IN THE HIGH COURT OF JUDICDATURE FOR THE STATE OF TELANGANA: HYDERABAD

...

WRIT PETITION NO.56 OF 2014;

WRIT PETITION NO.38486 OF 2022

AND

WRIT PETITION NO.5477 OF 2023

W.P.No.56 of 2014:

Ms. GMR Spintex Pvt Ltd .. Petitioner

Vs.

Northern Power Distribution Company of A.P. Ltd. and others .. Respondents

DATE OF THE JUDGMENT PRONOUNCED: 10.08.2023

SUBMITTED FOR APPROVAL:

HONOURABLE SMT. JUSTICE P. MADHAVI DEVI

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Her Lordship wishes to see the fair copy of the judgment? Yes/No

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JUSTICE P. MADHAVI DEVI

***THE HONOURABLE SMT. JUSTICE P. MADHAVI DEVI**

+WRIT PETITION NO.56 OF 2014;

+WRIT PETITION NO.38486 OF 2022

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% DATED 10TH AUGUST, 2023

W.P.No.56 of 2014:

Ms. GMR Spintex Pvt Ltd .. Petitioner

Vs.

$ Northern Power Distribution
Company of A.P. Ltd. and others .. Respondents

<Gist:

>Head Note:

! Counsel for the Petitioner : Sri Srinivasa Rao Putluri
in W.P.No.56 of 2014

! Counsel for the Petitioner : Sri Srinivasa Rao Putluri
in W.P.No.38486 of 2022

! Counsel for the Petitioner : Sri M.S.N. Prasad, Senior Counsel
in W.P.No.5477 of 2023 representing Sri Akshat Sanghi

^Counsel for the Respondents : Sri G. Vidya Sagar, Senior Counsel
in W.P.No.56 of 2014 representing Ms. K.Udaya Sri

^Counsel for Respondents 1 to 4 in W.P.No.38486 of 2022 : Sri G. Vidya Sagar, Senior Counsel representing Ms. K.Udaya Sri

^Counsel for Respondent 5 & 6 in W.P.No.38486 of 2022 : --

^Counsel for Respondents 1 & 2 in W.P.No.5477 of 2023 : Sri G. Vidya Sagar, Senior Counsel representing Ms. K.Udaya Sri

^Counsel for the Respondent No.3 in W.P.No.5477 of 2023 : Sri Srinivasa Rao Putluri

? CASES REFERRED:

1. 2021 SCC OnLine SC 870
2. 1963 AIR 358 : 1964 SCR (4) 485
3. 2011 (6) ALD 35
4. 2012 (2) ALD 739 (DB)
5. 2012 (5) ALD 683
6. 2023 SCC OnLine SC 663
7. 2013 (3) ALD 298
8. W.P.No.1859 of 2022 dt.25.01.2023
9. (2010) 6 SCC 165
10. (1998) 4 SCC 470
11. 2022 LiveLaw (SC) 630
12. (1974) 3 SCC 554
13. (2018) 10 SCC 707
14. 1977(1) APLJ 60 (DB)
15. (1982) 1 SCC 159
16. (1983) 2 SCC 127
17. 2005 (3) ALD 764
18. (2020) 6 SCC 404 : (2020) 3 SCC (Civ) 748 : 2020 SCC OnLine SC 478
19. (1999)3 SCC 657

20.2023 (2) ALD 54 (AP)
21.(1997) 5 SCC 516 : AIR 1997 SC 2502 : 1997 (4) ALD(S.C.S.N.)7-2
22.AIR 2008 AP 11
23.AIR 1971 AP 169
24.(1998) 5 SCC 170
25.(2019) 10 SCC 572
26.2013 (6) ALD 175 (DB)

THE HONOURABLE SMT. JUSTICE P. MADHAVI DEVI

WRIT PETITION NO.56 OF 2014;

WRIT PETITION NO.38486 OF 2022

AND

WRIT PETITION NO.5477 OF 2023

COMMON ORDER

The above three Writ Petitions involve common issues and common parties and therefore, they were clubbed and heard together and are disposed of by this common and consolidated order.

2. Facts and issues involved in each of the cases are as under:

W.P.NO.56 OF 2014

3. In this Writ Petition, the petitioner is seeking a Writ of Mandamus declaring the action of the respondents in

(i) *determining the payment of electricity charges vide provisional revised demand notice dated 23.10.2013 and the revised demand notice dated 10.12.2013, on the basis of the demand and consumption calculated, by taking a block*

of 15 minutes as a unit for determining compliance with R&C measures; and

(ii) further threatening to disconnect the electricity to the petitioner's premises on failure to produce the proof of payment of the above demanded amount;

as illegal, arbitrary and unconstitutional and consequently to set aside the revised demand notices dt.23.10.2013 and 10.12.2013 and to pass such other order or orders in the interest of justice.

4. Brief facts leading to the filing of W.P.No.56 of 2014 are that the petitioner company was incorporated with the object of operating and running Spinning Mills and in the process, it has transacted with AP Transco for supply of power to its unit and has been operating a spinning mill from the year 2001. The petitioner has been availing power supply under HT-1 category with service connection No.HT.SC No.ADB 247 and claims to have been making regular payments in respect of consumption charges for the power consumed till January, 2013.

5. It is submitted that in the year 2012, due to acute shortage of power that was confronting the State of A.P., on the representations made by APCPDCL and the Zonal Distribution Companies including the 1st respondent herein, the APERC issued an order of Restriction and Control measures ('R&C measures' in short) *vide* order dt.07.09.2012 imposing restrictions of power supply. Thereafter, the said measures were revised *vide* proceedings dt.01.11.2012, wherein specific conditions/provisions with respect to distribution companies, licensees, consumers have been laid out, and Clause 19(a) thereof provided that billing demand shall be the maximum recorded demand during the month and Clause 19(e) provided that licensees shall grant permission for non-discriminatory open access to all HT consumers. In view of the above, apart from the power supply through DISCOMs, consumers were permitted to purchase power through open access from any private power exchange, which, in effect, relaxed the restrictive measures on power supply for consumers like petitioner's industry to avail uninterrupted power supply. The billing for the power used by the petitioner shall be on the Maximum Recorded Demand during the month, i.e., on the total consumption of electricity.

6. Accordingly, the petitioner has obtained permission for open access and also obtained "Standing Clearance"/"No Objection Certificate" from the Chief Engineer/SLDC, AP TRANSCO through Power Exchange from February, 2013. Thus, in order to fulfill the shortfall of power supply by DISCOMs due to R&C measures, the petitioner has been availing open access power at higher rates for energy over and above the maximum consumption fixed by APERC in its R&C measures from 23.01.2013 onwards. Therefore, the total power demand consisted of the power supplied by DISCOMs and the power purchased through open access from a private supplier through Power Exchange. Consequently, billing of electricity by the respondents was to be calculated by deducting the demand component of open access power/energy from the entire recorded demand, but because of not considering the demand component through open access, and due to considering the open access power supply along with power supply through DISCOMs as the Maximum Recorded Demand while preparing the bill, the petitioner and other consumers had received exorbitant bills.

7. Since the petitioner was utilizing the power by complying with the R&C measures through DISCOMs along with the power supply

through open access, it requested the 3rd respondent to revise the bills issued by implementing the right calculating methodology by deducting open access component from the bills. Respondent No.4, therefore, issued provisional revised bills for the period from February, 2013 to July, 2013 (except April, 2013) *vide* demand notice dt.23.10.2013 and arrived at a total due of Rs.1,74,66,618/-.

8. Considering the failure of DISCOMs in deducting the open access demand component from the bills, the APERC had issued an order on open access metering and demand settlement *vide* proceedings dt.04.05.2013 and instructed the DISCOMs that as per the Interim Balancing and Settlement Code (IB&SC), the DISCOMs have to consider both energy and demand availed through open access while billing the consumers. In addition thereto, the procedure to consider the open access demand component also has been provided in the said order for arriving at Maximum Demand consumed from a DISCOM in a month.

9. It is submitted that as the metering of open access supply is done for every 15 minute block period, *vide* the said order, the APERC directed the DISCOMs to arrive at 15 minutes block-wise demands by

deducting Open Access (in short 'OA') demand from Recorded Demand for the 2880 time blocks in a month and the result would be 2880 demand readings of 15 minute blocks consumed from the DISCOM and all of the 2880 fifteen minute block demand readings from DISCOMs and the Maximum Demand (in short 'MD') should be billed as per the tariff order rate. According to the writ petitioner, the above method/procedure for considering Open Access (OA) demand component was only for the purpose of calculating the OA demand component and not for the purpose of the final billing of the Maximum Demand consumed from DISCOM in a month and therefore, the Maximum Demand is to be calculated separately under the procedure of total electricity consumption in a month and bill also would have to be upon monthly calculations.

10. Pursuant to the above order of the APERC, the petitioner had made a representation on 08.11.2013, referring to the gross mistakes in the calculation of bills from February, 2013 to July, 2013. Consequently, the petitioner received another revised bill dt.10.12.2013 for the period from February, 2013 to July, 2013 and arrived at the dues of Rs.2,27,13,727/- towards electricity charges. Though, both the

demand notices dt.23.10.2013 and dt.10.12.2013 are purportedly issued in accordance with the APERC guidelines, they have been billed calculating the Maximum Demand of the 15 minute time block. It is submitted by the petitioner that the respondents, while issuing the revised bills, have been combining the procedure for calculation of OA demand component with the procedure for calculating the total consumption of electricity on a monthly basis. It is submitted that in addition to issuing of such defective bills, the bills also contained a threat to disconnect the electricity supply for non-payment of such charges. It is submitted that the procedure as enumerated in the APERC order is only for calculation of OA demand and hence should not have been used for calculating excess demand or consumption on a 15 minute block, but as a result of combining of both the procedures for calculation, i.e., the open access demand component and the total consumption in a month, there has been a deviation in the amount of power supply used and power supply demanded resulting in billing of high, exorbitant and unauthorized charges on the petitioner. Challenging the revised demand notices dt.23.10.2013 and 10.12.2013, this W.P.No.56 of 2014 is filed.

