IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

W. P. No. 6606 of 2021

Between:

1) M/s Suguna Metals Ltd.,(VKB1247)

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 Limited of

Telangana State, rep. by its Chairman & Managing Director, Mint Compound, Hyderabad, Telangana State.

1. The Chief General Manager-IPC, TSSPDCL, Mint Compound, Hyderabad.
2. Telangana State TRANSCO,

Vidyut Soudha, Khairatabad, Hyderabad Rep by its Chairman and Managing Director,

1. The State Load Dispatch Centre, (SLDC),

TSTRANSCO, Vidyut Soudha, Hyderabad, Telangana State. Rep. by its Chief Engineer.

...Respondents

COUNTER AFFIDAVIT FILED BY RESPODENTS NO. 1 and 2

I, Sri. P. Krishnaiah, S/o P. Ramulu, age: 57 years, Occ: Chief General Manager/IPC & RAC do here by solemnly affirm and state on oath as follows:

I am working as Chief General Manager/IPC & RAC (Respondent 2) and as such I am well acquainted with the facts of the case. I am authorized to swear this affidavit. I am also authorized to file this affidavit on behalf of Respondents 1.

1. It is submitted that the writ petition bearing WP. No. 6606 of 2021 is filed praying 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 for the Month of February & March-2021 and the SLDC in not considering the Bilateral Open access applications of the petitioner as wholly arbitrary, illegal without jurisdiction, offending the principles of natural justice and void, and consequently to direct the respondents to consider the bilateral open access applications of the petitioner and pass such other and further orders as this Hon’ble High Court deem fit and proper in the facts and circumstances of the case.
2. In reply to para 3 it is submitted that the petitioner M/s Suguna Metals Ltd (VKB-1247) is Regular HT consumer of TSSPDCL availing supply at 132 KV Voltage Level under HT Cat-1A having Contracted Maximum Demand of 30.99 MVA.
3. The averments of paragraph (4&5) of the Affidavit under reply being substance of Section 2(1), section 5 of Central Electricity Regulatory

Commission (Open Access in inter-State Transmission) Regulations, 2008 do not call for reply.

1. It is submitted that the procedure for providing feasibility for allowance of Open access to an applicant, is laid down in Clause 3 of Central Electricity Regulatory Commission (Open Access in inter- State Transmission) Regulations, 2008, and the same is extracted below:

*“3. subject to any other regulations specified by the Commission, the long-term customer shall have first priority for using the inter-State transmission system for the designated use. These regulations shall apply for utilization of surplus capacity available thereafter on the inter- State transmission system by virtue of-*

1. *Inherent design margins;*
2. *Margins available due to variation in power flows; and*
3. *Margins available due to in-built spare transmission capacity created to cater to future load growth or generation addition:”*
4. It is submitted that the procedure to obtain the concurrence of the SLDC is laid down in Clause 8 of Central Electricity Regulatory Commission (Open Access Inter State Transmission ) Regulation 2008 and the said clause has been amended by the Central Electricity Regulatory Commission (Open Access in inter-State Transmission) (Amendment) Regulations, 2009. As per clause 8 (b), at the time of

processing the application the following requirements shall have to be fulfilled by the SLDC. Clause 8 (b) is extracted here under:

*“b) 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 the following, namely-*

* 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.”*

1. It is submitted that, as per clause of 3 of the APERC (Terms & Conditions of Open access to Intra-state Transmission and Distribution Networks) Regulations 2 of 2005 *“the regulations 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 systems”* and as per clause 5.2 of the said regulation

“*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*

*Provided that for short-term transactions with duration of less than one week, the SLDC may not consult the concerned licensees for permitting such transactions. The SLDC and Licensees shall devise procedures for coordination among themselves for allowing such short- term transactions*

