

[ 3393 ]

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD**

**WEDNESDAY, THE TWENTY FOURTH DAY OF JULY  
TWO THOUSAND AND TWENTY FOUR**

**PRESENT**

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE  
AND  
THE HONOURABLE SHRI JUSTICE ANIL KUMAR JUKANTI**

**WRIT APPEAL NO: 971 OF 2014**

Writ Appeal under clause 15 of the Letters Patent against the order dt.11-06-14 in WP.No.12199 of 2013 on the file of the High Court.

**Between:**

1. **Sitapuram Power Limited, Having its Regd., Office at D.No.8-2-293/A/431/A, Road No. 22, Jubilee Hills, Hyderabad.**
2. **Zuari Cements Limited, Having its Regd., Office at Krishna Nagar, Yerraaguntla, Kadapa, Andhra Pradesh-576311 and Corporate Office at Adventz Centre, 2<sup>nd</sup> floor, No.28, Cubbon Road, Bengaluru-560001 and its Plant at Dondapadu Village, Chintala Palem Mandal, Suryapet District, Telangana-508246.**

*(Appellant No.1 is deleted and Appellant No.2 C.T. is amended as per Court Order dated : 22.07.2024 Vide I.A.No.1 of 2021 in W.A.No.971 of 2014)*

**...APPELLANTS**

**AND**

1. **Transmission Corporation of A.P. Limited VidyutSoudha, Hyderabad.**
2. **A.P.Southern Power Distribution Company Ltd, Tirupathi, Rep by its Managing Director**
3. **Telangana State Transmission Corporation Limited, Vidyut Soudha Hyderabad.**

*(Respondent No.3 is impleaded as per Court Order dated 11.06.2024 Vide IA.No.1 of 2024)*

**...RESPONDENTS**

**I.A. NO: 1 OF 2014(WAMP. NO: 2074 OF 2014)**

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to restrain the Respondent No. 2 from either demanding or insist for repayment of amounts already adjusted from the amounts payable under invoices for the months of June and July 2013 or take any coercive steps.

**Counsel for the Appellants : SRI PRABHAKAR SRIPADA, Sr.Counsel  
for SRI SETTY RAVI TEJA**

**Counsel for the Respondents No.1&2 : SRI M.HARI VASTHAV, rep.,  
SRI ANUP KOUSHIK KARAVADI,  
SC FOR APSPDCL**

**Counsel for the Respondent No.3 : SRI R.VINOD REDDY, (SC FOR TRANSCO)**

**The Court made the following: JUDGMENT**

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**  
**AND**  
**THE HON'BLE SHRI JUSTICE ANIL KUMAR JUKANTI**

**WRIT APPEAL No.971 OF 2014**

**JUDGMENT:** *(Per the Hon'ble the Chief Justice Alok Aradhe)*

Mr. Prabhakar Sripada, learned Senior Counsel appears for Mr. Setty Ravi Teja, learned counsel for the appellant.

Mr. M.Hari Vasthav, learned counsel represents Mr. Anup Koushik Karavadi, learned standing counsel for the Andhra Pradesh Southern Power Distribution Company Limited for respondent No.2.

Mr. R.Vinod Reddy, learned standing counsel for the Telangana State Transmission Corporation Limited appears for respondent No.3.

2. This intra court appeal emanates from an order dated 11.06.2014 passed by the learned Single Judge by which writ petition preferred by the appellant has been dismissed. In order to appreciate the grievance of the appellant, relevant facts need mention which are stated hereinafter.

3. M/s. Sitapuram Power Limited, initially arrayed as the appellant No.1, is a power generating company (hereinafter

referred to as 'the power generating company'), which has established a power generating plant with a capacity of 43 MW situated at Sitapuram, Dondapadu Village, Mellacheruvu Mandal, Nalgonda District, Telangana. M/s.Zuari Cements Limited, initially arrayed as the appellant No.2, is an Open Access User (hereinafter after referred to as 'the User') having entered into a Long Term Open Access Agreement dated 26.02.2008 (hereinafter referred to as 'the Open Access Agreement') with the respondents. During the pendency of this appeal, M/s. Sitapuram Power Limited was amalgated into M/s.Zuari Cements Limited and therefore, M/s.Zuari Cements Limited is the sole appellant. Under the Open Access Agreement, the power generating company has a contracted capacity of 26,000 KW for transmission and wheeling the electricity from its power plant to its captive consumer, namely the User.

