THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.12748 of 2006

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed seeking the following relief:-

> "to issue a Writ, order or direction, one more particularly in the nature of writ of "Mandamus" declaring the action of the 1st respondent in not refunding the additional consumption deposits due and payable to the petitioner and in issuing Lr.No.1830/06 dated 21-2-2006 as being illegal, arbitrary and unconstitutional and consequently direct the 1st respondent to forthwith refund and return to the petitioner the additional consumption deposit with interest from 1-1-2004 till the date of repayment and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case."

2. I have heard the submissions of *Ms. G.Sri Ranga Pujitha*, learned counsel appearing for the petitioner and *Smt. J.Koteswari Devi*, learned Standing Counsel appearing for the 1st respondent and of *Sri N.Ashwini Kumar,* learned counsel appearing for the 2nd respondent. I have perused the material record.

3. The case of the writ petitioner and the submissions made on its behalf, in brief, are as follows: 'The writ petition was originally filed by EKL Appliances Ltd., which is a Company incorporated under the provisions of the Indian Companies Act, 1956. Under orders of High Court of Bombay sanctioning a scheme of amalgamation of the said Company with the present petitioner-company, on 30.06.2006, and, on the said scheme of amalgamation becoming effective, on 21.07.2016, the afore-stated company merged and amalgamated with the present writ petitioner company, M/s. Videocon Industries Limited. After such merger and amalgamation, the cause title in the writ petition is amended accordingly, as per the orders, dated 02.03.2007, of this Court in WPMP No.3711 of 2007. M/s. Hyderabad Alwyn Limited is also amalgamated with the writ petitioner company and the ownership of its assets was

transferred to the petitioner company as per the orders of the Board for Industrial and Financial Reconstruction ('BIFR'). For the purpose of availing power supply, HT services were granted to the unit vide HT service Nos.074 and 077 and were released on 09.01.1990 and 28.06.1990 respectively. Subsequently, additional loads were also sanctioned on payment of additional consumption deposit commensurate with the connected load. The petitioner company encountered difficulties for running the unit and discontinued operations from the factory that was located on the land originally allotted to M/s. Hyderabad Alwyn Limited. The writ petitioner approached the then Superintendent Engineer, Kadapa, APSPDC Ltd seeking cessation of the load electric supply and requested for refund of the additional security and consumption deposit amount of Rs.30,71,404/-, vide letter dated 12.06.2003. The writ petitioner sent another letter dated 20.06.2003 requesting for refund of the said amount. Under the revised HT agreement executed between the writ petitioner and the Divisional Electrical Engineer of the 1st respondent/APSPDCL, on 01.01.2004, it was specifically agreed that the power supply was to be reduced from 1000 KVA to 75 KVA and the consumption deposit recalculated and the excess consumption deposit was to be returned. A letter, dated 04.02.2004, was addressed by the Superintending Engineer of the 1st respondent to the Chief General Manager of the 1st respondent authority requesting for sanction of the amount for refund of the amount due to the petitioner by adjustment in future bills. The Superintending Engineer, by his proceedings, dated 17.02.2004, sanctioned the refund by way of adjustment in future bills of the petitioner. Thereafter, the petitioner requested for refund of the excess consumption deposit instead of adjustment in future bills as the funds were required urgently. While the request for payment of additional consumption deposit continued to be pending with the 1st respondent, the writ petitioner entered into negotiations with the 2nd respondent, M/s. Rajendra Construction Corporation, for transfer of existing land and facilities in an "as is where is" condition. The same culminated, on 14.12.2004, in an agreement of sale-cum-GPA executed between the petitioner and the 2nd respondent. The agreement refers to transfer of the unit and the land as mentioned in the schedule of the document. Thus, what was transferred to the 2nd respondent was the unit with the reduced service load; and the valuations were done only for the unit as was existing. No right was conveyed in favour of the 2nd respondent in respect of excess consumption deposit as the same was to be paid to the writ petitioner. The writ petitioner continued to request the 1st respondent for immediate refund of the amount payable to the petitioner. The 1st respondent was also informed that in view of the transfer of the unit, any adjustment of amount in future bills was not possible and that the 1st respondent was required to make payment to the petitioner. A letter, dated 24.01.2005, was addressed by the Senior Accounts Officer of APSPDC Ltd, Kadapa, to the petitioner company acknowledging an amount of Rs.30,71,404/- as additional consumption deposit as on 31.12.2004. Despite number of letters and remainders sent to the APSPDCL that the additional security deposit was not released to the petitioner. Though the 1st respondent has committed in regard to the amount refundable to the petitioner, the payment was evaded. On 21.02.2006, the Chief General Manager of APSPDCL addressed a letter to the petitioner and the 2nd respondent to settle their claim in a competent Court of law before securing payment of the additional security deposit. The said letter was issued with an ulterior motive of delaying and possibly denying the rightful claim of the petitioner under the ruse of a rival claim made by the 2nd respondent. Thus, the 1st respondent has become due and payable, the additional consumption deposit amount. When the liability crystallized on 01.01.2004, the 2nd respondent was not in picture. The agreement of sale-cum-General Power of Attorney was executed between the petitioner and the 2nd respondent on 14.12.2004. The agreement also reflects that all past liabilities in respect of past tax, house tax, Nala tax, rates etcetera shall be of seller.