11. When the matter came up for admission, the A.P. High Court (as it then was), *vide* orders dt.03.01.2014, in W.P.M.P.No.67 of 2014, has granted interim stay of all further action pursuant to the revised demand notices dt.23.10.2013 and 10.12.2013 including disconnection of electricity to the petitioner's premises pending disposal of the Writ Petition on the condition that the petitioner company deposits 50% of the penal charges within four weeks from the date of the order and that the amounts already paid by the petitioner company shall be given credit to. However, the petitioner failed to make the said payment. Subsequently, *vide* orders dt.30.01.2014, it was observed that the billing of the petitioner company has not been done correctly and therefore, the interim order dt.03.01.2014 was modified to the effect that the petitioner shall deposit 50% of the billed amounts within a period of two weeks from the date of the order. The petitioner has failed to comply with this condition as well.

W.P.No.38486 of 2022

12. In this Writ Petition, the petitioner is seeking a Writ of Mandamus declaring the high handed action of the respondents

(i) in issuing Notice in Form-V No.DEE/OP/AE(T)/F.No. D.No.524/22 and in D.No.525/22 both dated 28.06.2022 for publication of attachment in the District Gazette as well as its publication in respect of the property of the petitioner unit situated in Sy.Nos.19, 20/A, 22/A, Bela Road, Fuzpoor Village, G.P. Thorada (B), Jainath Mandal, Adilabad District for recovery of the outstanding arrears without adjudicating the billing dispute raised by the petitioner in the Appeal No.34 of 2016 before the 6th respondent, thereby unilaterally invoking the provisions of the Revenue Recovery Act, 1864, as illegal, unjust, untenable apart from being violative of Articles 300-A and 14 of the Constitution of India; and

(ii) to consequently direct the respondents to refrain from proceeding further in the matter until the billing dispute is adjudicated by the 6th respondent by re-opening aforementioned appeal and to dispose of the same as per the procedure envisaged under the Regulations, 2015, and

to pass such other order or orders as this Court deems fit and proper in the circumstances of the case.

13. Brief facts leading to the filing of this Writ Petition are that during the year 2012, due to shortage of power, the licensees approached the then Regulatory Commission for approval of imposition of power cuts on the supply to the consumers. Thus, the Commissioner approved the Restrictions and Control (R&C) measures by APERC *vide* order dt.07.09.2012. The consumers who have exceeded the restricted control measures were liable to payment of penalty and the respondents were entitled to levy the penalty against the consumers on the excess consumption of electricity. Accordingly, penalty charges have been levied as per the tariff fixed for the financial year 2012-13 and the terms and conditions of supply specified therein. The bills were raised at three times of the normal charges. The tariff and the energy charges on excess over Permitted Consumption Limit (in short 'PCL') during peak period were to be billed at the rate of five times of normal tariff consumed during the peak time period.

14. It is submitted that due to these measures in force, the petitioner industry was put to great hardship and the functioning and carrying on

the business was not to the optimal and the expected level of quantum, and gradually, this led to a financial crunch, in addition to economic burden due to payment of the salaries and wages including tax liabilities that are to be paid under the statute to the local and central authorities.

15. It is submitted that subsequently, the Commission of Electricity in the State *vide* proceedings No.APERC/Secy/154/2013, dt.08.08.2013, has waived the penalties under R&C measures, which were imposed originally in September, 2012 up to 50% and the benefits of reduction of this 50% penalty was universal and general in nature and was applicable to all the registered consumers. This benefit was however confined by the Commission under the above proceedings by directing that the consumers shall not insist for refund of the 50% waiver and that it shall be adjusted in the future regular bills raised on the consumers.

16. The learned counsel for the petitioner submitted that the petitioner unit also was eligible for the above waiver and was under the bonafide impression and legitimate expectation that the respondents would give credit for the 50% waiver benefit in the bills and credit would be given by deducting the same or by adjusting the liability raised, in the subsequent regular consumption bills, but instead, the

respondents have unilaterally started showing the penalties as outstanding amount and basing on the alleged arrears, the respondents have issued demand notices to the petitioner demanding to pay the said amounts. Therefore, the demand notices were challenged by the petitioner in W.P.No.56 of 2014. It is submitted that due to the financial crunch prevailing as on that date, the petitioner could not comply with the interim directions of this Court dt.30.01.2014 in W.P.No.56 of 2014 to pay 50% of the billed amounts.

17. It is submitted that in order to resolve the dispute of excess billing, in the demand notices dt.23.10.2013 and 10.12.2013, the petitioner unit raised the dispute about the wrong and incorrect bills raised unilaterally by the respondents before the Consumer Grievance Redressal Forum ('CGRF' in short) of the respondent licensed area in Dispute No.484 of 2015. However, the same was dismissed *vide* order dt.17.12.2015 by relying upon the reply filed by the respondent company that 50% of penal charges were not waived because there is a pending W.P.No.56 of 2014 filed by the writ petitioner on the file of the High Court. Aggrieved by the order of dismissal dt.17.12.2015, the petitioner filed Appeal No.34 of 2016 before the Vidyut Ombudsman

for the State of Telangana (6th respondent). But the same was dismissed by the 6th respondent also on the same ground that W.P.No.56 of 2014 filed by the petitioner regarding the penal charges during R&C measures is pending resolution by the Hon'ble High Court. Therefore, the waiver of 50% of penal charges during R&C period was not considered and allowed to the petitioner by the DISCOMs. The Ombudsman held that if there is any writ petition pending on the subject matter of the appeal, the question of jurisdiction of the Ombudsman would not arise under Clause 3.19(c) of Regulation 3 of 2015. Thus, the appeal was dismissed confirming the order of the Consumer Grievance Redressal Forum, dt.17.12.2015. The order of the Ombudsman is dated 29.07.2016.

18. It is submitted that thereafter, the respondents have initiated action by issuing proceedings dt.06.09.2019 stating that the petitioner has been provided with the facility of instalments up to August, 2020 commencing from October, 2019, i.e., 12 instalments for every calendar month, i.e., Rs.66,00,000/- and odd for the payment of consumption charges as per their calculations. According to this notice, liability was shown at Rs.8,03,49,865/- without giving any break-up figures for each of the components, such as original consumption charges, interest for

delayed payments, other statutory charges, etc. Subsequently, during Covid-19 pandemic, i.e., on 23.05.2020, another proceeding without any notice was issued showing the liability of the petitioner unit at Rs.12,45,93,596/- and the same was directed to be paid in 12 instalments. Subsequently, another notice dt.01.02.2021 was issued demanding payment of more than Rs.16.00 Crores. It is submitted that during the pandemic situation, the unit was completely closed and no power was consumed.

19. Thereafter, the respondents invoked the provisions of the A.P. Revenue Recovery Act, 1864 for recovery of the dues as stated above, i.e., Rs.16.00 Crores and odd and the 5th respondent was granted permission for publication in the Gazette in its official form for attachment of the property of the unit so as to bring it to auction. On coming to know about the issuance of attachment notice in Form-V dt.28.06.2022, the petitioner claims to have made a detailed representation on 26.08.2022 to the respondents explaining in detail about the inconsistencies of the calculations and the glaring mistakes that have crept in, due to non-examination of the records relating to the bills, payments and the demand raised under various bills. It is claimed

that there was no response to the same from the respondents and apprehending that the respondents would proceed further under the provisions of the A.P. Revenue Recovery Act, 1864 for auctioning of the property, in which event, the petitioner would be put to great hardship and irreparable loss, the petitioner filed W.P.No.38486 of 2022, challenging the action of the respondents in issuing notice in Form-V dt.28.06.2022 as illegal, unjust and arbitrary and to consequently direct the respondents to refrain from proceeding further in the matter until the billing dispute is adjudicated by the 6th respondent by reopening the aforementioned appeal and to dispose of the same as per the procedure envisaged under Regulations, 2015 and to pass such other order or orders as this Court deems it fit and proper in the circumstances of the case.

20. This Court, *vide* orders dt.19.10.2022 in I.A.No.1 of 2022 in W.P.No.38486 of 2022, has granted stay of all further proceedings pursuant to issuance of Form-V notice dt.29.06.2022 published in Adilabad District Gazette No.6-R/ADB/2022 on the condition that the petitioner shall deposit 20% of the amount under the impugned Gazette Notification dt.28.06.2022 within four weeks from the date of the order

and it was also made clear that if the petitioner fails to comply with the said condition, the respondents are at liberty to proceed further in the matter without any notice to the petitioner.

21. Subsequently, on 18.01.2023, this Court has taken note of the conditional order passed on 19.10.2022, directing the petitioner to deposit 20% of the demand amount, which would be Rs.3,22,00,000/-, but that the petitioner has paid only Rs.85,00,000/- as on that date. For payment of the balance amount, enlargement of time was pleaded in I.A.No.1 of 2023 which was filed on 14.02.2023. The learned counsel appearing for the respondents had submitted that due to non-compliance of the condition by the writ petitioner, the respondents have attached the property of the petitioner, i.e., land, building and the machinery therein on 28.12.2022. Subsequently, when the respondents had given the notice dt.06.04.2023 for auction of the property of the petitioner, scheduled to be held on 10.05.2023, the petitioner has filed I.A.No.2 of 2023 contending that as per the directions of the Hon'ble Court on 19.10.2022, the petitioner has deposited an amount of Rs.50,00,000/- on 11.11.2022, another sum of Rs.35,00,000/- on 18.11.2022 out of the amount of Rs.3,22,32,447/-, which is 20% of the demanded amount.

Thereafter, it was submitted that on procurement of funds, the balance amount of Rs.2,37,50,000/- was paid to the respondents on 27.02.2023 and therefore, the interim direction dt.19.10.2022 of this Court has been complied with and that the respondents are in receipt of such amount. *Vide* orders dt.25.04.2023, this Court has taken note of the above submissions and due to the forthcoming summer vacation and in order to protect the interest of all the parties, has directed the respondents to postpone the auction notification dt.06.04.2023 till the end of June, 2023.

