

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.21276 OF 2023

Between:

M/s. Northern Power Distribution company of Telangana Limited &
Others

... **Petitioners**

And

M/s. Orient Cement Limited., & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 25.11.2024

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 : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

MRS. JUSTICE SUREPALLI NANDA

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No.15679 OF 2024****% 25.11.2024****Between:****# M/s. Northern Power Distribution company of Telangana Limited
& Others****... Petitioners****And****\$ M/s. Orient Cement Limited., & others****... Respondents****< Gist:****> Head Note:****! Counsel for the Petitioners** : G.Vidyasagar, learned senior designated counsel representing Ms. Udaya Sree, learned counsel on record**^ Counsel for Respondents** :Sri Challa Gunaranjan, learned senior designated counsel for R1 Sri Zakir Ali Danish, learned standing counsel appearing on behalf of R2**? Cases Referred:**

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THE HON'BLE MRS. JUSTICE SUREPALLI NANDA**W.P. No.21276 OF 2023****ORDER:**

Heard Sri G.Vidyasagar, learned senior designated counsel representing Ms.Udaya Sri, learned counsel appearing on behalf of the petitioners on record, Sri Challa Gunaranjan, learned senior designated counsel appearing on behalf of the respondent No.1 and Sri Zakir Ali Danish, learned standing counsel appearing on behalf of the respondent No.2

2. The Petitioners approached the Court seeking prayer as under :

"...to issue an order direction or Writ more particularly one in the nature of Writ of Mandamus or any other appropriate writ to declare the order dated 22-5-2023 passed in CGRF-II-230001530 and C.G. No. NZB/609/2022-23 on the file of the 2nd Respondent as illegal and contrary to the Terms and Conditions of the Power supply as notified by the Tariff Order TSERC for the Financial Year 2022-23 vide order dated 23-3-2022 and consequently set aside the order dated 22.5.2023 passed in CGRF-II-230001530 and C.G.No NZB/609/2022-23 on the file of the 2nd Respondent and pass..."

PERUSED THE RECORD:-

3. The orders of this Court dated 08.08.2023 passed in favour of the petitioners herein are extracted hereunder:-

"Heard Sri G.Vidyasagar, learned senior counsel appearing on behalf of petitioner.

The learned counsel for the petitioner is permitted to take out personal notice on unofficial respondent through RPAD and file proof of service into the registry.

List on 05.09.2023.

In the meantime, there shall be stay of all further proceedings pursuant to the order dated 22.05.2023 passed in CGRF-II-230001530 and C.G.No.NZB/609/2022-23 on the file of the 2nd Respondent for a period of six (06) weeks from today."

The said orders dated 08.08.2023 are in force till date.

4. The case of the petitioners in brief as per the averments made in the affidavit filed by the petitioners in support of the present Writ Petition is as under:-

a) It is the specific case of the petitioner that the then APSEB and the 1st Respondent entered into an agreement dated 25- 7- 1979 for providing power supply through a dedicated feeder at 132 KV at Devapur (V), Bellampally Mandal, w.e.f. 1-2-1982. Accordingly, power supply was provided through HT Power Supply Category-I with Service Connection No. ABD-007 w.e.f. 1-2-1982(Now MCL-007) to the 1st Respondent. Thereafter on request made by the 1st Respondent, a Supplementary Agreement dated 7-3-2008 was entered into increasing the load of power supply to 32000 KVA at Voltage level. Thereafter, vide Agreement dated 7-7-2011 the load was derated to 15000 KVA. Further, vide agreement dated 9-6-2021, the power supply was derated from 15000 to 6000 KVA on a request made by the 1st Respondent. Clause 2 of the Agreement clearly prescribes that the contracted demand for 6000 KVA would be provided exclusively to the 1st Respondent Cement plant. Thus, the power supply through HT power supply Category-I was directly provided to the 1st Respondent through a dedicated feeder from Bellampally Sub- Station, since June, 2021, the 1st Respondent was being supplied with power supply at 6000 KVA

exclusively from Bellampally Sub-Station without connecting any other loads on the feeder.