Further, there is no privity of contract between the respondents 1 and 2. Hence, merely because the 2nd respondent claimed refund of the deposit from the 1st respondent, the 1st respondent cannot direct the petitioner to go before a competent Court and get the matter settled. The action of the 1st respondent in issuing letter, dated 21.02.2006, and in not making payment to the petitioner is illegal. Hence, the writ petition is filed to direct the 1st respondent to forthwith refund to the petitioner the additional consumption deposit with interest from 01.01.2004 till the date of repayment and for such other orders.

4. The case of the 1st respondent in the counter affidavit filed by the Superintending Engineer (Operation), APSPDCL, Kadapa, in brief, is this:

As per the details stated in the counter, there are no outstanding amounts to the credit of HT SC No.077 as the available portion was exhausted. Having no other option, the 1st respondent authority, as per the prevailing tariff order adjusted the CC charges of both the HT services from the excess consumption deposit standing in respect of HTSC No.074. The 2nd respondent approached the Chairman & Managing Director, APSPDCL, Tirupati, i.e., the 1st respondent, through letter dated 04.03.2005, by enclosing a copy of sale-cum-GPA, and informed that they purchased the sick unit, i.e., M/s. Electrolux Kelvinator Limited, on 01.03.2005, and requested to dismantle the existing two services and transfer the deposit available in the name of the 2nd respondent. Subsequently, the 2nd respondent through his letter dated 14.03.2005 approached the 1st respondent with a request to dismantle the existing supply of electricity and for name change for lighting purpose, wherein, it is stated that they are the present owners for the sick industry, i.e., M/s. Electrolux Kelvinator Limited. After verification of the required formalities, the respondent authorities effected the name change, on 27.8.2005, in favour of the 2nd respondent, vide letter dated 27.08.2005. The existing HT Service Connection nos.74 and 77 were dismantled, on 29.06.2005, by the 1st respondent authority in consideration of the request of the 2nd respondent. On finalization of the accounts, the 1st respondent came to the conclusion that the outstanding security deposit standing to the credit of HT services bearing nos. CDP 74 & 77 are Rs.27,62,753/- and Rs.88,031/- respectively. At that juncture, the Senior Manager/Accounts, M/s. Electrolux Kelvinator Limited, made an objection, dated 12.06.2005, and claimed outstanding amounts from this respondent authority stating that the 2nd respondent is not having any claim over the outstanding security deposit. In consideration of the said objection and the claim made, the 1st respondent authority addressed letter, dated 31.08.2005, to the 2nd respondent requesting to obtain no objection from M/s. Electrolux Kelvinator Limited in order to settle the claim. The 2nd respondent gave a reply, dated 14.09.2005, wherein it was stated that they purchased the entire unit, i.e., assets and liabilities and as such, they are entitled for the claim legally. Having no other go, the 1st respondent issued letter, dated 21.02.2006, duly requesting the 2nd respondent to get orders from the competent Court. The 2nd respondent addressed letter, dated 01.03.2006, to the 1st respondent duly enclosing an indemnity, dated 28.02.2006, taking the responsibility and with a request to settle the outstanding claim in their favour. M/s. Electrolux Kelvinator Limited, did not respond to the letter, dated 21.02.2006, addressed by the respondent authorities. Finally, the 1st respondent authority, on 18.03.2006, issued orders in Memo D.No.1984/2006 duly refunding the balance security deposit in favour of the 2nd respondent with applicable rate of interest with condition that if any dispute arises the 2nd respondent will be held responsible for such liability including refund of security deposit. The payment was made by way of bankers cheque bearing No.751957, dated 29.03.2006, for an amount of Rs.25,53,351/- and Rs.4,07,921/- by way of bankers cheque bearing No.753980, dated 28.04.2006, i.e., a total payment of Rs.29,61,272/- was made in favour of the 2nd respondent. There are no outstanding amounts in the name of M/s. Electrolux Kelvinator Limited, with this respondent authority.

5. The 2nd respondent has not filed any counter.

6. The petitioner filed a rejoinder with the following averments:

The averments in the counter of the 1st respondent do not deserve consideration. The agreement to sell-cum-GPA, dated 14.12.2004, executed between the petitioner and the 2nd respondent does not provide for transfer of any outstanding dues of the petitioner to the 2nd respondent and under the said agreement to sell-cum-General Power of Attorney, the schedule assets were transferred to the 2nd respondent, which, at that relevant time included the reduced load. As per the sanction accorded, refund of deposit shall be to the petitioner and not to the 2nd respondent/buyer. The letter, dated 21.02.2006, was issued with a *mala fide* intention stating that there are allegedly conflicting claims as to the refund of security deposit and that the refund would be done only on the basis of a Court verdict. While so, the 1st respondent arbitrarily and without any authority issued order dated 18.03.2006 refunding the security balance deposit in favour of the 2nd respondent. Such action of the 1st respondent without any authority is shocking in view of its own stand that there are conflicting claims for refund of the same. The refund of the deposit by the 1st respondent to the 2nd respondent even without informing and providing an opportunity to the petitioner reeks arbitrariness and *mala fides* and is in violation of the principles of natural justice. The 1st respondent being an instrumentality of the State ought to have acted in a fair, just and reasonable manner and could not have issued the proceedings, dated 18.03.2006, allegedly refunding the balance security deposit to the 2nd respondent without even giving an opportunity of hearing to the petitioner, who is statutorily entitled for the refund of the security deposit as per the provision of Section 47 of the Electricity Act, 2003. The action of the 1st respondent is a clear case of favoritism and arbitrariness.

