

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD****W.P. No. 15222 of 2023****Between:**

M/s Green Power Technologies

... Petitioner

And

The State of Telangana and another

... Respondents

**JUDGMENT PRONOUNCED ON: 11.09.2023****THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : yes  
may be allowed to see the Judgment?
2. Whether the copies of judgment may be  
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to  
see the fair copy of the Judgment? : yes

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**SUREPALLI NANDA, J**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

**W.P. No. 15222 of 2023**

**% 11.09.2023**

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# M/s Green Power Technologies

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> Head Note:

! Counsel for the Petitioner : Mr K.L.B.Kumar

^Counsel for Respondents 1: G.P. for Energy

^Standing Counsel for respondent No.2: Mr A. Ravibabu

? Cases Referred:

1. (2022) SCC online SC 232
2. (2014) 9 SCC 105
3. (2014) 14 SCC 731

**HON'BLE MRS JUSTICE SUREPALLI NANDA****W.P. No. 15222 of 2023****ORDER:**

**Heard the Learned Counsel for the Petitioner, learned Government Pleader for Energy and the Learned Standing Counsel appearing on behalf of the 2<sup>nd</sup> Respondent.**

2. This Writ Petition is filed to issue a Writ of Mandamus by declaring the actions of Respondent No.2 in black listing the petitioner firm by issuing Letter Ref.no. TSREDCO/SE/SPVoff Grid Systems - PV/2018-19/2019/507, dated 14.08.2019 and also in seizing a sum of Rs.65,70,000/- by forfeiting the performance security deposits of petitioner firm as arbitrary, unlawful and unconstitutional and set aside all the actions and proceedings of Respondent No.2.

**3. The case of the Petitioner, in brief, is as follows:**

a) The Petitioner is the proprietor of M/s.Green Power Technologies and is engaged in the business of installation of domestic and commercial solar systems. Earlier through the petitioner firm, a bidding was placed in an e-tender for

supply, installation and commissioning of 1 KWp to 1000 KWp Solar PV GCRT power plants at various government buildings, in all over Telangana State for 10MW Capacity under CAPEX mode with the Respondent.no.2.

b) Accordingly, the tender was approved to the petitioner firm on 07.05.2016. Thereafter, the firm installed 98 number of 1KWP off Grid Solar spv plants in Adilabad and 44 in Karimnagar Districts totaling to 142 and completed all the works.

c) After installing the said solar plants in Adilabad and Karimnagar Districts, the 2<sup>nd</sup> Respondent has conducted an inspection and issued a vide Memo No.TSREDCO/SE/SPV Off Grid/Inspections/D.no:4614/2017-18, dated 19.02.2018 to the petitioner stating that, out of the 142 1KW Solar Systems, 96 Solar Systems are not available. The petitioner in reply letters vide no.GPT/PO/180, dated 13.08.2018 and 02.09.2018 stated that, all 69 number of 1KW Solar Plants are available in Adilabad District and the 2<sup>nd</sup> Respondent can depute Inspecting Officers to inspect all the systems.

d) On 17.09.2018, the 2<sup>nd</sup> respondent issued Memo No. TSREDCO/SE/SPVOffGrid/Inspections/D.No:5643/2017-18, deputing K.Rameshwararao, District Manager, Medak & Siddipet, V. Subrahmanyam, District Manager, Khammam and P. Peerya, Development Officer, Head Office, TSREDCO to inspect all the 96 1KWP off Grid Solar Spv Plants in coordination with the petitioner and submit the Inspection Reports by 24.09.2018.

e) Accordingly, in the month of October, 2018 the above said officers have inspected 69 number of 1KWP off Grid Solar Spv Plants in Adilabad District and some of the inspection photographs and documents were submitted to the 2<sup>nd</sup> Respondent, while they failed to submit the remaining reports.

f) On 07.01.2019, the petitioner received a second Notice vide Ref.no. TSREDCO/SE/SPV Off Grid/Inspections/2018-19/6174 issued by the 2<sup>nd</sup> Respondent stating that, 78 number of systems were not installed and subsidies were mis-utilized by the petitioner and thereby black listed the petitioner's firm

and all the performance security deposits of the petitioner which are available with 2<sup>nd</sup> Respondent were forfeited.

g) Subsequently, on 27.01.2019, the petitioner has issued a reply letter clarifying that total 59 solar systems were inspected by 2<sup>nd</sup> respondent authorities in the month of November, 2018 and the same number of systems are available as well as working in Adilabad District. However, the problem persisted only due to shifting of solar systems by beneficiaries to their neighbors, relatives and family friends and on knowing the same, the petitioner has relocated the solar systems to original beneficiaries again. The same situation arose in Karimnagar District and all 25 1KWP solar systems are available and working.