4. The User has set up a cement plant at Yerraguntla, Kadapa District, in the State of Andhra Pradesh. It has entered into a supply agreement with Andhra Pradesh Southern Power Distribution Company Limited (APSPDCL) for a contracted demand of 6500 KVA in addition to supply from the power generating company. The User is a scheduled consumer within

the meaning of Andhra Pradesh Electricity Regulatory Commission (Interim Balancing and Settlement Code for Open Access Transactions) Regulation, 2006 (hereinafter referred to as 'the 2006 Regulations'). The User is also captive consumer of power generating company which has a captive generating plant within the meaning of Electricity Rules, 2005.

5. It is the case of the appellant that if the captive power plant of the generating company trips and User draws schedule power even for fifteen minutes time block from APSPDCL, it bills the User with demand charges treating the power drawn by it during one time block as maximum demand for the whole month. In other words, for supplying electricity for fifteen minutes, APSPDCL demands electricity charges as if electricity was supplied for entire one month i.e., 43,200 minutes.

6. The appellant challenged the aforesaid action of APSPDCL in demanding electricity charges for entire one month even though the electricity was supplied to the User for fifteen minutes only, by way of a petition under Section 86(1)(f) and (k) of the Electricity Act, 2003 before the Andhra Pradesh Electricity Regulatory Commission. The Electricity Regulatory Commission by an order dated 19.08.2009 passed in O.P.No.15 of 2008

refused to adjudicate the dispute by treating the same to be a billing dispute and held the same to be beyond the purview of Section 86(1)(f) of the Electricity Act.

7. The appellant thereupon filed an Appeal before the Appellate Tribunal for Electricity vide Appeal No.8 of 2010. The Appellate Tribunal by an order dated 19.11.2010 *inter alia* held that dispute between the appellant and the APSPDCL is justiciable under Regulation 15 of the 2006 Regulations. The respondents in this appeal challenged the validity of the order passed by the Appellate Tribunal in Civil Appeal No.837 of 2011 before the Supreme Court and sought stay of the order passed by the Appellate Tribunal. The Supreme Court by an order dated 11.02.2011 refused to grant stay of the order passed by the Appellate Tribunal. The appellant thereupon filed an I.A., namely I.A.No.2 in Civil Appeal No.837 of 2011 before the Supreme Court seeking a direction to the respondents to deposit an amount of Rs.18,17,56,066/-. The Supreme Court by an order dated 20.01.2012 directed the appellant to approach the appropriate authority.

8. Thereupon the appellant filed an execution petition, namely E.P.Nc.3 of 2012 before the Appellate Tribunal for

Electricity seeking deposit of a sum of Rs.18,17,56,066/-. The Appellate Tribunal by an order dated 27.08.2012 held that the execution petition filed before it is not maintainable and relegated the appellant to work out the remedies before State Electricity Regulatory Commission.

9. The appellant thereupon instead of approaching the State Electricity Regulatory Commission has filed the writ petition seeking refund of the amount of Rs.18,17,56,066/- illegally collected by APSPDCL. The learned Single Judge by an interim order dated 07.06.2013 passed in W.P.M.P.No.15090 of 2013 in W.P.No.12199 of 2013 directed the APSPDCL to adjust the amount in dispute i.e., Rs.18,17,56,066/- against the running bills. The aforesaid interim order, however, was set aside by a Division Bench of this Court vide order dated 25.09.2013 passed in W.A.No.1627 of 2013 and it was held that the learned Single Judge could not have granted the interim relief without finally adjudicating the writ petition.

10. Thereafter the learned Single Judge by an order dated 11.06.2014 dismissed the writ petition on the ground that the amount which is due and payable by the APSPDCL has not been

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ascertained. In the aforesaid factual background, this intra court appeal arises for our consideration.