W.P.No.5477 of 2023

22. In the meantime, the petitioner in W.P.No.5477 of 2023 claiming to be the purchaser of the plant and machinery, *vide* MoU dt.25.03.2022, from respondent No.3 therein, i.e., the writ petitioner in W.P.No.56 of 2014 and W.P.No.38486 of 2022, without any knowledge of any dues of electricity charges, and having paid the sum of Rs.22,45,00,000/- to Karur Vysya Bank Limited and having settled dues with the respondent No.3 therein, i.e., its vendor M/s. GMR Spintex Private Limited towards OTS amount, has filed W.P.No.5477 of 2023 challenging the attachment of the plant and machinery in the

consumer's property, under Section 27 of the Telangana Revenue Recovery Act, 1864. It claimed that the notice under Section 27 of the Telangana Revenue Recovery Act, 1864 can be issued only in respect of the landed property of the defaulter and therefore, the plant and machinery attached under the said notice is illegal and arbitrary. It is submitted that the proceeds from the sale of land and the building which is attached by respondents 1 and 2 would be more than sufficient to meet the liability of respondent No.3 and therefore, it was prayed

> *to declare the attachment of the plant and machinery purchased by the petitioner and kept in the premises bearing No.5-2GP Thorada, Sy.No.19, 20/AA/1 and 22/AA situated at Fauzpur Village, Jainath Mandal, Adilabad under the guise of recovery of electricity dues of the vendor, i.e., respondent No.3 therein, as illegal, arbitrary and unconstitutional and consequently to set aside the same and release from attachment.*

23. With the above background, all the three Writ Petitions are now sought to be disposed of as under. For the sake of convenience, hereinafter, the writ petitioner in W.P.No.56 of 2014 and W.P.No.38486 of 2022 is referred to as "the consumer", while the writ petitioner in

W.P.No.5477 of 2023 is referred to as "the purchaser" and the Power Distribution Company is referred to as "the respondent". The consumer has also been made as respondent No.3 in W.P.No.5477 of 2023.

24. In all the three Writ Petitions, the issues to be decided are:

(1)(a) The period for which the bills are due to be paid by the consumer in W.P.No.56 of 2014 and in W.P.No.38486 of 2022.

(b) *Whether the liability of the consumer has been properly determined by the respondent? and if not, whether the issue has to be referred to the Consumer Grievance Redressal Forum for determination of the liability?*

(2) Whether the demands raised by the respondent against the consumer are barred by limitation? And if not, under which law can it be recovered?

(3) Whether the plant and machinery also attached along with the property, i.e., the land and building of the consumer, is proper and valid under Section 27 of the Telangana Revenue Recovery Act, 1864?

(4) Whether the plant and machinery has already been transferred in favour of the purchaser under the Sale of Goods Act? and if yes, can it be attached and appropriated by the respondent company towards the dues of the consusmer?

Consideration by the Court in W.P.No.56 of 2014 (Issue Nos.1(a):

25. In W.P.No.56 of 2014, the Issue No.(1)(a), i.e., the liability of the consumer for the months of February, 2013 to July, 2013, is involved and the following documents give the details of the liability:

(a) The provisionally revised demand notice dt.23.10.2013 for a total of Rs.1,74,66,618/- for the months of February, 2013 to July, 2013 excluding the bill for April, 2013.

(b) The provisionally revised demand notice dt.10.12.2013 for a total of Rs.2,27,13,727/- for all the months from February, 2013 to July, 2013, i.e., including April, 2013.

26. In the penultimate para of the counter affidavit filed by the respondent No.3 on behalf of respondents 1 to 4 in this Writ Petition, it is stated that the electricity consumption charges and other charges due from the petitioner for the months of February, 2013 to July, 2013 is Rs.2,27,13,727/-, i.e., as per the revised demand notice dt.10.12.2013. In para 3.1 of the additional counter affidavit filed by the 3rd respondent on 19.06.2023, the respondent has given the break-up of the amounts mentioned in the demand notices dt.23.10.2013 and 10.12.2013. Both the demand notices contained the Month, the Bill amount, Paid amount and the Balance; and the relevant bills were enclosed therewith. It is stated that the demand notices dt.23.10.2013 and dt.10.12.2013 referred to two disputed amounts namely Permitted Demand Limit (PDL) amount of Rs.69,27,900/- and the Permitted Consumption Limit (PCL)

amount of Rs.64,82,280/-, i.e., a total of Rs.1,34,10,810/- and the amount due towards consumption charges was Rs.4,79,09,475/- and that *vide* interim order dt.30.01.2014, this Court had directed payment of 50% of the disputed amount, i.e., Rs.1,34,10,810/- which comes to Rs.67,05,405/- and thus the total amount due towards the demand notices dt.23.10.2013 and 10.12.2013 as per the interim order amounts to Rs.4,12,04,070/- (Rs.4,79,09,475 – 67,05,405), whereas the petitioner has paid only a sum of Rs.2,51,95,748/- and thus failed to comply with the interim order of this Court. However, this Court finds that this contention is not correct. The interim order dt.30.01.2014 was to pay 50% of the bill amounts and the petitioner has paid a sum of Rs.2,51,95,748/- which is above 50% of Rs.4,79,09,475/- as on the date of filing of the additional counter affidavit and therefore, there is compliance of the interim direction of the Court, but not within the time granted by the Court.

27. Further, it is noticed that after filing the W.P.No.56 of 2014, the consumer has raised a dispute about the said bills before the Consumer Grievance Redressal Forum under Section 42(5) of the Electricity Act, 2003. Therefore, the Consumer Grievance Redressal Forum ought to

have gone into the objections of the consumer and ought to have determined the correctness of the quantum of bills raised on the consumer, but has dismissed the same and hence the consumer appealed to the Vidyut Ombudsman which has refrained from considering the objections of the petitioner only on the ground that the consumer has approached this Court in W.P.No.56 of 2014 and that the same is pending adjudication. Though, this Court initially granted conditional stay, the consumer failed to fulfil the condition. But, the respondents have not proceeded to recover the amount. However, since the quantification of the due amounts of consumption charges and waiver of 50% of the penalties under the R & C Measures is yet to be given, the demand notices need to be revised. Therefore, this Court deems it fit and proper to hold that the dues for the months of February, 2013 to July, 2013 are recoverable after the respondents waive off the 50% of the penalties as per the orders of the APERC dt.08.08.2013 and quantification of the due amount thereafter.

28. Since the Consumer Grievance Redressal Forum is the appropriate Forum for carrying out the above exercise, this Court deems it fit and proper to refer the determination of the dues of the consumer

for the months of February, 2013 to July, 2013 to the Consumer Grievance Redressal Forum and direct the Consumer Grievance Redressal Forum to complete the exercise within a period of two months from the date of receipt of a copy of this order. Needless to mention that the petitioner shall be given reasonable opportunity of hearing before completing the above exercise.

29. W.P.No.56 of 2014 is accordingly disposed of. No order as to costs.

Consideration by the Court in W.P.No.38486 of 2022 (Issues No.1(a), 1(b) & (2)

30. In this Writ Petition, the first and foremost issue to be adjudicated is the amount due by the consumer for the period after July, 2013 and up to June, 2022 and whether the above demands raised by the respondent against the consumer are barred by limitation? For the above purpose, the following documents are necessary to be referred to:

(a) The proceedings of the 1st respondent dt.06.09.2019 referring to the C.C. charges up to August, 2019 at R.8,03,41,865/-.

(b) The proceedings of the 1st respondent dt.23.05.2020 referring to the C.C. charges up to April, 2020 at Rs.12,45,93,596/-.

(c) The proceedings of the 1st respondent dt.01.02.2021 referring to the C.C. charges up to December, 2020 at Rs.16,23,60,766/-.

(d) The arrears statement of the consumer showing that the consumer is due to pay consumer charges from January, 2014 to August, 2021.

(e) The statement showing the closing balance up to 6/22 at Rs.17,78,80,277/-.

(f) In the notice of attachment dt.28.06.2022, the amount shown as due from the consumer is Rs.16,11,62,233/-.

31. It is submitted that under the provisional revised demand notice dt.23.10.2013, the sum of Rs.1,74,66,618/- was due towards PCL and PDL for recovery for the months of February, 2013 to July, 2013 except April, 2013, while under the revised demand notice dt.10.12.2013, the demand raised was for an amount of Rs.2,27,13,727/- for all the months from February, 2013 to July, 2013 along with the levy of additional surcharge @ 18%. It is submitted that *vide* APERC proceeding No.APERC/Secy/154/2013 dt.08.08.2013 and paras 50 to 52 thereof, the APERC waived 50% of the penal charges for all the consumers for

whom R&C measures were made applicable *vide* order dt.07.09.2012 and all orders issued from time to time including the last order dt.17.04.2013. It was also stated that it is a onetime waiver and the refunds arising out of waiver of 50% penalty shall not be refunded and the same shall be adjusted against future bills. It is submitted that the benefit of this waiver was not given to the petitioner and in both the demand notices, the time given for recovery of dues was 15 days and therefore, the recovery and attachment notice dt.28.06.2022 for recovery of dues including the above was clearly barred by limitation. It is submitted that the petitioner had taken this ground before the Court and also in the representation dt.28.06.2022, a copy of which is filed along with the writ affidavit. Therefore, according to the learned counsel for the consumer, the demands raised in the year 2013 for which the attachment of property is made in the year 2022 for recovery of all the dues including the above dues is clearly barred by limitation. It is submitted that under Section 2(3) of the Andhra Pradesh State Electricity Board (Recovery of Dues) Act, 1984 read with Rule 2(e) of the Rules of 1985 framed thereunder by the State Government, it is clear that dues as per the tariff determined by the Board and the supply