h) Thereafter, the petitioner requested the 2<sup>nd</sup> Respondent for re-inspection, as the beneficiaries are from Tribal areas and Thandas and they are shifting the solar systems without any intimation. The petitioner also requested to withdraw the Notice vide Ref. No.TSREDCO/SE/SPV Off Grid/Inspections

/2018-19/6174, dated 07.01.2019 and requested for re-inspection on or after 06.02.2019.

i) The 2<sup>nd</sup> respondent vide letter dated 14.02.2019 granted Ten (10) days' time to show the systems installed, otherwise the action taken vide Notice dated 07.01.2019 will remain. Accordingly, on two intervals i.e., from 17.02.2019 to 20.02.2019 and from 25.03.2019 to 29.03.2019 the inspection was conducted by 2<sup>nd</sup> Respondent authority and found 27 Solar Systems are installed and working in Karimnagar and submitted reports on 25.02.2019 and 29.03.2019.

j) Alongside, there are 53 Solar systems available in Adilabad and were working normally. However, the 2<sup>nd</sup> Respondent through letter vide Ref. no. TSREDCO/SE/SPV Off Grid Systems-PV/2018-19/2019/507, dated 14.08.2019, seized Rs.65,70,000/- of petitioner's amount by making false allegations of fraud and did not release the remaining due amounts to the petitioner.

k) As seen from the letters, dated 17.09.2018, 07.01.2019 and 14.08.2019 issued by 2<sup>nd</sup> Respondent, there are several contradictions as to the numbers of unavailability of solar

systems. It was first complained that there was shortage of 96 Solar systems, later in contradiction to their own versions, stated that 78 number of systems are not available.

l) The petitioner also submitted Tax Invoices to claim the amount, but the respondents intentionally did not release the bill amounts and in turn seized an amount of Rs.65,70,000/- out of Rs.1,09,41,9001/- which is pertaining to other works completed by the petitioner under separate tenders and also failed to release the balance amounts.

m) Due to improper inspection, enquiries and blacklisting of the petitioner firm not only by the 2<sup>nd</sup> Respondent but also recommending to MNRE and All SNA's across the country to blacklist the petitioner firm, the petitioner is thus unable to bid for any contract works with other government departments all over India, which is the source of livelihood and business.

n) On 26.05.2023, the 2<sup>nd</sup> respondent through his reply to the petitioner's representation dated 04.05.2023 informed that the matter is under investigation of CID Wing Hyderabad. Even on several occasions, the petitioner requested the 2<sup>nd</sup>



respondent to conduct fair and proper enquiry, but the 2<sup>nd</sup> respondent failed to do so. Being aggrieved by the actions of 2<sup>nd</sup> respondent, the present Writ Petition is filed.

**4. Vacate stay petition is filed by Respondent No.2 to vacate the interim order dated 26.06.2023 passed in this Writ Petition.**

**5. Counter Affidavit filed by the Respondent No. 2 is as follows:**

a) The Petitioner has entered into work agreement on 20.11.2015 with the 2<sup>nd</sup> Respondent to execute work in all districts of Telangana State. In view of the demand of installation of off grid power packs in State of Telangana, MNRE extended the sanction from 05.03.2014 to 31.03.2016. Accordingly, the Petitioner executed work in Adilabad, Karimnagar, Ranga Reddy, Nalgonda, Nizamabad and Warangal Districts.

b) The Petitioner, during the years 2015-16 and 2016-17, claimed and has drawn bills under MNRE CFA & State Government subsidy at Rs.90,000/- per system for 73

systems to the tune of Rs.65,70,000/- for implementation of supply and installation of 1 KWP Solar off grid systems for domestic use in Adilabad and Karimnagar Districts.

c) On receipt of Statutory Audit Report dated 24.02.2017 and 14.04.2017 for the years 2014-15 and 2015-16, it was found that large scale fraud and misappropriation of monies to the tune of Rs.6.25 crores in implementation of various schemes took place.

d) After taking into consideration the report of the Inspection Team, it was initially found that in Adilabad District 69 systems and Karimnagar 27 systems were not found at the corresponding location nor are traceable. Therefore, the 2<sup>nd</sup> respondent issued a letter dated 11.06.2018 addressing the Petitioner duly bringing to its notice about the fraud and requested the Petitioner to attend a Joint Inspection with 2<sup>nd</sup> Respondent Officers within 7 days, failing which the payments already made will be recovered from the Petitioner.

e) Further, Memo dated 21.06.2018 was also issued to K.Prakash EE/DM and D.Ashok Kumar, Ex. Project Director, TSREDCO, officers responsible for supervision and execution

of the Solar Power Plants to physically show the systems installed in coordination with System Integrators and TSREDCO. Upon verification it was found that 53 systems in Adilabad District and 20 systems in Karimnagar District (total  $53+20=73$ Nos.) are not available at the corresponding location.