11. Learned Senior Counsel for the appellant while inviting the attention of this Court to paragraph 6 of the counter affidavit submitted that the APSPDCL has admitted the amount and therefore, learned Single Judge ought to have appreciated that the amount is admittedly due to the appellant and the same should have been refunded. However, it is pointed out that the Special Leave Petition is still pending before the Supreme Court. It is further submitted that appellant is entitled to the amount due under the orders passed by the Appellate Tribunal. It is further submitted that the writ petition seeking refund of the amount illegally collected from the appellant is maintainable. In support of the aforesaid submissions, reliance has been placed on the decisions of the Supreme Court in **M/s. Shiv Shankar Dal Mills vs. State of Haryana**<sup>1</sup>, **Salonah Tea Company vs. Superintendent of Taxes, Nowgong**<sup>2</sup> and **Shree Baidyanath Ayurved Bhawan Private Limited vs. State of Bihar**<sup>3</sup>.

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<sup>1</sup> (1980) 2 SCC 437

<sup>2</sup> (1988) 1 SCC 401

<sup>3</sup> (1996) 6 SCC 86



12. On the other hand, learned counsel for APSPDCL has submitted that the erstwhile State of Andhra Pradesh has been bifurcated into two successor States under the Andhra Pradesh Reorganisation Act, 2014 and as the dispute is involved between two States, the Central Electricity Regulatory Commission is appropriate authority to decide the dispute. In support of the aforesaid submission, reference has been made to the order dated 04.02.2020 passed in Civil Appeal Nos.3788-3790 of 2019. Learned Counsel for APSPDCL and TSTCL submitted that the amount due to the appellant has not been admitted and the appellant ought to have approached the Central Electricity Regulatory Commission instead of filing the writ petition.

13. We have considered the rival submissions and have perused the record. The appellant had assailed the validity of the action of APSPDCL in levying electricity charges for one month even though the electricity was supplied to the User for fifteen minutes. The Andhra Pradesh Electricity Regulatory Commission by an order dated 19.08.2009 passed in O.P.No.15 of 2008 refused to adjudicate the disputes on the ground that the same is outside the purview of Section 86(1)(f) of the Electricity Act, 2003. Being aggrieved, the appellant filed an

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Appeal before the Appellate Tribunal for Electricity, which was allowed by an order dated 19.11.2010. The operative portion of the order reads as under:

“54. Summary of our Findings:

(i) The 1<sup>st</sup> Appellant is a captive generating plant and the 2<sup>nd</sup> Appellant is the captive user. The 2<sup>nd</sup> Appellant meets part of its power requirements from respondent-2, the Distribution Licensee as per the supply agreement for which it has to pay to respondent-2 at the tariff determined by the State Commission. Appellant-2 is a Scheduled Consumer in terms of the Regulations of the State Commission.

(ii) The 1<sup>st</sup> Appellant entered into a long term Open Access Agreement with respondent-1, Transmission licensee and respondent-2, the Distribution licensee on 26.02.2008. The appellant-2, being a captive user admittedly was not a party to the said agreement. Under the agreement dated 26.02.2008, the open access user i.e., Appellant-1 has to pay respondent-2 in accordance with the rates/charges specified by the Commission from time to time, on the basis of the settlement statement determined in accordance with the Balancing and Settlement Code approved by the Commission. The Clause 8.4 of Regulations 2 of 2006 would specifically provide, where there is a deviation between the scheduled capacity and the actual capacity, being injected at an entry point, the shortfall in the capacity allocated to the scheduled consumer shall be deemed to

have been drawn by the scheduled consumer from the distribution company and the energy corresponding to such a shortfall shall be paid for by the party who has contracted for the Open Access capacity with the distribution company. However, the balance demand due to shortfall in supply by the Open Access Generator is treated in the same way as excess drawl by a consumer and has to be paid to the Distribution Company in terms of the supply agreement with the Distribution Company. According to clause 10.1 of the Regulations, dealing with Settlement for Open Access Generator at Entry Point, it is stated that the energy and demand charges for the excess drawals by the Scheduled Consumer on account of under-generation by the Open Access Generator for each time block shall be paid by the Scheduled Consumer to the Distribution Company in accordance with the proviso to clause 8.3 and as per clause 8.4 respectively.