b) It is further the case of the petitioners that, the 1st Respondent falls within the definition of 'consumer' availing power supply through a dedicated/ independent feeder as it has been availing the power supply exclusively from the Bellampally Sub-Station without connecting to any other loads on the feeder. Thus, the 1st respondent falls under Clause 3.2.2.2 of GTCS which is para-materia to 9.27.3 (ii) of TSERC Tariff Order dated 23- 3-2022 and clause 2.30 (ii) of the Tariff Order issued by the TGNPDCL. Thus, as the 1st Respondent had requested for the contracted maximum demand of power supply at 6000 KVA, it is required to be given power supply at voltage level of 33 KV and is also required to be billed for the power supply at 33 KV Voltage. However, during the verification, it was found that the 1st Respondent was being supplied power at 132 KV voltage instead of 33 KV and was inadvertently billed for the voltage operated at 132 KV. Accordingly, upon rectification of the same, a short fall amount of Rs.20,54,950/- for the period from 6/2022 to 10/2022 was included

in the electricity bill of the 1st Respondent. In response to the same, the 1st Respondent deposited the said amount.

c) It is further the case of the petitioners that the 1st Respondent approached the CGRF vide C.G. No. 609/2022 challenging the electricity bill of Rs.20,54,950/- for the period from 6/2022 to 10/2022. The CGRF allowed the grievances of the 1st Respondent and through order dated 22.05.2023 directed the petitioners herein to refund/adjust the amount of Rs.20,54,950/- in other bills. **Aggrieved by the same, the present Writ Petition has been filed.**

5. The learned senior designated counsel Sri G.Vidyasagar appearing on behalf of the petitioners mainly puts-forth the following submissions:-

a) The impugned order of the 2nd respondent dated 22.05.2023 passed in CGRF-II-230001530 and C.G.No.NZB/609/2022-23 is contrary to the tariff orders issued by the TSERC, and hence, liable to be set-aside.

- b) The 2nd respondent failed to take into consideration the fact that the 1st respondent is availing the power through independent (dedicated) feeder from the Bellampally Sub-station .
- c) The 2nd respondent failed to take into consideration that at 30MW Power is injected at 132KV sub-station Bellampally and hence, the solar power transformation takes place at Belampally Sub-station and thereafter, the 1st respondent is provided with dedicated power supply through Bellampally sub-station. Therefore, the transformation also takes place at Bellampally sub-station, and said fact was ignored by the CGRF
- d) The 1st respondent entered into an HT Agreement executed on 09.06.2021 for providing 6000KVA for exclusive use of their cement plant and thus, 1st respondent was availing the exclusive power supply of 6000KVA, which is chargeable at 33KV in terms of Clause 9.27.3 (which is equivalent to 2.30 of the Tariff order of TSNPDCL) and hence, the stand of the 1st respondent that he is not availing the power supply through exclusive (dedicated) power supply from Bellampally sub-station is erroneous.
- e) The 1st respondent had deposited a sum of Rs.20,54,950/- at the time of filing of the complaint with the 2nd respondent herein

and the 2nd respondent vide the impugned order dated 22.05.2023 directed to referred/adjust the said amount which is contrary to the tariff orders.

f) The findings of the 2nd respondent that the transformation of the voltage from 220/132 KV takes place at 220/132 KV Mandamarri sub-station and being fed from 220/132 KV sub-station Mandamarri through 132KV Bellampally-I & II feeders does not come in the way of treating the 1st respondent as a HT power consumer in terms of clause 2.30 (ii) which is a paramaterial to clause 9.27.3 of Tariff order dated 23.03.2023 of TSERC.

6. The learned senior designated counsel appearing on behalf of the petitioners based on the aforesaid submissions contended that the petitioners are entitled for the relief as prayed for in the present Writ Petition.