f) As the petitioner did not cooperate for conduct of Joint Inspection in terms of Memo dated 11.06.2018, this Respondent issued a show cause notice dated 30.07.2018 calling for Petitioner's explanation as to why Petitioner should not be blacklisted and for recovery of subsidy amount as per MNRE guidelines within (7) days from the date of receipt of the show cause notice. In reply to the said show cause notice, the Petitioner vide letter dated 14.8.2018 stated that the installation of Solar SPV plants in Adilabad and Karimnagar District were executed through its agents and that during joint inspection, the agents/dealers of the Petitioner did not cooperate and requested for grant of one month's time for Joint Inspection. In letter dated 01.09.2018, this Respondent informed the Petitioner that (7) days' time is

granted from the date of the receipt of letter, failing which necessary action will be initiated against him.

g) On the same day i.e., 01.09.2018, the Petitioner addressed a letter to the 2<sup>nd</sup> Respondent to depute officials for joint inspection of the systems and the 2<sup>nd</sup> respondent in his memo dated 17.09.2018 directed the concerned District Managers, Medak & Siddipet and Khammam Districts to conduct a joint inspection.

h) As the Petitioner did not cooperate to participate in the joint inspection along with the officers of TSREDCO, the 2<sup>nd</sup> Respondent vide letter dated 07.01.2019, has Black listed the Petitioner and forfeited all the performance security deposits available with this Respondent apart from initiating legal action under law.

i) On receipt of the letter dated 07.01.2019, the Petitioner addressed a letter on 27.01.2019 requesting to withhold the letter dated 07.01.2019, with a request to resolve the issue on humanitarian grounds. On consideration of the same, additional (10) days' time was granted through letter dated 04.02.2019 directing the Petitioner to be present physically to

show the systems installed by its firm, failing which action taken in its letter dated 07.01.2019 will be restored.

j) On 30.03.2019, the Development Officer TSREDCO, Hyderabad submitted a report stating that in spite of repeated reminders to turn-up to show the systems installed in Adilabad District, there was no response from the Petitioner. Likewise, the District Manager, TSREDCO, Khammam also submitted a report on 03.04.2019 that the petitioner did not respond for conducting the joint inspection.

k) In spite of giving several opportunities to the Petitioner the Petitioner failed to avail the opportunities afforded to it and committed fraud and misappropriated amount to the tune of Rs.65,70,000/-.

l) Therefore, the 2<sup>nd</sup> respondent had to invoke clause 1.2.7 under Section 3 of Part No.2 (Instructions to Bidder) and clause 4.4 of Section 3- General Conditions of Contract in letter Ref No. TSREDCO/SE/SPV Off Grid Systems-PV/2018-19/2019/507, dated 14.08.2019 (as referred to and extracted below) by blacklisting the petitioner, with immediate effect, forfeiting the security deposit/EMD/PGA lying with TSREDCO.

After lapse of 4 years, the petitioner has addressed a letter on 04.05.2023 to the 2<sup>nd</sup> Respondent to delete the name of the Petitioner from Blacklist.

m) Respondent places reliance on the full bench judgment of this Court in P V NARAYANA Vs. APSRIC, HYDERABAD & OTHERS, 2013 (4) ALD 386/2013 SCC online AP 729(Same has been extracted below). Hence, the Writ Petition is without merits and is liable to be dismissed.

**6. PERUSED THE RECORD :**

**i. The impugned proceedings dated 15.08.2019 of the 2<sup>nd</sup> Respondent vide Ref. No.TSREDCO/SE/SPV Off Grid System – PV/2018-19/507, dt. 14.08.2019 reads as under :**

“On depth study of the relevant record that M/s.Green Power Technologies, Proprietary Concern has claimed and drawn MNRE CFA & State Govt.subsidy @ Rs.45,000/- + Rs.45,000/- + @Rs.90,000/- per system for 73 Nos. to the tune of Rs.65,70,000/- in the implementation of Supply & installation of 1 Kwp Solar Off grid systems for domestic use in 2015-16 and 2016-17 without installation, shifting to other locations duly mentioning the new beneficiary name with documents, to construe/categories as multiple claims on one system

in the erstwhile district of Adilabad and Karimnagar 53 and 20 Nos. respectively, the above deeds are opined as fraud and misutilisation of Govt.funds, caused for bad image and goodwill of this Govt. organization."

**ii. The interim orders of this Court dated 26.06.2023**

**read as under :**

"This matter earlier came up for consideration before this Court on 19.06.2023. Sri A.Ravi Babu, learned Standing Counsel for respondent No.2-TSREDC, took notice and sought time for filing counter.

Prima facie, it appears that the impugned order was passed in violation of the principles of natural justice.