conditions notified under Section 49 of the Electricity (Supply) Act, 1948 only are the recoverable dues. It is submitted that the recovery as per the tariff determined and the rate fixed for consumer category only can be made and the Andhra Pradesh State Electricity Board (Recovery of Dues) Act, 1984 and the Rules of 1985 framed thereunder, have to be read along with tariff conditions and the agreement entered into by the DISCOM/Board with the consumer under the Electricity Act, 2003, General Terms of Supply Conditions and Regulations framed by the State Electricity Regulatory Commission under Supply Code as per Section 50 of the Electricity Act, 2003. It is submitted that in the erstwhile Board regime under Section 60-A of the Electricity (Supply) Act, 1948, limitation period for recovery was three years and now under Section 56 of the Electricity Act, 2003, the limitation period for recovery is two years and as there is no other period of limitation prescribed under the Andhra Pradesh State Electricity Board (Recovery of Dues) Act, 1984 and the Rules of 1985 framed thereunder, it is now only two years period to recover the dues. The learned counsel for the petitioner submitted that the words “any time” used in the Act of 1984 for recovery of charges, sums due, etc., under the tariff rates fixed under

the Electricity (Supply) Act, 1948 shall not run independently as it is only a right to claim dues, charges, etc., for recovery from the consumer under the mechanism provided under the Andhra Pradesh State Electricity Board (Recovery of Dues) Act, 1984 and the Rules of 1985 framed thereunder and therefore, the three years period of limitation under Section 60-A of the Electricity (Supply) Act, 1948 since repealed, is no longer applicable and it is the period of two years under Section 56 (1) and (2) of the Electricity Act, 2003 which has to be considered for initiation of the proceedings for recovery of dues, charges, etc. It is submitted that in this case, the period of two years will run and commence from the date of notice of demand under Section 56(1) coupled with Sub-Section (2) thereof of the Electricity Act, 2003. It is submitted that the demand notices for the months of February, 2013 to July, 2013 were issued in this case on 23.10.2013 and 10.12.2013 and the consumer has challenged the same before the Court. It is submitted that these amounts are also sought to be recovered under the notice of attachment dt.28.06.2022 in Form-V notification issued by invocation of the provisions of the Telangana Revenue Recovery Act, 1864 which is highly unreasonable and hopelessly barred by limitation. The learned

counsel for the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of **Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Limited and others**[1] in support of this contention.

32. It is submitted that disputing the bills so raised, the petitioner had filed W.P.No.56 of 2014. Therefore, the contention of the DISCOM that dues under the provisions of the Andhra Pradesh State Electricity Board (Recovery of Dues) Act, 1984 can be recovered at any time, is contrary to the provisions of the Electricity Act, 2003. It is submitted that the Electricity Act, 2003 is a Central Legislation and prevails over the State Act of 1984 and the Rules of 1985 made thereunder.

33. Learned counsel for the petitioner further submitted that without correct determination of the demand and quantification of the sum due and payable, invocation of the provisions of the Telangana Revenue Recovery Act, 1864 for recovery of the sums due as early as on 23.10.2013 and 10.12.2013 is barred by limitation. It is submitted that the right to recover consumption and other charges due from the consumers can be by way of a civil suit as per the provisions of Section

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[1] 2021 SCC OnLine SC 870

145 of the Electricity Act, 2003 read with the Supply Code Regulations in force framed by the State Electricity Regulatory Commission in exercise of powers vested under Section 50 of the Electricity Act, 2003. The learned counsel for the petitioner placed strong reliance upon the Apex Court Judgment in **Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Limited and others** (1 supra) in support of his contention. It is further submitted that the contention of the respondents that Section 56 of the Electricity Act, 2003 bars only disconnection of power supply within a period of two years but not the recovery of dues, is absolutely incorrect. It is submitted that disconnection of power supply is a ministerial act of the staff of lower strata while the right of recovery of dues is provided under the Electricity Act, 2003 which is an act of Executive. It is stated that the Executive has not taken any action on the bill amounts under demand notices dt.23.10.2013 and 10.12.2013 and as the consumer disputes such billed amounts, it is the duty of the licensee to resolve the same and go for recovery as per the procedure prescribed under law. But since the respondents neglected to take action, the right to recover the same is barred by limitation under the Electricity Act, 2003. The learned counsel for the petitioner placed reliance upon the

judgment of the Hon'ble Supreme Court in the case of **State of U.P. Vs. Singhara Singh and others**[2] for the proposition that when the statute prescribes in a particular manner to do a thing, it must be done in such manner only and must not be done in a different manner.

34. The learned counsel for the petitioner further submitted that the right to recover FSA charges from the consumers is covered by judicial orders of this Court as well as of the Hon'ble Apex Court in the cases of

(i) **M/s. India Cements Ltd. Vs. The Chairman, APERC and others**[3]**;**

(ii) **Jairaj Ispat Ltd., Hyderabad Vs. A.P. Regulatory Commission, Hyderabad and others**[4]**;** and

(iii) **Thermal Systems (Hyderabad) Pvt. Ltd., Hyderabad Vs. Andhra Pradesh Electricity Regulatory Commission, Hyderabad and others**[5]**,**

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[2] 1963 AIR 358 : 1964 SCR (4) 485
[3] 2011 (6) ALD 35
[4] 2012 (2) ALD 739 (DB)
[5] 2012 (5) ALD 683

which, according to him, are applicable *in rem* and not *in personam* and therefore, the licensee cannot enforce the FSA liability on the writ petitioner/consumer in contravention of the above orders. It is further submitted that recovery in this case is hit by constitutional provisions under Article 265 of the Constitution of India as the levy is not authorised by law. It is further submitted that the State Government, in its wisdom, in the welfare of particular category of consumers, i.e., the spinning mills sector, has provided an incentive of Rs.2/- per unit under the proceedings issued on 03.10.2008, 09.10.2009, 06.06.2020, 17.03.2020 and 29.01.2021, whereas the said concession has not been given to the petitioner in the demand notices raised by the respondents. Therefore, according to the learned counsel for the petitioner, not only is the demand barred by limitation but even the liability has not been quantified properly and therefore, the recovery proceedings without quantifying the demand are incorrect. He relied upon the judgment of the Hon'ble Supreme Court in the case of **K.C.Ninan Vs. Kerala State Electricity Board and others**[6]**,** wherein after considering various decisions on the issue, it was held that

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[6] 2023 SCC OnLine SC 663

> *"341. h. The power to initiate recovery proceedings by filing a suit against the defaulting consumer is independent of the power to disconnect electrical supply as a means of recovery under Section 56 of the 2003 Act."*

He therefore submitted that the demands raised by the respondents, *vide* demand notices dt.23.10.2013 and 10.12.2013, and the subsequent communications dt.06.09.2019, 23.05.2020, 01.02.2021, etc., are unsustainable and have to be set aside.

35. The learned counsel for the petitioner/consumer submitted that this Writ Petition is filed challenging the attachment notice dt.28.06.2022 and the attachment order dt.28.12.2022. It is submitted that the attachment notice as well as the attachment order are also in respect of the demand notices issued in the year 2013 and since the action of attachment is in the year 2022, it is clearly barred by limitation. The learned counsel for the petitioner further took an objection that the procedure under the Telangana Revenue Recovery Act, 1864 has not been followed by the authorities and there is no delegation of powers in favour of the Divisional Engineer (Operations) Adilabad by the District Collector.

36. As regards the dispute regarding the components in the bills raised by the respondent, the decisions of various Courts on the said issues as relied upon by the learned counsel for the petitioner are as follows:

(1) **M/s. Sriramagiri Spinning Mills Ltd. Vs. State of Andhra Pradesh and others**[7]**.**

(2) **M/s.India Cements Ltd. and another Vs. Chairman, APERC, Hyderabad and others** (3 supra)**.**

(3) **Jairaj Ispat Ltd., Hyderabad Vs. A.P. Regulatory Commission, Hyderabad and others** (4 supra)**.**

(4) **Thermal Systems (Hyderabad) Pvt. Ltd., Hyderabad Vs. Andhra Pradesh Electricity Regulatory Commission, Hyderabad and others** (5 supra)**.**

(5) **Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Limited and others** (1 supra).

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[7] 2013 (3) ALD 298

(6) **M/s. Sri Sai Baba Cellulose Pvt. Ltd. Vs. State of Telangana rep. by Principal Secretary, Power and Energy Department and others[8].**

37. The learned Standing Counsel for the respondents, however, relied upon the averments made in the counter affidavit and submitted that the petitioner had approached the Consumer Grievance Redressal Forum (CGRF), and after the dismissal of the dispute by the CGRF, approached the Vidyut Ombudsman, against the demand notices dt.23.10.2013 and 10.12.2013, and the dispute was also dismissed by the Vidyut Ombudsman and as there is no challenge to the said proceedings in a Court of law, they have become final and the petitioner is bound to make payment of the demanded amounts in accordance therewith. It is further submitted that the demands have been kept alive by the petitioner by filing an application before the Vidyut Ombudsman and the order of Vidyut Ombudsman is only in the year 2016 and thereafter, the petitioner itself had made representations requesting for instalments and the respondents have granted sufficient time to the petitioner. The learned Standing Counsel has drawn the attention of this Court to the

[8] W.P.No.1859 of 2022 dt.25.01.2023

representation of the petitioner dt.29.10.2018 accepting its liability and seeking instalments for payment of the same and the correspondence of the respondent dt.01.11.2018 granting instalments and time for the same. It is submitted that since the petitioner did not comply with the conditions under which, time was granted to the petitioner to make payments, *vide* correspondence dt.01.11.2018, further time was requested by the consumer on 11.07.2019 and *vide* letters dt.16.07.2018 and 06.09.2019, time and instalments were again granted to the consumer. But the consumer paid only few instalments and defaulted in respect of others. He submitted that *vide* letter dt.23.05.2020, the consumer requested for further time to pay the outstanding dues and *vide* correspondence dt.23.05.2020, further time and instalments were granted, but since the consumer did not make the payment, steps had to be taken under the Telangana Revenue Recovery Act, 1864 for recovery of the due amounts. It is submitted that except for taking a ground that the demand is barred by limitation, the petitioner has not pointed out any provision of law under which the demand is barred by limitation. He submitted that under Section 56(2) of the Electricity Act, 2003, the restriction of two years is only on the disconnection of power supply for

recovery of amount, but there is no bar for recovery of the liability thereafter. He submitted that the Hon'ble Supreme Court in the case of **K.C.Ninan Vs. Kerala State Electricity Board and others** (6 supra) has considered the provision of Section 56 of the Electricity Act, 2003 and held that the said provision only deals with disconnection of power supply in default of payment and the Distribution Company is entitled to recover the amounts due under any other law. He submitted that reference to the Telangana Revenue Recovery Act, 1864 is only to follow the procedure laid down under the Telangana Revenue Recovery Act, 1864 for recovery of the amounts and not that the Telangana Revenue Recovery Act, 1864 is *ipso facto* applicable to the facts of the case. It is submitted that the provisions of the Telangana Revenue Recovery Act, 1864 have been invoked to recover the outstanding dues recoverable under the Electricity Act, 2003 and the Andhra Pradesh State Electricity Board (Recovery of Dues) Act, 1984, under which electricity dues can be recovered from a consumer at any point of time. The learned counsel for the respondents therefore prayed for dismissal of the Writ Petition so as to enable the respondents to proceed with the auction of the property and appropriate the proceeds towards the

amounts due from the petitioner. The learned counsel for the respondents submitted that the remedy of filing a civil suit is the remedy for the consumer and not for the licensee or the power supplier.