1. It is further submitted that in case, any consumer is intending to avail open access power under Inter State STOA, feasibility has to be verified at various levels, Viz., Verification of Inter State and Intra State transmission and distribution spare capacity, Margins availability due to variation in power flows, Verification of power line capacity, Verification of Sub Station feasibility, Verification of metering provisions as per CEA norms at the consumer end to avail open access power, Verification of Compatibility Check of the installed ABT meters with the EBC Software. It thus becomes clear that verification of feasibility is a time consuming and cumbersome process.
2. In reply to Para (6) of the Affidavit, it is submitted that TSSPDCL has been communicating the technical clearance towards the Interstate collective transactions applied by the petitioner regularly to the Nodal Agency (TSSLDC respondent No. (4)). The Petitioner herein have applied for Bilateral Transactions from M/s Raipur energen Limited, Chhattisgarh for the month of Oct-20 & Nov-20 through the trader M/s

Manikaran Power Limited and the same were routed to this office through mails. These respondents upon receiving the mail, have carried out the technical feasibility study and found that, the transactions were technically feasible and the same was communicated to CE/SLDC/TSTRANSCO (4th Respondent).

1. It is further submitted that, for the month of Dec-2020, the application filed by the said petitioner for Short term Open access through bilateral transactions from M/s Raipur energen Limited, Chhattisgarh through the trader M/s Manikaran Power Limited were routed to this office by the Nodal agency SLDC requesting technical clearance from Discom. After carrying out the feasibility study for the month of Dec-2020, it was found that, the above said transaction was not feasible as there was huge load growth & saturation of distribution network with the 24 hrs agricultural supply, supply to the other categories and also supply to the recent Mission Bhagiratha Scheme, Lift Irrigation Scheme like Kaleeshwaram, Palamuru, Chevella– Pranahitha. The aforementioned projects of the Government have completely utilized the spare capacity of TSSPDCL interconnected grid network resulting in loading of the network to the maximum extent and the same was communicated to CE/SLDC/TSTRANSCO (4th Respondent).
2. M/s. Manikaran Power Ltd vide letters dated 26.11.2020 has requested CE/SLDC(Respondent no. 04) for cancellation of Inter-state STOA bilateral application on behalf of Petitioner and others stating that the said consumers( including petitioner) are willing to procure

the power from Power Exchange and for the same technical clearance was issued to the collective transactions.

1. It is submitted that, Interstate Bilateral application filed by the petitioner for availing Open Access Power from M/s Raipur Energen Limited, Chhattisgarh was approved for the month of Feb-2021 only, based on the orders of Hon’ble High Court of Telangana in W.P.1258 of 2021 but the Interstate Bilateral application of the petitioner for availing Open access power from M/s DB Power Limited were rejected in view of the reasons stated at Para(9) of the Counter.
2. In reply to Para (12), it is submitted that, based on the above mentioned reasons, the allegations made by the petitioner stating “the action of 1st respondent in rejecting the applications for the month of February &March-2021 is wholly arbitrary illegal without jurisdiction, offending the principles of natural justice is untenable and baseless as the applications were not considered mainly due to non-availability of distribution corridor only.

13.It is submitted that this Hon’ble court by order dated 17-03-2021 has directed the official Respondents to consider afresh the application made by the petitioner on 11-01-2021 and 19-02-2021, requesting for open access, and pass reasoned orders thereon strictly in accordance with law and communicate the orders to the petitioner. In compliance of the above order the Representations of the petitioner have been considered by letter dated 09-04-2021. The request of the petitioner have been rejected as there is no “distribution corridor” available and also for the reason that the period for which open access is sought has elapsed.

It is submitted that all the allegations made by the petitioners 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 dismiss the Writ Petition with costs in the interest of Justice.

Sworn and signed before me

On day of April, 2021

at Hyderabad. DEPONENT

ADVOCATE::HYDERABAD

VERIFICATION

I Sri. P. Krishnaiah, S/o P. Ramulu, age: 57 years, Occ: Chief General Manager/IPC & RAC 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 day of April, 2021 at Hyderabad.

Counsel for the Respondent DEPONENT