This Court having taken note of the above adjourned the matter to 26.06.2023 to be listed under the caption 'For Orders', while permitting respondent No.2 to file counter affidavit in the matter.

Today, when the matter is taken up for consideration during pre-lunch session, there was no representation for respondent No.2 nor any appearance is entered on behalf of respondent No.2. Hence, the matter is passed over.

Even during the post-lunch session also, there is no representation for respondent No.2.

In the circumstances, as the impugned order is passed in violation of the principles of natural justice, there shall be interim suspension of the impugned proceedings, dated, 14.08.2019.

Post matter on 24.07.2023 for filing counter."

**iii. The counter affidavit filed by the Respondent No.2,**

**in particular paras 13, 16 and 17 read as under:**

"13. The District Manager, TSREDCO, Medak & Siddipet District submitted a report on 21-12-2018 stating that in

spite of repeated reminders there was no response from the petitioner. But however based on the information provided in the list of the beneficiaries, it has come to light that none came nor supplied any materials to the beneficiaries and that only two systems were installed one in the name of Sri Md.Zaffar Ali and another of Mr.Nayeem, out of which one system is not working. As the Petitioner did not cooperate to participate in the joint inspection along with the officers of TSREDCO, this Respondent vide letter dated.7-1-2019, has Black listed the Petitioner and forfeited all the performance security deposits available with this Respondent apart from initiating legal action under law.

6. It is submitted that in spite of giving several opportunities to the Petitioner to prove its claim of supply and installation of IKWp Solar off grid system under programmed year 2014-15 sanctioned by MNRE and implemented in the year 2015-16 and 2016-17, for having claimed and drawn bills under MNRE CFA & State Government subsidy @ Rs.45.000/- +Rs.45.000/= @ Rs.90,000/- per system for 73 Nos, to the tune of Rs.65,67,000/-, the Petitioner failed to avail the opportunities afforded to it. Thus the Petitioner committed fraud and misappropriated amount to the tune of Rs.65,70,000/-.

**a) As per clause No.1.2.7 Under Section 3 of Part No.2 (Instructions to Bidder):**



"The tender has to give an undertaking that the systems will be maintained regularly during the AMC period 5 years failing which the Security Deposit amount will be forfeited."

**b) Clause 4.4 of Section 3-General Conditions of Contract:**

"Frequent and unjustified delays in rectifying defects may lead to cancellation of the contract, recovery of losses and imposing of additional penalty. In such circumstances NREDCAP shall have the full liberty to recover the losses/penalty from the contractor pending claims, security deposit or in other law full manner. The amount of losses/penalty shall be decided by VC & Managing Director, NREDCAP and will be binding on the contractor

17. This respondent had to invoke clause 1.2.7 under Section 3 of Part No.2 (Instructions to Bidder) and clause 4.4 of Section 3- General Conditions of Contract in letter Ref No.TSREDCO/SE/SPV Off Grid Systems-PV/2018- 19/2019/507, dated 14-8-2019 Blacklisting the petitioner, with immediate effect. forfeiting the security deposit/EMD/PGA lying with TSREDCO. The action of this Respondent is valid and in accordance with the terms and conditions of the contract, therefore sustainable and justified.

**iv. Proceeding dated 30.07.2018 of the 2<sup>nd</sup>**

**Respondent read as under :**

"With reference to the cited above, it is to inform that the matter is under the investigation of CID Wing, Hyderabad, Telangana State and the detailed report on the systems is to be received from CID wing, Hyderabad.

In this regard, the request made vide reference cited will be examined on receipt of report from the CID wing and further steps will be initiated based on report."

**v. Letter dated 01.09.2018 of the petitioner to the 2<sup>nd</sup>**

**respondent, reads as under :**

"With reference to the above 1<sup>st</sup> cited, it is submitted that, we have received letter stating that out 96 Nos. of 1 KWp solar PV off grid power packs in Adilabad and Karimnagar Districts. Vide reference 2<sup>nd</sup> cited we have submitted a letter for providing one month time for verification of systems in the field with our concerned dealers. Now, it is submitting that, we are verified in the field and all the systems are available.

In this context, it is requested to depute TSREDCO officials for joint inspection for the above systems at an early date."

**VI. Proceedings dated 17.09.2018 of the 2<sup>nd</sup>**

**respondent, reads as under:**

“With reference to the above cited, the inspections for 1 KWp off grid solar SPV plants installed by M/s Green Power Technologies were conducted by the inspection team and found the certain systems are not available at the corresponding sites, the abstract of the inspections is detailed below.