38. Having regard to the above rival contentions and the material on record, this Court finds that the first and foremost question to be decided in this case is the period for which there is liability of the petitioner to make the payment. The issue of the dues for the months of February, 2013 to July, 2013 is already an issue in W.P.No.56 of 2014 and appropriate directions for quantifying the same by CGRF have been given thereunder by order even dated. The bills raised for the subsequent period have not been disputed by the consumer. In fact, the petitioner in its representation dt.11.07.2019 has accepted the outstanding dues of Rs.6,70,08,527/- and had sought instalments to make the payment. Further, in the representation dt.23.05.2020, the petitioner has referred to the outstanding amount of Rs.17.04 Crores demanded by the respondent company and has admitted to undisputed dues outstanding at Rs.10.93 Crores and that an amount of Rs.6.11 Crores is at various stages of adjudication regarding FSA at Government and regarding PDL and PCL penalties etc., before the Court. Therefore, the quantification of

the demand only with regard to FSA and PDL and PCL is disputed by the petitioner. The PDL and PCL demands have already been remanded to the CGRF in W.P.No.56 of 2014 for correction and issuance of revised bills. As regards FSA, the consumer has raised this issue only in the representation dt.26.08.2022. Therefore, the said issue shall be considered while dealing with the representation of the petitioner dt.26.08.2022.

39. The next issue to be considered is whether the demand notices under challenge in this Writ Petition are barred by limitation under Section 56(2) of the Electricity Act, 2003? and under the Andhra Pradesh State Electricity Board (Recovery of Dues) Rules, 1985? and also under the Telangana Revenue Recovery Act, 1864? First, let us deal with the applicability of Section 56 of the Electricity Act, 2003. It reads as under:

> *"**56. Disconnection of supply in default of payment:**-- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover*

such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,--

(a) an amount equal to the sum claimed from him, or

b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,

whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity."

Thus, it can be seen that Section 56 of the Electricity Act, 2003 empowers the licensee to disconnect the power supply in default of payment of consumption and other charges by the consumer. While

Sub-Section (1) thereof empowers the DISCOM to disconnect the power supply if any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee subject to certain conditions, sub-Section (2) thereof imposes a restriction on the disconnection of power supply if a sum is due from any consumer and the recovery is sought to be made after a period of two years from the date when such sum became first due. The exemption from the restriction of Sub-Section (2) is if such sum has been shown continuously as recoverable as arrear of charges for electricity supplied. In this case, the initial demand notices were issued *vide* notice dt.23.10.2013 and revised notice dt.10.12.2013. Thereafter, to take action under Section 56(2) of the Electricity Act, 2003, the respondents could have disconnected the power supply for recovery of due amount within a period of two years, but thereafter, they could not have disconnected the power supply unless dues have been shown as in arrears continuously thereafter. In this case, the respondents sought to invoke the provisions of Section 56(2) of the Electricity Act, 2003 by issuing the demand notices dt.23.10.2013 and 10.12.2013 in respect of bills for the months of February, 2013 to July, 2013, but the consumer

had approached this Court in W.P.No.56 of 2014 and obtained stay. Section 56(2) of the Electricity Act, 2003 does not impose any restriction for recovery of consumption charges after two years, but it can be done only under the Telengana Revenue Recovery Act, 1864. The petitioner has strongly relied on the decision of **Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Limited and others** (1 supra) in support of his contention that recovery of dues is not permissible under Section 56(2) of the Electricity Act, 2003 after a period of two years. However, a Larger Bench of the Hon'ble Apex Court in the case of **K.C.Ninan Vs. Kerala State Electricity Board and others** (6 supra) has considered the above decision and has held as under:

> *"**136.** We therefore, reject the submission of the auction purchasers that the recovery of outstanding electricity arrears either by instituting a civil suit against the erstwhile consumer or from a subsequent transferee in exercise of statutory power under the relevant conditions of supply is barred on the ground of limitation under Section 56(2) of the 2003 Act. Accordingly, while the bar of limitation under Section 56(2) restricts the remedy of disconnection under Section 56, the licensee is entitled to recover electricity arrears through civil remedies or in exercise of its statutory power under the conditions of supply."*

Therefore, it is clear that the decision in the case of **Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Limited and others** (1 supra) has been impliedly overruled and accordingly, the recovery is sought to be made under the Telangana Revenue Recovery Act, 1864.

40. This Court shall now refer to the other judgments relied upon by the learned counsel for the petitioner and their applicability to the facts of the case before this Court.

(1) In the case of **Kanpur Electricity Supply Company Limited and another Vs. LML Limited and others**[9], the Hon'ble Supreme Court has held as follows:

> *"44. We are, therefore, of the view that no interference is called for in this petition in regard to the impugned order of the High Court. The special leave petition is, accordingly, dismissed, but this will not prevent the petitioner Company from taking appropriate steps against the respondent Company in the event the latter Company commits default in paying the instalments as directed by BIFR towards the arrears or in respect of the current electricity bills. There will be no order as to costs."*

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[9] (2010) 6 SCC 165

(2) In the case of **Hyderabad Vanaspathi Ltd. Vs. A.P.State Electricity Board and others**[10]**,** the Hon'ble Supreme Court has held as follows:

> *"20. We have already seen that Section 49 of the Supply Act empowers the Board to prescribe such terms and conditions as it thinks fit for supplying electricity to any person other than a licensee. The section empowers the Board also to frame uniform tariffs for such supply. Under Section 79(j) the Board could have made regulation therefor but admittedly no regulation has so far been made by the Board. The Terms and Conditions of Supply were notified in BPMs No.690 dated 17-9-1975 in exercise of the powers conferred by Section 49 of the Supply Act. They came into effect from 20-10-1975. They were made applicable to all consumers availing supply of electricity from the Board. The section in the Act does not require the Board to enter into a contract with individual consumer. Even in the absence of an individual contract, the Terms and Conditions of Supply notified by the Board will be applicable to the consumer and he will be bound by them. Probably in order to avoid any possible plea by the consumer that he had no knowledge of the Terms and Conditions of Supply, agreements in writing are entered into with each consumer. That will not make the terms purely contractual. The Board in performance of a statutory duty supplied energy on certain specific terms and conditions framed in exercise of a statutory power. Undoubtedly the terms and conditions are statutory in character and they cannot be said to be purely contractual."*

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[10] (1998) 4 SCC 470

From the above decisions, it is seen that the terms and conditions of supply are statutory in nature and therefore, the bills have to be raised and demanded in accordance therewith and can be recovered by taking appropriate steps therefor.

(3) The Hon'ble Supreme Court in the case of **State of U.P. Vs. Singhara Singh and others** (2 supra), has held as under:

> *"8. The rule adopted in Taylor v. Taylor (1876) 1 Ch D 426 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted."*

(4) In the case of **Union of India and others Vs. Mahendra Singh**[11], the Hon'ble Supreme Court has held as under:

> *"14. The argument of Mr. Bhushan that use of different language is not followed by any consequence and, therefore, cannot be said to be mandatory is not tenable. The language chosen is relevant to ensure that the candidate who has filled up the application form alone appears in the written examination to maintain probity. The answer sheets have to be in the language chosen by the candidate in the application form. It is well settled that if a particular procedure*

[11] 2022 LiveLaw (SC) 630

> *in filling up the application form is prescribed, the application form should be filled up following that procedure alone. This was enunciated by Privy Council in the* ***Nazir Ahmad*** *v.* ***King Emperor*** *(SCC OnLine PC 41), wherein it was held that "that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden"."*

The principle in the above decisions is that where a statute prescribes an act to be done in a particular manner, it must be done in such manner alone and not be done in any other manner.

(5) **Dilbagh Rai Jarry Vs. Union of India and others[12].**

(6) In the case of **Suzuki Parasrampuria Suitings Private Limited Vs. Official Liquidator of Mahendra Petrochemicals Limited (In Liquidation) and others[13]**, the Hon'ble Supreme Court held as follows:

> *"12. A litigant can take different stands at different times but cannot take contradictory stands in the same case. A party cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands. The untenability of an inconsistent stand in the same case was considered in Amar Singh v. Union of India*

[12] (1974) 3 SCC 554
[13] (2018) 10 SCC 707

[(2011) 7 SCC 69 : (2011 3 SCC (Civ) 560], observing as follows: (SCC p. 86 para 50)

> *"50. This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions."*

13. A similar view was taken in Joint Action Committee of Air Line Pilots' Assn. Of India v. DGCA [(2011) 5 SCC 435], observing: (SCC p. 443, para 12)

> *"12. The doctrine of election is based on the rule of estoppels—the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppels by election is one of the species of estoppels in pais (or equitable estoppels), which is a rule in equity. ... Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily"."*

The decisions in the case of (7) **Kishwari Begum and others Vs. Quadiri Begum and others**[14]**;** (8) in the case of **Chinnamarkathian alias Muthu Gounder and another Vs. Ayyavoo alias Periana Gounder and others**[15]**;** (9) in the case of **Smt. Periyakkal and others Vs. Smt. Dakshyani**[16]**;** and (10) in the case of **M.A. Mukheed Vs.**

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[14] 1977(1) APLJ 60 (DB)
[15] (1982) 1 SCC 159
[16] (1983) 2 SCC 127

C.Pandurangam[17] are in respect of extension of time for compliance with the interim directions of this Court.