(iii) If the distribution licensee is allowed to claim demand charges from the 2<sup>nd</sup> Appellant, the captive user, of an amount determined based on the consumption during any time block of 15 minutes, treating the same as Maximum Demand Charges applicable for the entire month, the entire statutory scheme of encouraging the captive generation and open access would get defeated.

(iv) The National Tariff Policy, in para 8.5.6, provides that in case of outages of a generator, for supply of electricity to an Open Access consumer, suitable arrangements should be provided by the

licensee on payment of rate for temporary connection to that consumer category as specified by the Appropriate Commission. The Central Commission in its Open Access Regulations for Inter-state transmission system has devised UI rates for deviation between scheduled and actual drawal/generation supply during a time block. Such UI charges are leviable only during the time block when the deviation from schedule takes place. The State Commission in the preamble to Regulation-2 of 2006 has also expressed the intent to introduce Availability Based Tariff as implemented by the Central Commission and till then the State Commission has implemented the Interim Balancing & Settlement Code. The interim code cannot negate the intent of the Electricity Act to encourage open access in distribution and the provisions of the National Tariff Policy and Open Access Regulations of the Central Commission.

(v) The contention of the respondents that the Distribution licensee is required to make the arrangements for the supply of electricity to the consumer during outages and said arrangements should be for the entire month, is without any basis. In order to substantiate this contention, no material has been placed by the distribution licensee that it has maintained such segregated quantum for the entire month to meet the requirement of outage during any time block relating to Open Access consumer. It is the responsibility of the respondent Distribution licensee to provide supply during the period of outages in terms of

Regulations framed by the State Commission. Even otherwise, any additional supply by the licensee on account of outages ought not to be charged at a rate higher than the cost incurred by the licensee in making such supply available to the captive consumer.

(vi) In this case, the dispute has arisen due to difficulties experienced by Appellants 1 and 2 in implementation of Open Access and Interim Balancing and Settlement Code of the State Commission and this cannot be resolved at the Forum for Redressal of Grievances of Consumers. Under the circumstances, the Appellant is justified in praying the State Commission to invoke the powers under clause-15 of Regulation-2 of 2006. Accordingly, we are of the view that the Commission ought to have invoked its powers under clause-15 of Regulation-2 of 2006 to remove the difficulties being experienced by Open Access User.

55. In view of the above findings, we conclude that the order impugned holding that it cannot invoke Regulation 15 of Regulation 2 of 2006 to remove difficulties being experienced by the Appellants in implementation of the Open Access and Billing and Settlement Code is liable to be set aside and accordingly, set aside. Consequently, it has to be held that levy of demand charges on the 2<sup>nd</sup> Appellant by the respondent-2 is also not in accordance with law and therefore, the same also is set aside.

56. Appeal is allowed.”

14. Thus, it is evident that the Appellate Tribunal has neither specified the quantum of amount payable by the appellant nor has issued any positive direction to the APSPDCL to refund the amount to the appellant.

15. It is not in dispute that against the aforesaid order, the respondents have approached the Supreme Court by filing C.A.No.837 of 2011 in which on 11.02.2011, the following order has been passed:

“Admit. No stay.”

16. Admittedly, thereafter the appellant filed an application, namely I.A. No.2 in C.A.No.837 of 2011 seeking a direction to respondents to refund a sum of Rs.18,17,56,066/- along with interest at the rate of 18% per annum. The aforesaid application was decided by the Supreme Court by an order dated 20.01.2012, which reads as under:

“This an application by respondent Nos.1 and 2 for issue of direction to the appellants to refund a sum of Rs.18,17,56,066/- with interest at the rate of 18% per annum.

After making some arguments, Mr. Soli J.Sorabjee, learned Senior Counsel appearing for the applicants made a request that they may be permitted to withdraw the application with liberty to avail

appropriate remedy for realization of the amount payable by the appellants in view of the order passed by the Appellate Tribunal for Electricity.