S.No.	Name of the District	Total No. of systems allotted for inspection	Total No. of systems inspected	Total No. of systems not found
01	Adilabad	98	98	69
02	Karimnagar	44	44	27
	Total	142	142	96

Consequently vide reference cited several requests were made to M/s Green Power Technologies for attending joint inspection with TSREDCO officials for showing the 96Nos. of unavailable systems. **Subsequently M/s Green Power Technologies has turn up and is ready to show the 96 Nos. of unavailable systems.**

Hence, you are hereby instructed to inspect the 96 NOs. of 1KWP off Grid spv plants installed which were not found during your inspection in Adilabad and Karimnagar Districts under various schemes in co-ordination with M/s Green Power Technologies list enclosed at annexure- 1. And submit the inspection reports along with relevant documents to Head Office by 24<sup>th</sup> September, 2018 without fail. Otherwise it will be viewed seriously.

**VIII. Contents of the letter dated 30.03.2019 of the Development Officer, Solar/Head Office, TREDCO to the 2<sup>nd</sup> respondent, reads as under:**

"In obedience to the orders vide reference cited for conducting of inspections, I have contacted M/s Green Power Technologies requesting to turn-up to show the systems installed in Adilabad District.

But it is to submit that, inspite of several oral requests and remainders made by me, the firm M/s Green Power Technologies has not responded and not turned up to show the systems installed till date.

Hence, it is submitted for kind information and taking further necessary action please.

**DISCUSSION AND CONCLUSION:**

**DISCUSSION :**

**7. It is the specific case of the Petitioner that the Petitioner's firm is engaged in the business of Installation of Domestic and Commercial Solar System and in pursuance to Petitioner's participation in e-tender for Supply, Installation and Commission of Solar Plants at various Government buildings in all over Telangana State for 10 MW capacity under Capex Mode with Respondent No.2, the tender was approved to**

Petitioner firm on 07.05.2016. Thereafter Petitioner had installed 98 No's of 1 KWP Off Grid Solar SPV Plants in Adilabad and 44 No's in Karimnagar Districts totaling to 142 No's and completed all the works, and installed the said Solar Plants in Adilabad and Karimnagar Districts, while so the Petitioner received a Notice dated 30.06.2018 issued by the 2<sup>nd</sup> Respondent calling upon the Petitioner to submit Petitioner's explanation as to why the Petitioner's firm may not be black listed for recovery of subsidy amount as per MNRE guidelines and applicable law within a week from the date of receipt of the said notice. Petitioner vide reply dated 13.08.2018 requested for one month's time and then to proceed with joint inspection. In response to the said letter dated 13.08.2018 the 2<sup>nd</sup> Respondent granted only one weeks time to the Petitioner to show the systems installed by the Petitioner firm which were unavailable at the time of inspection. The Petitioner vide letter 01.09.2018 addressed to the 2<sup>nd</sup> Respondent again informed the 2<sup>nd</sup> Respondent that the petitioner had verified in the field and all the systems are available

and requested to depute TSREDCO officials for joint inspection for the above systems at an early date. It is further case of the petitioner that the Petitioner received the letter dated 27.11.2018 of the 2<sup>nd</sup> Respondent herein and the Petitioner was informed vide the said letter dated 27.11.2018 that inspections were conducted on 19.02.2018, 11.06.2018, 30.07.2018 and 01.09.2018 by the Inspection Team in Adilabad and Karimnagar Districts and it was found that 96 No's systems are not available at the corresponding sites and that the Petitioner did not turn up to show the systems and further that the works for the subject tenders will not be awarded till the final result of the obligations for pending inspections of 96 No's of unavailable 1 KWP Off grid systems in Adilabad and Karimnagar Districts. It is further the specific case of the petitioner that the Petitioner had been continuously corresponding with the 2<sup>nd</sup> Respondent for the conduct of the inspection of the solar systems installed by the Petitioner which however did not take place in the presence of the Petitioner though it is very clearly

**observed by the 2<sup>nd</sup> Respondent in the 2<sup>nd</sup> Respondent's letter dt. 17.09.2018 that the Petitioner had turned up and is ready to show the 96 No's of unavailable systems,** and curiously the Petitioner received letter dt. 07.01.2019 from the 2<sup>nd</sup> Respondent herein stating that the Petitioner failed to turn up to show the systems installed as on 07.01.2019 and that there is no further communication from Petitioner's end, legal action had been initiated against the Petitioner herein. In the last paragraph of the said letter dt. 07.01.2019 of the 2<sup>nd</sup> Respondent herein it is observed as under :

"In this context, by treating the 78 No' of systems were not installed and the subsidies for 78 No's of systems were mis-utilized by M/s. Green Power Technologies and has fraudulently involved in misuse of the subsidy. Hence, the firm M/s. Green Power Technologies is hereby black listed and it's all the performance security deposits available with TSREDCO of the firm are forfeited. Consequently, recommending for blacklist the firm to MNRE and All SAN's all over India. Apart from above, initiating legal action also against M/s. Green Power Technologies as per applicable law".