7. Counter affidavit has been filed on behalf of the 1st respondent and relevant para Nos. 8, 12, and 14 are extracted hereunder:-

8. In reply to Para 3 & 6, it is submitted that the 1st Respondent herein has been availing power supply since its

inception through 132 KV common feeder for its cement plant at Devapur Village. It is pertinent mention here that the transformation of voltage from 220/132KV i.e., the voltage level of the complainant is taking place at 220/132KV Mandamarry SS since 07/2011. The same is fed to 132KV Bellampally Sub-Station through Bellampally I & II feeders. The Bellampally I & II feeders carry the loads of Railways (Bellampally), the 132 KV Railways (Sirpur Kaghaznagar) and 132KV Sirpur Kaghaznagar SS along with the 1st Respondent's load. Hence, the connection of 1st Respondent herein is on common feeder but not a dedicated one as submitted by the petitioner herein in the Writ Petition. Therefore, the 1st respondent denies the same to that extent in the reply to para 3 & 6.

12. In reply to para 10 to 12, it is humbly submitted that the 1st respondent has been drawing power from its inception at 132KV voltage line and paying the tariff since 2018-19 till May, 2022 and from November, 2022 to till today on the actual supply of voltage level i.e., 132 KV. It is pertinent to mention here that there is no change in the tariff from 2018-19, 2019-2020, 2020-21, 2021-22 & 2022-23 about billing of the HT services on specified voltage as per Clause 2.30 or Para 9.27.3. It is vehemently submitted that the Petitioner herein erroneously levied Rs 20,54,950/- as shortfall amount for the period from June 2022 to October 2022 since the 1st Respondent is required to be operated at 33 KV voltage level

instead of 132 KV voltage level. It is humbly submitted that the 1st Respondent herein need not pay any shortfall amount as claimed by the Petitioner herein. It is humbly brought to the notice of this court that even the voltage surcharge has been withdrawn as per Clause 9.27.4 of the Retail Supply Tariff Order for FY 2022-23. It is further submitted that the guiding principle behind the Clauses 3.2.2.1, 3.2.2.2 & 3.2.2.3 is to release power supply at different voltage levels based on the contracted maximum demand required by the applicant/consumer and not to bill as per entitled voltage tariff (i.e., 33KV in the present case) as there is variance in the actual supply of the voltage (i.e., 132 KV in the present case). Thus, the Petitioner herein levied such shortfall amount on the 1st Respondent in violation of year-on-year Tariff Orders and General Terms and Conditions of Supply issued by the Telangana State Electricity Regulatory Commission.

14. In reply to Ground (i) to (vi), it is reiterated that even assuming that the 1st Respondent falls under the dedicated feeder category as per Clause 2.30 of Terms and Conditions of HT Supply (in para materia with Para 9.27.3 of Tariff Order for FY 2022-23), the tariff should be fixed on the basis of the voltage at which the actual supply is provided to 1st Respondent but not on the voltage at which the 1st Respondent is entitled to as per Clause 2.30 of Terms and Conditions of HT Supply. Hence, the applicable tariff in the present case is at 132 KV voltage level and the 2nd

Respondent has lawfully allowed the complaint filed by the 1st Respondent and further directed them to adjust the amount deposited i.e., Rs 20,54,950/- against the bill raised on 1st Respondent based on 33KV voltage level tariff from 06/2022 to 10/2022.

8. The learned counsel appearing on behalf of the respondent No.1 based on the averments made in the counter affidavit filed on behalf of the 1st respondent (referred to and extracted above) contends that the 2nd respondent had lawfully passed order vide CGRF-II-230001530 and CG.No.NZB/609/2022-23 dated 22.05.2023 and therefore, the Writ Petition is devoid of merits and is liable to be dismissed duly vacating the interim order dated 08.08.2023 passed in favour of the petitioners herein.

