IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT HYDERABAD

IA.NO. of 2021

IN

W.P.No. 2500 of 2021

Between:

M/s Kakatiya Cement Sugar and Industries Ltd  
110440/1 GURUKRUPA Ashok Nagar Hyderabad500 020 rep by its Managing Director Sri P Veeraiah S/ o Late Sri P Venkateswarlu

… Petitioner

AND

1. The State of Telangana   
represented by its Principal Secretary Energy RES Department at Secretariat Hyderabad

2. The Telangana State Transmission Corporation Ltd  
Vidyuth Soudha Somajiguda Hyderabad Represented by its Managing Director

3. The Telangana State Southern Power Distribution Company Limited  
Mint Compound Hyderabad rep by its Managing Director

4. The Telangana State Northern Power Distribution Company Limited  
Vidyut Bhavan Nakkalagutta Hanmakonda Warangal District represented by its Managing Director

5. The Chief General Manager Rev  
Telangana State Southern Power Distribution Company Limited Mint Compound Hyderabad

6. The Superintending Engineer  
Operation Circle TSSPDCL Jammiguda Suryapet Suryapet District

…Respondents

COUNTER AFFIDAVIT FILED BY RESPONDENT No.

I, S/o. age: years Occ do hereby solemnly affirm and state on oath as follows:

I am working as and as such I am well acquainted with the facts of the case and authorized to swear this affidavit on behalf of other Respondents.

1. In reply to para 3 to 8 it is submitted that the petitioner company has set up a non-conventional energy plant with a capacity of 16.7 MW with Bagasse based co-generation Power Plant for Captive purpose and sale to Transco. The petitioner company has entered captive power wheeling agreement and purchase agreement separately with the 2nd respondent company.

Consequent to the formation of Electricity Regulatory Commissions as per the provisions of the Indian Electricity Act 2003, the Electricity Regulatory Commission has approved the rates of wheeling losses in kind and wheeling/transmission charges in cash from time to time w.e.f. financial year 2002-03. Consequent to the levy of wheeling charges both in cash and kind as approved by the Electricity Regulatory Commission vide Tariff orders, the petitioner filed the Writ Petition before the Hon’ble High Court and obtained the directions to collect the wheeling charges as mentioned in the captive wheeling and power purchase agreement.

2. It is submitted that the said order of the Hon’ble High Court was challenged before the Hon’ble Supreme Court of India by the respondent company. The Hon’ble Supreme Court of India allowed the Special Leave Petition bearing SLP No.4569/2003 and batch cases on 29th November 2019 and upheld the powers of State Electricity Regulatory Commission in fixing the wheeling charges. Based on the said judgment a Demand notice for payment of Rs. 42,22,23,128.00 vide Lr.No.SE/OP/SAO/AAO/JAO/HT/D No.431/1/2020 dt.27-06-2020 was served on the petitioner to pay the demanded amount within 30 days. But the petitioner company has failed to pay the demanded amount and has violated the Judgment of the Supreme Court of India.

3. It is submitted that the petitioner Company has also failed to install the Data Acquisition System (DAS) as per the notice bearing Lr.No. CE/Comml& RAC/SE/C/DE/CAE/F/Kakatiya/D No.153/19 dt.31.05.2019 in spite of granting much time.

**4.** In reply to para 9 to 15 it is submitted that the Interim Orders passed by this Honourable High Court in various other writ petitions filed by the Petitioner company were complied with by providing wheeling and banking facility to the petitioner. As per the powers conferred by Clause (ZP) of Section 181 read with clause (h) of Section 86 of the Electricity Act 2003, the Telangana State Regulatory Commission (TSERC) framed Regulation of Grid code for the State of Telangana in 2018 i.e. “TSERC State Electricity Grid Code Regulation 2018” applicable to all users of the Grid in the intra-state transmission system which also includes the petitioner. The State Grid code was framed duly providing the rules, guidelines and standards to be followed by various users of the Grid in the intra-state transmission system to plan, develop, maintain and operate the intra-state transmission system in the most secure, efficient, reliable and economic manner.

As per Regulation No.3, Sub-clause 3.1 (iii) of Grid code, the Regulation is applicable to all users of the intra-state transmission system and they are required to abide provisions of the Regulations.

As per Sub-clause 18.6 of the Grid code, the generators including captive/co-generation plants shall arrange to provide online data to the State Load Dispatch Centre (SLDC) by installing suitable RTUs/SCADA facility at their cost. They are called Data Acquisition System (DAS).

Since SLDC has to operate the intra-state transmission system in a secured, efficient and economical manner, it requires monitoring the power flows in the transmission network under normal and abnormal conditions by acquiring the information on real time basis through Data Acquisition System (DAS).

