. Manikaran Power limited as trader submitted STOA applications on behalf of petitioners for the month of December-2020 to draw power from M/s. Raipur Energen Limited (REL). The applications were transmitted to TSSPDCL for furnishing the remarks. M/s. Manikaran Power Limited through letter has informed that the Bilateral applications of M/s.MS Agarwal Foundries (Pvt) Limited, M/s. Agarwal Foundries to draw power from M/s. Raipur Energen Limited (REL) were cancelled, and requested the cancelled Bilateral application quantum to collective transaction quantum and accordingly TSSLDC has issued NOC for the revised (enhanced) quantum to purchase power through Exchange.

M/s. Manikaran Power limited has submitted STOA applications on behalf of petitioners for the month of Januray-2021 to draw power from M/s. Raipur Energen Limited (REL). The applications were transmitted to TSSPDCL for furnishing the remarks for January-2021month. TSSPDCL has communicated that the applications were rejected, accordingly TSSLDC has informed to the petitioner that the applications are not considered.

Respondent respectively submits that, as per the Section 31of Electricity Act, 2003, the State Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in a State,and responsible for carrying out real time operations for grid control and despatch of electricity within the State through secure and economic operation of the State grid. Accordingly SLDC issues ‘No-Objection certificate’ to the petitioner, after obtaining technical clearance from TSSPDCL.without obtaining Technical Clearance from Discom, if TSSLDC issues NOC, it may lead to endangering of the security of the Grid and also against to the Regulations.

* + - 1. It is submitted that M/s. Manikaran Power limited has submitted applications on behalf of petitioners for the months of February-2021 to draw power from M/s.Raipur Energen Limited (REL) and the same are transmitted to TSSPDCL for furnishing remarks.

TSSPDCL has issued technical clearance to M/s. Manikaran Power limited for the month of February -2021, and accordingly the TSSLDC has issued concurrence for the Bilateral transactions.

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 pleased be to dismiss the writ petition with costs in the interest of Justice.

Sworn and signed before me DEPONENT

On this day of April, 2021

At Hyderabad

Advocate: Hyderabad

VERIFICATION

I,S.V. Kumar Raju, S/o S. Rajaratnan, Aged: 57 years, Occ: Chief Engineer 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 advice from my counsel.

Hence verified on this the day of April, 2021 at Hyderabad.

DEPONENT

Counsel for the Respondent