9. The learned counsel appearing on behalf of the 2nd respondent also contends there is no illegality in the order passed by the 2nd respondent and the 2nd respondent rightly allowed the complaint filed by the 1st respondent and the Writ Petition is devoid of merits and is liable to be dismissed.

DISCUSSION AND CONCLUSION:-

10. The General Terms and Conditions of Supply (GTCS) of Distribution and Retail Supply Licensees regulate the power supply to the consumers. **Regulation 3.2 of GTCS** deals with Classification of Connection. Clause 3.2.2.1 of GTCS, regulates the power supply to the consumers intending to avail supply on common feeders, whereas the Clause 3.2.2.2 regulates the HT Consumers intending to avail supply through independent/ dedicated feeders from Sub-Station. The said clauses read as under:

"3.2.2.1 HT consumers intending to avail supply on common feeders:

For total Contracted Demand with the Company and all other sources like APGPCL, Mini Hydel, Wind Power, MPPs, Co-Generating Plants etc:

Contracted Demand	Voltage level
Upto 1500 kVA	11KV
1501kVA to 5000kVA	33 Kv
Above 5000 kVA	132 kV or 220 kV as may be decided by the Company

3.2.2.2 HT consumers intending to avail supply through independent feeders from sub-station:

For total Contracted Demand by applicants seeking HT supply through independent feeders from the sub-stations, with the Company and all other sources like APGPCL, Mini Hydel, Wind Power, MPPs, Co-Generating Plants etc shall be:

Contracted Demand	Voltage level
Upto 2500 kVA	11kV
2501 kVA to 10000 kVA	33kV
Above 10000kVA	132 kV or 220 kV

Since the 1st Respondent has been availing the power supply through independent/dedicated feeder, this Court opines that it is regulated by Clause 3.2.2.2 of the GTCS clause.

11. Clause 3.2.2.3 of the GTCS further prescribes that the consumer should have an exclusive dedicated feeder from the sub-station and the consumer shall pay full cost of the service line as

per standards specified by Company including take off arrangements at sub-station.

12. The Telangana State Electricity Regulatory Commission (in short TSERC) vide tariff order 23.03.2022 notified the 'Schedule of Retail Supply Tariff and Terms and Conditions and Cross Subsidy Surcharge and Additional Surcharge for Open Access Consumers, for the Financial Year 2022-23, applicable from 01.04.2022 to 31.03.2023. Clause 9.27.3 of Tariff Order dated 23.03.2022 is para- materia to Clauses 3.2.2.1; 3.2.2.2 and 3.2.2.3 of the GTCS.

13. It is the specific case of the petitioners that the CGRF proceeded on the assumption that the voltage transmission is not taking place at 132 KV Sub-Station, Bellampally, and that the voltage transmission is taking place at 220/132 KV Mandamarri Sub-Station and that the 132 KV Bellampally Sub-Station is being fed from 220/132 KV Sub-Station Mandamarri through 132 KV Bellampally I & II feeders and further that the CGRF failed to consider the fact that the TSNPDCL had entered into an agreement with M/s. TATA Power Renewable Energy Limited for procurement of 15 MV power through their solar PV power plant at 33 KV level

for injecting 15 MV Power at 132/33 KV Bellampally Sub-Station. Similar agreement was also entered into with M/s. Singareni Collieries Company Limited for procurement of 15 MV Power through their Solar Power Plant for injecting 15 MV power to 132/33 KV, Bellampally sub-station. Thus, there is a direct injection of Solar Power to 30 MV at 132/33 KV Bellampally Sub-Station which is also being transformed at 132 KV Bellampally Sub-Station for the sole purpose of providing power supply to the 1st Respondent and therefore, the Respondent falls within the meaning of Consumer availing power supply through independent and dedicated feeder in terms of Clause 3.2.2.2 of GTCS and the said factual aspects had not placed before the CGRF and thus not considered by it while passing of the impugned orders.

