IN THE HIGH COURT FOR THE STATE OF TELANGANA

AT HYDERABAD

WP.No. of 2021

Between:

1. The Superintending Engineer, Operation,

Medchal Circle, Telangana State Southern Power Distribution

Company Limited (TSSPDCL), Hyderabad

2. The Divisional Engineer, Operation,

Jeedimetla Circle, Telangana State Southern Power Distribution

Company Limited (TSSPDCL), Hyderabad

3. The Assistant Divisional Engineer, Operation,

Jeedimetla Circle, Telangana State Southern Power Distribution

Company Limited (TSSPDCL), Hyderabad.

4. The Assistant Accounts Officer, ERO,

Jeedimetla Circle, Telangana State Southern Power Distribution

Company Limited (TSSPDCL), Hyderabad.

5. The Assistant Engineer, Operation, Jeedimetla (IDA),

Telangana State Southern Power Distribution

Company Limited (TSSPDCL), Hyderabad

…Petitioners

And

1. Vidhyuth Ombudsman for the State of Telangana,

First Floor 33/11 KV, Sub Station,

Hyderabad Boats Club Lane,

Lumbini Park, Hyderabad.

1. M/s. Hyderabad Plastic

Plot No. 45/A

Phase - I, IDA

Jeedimetla, Hyderabad 500055.

…Respondents

AFFIDAVIT

I, T. Garuth Month Raju S/o. Krishnam Raju, Age: 50 years , Occ: Divisional Engineer, Operation, Jedimetla, TSSPDCL, Hyderabad do here by solemnly affirm and state on oath as follows:

I am working as Divisional Engineer, Operation, Jedimetla, TSSPDCL, Hyderabadand well acquainted with the facts of the case and I am able to depose on behalf of 1, 3,4 & 5 Petitioners.

1. It is submitted that the present Writ Petition is filed aggrieved by the orders of the 1st Respondent dated: 22-07-2020 in Appeal No. 01 of 2020-21 as unjust, illegal, arbitrary and without sanction of law and to set aside the same.
2. It is submitted that Low Tension (LT) service connection bearing SC. No. 013201400 with Contracted Maximum demand of 74 HP was released in the name of M/s. Srinivasa Coach Builders ie., the 2nd Respondent herein in the plot No. 22, Phase II, IDA Jeedimetla. The said service connection was granted under Category –IIIA Industrial.

3. It is submitted that the service connection was inspected on 03-03-2011 and it was noticed that the connected load is 115 HP but whereas the contracted load is only 74 HP Hence, development charges are proposed as per the General Terms and Conditions of Supply and the Electricity Act 2003 and the regulations framed thereunder. A provisional assessment notice for regularization of additional load of 41 HP was issued to the consumer and a demand for Rs. 82,000 was made for regularization of full load. The said amount was paid by the consumer on 13-05-2014 but the load has not been updated in Energy Billing System (EBS).

4. It is submitted that as per the General Terms and Conditions of Supply (GTCS) the unauthorized loads have to be regularized after payment of the provisionally assessed amounts and fixed charges are to be collected from the date of regularization of unauthorized loads. The demand towards fixed charges could not be raised as the loads have not been uploaded in the EBS.

5. It is submitted that in case of Low Tension category the fixed component is recovered in the name of “Fixed charges” levied in Rs. / KW and in case of HT Consumers it is levied in the name of “Demand Charges” in Rs. / KVA. The Fixed/ Demand charges shall be levied on the consumer to recover the fixed cost component of Power Purchase Cost payable to the Generators, Intra- State transmission cost payable to Telangana State Transmission Corporation (TSTRANSCO), Inter State Transmission Charges payable to Power Grid Corporation of India Limited (PGCIL), Wheeling charges of the DISCOMS i.e, TSSPDCL. The Fixed/ Demand Charges also include employee expenses, depreciation on assets, interest on loans, repairs and maintenance cost, and other administrative and general cost.

6. It is submitted that the Erstwhile APERC has approved the General Terms and Conditions of Supply (GTCS) vide proceedings dated 06-01-2006 and the GTCS is of Statutory nature. The Discoms have to follow the General Terms and Conditions of Supply in providing electricity connections and the charges to be levied from the consumers both industrial, commercial and domestic etc.

1. It is submitted that as per Clause 12.3.2 of GTCS if a consumer exceeds the Contracted Maximum Demand (CMD), the consumer is liable to compensate the petitioner company for the damages caused to the equipment and machines and shall be liable to pay penalties/charges which are collected in the Form of “Fixed Charges”. The Clause 12.3.2 reads as follows:

If at any time the Maximum Demand of an HT consumer exceeds his Contracted Demand or LT consumer exceeds the Contracted Load without prior approval of the Company, the consumer shall be liable to compensate the Company for all damages occasioned to its equipment or machinery if any, by reason of this default, and shall also be liable to pay the charges payable by him on account of such increase in demand or load and penalty, as prescribed by the Commissionfrom time to time, without prejudice to this right the Company may also cause the supply to consumer to be disconnected.

1. It is submitted that the 2nd Respondent was informed by a notice dated 18-10-2019 that a sum of Rs. 1,84,347/- is pending towards fixed charges from 03-03-2011 to till date and was directed to pay the said amount within 30 days from the date of receipt of this notice .