8. The Petitioner vide clarification dated 27.01.2019 vide Letter No.GPT/PO/180, addressed to the 2<sup>nd</sup> Respondent requested to withhold the show cause notice dated 07.01.2019 and to resolve the issue on humanitarian grounds very clearly observing in the letter that the issue pertained to livelihood of 32 employees and their families. However the 2<sup>nd</sup> Respondent proceeded and issued the impugned letter dated 14.08.2019 black listing the Petitioner with immediate effect from the date of the said proceedings duly forfeiting Petitioner firms security deposits/EMD/PGA with TSREDCO. The Petitioner vide representation dated 04.05.2023 addressed to the Respondents herein requested for deletion of the name of Petitioner firm from black list, but however, the same was not considered and aggrieved by the same the Petitioner filed the present Writ Petition.

9. The counter affidavit has been filed and a bare perusal of the counter affidavit in particular paras 11 to 19 indicate a specific stand of the 2<sup>nd</sup> Respondent herein that the Petitioner did not co-operate to



participate in the joint inspection along with the officers of TSREDCO and therefore the 2<sup>nd</sup> Respondent vide Letter dated 07.01.2019 had black listed the Petitioner and forfeited all the performance security deposits available with the 2<sup>nd</sup> Respondent apart from initiating legal action under law. The said stand of the 2<sup>nd</sup> Respondent is in fact contrary to its own statement in 2<sup>nd</sup> Respondent's letter dated 17.08.2018 which clearly indicates that the Petitioner turned up and is ready to show the 96 No's of unavailable systems. Another specific plea of the 2<sup>nd</sup> Respondent in the counter affidavit placing reliance of a Full Bench Judgement reported in 2013 (4) ALD 386 in P.V.Narayana Vs. APSRTC, Hyderabad is that the Petitioner approached the Court after a lapse of 4 years without any explanation and justifiable reason for delay and hence the Writ Petition needs to be dismissed.

**CONCLUSION :**

10. This Court opines that the order impugned dated 14.08.2019 passed by the 2<sup>nd</sup> Respondent vide Ref.

**No.TSREDCO/SE/SPV Off Grid System – PV/2018-19/507, needs to be set aside for the following reasons:**

i. A bare perusal of the material document dated 10.07.2017 of the 2<sup>nd</sup> Respondent Corporation vide TSREDCO /SE/SPV-Off GRID/1-10 KWP/2017, which is part of record, clearly indicates that the 2<sup>nd</sup> Respondent Corporation issued certificate dt. 10.07.2017 certifying the Petitioner of having supplied and installed 288 No's of 1 KWP Solar Off-GRID Power packs in the State of Telangana under market mode during the year 2015-16 to 2016-17 and gave the said subject details as well in the said letter dt. 10.07.2017, and the very same 2<sup>nd</sup> Respondent Corporation passed the order impugned dt. 14.08.2019. The 2<sup>nd</sup> Respondent totally ignored and did not give any credence to the certificate issued by the 2<sup>nd</sup> Respondent Corporation itself certifying that the Petitioner supplied and installed 288 No's of 1 KWP Solar Off-GRID Power Packs in the State of Telangana under market mode during the year 2015-16 to 2016-17.

ii. The order impugned of the 2<sup>nd</sup> Respondent Corporation vide Ref. No.TSREDCO/SE/SPV Off Grid System – PV/2018-19/507, dated 14.08.2019, clearly indicates that the order impugned has been passed mechanically in a routine casual manner unilaterally, irrationally without application of mind, in clear violation of principles of natural justice without considering the serious consequences that would follow eventually by virtue of the said impugned order and the 2<sup>nd</sup> Respondent totally ignored the fact that the fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the black list.

iii. In the present case admittedly the show cause notice dated 30.07.2018 does not even indicate the grounds/material indicating the precise case set up against the Petitioner which the Petitioner has to meet which according to the Respondents necessitated initiation of action against the Petitioner for black listing the Petitioner. A bare perusal of the contents of the letter dated 17.09.2018 of the 2<sup>nd</sup> Respondent

herein in fact indicate a very clear observation in favour of the Petitioner herein that the Petitioner had turned up and is ready to show the 96 Nos. of unavailable systems and that the 2<sup>nd</sup> Respondent had directed the Officers concerned to inspect the said plants installed which were not found during inspection in Adilabad and Karimnagar Districts in co-ordination with the Petitioner herein and submit inspection reports along with relevant documents to the Head Office by 24.09.2018, but however, the said joint inspection admittedly did not take place even as on date. Admittedly without conducting any inspection in the presence of the petitioner and the other concerned officers the order impugned dated 14.08.2019 had been passed by the 2<sup>nd</sup> respondent.