Therefore, notice dated 20-04-2018 was issued directing the peitioner vide Lr.No. CE (Comml)RAC/SE/C/DE/C/ADE-II/F.Kakatiya/D No.303/18 Dt.20-04-2018 to install suitable Data Acquisition System (DAS). The petitioner Company failed to install the required DAS Mechanism in spite of the several requests of this Respondent Company. Consequently, the wheeling facility from the Petitioners Co-generation power plant at Peruvancha village, Khammam District situated within the operating limits of The Northern Power Distribution Company of Telangana (TSNPDCL) was interrupted. However the regular power supply to the petitioners cement industry located in Suryapet is being continued by the Respondent Company.

5. In reply to para 16 itis submitted that the power consumption of the Petitioner industry has gone up during the financial year 2019-20. As per Regulation No.6 of 2004 para No.6 (1) & (2) and as per clause 5.3.1 of General Terms and Conditions of Supply (GTCS) the Additional Consumption Deposit required for the financial year 2020-21 was arrived as Rs.3,04,44,672/- but whereas the consumption deposit of the petitioner with this Respondent company available is only Rs.1,71,48,960/- Hence, a demand notice was issued to the Petitioner HT Service to pay the balance amount of Rs. 1,32,95,712/- towards the Additional Consumption Deposit vide letter dated 01-06-2020. The petitioner is liable to pay the said amount. The Petitioner has filed the Writ Petition bearing WP. No. 9477 of 2020 against the said demand and in compliance of the Interim orders of this Honorable Court, the said demand has been kept in abeyance.

6. In reply to para 17 it is submitted that as per APERC Regulation No. 6(3) of 2004 if there is any delay in payment of Additional Consumption Deposit , the consumer shall be liable to pay surcharge thereon at 18% per annum or at such rates as may be fixed by the Commission from time to time, without prejudice to the Licensee’s right to disconnect supply of electricity. As per the said Regulation, the applicable surcharge for delay in payment was levied in terms of above regulation every month.

**7.** In reply to para 18 to 21 it is submitted that as per the interim directions of this Hon’ble High Court in WP No.2500 of 2021, dt: 03.02.2021, the petitioner was heard through personal hearing on 02.03.2021. The representations dated 04.09.2020 and 11.01.2021 of the petitioner were examined and orders were passed vide Lr.No.SE/OP/SRPT/SAO/ JAO/HT/D.No.190/20 dt.02-03-2021 and communicated to the petitioner.

8. It is submitted that as the petitioner power plant is located in Khammam district falling in the jurisdiction of Northern Power Distribution Company Ltd.(TSNPDCL), the petitioner energy produced is injected into the electrical network of Northern Power Distribution Company Lt. The Telangana Southern State Load dispatch Center (TSSLDC) is the nodal agency for inter DISCOM energy transfer. As the petitioner has not installed the required DAS, the TSSLDC is unable to procure the details regarding the quantity of power injected into the system by the petitioner. The energy produced by the petitioner will get transferred from TSNPDCL to the Southern Power Distribution Company Ltd. (TSSPDCL) by TSSLDC only if the petitioner make arrangement of the required communication system. The TSSPDCL has not received the energy produced by the petitioner from the network of the TSNPDCL for the above stated reasons.

As the TSSPDCL is not receiving the power scheduled by the petitioner through the network of the TSNPDCL as approved by TSSLDC the entire energy consumed by the petitioner is only the power drawn from the TSSPDCL hence the Current consumption (CC) bills are being issued to the petitioner company regularly for the entire consumed units ie., 23,65,740 during December 2020 and demand of 4194 KVA was drawn by the petitioner from the Respondent-3 company(TSSPDCL) alone during December-2020. Hence the petitioner company is liable to make payment as per the CC bills raised by TSSPDCL. But, the petitioner had deducted the 21,66,540 units and demand of 3001.46 KVA unilaterally from the recorded consumption and made the payment for 1,99,200 units and demand of 3984 KVA to Respondent-3 company(TSSPDCL) totalling amounting to Rs.26,52,560/- against the demand of Rs.1,53,04,841/-. As the energy adjustment of 21,66,540 units claimed by the petitioner is not received by TSSPDCL, the contention of the petitioner for adjustment of same in the bills to the petitioner is not tenable. The bills raised by the TSSPDCL are correct in nature and therefore the petitioner is liable for payment of the same.

9. It is submitted that the Honorable High Court by order dated 03-02-2021 in WP. No. 2500 of 2021 has granted interim stay as prayed for including disconnection of power supply to the petitioner company. The petitioner is liable to pay huge amount as demanded in the bills and if the orders dated 03-02-2021 in WP. No. 2500 of 2021 are not vacated it will cause irreparable loss and injury to the Respondent company.

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 be pleased to vacate the interim orders dated 03-02-2021 in WP. No. 2500 of 2021 and dismiss the writ petition and be pleased to pass such other orders as this Honorable Court deems fit and proper in the circumstances of the case.

Sworn and signed before me DEPONENT

On this day of March, 2021

At Hyderabad

Advocate: Hyderabad

VERIFICATION

I S/o. age: years, Occ: , 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 March, 2021 at Hyderabad.

DEPONENT

Counsel for the Respondent.