41. All the above judgments are on the principles which are not controverted by the learned Senior Counsel for the respondents.

42. It is now to be considered whether the recovery of electricity consumer charges is governed by the Andhra Pradesh State Electricity Board (Recovery of Dues) Act of 1984 and Rules of 1985 framed thereunder. Section 2(3) of Act, 1984 defines "dues"; Section 3 thereof prescribes that the Bills are to state the date by which payments are to be made and consequences of non-payment; Section 4 refers to Notice of demand for dues and penalty not paid; Section 5 permits the debtor to institute a suit, if he denies his liability to pay dues, within six months from the date of service of notice of demand; and Section 6 prescribes the method for recovery of dues etc., if not paid. Rule 2(e) of the Rules of 1985 framed under the Act of 1984 defines "dues" to mean "any sum payable to the Board as per the tariffs and Terms and Conditions of supply notified by the Board, from time to time." Rule 4 also defines

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[17] 2005 (3) ALD 764

"Bill for Dues". Thus, it can be seen that it is the licensee which has to raise a bill for dues in Form 'A' and if the amount is not paid within a period of 3 months, then notice of demand shall be in Form 'B' and in case of continuous default by the consumer, the prescribed authority may communicate the amount and the details of demand together with the description of the debtor in default to the District Collector with a 'certificate' under his signature. The certificate to be issued by the prescribed authority under Sub-Section (2) of Section 6 of the Andhra Pradesh State Electricity Board (Recovery of Dues) Act, 1984 shall be in Form 'C' and the District Collector shall take action to recover the dues as indicated in Form 'C' as if it were an arrear of land revenue and remit the same to the prescribed authority. Therefore, it is at this stage that the provisions of the Telangana Revenue Recovery Act, 1864 would come into force upon issuance of Form 'C' under the Andhra Pradesh State Electricity Board (Recovery of Dues) Rules, 1985 which is in accordance with the procedure laid down for recovery of arrears of land revenue in the State of Andhra Pradesh/Telangana. Thus, this Court is of the opinion that the provisions of Telangana Revenue Recovery Act, 1864 are applicable to the proceedings herein. The relevant provisions

are the machinery provisions. Section 5 of the Telangana Revenue Recovery Act, 1864 prescribes the method for recovery of arrears of land revenue and it provides that the Collector, or other officer empowered by the Collector in that behalf, shall proceed to recover the arrears, together with interest and costs of process, by the sale of defaulter's movable and immovable property, or by execution against the person of the defaulter in manner hereinafter provided. Section 8 of the Telangana Revenue Recovery Act, 1864 prescribes the rules for seizure and sale of movable property, while Section 23-A prescribes the procedure for sale of perishable articles, Section 25 deals with demand notice to be served prior to attachment of land and Section 27 deals with mode of attachment of the landed property.

In this case, the respondents have issued attachment order under Section 27 of the Telangana Revenue Recovery Act, 1864, i.e., attachment of landed property. If the respondents intended to attach the landed property as well as the plant and machinery in the building, then they ought to have proceeded both under Section 8 as well as Section 27 of the Telangana Revenue Recovery Act, 1864. However, the respondents have not invoked Section 8 of the said Act in the attachment order.

Therefore, the attachment notice dt.28.06.2022 and the attachment order dt.28.12.2022 in respect of the plant and machinery in the building are not sustainable. However, the consumption charges under the Electricity Act, 2003 have been held to be in the nature of statutory dues by the Hon'ble Apex Court in the case of **Telangana State Southern Power Distribution Co. Ltd. v. Srigdhaa Beverages.**[18] The Hon'ble Supreme Court has held as follows:

> *"**16.1.** That electricity dues, where they are statutory in character under the Electricity Act and as per the terms and conditions of supply, cannot be waived in view of the provisions of the Act itself, more specifically Section 56 of the Electricity Act, 2003 (in pari materia with Section 24 of the Electricity Act, 1910), and cannot partake the character of dues of purely contractual nature."*

Thus, the consumption charges under the Electricity Act, 2003 are recoverable at any time after determination of the dues.

43. In respect of the landed property, in the reply affidavit filed by the consumer, it has given an undertaking that it will not alienate the same, till the outstanding dues are finalised and settled by the respondents. The petitioner has always admitted its liability, but has

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[18] (2020) 6 SCC 404 : (2020) 3 SCC (Civ) 748 : 2020 SCC OnLine SC 478

only disputed the quantum of its liability. The dues under the demand notices dt.23.10.2013 and 10.12.2013 have been kept live due to the pendency of their determination in W.P.No.56 of 2014. With regard to the other bills also, the petitioner has raised certain objections and concessions *vide* its detailed representation dt.26.08.2022, i.e., after issuance of attachment notice dt.06.04.2022. Therefore, the respondents are required to look into the said objections before proceeding with the auction of the attached property. The respondents are therefore directed to consider the objections of the petitioner with regard to the quantum of the bills raised by the respondents and re-determine the quantum of the bills payable by the petitioner within a period of two months from the date of receipt of a copy of this order and thereafter, proceed with the auction of the landed property and appropriate the sale proceeds towards the dues recoverable from the petitioner for the period of February, 2013 to July, 2013 and also thereafter up to 2021 in respect of which the attachment notice is issued.

44. W.P.No.38486 of 2022 is disposed of accordingly. No order as to costs.

Consideration by the Court in W.P.No.5477 of 2023 (Issues No.3 and 4)

45. Learned counsel for the petitioner submitted that respondent No.3 had availed financial credit facility from M/s. Karur Vysya Bank Limited at Adilabad District of Telangana State, but due to various reasons, it could not repay its dues and as per the One Time Settlement (OTS) with the bank, the dues were arrived at Rs.22,45,00,000/-. The 3rd respondent approached the petitioner herein seeking financial help for settlement of the dues and in turn, offered to sell the entire machinery located in its unit. The petitioner has accepted the offer of the 3rd respondent and accordingly, they have entered into an MoU dt.25.03.2022, whereunder respondent No.3 has agreed to sell the plant and machinery to the petitioner herein for an amount of Rs.22,45,00,000/-, which is the OTS amount to be paid to the Karur Vysya Bank towards full and final settlement of all the dues. It is submitted that the petitioner has paid the entire settlement amount under OTS Scheme of Rs.22,45,00,000/- to Karur Vysya Bank and honoured the commitment made by the petitioner herein and after the payment of the entire dues, M/s. Karur Vysya Bank, Assets Recovery Branch, Chirag Ali Lane, Hyderabad has also issued a 'No Objection Certificate'

dt.24.05.2022. It is submitted that as per the MoU dt.25.03.2022, the petitioner has to move the machinery from the premises by 31.10.2022 which can also be extended. However, before the petitioner would move the machinery, respondents 1 and 2 have attached the land and building including the machinery therein *vide* orders dt.28.06.2022 through a Gazette Notification No.6-R/ADB/2022 dt.29.06.2022. The learned counsel for the petitioner submitted that under the Telangana Revenue Recovery Act, 1864, any amount due beyond three years cannot be attached and recovered. It is further argued that under Section 27 of the Telangna Revenue Recovery Act, 1864, only landed property can be attached and sold for recovery of dues of the defaulter. It is further submitted that there is a bar contained under Proviso to Section 44 of the Telangana Revenue Recovery Act, 1864 under which only such part of the land which is sufficient for discharging the arrears of payments shall be attached. It is submitted that the land and building of the 3rd respondent was more than sufficient to meet the demand of respondents 1 and 2 and therefore, the plant and machinery kept under the attachment should be released. He further submitted that under Section 27 of the Telangana Revenue Recovery Act, 1864, only landed property

can be attached as per the attachment order under Form-V of the Standing Orders and though the attachment order refers to the landed property, the schedule property mentioned in the attachment order also reflected the machinery along with plant and building and therefore, the attachment of the machinery is illegal and is liable to be released. It is submitted that respondents 1 and 2 have interpolated and inserted the words "plant and machinery" in the schedule part of the notice of attachment when only land can be attached. It is submitted that these words cannot be added to what is not there in the section to suit the purpose.

46. The learned counsel for the petitioner further argued that there has to be an enquiry and adjudication about the quantum of the amount to be recovered under the Telangana Revenue Recovery Act, 1864 after giving notice to the defaulter and in this case, no such enquiry was conducted nor were the amounts notified or ascertained before the issuance of the notification. It is submitted that there are disputes pending between the 3rd respondent-defaulter and the 1st respondent as is evident from the pendency of W.P.No.56 of 2014. The learned counsel for the petitioner further submitted that the plant and machinery were

purchased by the writ petitioner under an MoU on a hundred rupee stamp paper which is sufficient for transfer of movable properties and under Sections 19 and 20 of the Sale of Goods Act, 1930, the petitioner is the owner of the plant and machinery on the date of execution of the said MoU and hence, it ceases to be the property of the defaulter as on the date of the attachment and hence, it cannot be attached. It is submitted that as per the Telangana Revenue Recovery Act, 1864, it is the Collector who has the power to initiate action for recovery of dues, but the impugned notification is issued by the Divisional Engineer, Operations, Adilabad, which is bad in law. It is submitted that there is no document filed to demonstrate that there was any delegation of power to the Divisional Engineer and hence, the notification is liable to be set aside. It is further submitted that at no point of time, the machinery, which is placed inside the premises of the 3rd respondent, had been subjected to any part of lien or mortgage before respondents 1 and 2 and therefore, the same cannot be attached and is liable to be released from the lock and key put by respondents 1 and 2 herein. It is further submitted that as per the MoU, the petitioner has paid the entire amount, i.e., the sale consideration by making payment of dues and

settlement of the amounts of the 3rd respondent. Therefore, the petitioner has become owner of the machinery and is entitled to enjoy the fruits of the same. It is submitted that if the machinery is kept under the lock and key in the premises, the same would perish and it will not fetch any amount in future as it will become junk. It is submitted that the value of the land which has been attached is worth of Rs.17,95,32,000/- and the value of the structure thereon is Rs.12,00,00,000/- which is far more than the amount due, i.e., the amount of Rs.16,11,62,233/- and therefore, it was sufficient to meet the liability of the 3rd respondent. It is further submitted that in addition to the amount paid under OTS, the petitioner has also paid the sum of Rs.2,37,50,000/- towards the compliance of the interim order passed by this Court in W.P.No.38486 of 2022 dt.27.02.2023 which was accepted by the respondents and therefore, the said amount is to be reduced from the due amount. It is further submitted that as per the Telangana Revenue Recovery Act, 1864, only the property of the defaulter can be attached and the petitioner not being the defaulter of respondents 1 and 2, its property cannot be attached. It is further argued that as per Section 7 of the Telangana Revenue Recovery Act, 1864, only 6% interest is chargeable and as such the amount arrived

at by respondents 1 and 2 in the impugned attachment is illegal and arbitrary. It is submitted that as the Telangana Revenue Recovery Act, 1864 speaks about the recovery from the defaulter's property and the petitioner herein being neither a consumer nor a defaulter, the property of the petitioner is not liable for attachment under the Telangana Revenue Recovery Act, 1864.