iv. A bare perusal of the order impugned dated 14.08.2019 refers to letters dated 11.06.2018, 30.07.2018, 01.09.2018, 17.09.2018, 14.02.2019, 24.05.2018, 09.07.2018, 30.06.2018, 25.02.2019 and 30.03.2019, 04.01.2019, 11.06.2018, 26.10.2018. This Court takes note of the fact that there are only '2'

reports dated 04.01.2019 and 30.03.2019 which reflects in the order impugned dated 14.08.2019 of the 2<sup>nd</sup> respondent in pursuance to the letter dated 17.08.2018 of the 2<sup>nd</sup> respondent herein and a bare perusal of the contents of the Report dated 30.03.2019 (referred and extracted above) only speaks about the petitioner not responding to show the systems installed as on 30.03.2019 but does not speak of any inspection done at all till as on 30.03.2019.

v. A bare perusal of the contents of the letter dated 07.01.2019 of the 2<sup>nd</sup> Respondent herein clearly indicate that the 2<sup>nd</sup> Respondent recommended for black listing of the Petitioner firm to MNRE and all SNAs all over India unilaterally and the said action is not only high handed but also totally unwarranted and uncalled for.

vi. The Petitioner's representations dated 27.01.2019 and 04.05.2023 had been totally ignored.

vii. The Petitioner's request for re-inspection was not at all considered.

viii. The contradictions in the letters dated 17.09.2018, 07.01.2019 and 14.08.2019 as to the numbers of unavailability of solar systems referring to shortage of 96 No's solar systems in one letter and 78 No's and 73 No's in another letter clearly indicates that no proper authentic inspection in the presence of the Petitioner as having been conducted at all.

ix. Petitioner admittedly had been denied a fair hearing which is an essential precondition for a proper exercise of the power, the order impugned is unreasonable, unfair and disproportionate to the gravity of alleged irregularities which in fact is an unilateral, irrational conclusion arrived at by the 2<sup>nd</sup> Respondent herein without even conducting proper and authentic inspection in the presence of the Petitioner.

x. This Court opines that the judgments relied upon by the Counsel for the Respondent have no application to the facts of the present case, considering the fact that the black listing has the effect of preventing a person from the privilege and advantage of entering

into lawful relationship with the Government for the purposes of gains and further taking into consideration the fact that clear disability is created by the impugned order of black listing dated 14.08.2019 issued by the 2<sup>nd</sup> Respondent herein.

xi. This Court opines that the plea of delay on the part of the Petitioner in approaching the Court after more than 4 years pleaded by the 2<sup>nd</sup> Respondent in the counter affidavit is not tenable in view of the fact that there is a breach of the fundamental rights of the Petitioner i.e., Petitioner's right to life and Petitioner's right to livelihood. This Court opines that the rule which says that the Court may not enquire into belated and stale claims is not a rule of law, but a rule of practice based on sound and proper exercise of discretion and there is no inviolable rule that whenever there is delay, the Court must necessarily refuse to entertain the petition.

xii. The Apex Court in a judgment reported in (2022) SCC Online SC 232 in Sunil Kumar Rai and others v State

**of Bihar and others, dated 21.02.2022 at para 7 observed as under :**

Para 7 : Article 32 of the Constitution provides for a Fundamental Right to approach the Supreme Court for enforcement of the Fundamental Rights. The founding fathers contemplated that the very right to approach this Court when there is a violation of Fundamental Rights, should be declared as beyond the reach of Parliament and, therefore, it is as a part of judicial review that the right under Article 32 has been put in place and invoked from time to time. That in a given case, the Court may refuse to entertain a petition under Article 32 of the Constitution is solely a part of self-restraint which is exercised by the Court having regard to various considerations which are germane to the interest of justice as also the appropriateness of the Court to interfere in a particular case. **The right under Article 32 of the Constitution remains a Fundamental Right and it is always open to a person complaining of violation of Fundamental Rights to approach this Court.** This is, no doubt, subject to the power of the Court to relegate the party to other proceedings.

**xiii This Court opines that the findings at para 7 of the judgment of the Division Bench of the Apex Court reported in (2022) SCC Online SC 232, dated**



21.02.2022 in Sunil Kumar Rai & Others Vs. State of Bihar & Others (referred to and extracted above) which pertained to challenge of notification of the year 2016 after 5 years in principle applies to exercise of power under article 226 of the Constitution as well by this Court and in particular to the facts of the present case as well since the order impugned in the present case is dated 14.08.2019, and the present writ petition has been filed in 2023 i.e., after nearly four years from the date of order impugned.

xiv At para 10 and 11 of the said Judgment of the Apex Court reported in (2022) SCC Online SC 232, dated 21.02.2022 dealing with delay it is observed as under :