The request of Shri Sorabjee is accepted and the application is disposed of in terms of the prayer made.”

17. It is also not in dispute that thereafter the appellant filed E.P.No.3 of 2012 in Appeal No.8 of 2010 before the Appellate Tribunal. The aforesaid E.P., was disposed of by the Appellate Tribunal by an order dated 27.08.2012, which is extracted below for the facility of reference:

“Whatever to say, we have already said in the Judgment, which is under the Appeal before the Hon’ble Supreme Court. Since stay was not granted, the learned counsel for the Applicant seeks for execution of the consequential orders. We feel that the said prayer before this Tribunal is not maintainable. However, we give liberty to the Applicant to approach the Commission to seek for the consequential orders in consonance with the finding, which has been rendered in our Judgment.”

18. In substance, the writ petition is in fact an execution petition seeking execution of the order passed by Appellate Tribunal. In fact the appellant ought to have either approached the Supreme Court against order dated 27.08.2012 passed in E.P.No.3 of 2012, in the light of order dated 20.01.2012 passed

in Civil Appeal No.837 of 2011 or should have sought modification of the order dated 19.11.2010 passed by the Appellate Tribunal. However, instead of resorting to the aforesaid remedies, the appellant has filed the writ petition seeking execution of the order passed by the Appellate Tribunal. The jurisdiction of this Court under Article 226 of the Constitution of India, which is extraordinary and discretionary in nature, cannot be exercised to execute the order passed by the Appellate Tribunal under the Electricity Act.

19. It is also noteworthy that Civil Appeal No.837 of 2011 against the order passed by the Appellate Tribunal, is pending before the Supreme Court and it is open for the appellant to approach the Supreme Court seeking appropriate relief for redressal of its grievance. Therefore, the contention that the appellant has been rendered remediless does not deserve acceptance as against the order passed by the Appellate Tribunal, a Civil Appeal is already pending before the Supreme Court, which is yet to be adjudicated.

20. The submission made on behalf of APSPDCL that the dispute is involved between two States and therefore, the Central Electricity Regulatory Commission is appropriate authority to



decide the dispute, does not deserve acceptance as the dispute in this appeal is not between the two successor States, namely the State of Telangana and the State of Andhra Pradesh. On similar analogy, order dated 04.02.2020 passed in Civil Appeal Nos.3788-3790 of 2019 does not apply to the obtaining factual matrix of the case on hand.

21. For the aforementioned reasons, we, therefore, are not inclined to interfere with the order passed by the learned Single Judge. However, liberty is reserved to the appellant to take recourse to the remedy as may be available to it in law.

22. In the result, the writ appeal is disposed of. There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

**SD/-I.NAGALAKSHMI  
DEPUTY REGISTRAR**

**//TRUE COPY//**

**SECTION OFFICER**

To,

1. The Transmission Corporation of A.P. Limited VidyutSoudha, Hyderabad.
  2. The A.P. Southern Power Distribution Company Ltd, Tirupathi.
  3. The Managing Director, Telangana State Transmission Corporation Limited, Vidyut Soudha Hyderabad
  4. One CC to SRI SETTY RAVI TEJA, Advocate. [OPUC]
  5. One CC to SRI ANUP KOUSHIK KARAVADI, SC for A.P. Southern Power Distribution Company Ltd. [OPUC]
  6. One CC to SRI R.VINOD REDDY, (SC FOR TSTRANSCO). [OPUC]
  7. Two CD Copies.
- BSK/BSK

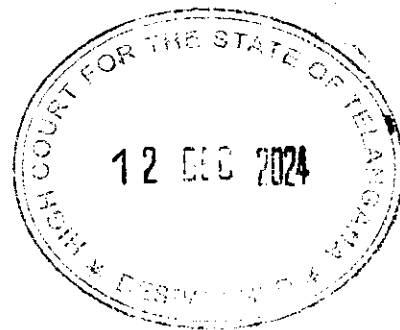


**HIGH COURT**

**DATED:24/07/2024**

**JUDGMENT**

**WA.No.971 of 2014**



**DISPOSING OF THE WRIT APPEAL  
WITHOUT COSTS**

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24/12/2024