14. This Court opines that the observation of the Forum that the GTCS clauses are guiding principle to release supply at different voltage, based on the contracted maximum demand required by the consumer and not to bill voltage wise tariff which is in variance from the actual supply voltage, is misconceived, since the consumer is liable to be billed in accordance with the voltage level which it is eligible for the purpose of supply of power as specified in the GTCS

clauses and as well as tariff orders as released by the TSERC and as adopted by the TSNPDCL.

15. This Court opines that the contention of the 1st Respondent that they are eligible to be billed as per the supply of the voltage is incorrect. As per the Tariff order as issued by the TSERC and the TGNPDCL, the consumer is liable to be billed at the voltage level at which, it is eligible to be supplied at. As the 1st Respondent requested for supply of power at 6000 KVA CMD, it is eligible for power supply at voltage level of 33 KV and also billed at the voltage level of 33 KV.

16. This Court opines that the judgments relied upon by the 1st respondent do not apply to the facts of the case, in view of the above, the orders of the CGRF dated 22.05.2023 in C.G.No. NZB/609/2022-23 are liable to be set aside and the Writ Petition is to be allowed.

17. This Court opines that the 2nd respondent had failed to justify through its reasoning given vide impugned order dated 22.05.2023 passed in C.G.No.NZB/609/2022-23, in allowing the grievances of the 1st respondent and further directing the writ petitioner TSNPDCL

to refund/adjust, the bill raised by charging 33KV tariff from 06/2022 to 10/2022. The specific plea of the petitioners that the respondent No.1 falls within the meaning of consumer availing power supply through independent and dedicated feeder in terms of clause 3.2.2.2 of GTCS had not been considered by the 2nd respondent while passing the impugned order dated 22.05.2023 passed by the 2nd respondent herein.

18. Taking into consideration:-

- i) The aforesaid facts and circumstances of the case,**
- ii) The submissions put-forth by the learned senior designated counsel appearing on behalf of the petitioners, the learned senior designated counsel appearing on behalf of the respondent No.1 and learned standing counsel appearing on behalf of the respondent No.2.**
- iii) The averments made in the counter affidavit filed on behalf of the respondent No.1 (referred to and extracted above)**

iv) Interim orders of this Court dated 08.08.2023 passed in the present Writ Petition (referred to and extracted above), which are in force as on date.

The order impugned dated 22.05.2023 passed in CGRF-II-230001530 and C.G.No.NZB/609/2022-23 on the file of the 2nd respondent is set-aside and the complaint filed against the petitioners herein for redressal of grievance under Clause 5 (7) of TSERC, Regulation No.3 of 2015 read with Section 42(5) of the Electricity Act, 2003, by the complainant i.e., the 1st respondent herein is remitted back to the 2nd respondent for reconsideration of the subject issue afresh by duly considering all the pleas as put-forth by the petitioners and the 1st respondent/complainant in the present Writ Petition in addition to all the other additional pleas as are available to the petitioners and the 1st respondent herein to be put-forth by the petitioners and the 1st respondent herein before the 2nd respondent including the factual aspects which had not been placed before the 2nd respondent and thus, which could not have been considered by the 2nd respondent while passing the impugned orders

dated 22.05.2023 as projected in the written arguments filed on behalf of the petitioners before this Court. The 1st respondent is directed to pass appropriate orders on the subject issue in accordance to law in conformity with principles of natural justice by giving opportunity of personal hearing to petitioners and all concerned within three (03) months from the date of receipt of the copy of the order and till appropriate orders are passed as per the directions as indicated above within the time period as stipulated as above the interim orders of this Court dated 08.08.2023 passed in the present Writ Petition shall remain in force. Accordingly, the Writ Petition is allowed. However there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS. JUSTICE SUREPALLI NANDA

Date: 25.11.2024

Note : L.R. Copy to be marked.
B/o.ktm