Para 10 : We may take up the first preliminary objection by the State, namely, that the petitioners have approached this Court with considerable delay. The impugned Notification is issued in August, 2016. A person cannot be said to be aggrieved merely upon the issuance of an instrument or of a law by itself. In fact, the Court may refuse to examine the legality or the validity of a law or order on the basis that he may have no locus standi or that he is not an aggrieved

person. No doubt, the Courts have recognized challenge to even a legislation at the hands of a public interest litigant. However, we may only indicate, ordinarily, the Court may insist on a cause of action and therefore, a person must be an aggrieved party to maintain a challenge. We must not be oblivious to the fact that based on the Notification, it appears that FIRs came to be lodged by persons claiming to be members of the Scheduled Tribe community and seeking to invoke the 1989 Act. The FIRs lodged in the year 2020 occasioned the petitioners to approach Courts seeking protection under Section 438 of the Cr.P.C. Two of the petitioners have not secured such protection. Petitioner No. 1, it appears was not arrested. But even assuming for a moment, that the petitioners have come with some delay, we find reassurance from the opinion of this Court in the judgment reported in Assam Sanmilita Mahasangha v. Union of India (2015) 3 SCC 1, wherein this Court has inter alia held as follows:—

32. ".....Further, in Olga Tellis v. Bombay Municipal Corpn., it has now been conclusively held that all fundamental rights cannot be waived (at para 29). Given these important developments in the law, the time has come for this Court to say that at least

when it comes to violations of the fundamental right to life and personal liberty, delay or laches by itself without more would not be sufficient to shut the doors of the court on any petitioner."

Para 11 : Therefore, we do not think we should be detained by the objection. We would think that delay by itself cannot be used as a weapon to Veto an action under Article 32 when violation of Fundamental Rights is clearly at stake.

xv. In the case of "Gorkha Security Services Vs. Government (NCT of Delhi) & Ors." reported in (2014) 9 SCC 105, the Hon'ble Supreme Court has held that the necessity of compliance with the principles of natural justice by giving an opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. Many civil and/or evil consequences are involved with the order of blacklisting. It is described as "civil death" of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government

contracts. In the present case an unilateral decision of black listing the Petitioner is taken by the 2<sup>nd</sup> Respondent without conducting proper authentic inspection and due verification of the Solar Systems installed by the Petitioner in the presence of the Petitioner in clear violation of principles of natural justice without giving reasonable opportunity to the Petitioner to defend his case.

xvi. In the case of “Kulja Industries Limited Vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited & Others” reported in (2014) 14 SCC 731, the Hon’ble Supreme Court has held that blacklisting simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach.

xvii. The freedom to contract or not to contract is unqualified in the case of private parties. However, any such decision is subject to judicial review if the same is taken by the State or any of its instrumentalities. This

implies that any such decision is open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. Whether the order itself is reasonable, fair and proportionate to the gravity of the offence, is also examinable by a writ court.

viii. The judgments relied upon by the learned counsel for the respondent have no relevance to the facts of the case.

11. Taking into consideration the above said facts and circumstances of the case and the law laid down by the Division Bench of the Apex Court reported in (2022) SCC Online SC 232 in Sunil Kumar Rai & Others vs. State of Bihar & Others and the Judgment of the Apex Court reported in (2014) 9 SCC 105 in Gorkha Security Services Vs. Government (NCT of Delhi) & Ors., and the judgement of the Apex Court reported in (2014) 14 SCC 731 in Kulja Industries Limited Vs. Chief General

Manager, Western Telecom Project Bharat Sanchar Nigam Limited & Others (referred to and extracted above) and in view of the discussion as arrived at above, the writ petition is allowed, the order impugned of the 2<sup>nd</sup> Respondent Corporation vide Ref. No.TSREDCO/ SE/SPV Off Grid System – PV/2018-19/507, dated 14.08.2019 is declared as arbitrary and illegal and is accordingly set aside. It is however observed that it is open to the 2<sup>nd</sup> Respondent to initiate appropriate action against the Petitioner if the 2<sup>nd</sup> Respondent intends to do so, by giving due notice and reasonable opportunity to the Petitioner herein in conformity with principles of natural justice by conducting proper authentic Joint inspection pertaining to the Solar Systems installed by the Petitioner in the State of Telangana in pursuance to the tender approved to the Petitioner firm by the 2<sup>nd</sup> Respondent on 07.05.2016, in the presence of the Petitioner and other officers concerned in accordance to law, as directed by the 2<sup>nd</sup> respondent in his proceedings Memo No.TSREDCO/SE/SPV Off Grid/Inspections/D.No.5643

**/3017-18 dated 17.09.2018, which admittedly as borne on record did not however take place even as on date.**

12. In view of the aforementioned discussion, the writ petition is allowed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

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**SUREPALLI NANDA, J**

**Date: 11.09.2023**

Note: L.R. Copy to be marked.  
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