47. The learned counsel for the petitioner further raised a ground that only the arrears up to the period of 3 years can be recovered and as such, the amounts arrived at by the respondents 1 and 2 are barred by limitation. It is submitted that the Telangana Revenue Recovery Act, 1864 does not create any new right, but only provides the process of speed recovery of money. During the course of the arguments, the learned counsel for respondents 1 and 2 had stated that they are proceeding not under the Telangana Revenue Recovery Act, 1864, but under the Electricity Act, 2003. It is submitted that under the Electricity Act, 2003, recovery can be made by filing a civil suit and therefore, the attachment under the Telangana Revenue Recovery Act, 1864 is liable to be set aside. It is submitted that even as per the Panchanama dt.28.12.2022, there is no attachment of the plant and machinery and it

is only the land which can be taken possession of by respondents 1 and 2. The learned counsel for the petitioner has placed reliance upon the following judgments in support of his contentions.

(1) **State of Kerala and others Vs. V.R.Kalliyanikutty and another[19].**

(2) **Tata International Ltd., Mumbai Vs. State of Andhra Pradesh and others[20].**

(3) **Agricultural Market Committee Vs. Shalimar Chemical Works Ltd.[21].**

(4) **Taherunnisa Begum Vs. District Collector, Cuddapah District and another[22].**

(5) **B.C. Mulajkar Vs. Govt. of Andhra Pradesh represented by its Secretary, Industries and Commerce Dept., and others[23].**

(6) **S.K. Bhargava Vs. Collector, Chandigarh and others[24].**

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[19] (1999)3 SCC 657
[20] 2023 (2) ALD 54 (AP)
[21] (1997) 5 SCC 516 : AIR 1997 SC 2502 : 1997 (4) ALD (S.C.S.N.) 7-2
[22] AIR 2008 AP 11
[23] AIR 1971 AP 169
[24] (1998) 5 SCC 170

(7) **Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Limited and another[25].**

(8) **A.P.State Financial Corporation, Ranga Reddy (East) Brach, Hyderabad Vs. Duvvuru Rajasekhar Reddy[26].**

48. Learned counsel for respondents 1 and 2, however, relied upon the averments made in the counter affidavit and submitted that the 3rd respondent company was provided with electricity service connection *vide* H.T. S.C.No.ADB-247, but it defaulted in payment of electricity dues. It is submitted that the 3rd respondent company had made a representation dt.29.10.2018 requesting for sanction of eight monthly instalments for payment of the outstanding amounts towards arrears of electricity dues and considering the said request, the TSNPDCL, *vide* Memo dt.01.11.2018, sanctioned 8 instalments for payment of C.C. charges amounts up to October, 2018 for Rs.4,06,12,324/-, but the 3rd respondent company paid only four instalments and defaulted in payment of the remaining instalments. It is submitted that the 3rd respondent subsequently made another representation dt.11.07.2019

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[25] (2019) 10 SCC 572
[26] 2013 (6) ALD 175 (DB)

requesting to sanction of 12 instalments for payment of Rs.6,70,08,527/- towards outstanding electricity dues as on the said date and the said request was accepted and *vide* Memo dt.06.09.2019, twelve (12) instalments were sanctioned for payment of Rs.8,03,41,865/- towards outstanding C.C. charges up to August, 2019. However, the 3rd respondent has only paid four instalments and eight instalments were overdue. It is submitted that the 3rd respondent further made a representation dt.23.05.2020 stating that an amount of Rs.17.04 crores is outstanding against its service number, out of which Rs.10.93 crores are undisputed and an amount of Rs.6.11 crores is under adjudication in various Courts and it will pay an amount of Rs.50.00 lakhs per month from May, 2020 to July, 2020 and the remaining amounts will be paid within 9 months. It is submitted that the Superintending Engineer (O), Adilabad, referring to the representation of the 3rd respondent, addressed a letter dt.23.05.2020 that the net amount payable is Rs.12,45,93,596/- and the Corporate office, *vide* Memo dt.23.05.2020, sanctioned for payment of Rs.12,45,93,596/- in 12 instalments towards outstanding C.C. charges up to April, 2020 payable from June, 2020 to April, 2021.

It is stated that the 3rd respondent, however, failed to pay the instalments.

49. It is submitted that the Andhra Pradesh State Electricity Board (Recovery of Dues) Act 28 of 1984 was enacted by the State Legislature which provides for recovery of sums due to the APSEB and the said provisions are applicable to the successor entities of APSEB including TSNPDCL. It is submitted that Section 4 of the said Act provides for issuing a notice of demand for the dues not paid by the consumer, the penalty and the cost of recovery and Section 5 of the said Act provides that if a debtor disputes the notice of demand, then he can institute a suit within 6 months from the date of service of the notice of demand and that Section 6 provides that if the dues, penalty and costs as specified in the demand notice within the prescribed time is not paid, the consumer shall be deemed to have defaulted in respect of such amount and the same shall be recoverable as if it were an arrear of land revenue, notwithstanding anything contained in any other law. It is submitted that the Andhra Pradesh State Electricity Board (Recovery of Dues) Rules, 1985 were notified in exercise of powers conferred under Section 7 of

the Act 28 of 1984 and Rule 4 of the Rules provides for proforma under which notice of demand is to be issued to the defaulter.

50. It is submitted that since the 3rd respondent has failed to clear the arrears, Form 'A' notice dt.16.11.2021 was issued under Section 4 of the Act of 1984 read with Rule 4(1) of the Rules of 1985 for a sum of Rs.16,11,62,633/- due towards HT Service Connection No.ADB-247. It is submitted that a notice under Rule 4(2) in Form 'B' dt.27.12.2021 was issued for payment of Rs.16,11,62,633/- (due amount + penalty + cost of recovery) and if the 3rd respondent fails to pay the said amounts within 3 months from the date of service of the notice, it shall be deemed to be a defaulter and the same will be recovered as arrears of land revenue. It is submitted that since the consumer, i.e., the 3rd respondent company failed to pay the demanded amounts, a letter dt.04.04.2022 was addressed to the District Collector and Magistrate, Adilabad to invoke the provisions of the Revenue Recovery Act to recover the outstanding C.C. charges from the 3rd respondent and it was requested to delegate the Tahsildar powers to the Deputy Executive Engineer (Operations), Adilabad under Sections 5 and 8 of the Telangana Revenue Recovery Act, 1864 to attach and distrain movable

and immovable property of the defaulters. Thereafter, Form-IV notice dt.19.05.2022 under Section 25 of the Telangana Revenue Recovery Act, 1864 for demand prior to attachment of immovable property was issued to the 3rd respondent and subsequently, a notice in Form-V dt.29.06.2022 in respect of attachment of property under Section 27 of the Telangana Revenue Recovery Act, 1864 was published in the Gazette and paper publication to that effect was also made in Namaste Telangana daily newspaper. It is submitted that challenging the said notice, the 3rd respondent has filed W.P.No.38486 of 2022 and this Court had granted interim stay of the notice on the condition that the petitioner shall deposit 20% of the amount under the impugned Gazette Notification dt.29.06.2022 within four weeks of the order. It is submitted that the petitioner failed to make the payment, but has paid only first instalment of Rs.50,00,000/- on 11.11.2022 and second instalment of Rs.35,00,000/- on 18.11.2022 and thereafter, failed to pay the balance amount of 20%, i.e., Rs.2,37,32,447/-. It is submitted since the petitioner failed to comply with the conditional order dt.19.10.2022, the respondents 1 and 2, in terms of the interim orders, were at liberty to proceed further in the matter without any notice to the 3rd respondent

and accordingly, the property was attached, *vide* Panchanama dt.28.12.2022.