9. It is submitted that aggrieved by the said demand, the 2nd Respondent has filed the complaint before the CGRF bearing CG. No. 567/2019-20, Medchal Circle. The TSSPDCL has also filed a reply to the complaint stating that the service connection was provided with a contracted load of 74 HP but on the inspection conducted on 03-03-2011 it was noticed that the actual connected load is 115 HP. The 2nd Respondent has paid a demanded amount i.e., Rs. 61,500/- toward development charges and Rs. 20,500/- towards security deposit ie., totally Rs. 82,000/- from 03-03-2011 to till date.

10. It is submitted that the 2nd Respondent is liable to pay the fixed charges for the actual connected load of 115HP and as the load was not updated in the EBS the said amount could not be collected. After updation of the load in the year 2020 the fixed charges amounting to Rs. 1,84,437/- were reflected in the bills.

1. It is submitted that the CGRF by order dated 29-02-2020 in C.G.No.567/2019-2020, Medchal Circle has allowed the grievance of the petitioner in part and directed that the TSSPDCL is only entitled to collect the fixed charges on the additional load of 41 HP only for the period from December 2016 to December 2019.

12. It is submitted that aggrieved by the orders of CGRF the 2nd Respondent has filed an Appeal bearing No. 01 of 2020-21 before the 1st Respondent herein. The 1st Respondent by order dated 22-07-2020 has set aside the orders of the CGRF and held that the fixed charges levied are liable to be withdrawn.

Aggrieved by the orders of the 1st Respondent the present writ petition is filed on the following among grounds:

GROUNDS

I.) The orders passed by the 1st Respondent are contrary to law, against the provisions of Electricity Act and the Regulations framed there under hence fit to be set aside.

II.) The 1st Respondent failed to appreciate the fact that the fixed charges can be demanded for the entire period where the additional load was not updated.

III.) The 1st Respondent has wrongly held that the Appellants should have resolved the issue in respect of the total actual load of the subject service connection as mandated in Clause 12.3.3.2 (III) of GTCS.

IV.) The 1st Respondent should have appreciated the fact that the demand towards fixed charges can be raised for the entire period of the offence ie., 03-03-2011 to till the date of notice as per clause 12.3.2 of GTCS.

V.) The 1st Respondent failed to take note of the fact that the demand was raised in respect of fixed charges as per the General Terms and Conditions of Supply, The Electricity Act 2003 and the Regulations.

VI.) The 1st Respondent without any proof being placed by the 2nd Respondent to show that the said demand cannot be raised from 03-03-2011 to till date of the notice has wrongly held that the amounts towards fixed charges can be collected only for a period of three years ie, from December 2016 to December 2019.

13. It is submitted that the orders of the 1st Respondent cannot be sustained for the grounds raised above and the same has to be set aside. The additional load which was placed on the system by the petitioner has caused severe damage to the infrastructure and the same can only be compensated by paying the fixed charges.

14. It is submitted that these Petitioners have reliably learnt that the 2nd Respondent is approaching the 1st Respondent to initiate steps for not implementing the orders dated 22-07-2020 in Appeal No. 01 of 2020-21. The 1st Respondent is empowered to impose penalties as per the Telangana State Electricity Regulatory Commission (Establishment of Mechanism for Redressal of Grievances of the Consumers) Regulation 2015.

15. It is submitted that there is no forum provided to appeal against the orders of the 1st respondents to the Telangana State Southern Power Distribution Company limited (TSSPDCL) and only the consumer can approach the Vidyuth Ombudsman against the orders of the Consumer Grievance Redressal Forum. Hence the only remedy available to the petitioner is to approach this Honorable Court under Article 226 of the Constitution of India. The Petitioners has not been treated equally as that of the Respondent No. 2 and the same is violation of Article 14 of the Constitution of India.

16. It is submitted that against the orders of the CGRF bearing CG. No. 567 of 2019-20, the Appellants herein have filed Writ Petition bearing WP. No. 18986 of 2020 and the present Writ Petition is filed against the orders of the Vidyut ombudsman bearing Appeal No. 01 of 2020-21.

17. It is submitted that the petitioners have no other alternative or efficacious remedy except to invoke the Jurisdiction of the Honourable court by way of filling the Writ petition under Article 226 of the constitution of India.

18. It is submitted that the Petitioners have not filed any writ petition, suit any other proceedings before any court of law in respect of the relief sought for in this writ petitioner.

19. It is submitted that the 1st Respondent has power to impose penalties under Regulations 2.54, 2.55, 2.56 of Regulation 3 of 2015 for not implementing its orders.

Main Prayer: Under the above stated facts and circumstances it is therefore prayed that this Hon’ble High Court may be pleased to issue a writ, order or direction more particularly one in the nature of writ of certiorari by calling for the records and to quash the orders dated 22-07-2020 in Appeal No. 01 of 2020-021, as arbitrary, illegal unjust and contrary to the law and facts of the case and to quash the same and pass such other order or orders as this Hon’ble Court deems fit and proper in the circumstances of the case.

Interim Prayer:Pending disposal of the writ petition this Hon’ble Court may be pleased to stay the operation the orders of the 1st respondent 22-07-2020 in Appeal No. 01 of 2020-021 and to pass such other order or orders as this Hon’ble Court deems fit and proper in the circumstances of the case.

Sworn and signed before me DEPONENT

On this day of April, 2021

At Hyderabad

Advocate: Hyderabad

VERIFICATION

I, T. Garuth Month Raju S/o. Krishnam Raju, Age: 50 years , Occ: Divisional Engineer, Operation, Jedimetla, TSSPDCL, Hyderabad 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 Petitioners