51. It is submitted that respondents 1 and 2 have no knowledge with regard to the alleged MoU said to have been entered into between the petitioner and the 3rd respondent as it is not a party to the said MoU. It is submitted that the property of the 3rd respondent was attached by the competent authority in terms of the powers exercised under the Telangana Revenue Recovery Act, 1864 read with the Andhra Pradesh State Electricity Board (Recovery of Dues) Act, 1984 and the Rules framed thereunder. It is further submitted that since the property has already been attached, *vide* notice of attachment dt.28.06.2022, the writ petitioner has no *locus standi* to challenge the same as it is not party to the said proceedings and further that the petitioner is not challenging the proceedings dt.28.06.2022. It is further submitted that due to failure on the part of the 3rd respondent in clearing the arrears of electricity bills, an action was taken under the Andhra Pradesh State Electricity Board (Recovery of Dues) Act, 1984 and the Rules framed thereunder and that the writ petitioner herein has no *locus standi* to question the said notice by invoking Article 226 of the Constitution of India and therefore, the

writ petition is liable to be dismissed. It is submitted that the MoU between the writ petitioner and the 3rd respondent is not binding on respondents 1 and 2 herein as it is not privy to the said contract. It is submitted that as on the date of the alleged MoU dt.25.03.2022, the Revenue Recovery proceedings were already initiated against the 3rd respondent and that the 3rd respondent, who filed W.P.No.38486 of 2022 on 12.10.2022 challenging the notice in Form-V dt.28.06.2022, did not refer to the alleged MoU dt.25.03.2022. It is further submitted that the TSNPDCL has attached the property of the 3rd respondent in exercise of the powers conferred under the Andhra Pradesh State Electricity Board (Recovery of Dues) Act, 1984 and the Rules framed thereunder and the Telangana Revenue Recovery Act, 1864 and since the writ petitioner is not a consumer of TSNPDCL, it does not have any say in the subject matter and that the reference to the MoU cannot be a ground to seek relief as claimed in the writ petition, but it has to work out its remedy before appropriate Forum against the 3rd respondent, if any. The learned Senior Counsel therefore submitted that the writ petition filed by the petitioner in this case is not maintainable. He has referred to the

documents filed along with the counter affidavit in support of the above contentions.

52. The 3rd respondent has also filed a counter affidavit confirming that it had availed the financial assistance from M/s. Karur Vysya Bank and that it has entered into negotiations with the bank for one time settlement and in order to meet the said commitment, the 3rd respondent has entered into an MoU with the petitioner for sale of the machinery. It is stated that the petitioner has accordingly paid the OTS amount of Rs.22,45,00,000/- on behalf of the 3rd respondent and 'No Due Certificate' dt.24.05.2022 was also issued by the bank. It is submitted that since the 3rd respondent has sold the machinery kept in its premises to the petitioner for a total sale consideration of Rs.22,45,00,000/-, the writ petitioner has become the sole and absolute owner of the machinery and that the same was paid on 25.03.2022 which is much prior to the notice of attachment dt.28.06.2022. It is stated that the fact of selling the machinery to M/s. Raimata Impex, i.e., the writ petitioner, could not be brought in W.P.No.38486 of 2022 as the very notice of attachment dt.28.06.2022 was challenged, which otherwise says about both land and machinery. It is submitted that the 3rd respondent raised several defects

and flaws in the determination of the dues by respondents 1 and 2 which have to be adjudicated in W.P.No.38486 of 2022 and without prejudice to the grounds raised by it in W.P.No.56 of 2014 and W.P.No.38486 of 2022, in order to show the bonafides of the 3rd respondent, it is submitted that it undertakes to pay the amount which become actually due and payable after adjudication of the disputes raised by the 3rd respondent and as and when the amounts are finally decided and crystallized by this Court or by the Ombudsman, after taking into consideration the disputes raised by the 3rd respondent. It is further submitted that the 3rd respondent company undertakes not to alienate the landed property belonging to it, i.e., excluding the plant and machinery which has already been sold to the petitioner under the MoU dt.25.03.2022 till the amounts which are under dispute are crystallized and decided as per law, if so directed by this Court. It is further submitted that the 3rd respondent only is responsible to pay the electricity dues as it is the consumer and that the writ petitioner is only the purchaser of the plant and machinery. It is also affirmed that the value of the land of the 3rd respondent is much higher than the amounts being claimed by respondents 1 and 2 under the impugned notification

and therefore, the writ petitioner should be permitted to take back the plant and machinery belonging to the petitioner on the ground of sale of machinery under the MoU dt.25.03.2022. It is stated that it is only due to inadvertence that the 3rd respondent could not mention about the sale of machinery to the petitioner and only during the arguments on 23.06.2023, the petitioner could gather knowledge and that there are no malafides on the part of the 3rd respondent in not mentioning about the said sale in as much as the 3rd respondent did not gain any advantage out of the same. Therefore, the 3rd respondent has prayed that the plant and machinery be permitted to be taken by the writ petitioner.

53. Having regard to the rival contentions and the material on record, this Court finds that the questions to be decided in this Writ Petition are whether the writ petitioner has got any right or title over the plant and machinery located in the premises of the 3rd respondent? And whether the petitioner has become owner of the plant and machinery under the Sale of Goods Act, 1930? The MoU between the petitioner and the 3rd respondent is admittedly not a registered one and it being in respect of movable property, it does not require registration under the

Registration Act. Therefore, it is sufficient if the MoU is executed on a stamp paper.

54. Whether the writ petitioner has become owner of the plant and machinery is now to be seen. The petitioner has claimed that under Sections 19 and 20 of the Sale of Goods Act, 1930 he has become owner and title holder of the plant and machinery. For the sake of ready reference, Sections 19 and 20 of the Sale of Goods Act, 1930 are reproduced hereunder:

> ***19. Property passes when intended to pass.—****(1) Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.*
>
> *(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.*
>
> *(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.*
>
> ***20. Specific goods in a deliverable state.—****Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract*

is made, and it is immaterial whether the time of payment of the price or the time of delivery of the goods, or both, is postponed.

55. Thus, under Section 20 of the Sale of Goods Act, 1930, the property in the specific goods passes to the buyer when the contact is made and it is immaterial whether the time of payment of the price or the time of delivery of goods, or both, is postponed. In this case, the MoU is dated 25.03.2022 and the writ petitioner has also made the payment on or before 24.05.2022 on which date M/s. Karur Vysya Bank has issued the 'No Objection Certificate' to the 3rd respondent company. Therefore, except for the lifting of the machinery or taking possession of the machinery from the possession of the 3rd respondent, the entering into of the MoU and also payment of money has been completed. Therefore, under Section 20 of the Sale of Goods Act, 1930, it can be said that the sale of plant and machinery is complete as on the date of the MoU itself.

56. In the case of **Agricultural Market Committee Vs. Shalimar Chemical Works Limited** (20 supra)**,** the Hon'ble Supreme Court has held as under:

*"**39.** Section 20, which contains the first rule for ascertaining the intention of the parties, provides that where there is an unconditional contract for the sale of "specific goods" in a "deliverable state", the property in the goods passes to the buyer when the contract is made. This indicates that as soon as a contract is made in respect of specific goods which are in a deliverable state, the title in the goods passes to the purchaser. The passing of the title is not dependent upon the payment of price or the time of delivery of the goods. If the time for payment of price or the time for delivery of goods, or both, is postponed, it would not affect the passing of the title in the goods so purchased.*

***40.** In order that Section 20 is attracted, two conditions have to be fulfilled: (i) the contract of sale is for specific goods which are in a deliverable state: and (ii) the contract is an unconditional contract. If these two conditions are satisfied, Section 20 becomes applicable immediately and it is at this stage that it has to be seen whether there is anything either in the terms of the contract or in the conduct of the parties or in the circumstances of the case which indicates a contrary intention. This exercise has to be done to give effect to the opening words, namely, "Unless a different intention appears" occurring in Section 19(3). In Hoe Kim Seing v. Maung Ba Chit (AIR 1935 PC 182) it was held that intention of the parties was the decisive factor as to when the property in goods passes to the purchaser. If the contract is silent, intention has to be gathered from the conduct and circumstances of the case."*

57. The learned counsel for the petitioner has relied upon the judgment of the Hon'ble A.P. High Court in the case of **Tata**

International Ltd., Mumbai Vs. State of Andhra Pradesh and others (19 supra), wherein a sugar mill had defaulted in payment of price of the sugarcane to the farmers and therefore, the State had invoked the provisions of A.P. Revenue Recovery Act, 1864 to recover the amount due by attaching the sugar/property. The order of distraint and subsequent order confirming the same were under challenge in that Writ Petition. The Coordinate Bench has considered as to whether there was a transfer of title in the sugar and whether a charge is created on the said sugar. The coordinate Bench of the A.P. High Court considered the judgment of the Hon'ble Supreme Court in the case of **Agricultural Market Committee Vs. Shalimar Chemical Works Ltd.** (20 supra), wherein Sections 19 and 20 of the Sale of Goods Act, 1930 were considered and it was held that as soon as a contract is made in respect of specified goods in a deliverable state, the title of the goods passes to the purchaser and the passing of the title is not dependent upon payment of price or time of delivery of goods. Thus, the Coordinate Bench held that there was a transfer of title in favour of the petitioner therein long prior to the notice of attachment dt.11.06.2021 as by that date, the

respondent was not the owner of the sugar and the sugar is not the property of the defaulter.

58. In view of the above and applying the same principle and rationale, it is to be held that the writ petitioner has become the owner and title holder of the plant and machinery as on the date of MoU dt.25.03.2022. It is also an admitted fact that the petitioner is not the defaulter of respondents 1 and 2 and therefore, the property of the petitioner cannot be attached for recovery of any dues of respondent No.3. Respondents 1 and 2 have also issued the notice of attachment on 28.06.2022 and actually put a lock and key on 28.12.2022. As the petitioner has become owner of the machinery in the building and the machinery is no longer the property of the 3rd respondent and is not liable for attachment under the provisions of the Telangana Revenue Recovery Act, 1864, the attachment of the machinery is not sustainable. Therefore, the attachment of plant and machinery alone is set aside and respondents 1 and 2 are directed to immediately remove the lock and permit the petitioner forthwith to remove or take away the plant and machinery purchased by it which is located in the premises of the 3rd respondent.

59. The other questions about limitation and the authority under the Telangana Revenue Recovery Act, 1864 to attach the property are not being dealt with in this Writ Petition in view of the finding above that the writ petitioner is the owner and title holder of the subject plant and machinery.

60. W.P.No.5477 of 2023 is accordingly allowed. No order as to costs.

61. In the result,

(1) W.P.No.56 of 2014 is disposed of. No order as to costs.

(2) W.P.No.38486 of 2022 is disposed of. No order as to costs.

(3) W.P.No.5477 of 2023 is allowed. No order as to costs.

62. Pending miscellaneous petitions, if any, in these Writ Petitions shall stand closed.

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JUSTICE P. MADHAVI DEVI

Date: 10.08.2023

Note: L.R. copies to be marked.
B/o Svv