7. At the hearing, learned counsel for the petitioner and the learned Standing Counsel for the 1st respondent made submissions in line with the pleadings, which are extracted supra, in detail. The learned counsel for the 2nd respondent supported the action of the 1st respondent.

8. The short questions that arise for consideration are –

(i) Whether the 1st respondent authority, in the facts and circumstances of the *lis*, is justified in refunding the security and consumption deposit in question to the 2nd respondent ignoring the claim of the writ petitioner? And;

(ii) To what relief?

9. From the pleadings, submissions and the material documents, the following aspects emerge for consideration and determination of the issues involved for resolution in this writ petition:

The writ petitioner, vide letter dated 12.06.2003, requested the then Superintendent Engineer, Kadapa, APSPDC Ltd, seeking cessation of the load electric supply and requested for refund of the additional security and consumption deposit amount of Rs.30,71,404/-. The writ petitioner sent another letter dated 20.06.2003 requesting for refund of the said amount. Under the revised HT agreement executed between the writ petitioner and the Divisional Electrical Engineer of the 1st respondent/APSPDCL, on 01.01.2004, it was specifically agreed that the power supply was to be reduced from 1000 KVA to 75 KVA and the consumption deposit shall be recalculated and the excess consumption deposit has to be returned. A letter, dated 04.02.2004, was addressed by the Superintending Engineer of the 1st respondent/APSPDCL to the Chief General Manager of the 1st respondent authority requesting for sanction of the amount for refund of the amount due to the petitioner by adjustment in future bills. The letter dated 17.12.2004 addressed by the Chief General

Manager, APSPDCL, Tirupati, reflects that the Superintendent Engineer (Operation), Kadapa, by letter, dated 04.02.2004, has submitted proposal to refund the excess amount deposit value, duly checked by the Accounts Officer (Internal Audit), against the Service Connection nos.074 and 077/CDP of M/s. Electrolux Kelvinator Limited; and that after careful examination of the said proposal, the said Chief General Manager sanctioned refund of excess consumption deposit of Rs.39,74,000/- to HTSC No.074/CDP and Rs.2,85,000/- to HTSC No.077/CDP of M/s. Electrolux Kelvinator Limited, by way of adjustment against future CC bills. The Superintending Engineer, by his proceedings, dated 17.02.2004, sanctioned the refund by way of adjustment in future bills of the petitioner. Thereafter, the petitioner requested for refund of the excess consumption deposit instead of adjustment in future bills as the funds were required urgently. While the request for payment of additional consumption deposit continued to be pending with the 1st respondent, the writ petitioner entered into negotiations with the 2nd respondent, M/s. Rajendra Construction Corporation, for transfer of existing land and facilities in "as is where is" condition. The same culminated in an agreement of sale-cum-GPA executed, dated 14.12.2004, between the petitioner and the 2nd respondent. The said agreement of sale-cum-GPA was in respect of immovable property admeasuring 302.08 acres (309.08 less 5 acres of land on which school is situated and 2 acres of land on which APSEB Power House is situated) in Nandalur village and Nagireddypalli village, Kadapa District, Andhra Pradesh, as per the schedule of the said document. The said document refers to transfer of the unit and the land as mentioned in the schedule of the document. Thus, as per the case of the petitioner, and the facts that are not in dispute, what was transferred to the 2nd respondent was the unit with the reduced service load; and the valuations were done only for the unit as was existing and no right was conveyed in favour of the 2nd respondent in respect of excess consumption deposit as the same was to be paid to the writ petitioner. The 2nd respondent did not file any counter pleading to the contrary and denying the claim of the petitioner. The writ petitioner continued its requests to the 1st respondent for immediate refund of the amount payable to it. The 1st respondent was also informed that in view of the transfer of the unit, any adjustment of amount in future bills was not possible and that the 1st respondent was required to make payment to the petitioner. A letter, dated 24.01.2005, was addressed by the Senior Accounts Officer of APSPDC Ltd, Kadapa, to the petitioner company acknowledging an amount of Rs.30,71,404/- as additional consumption deposit as on 31.12.2004.

9.1 Be that as it may. Admittedly, a total amount of Rs.29,61,272/- is refundable by the 1st respondent towards the balance consumption deposit. When the petitioner made a claim, the 2nd respondent was not in picture; at that time, the amount to be refunded was ascertained and has crystallized. Even by 24.01.2005, the Senior Accounts Officer (Operation Circle), APSPDCL, Kadapa, by his letter of even date addressed to M/s. Electrolux Kelvinator Limited informed that the consumption deposits available against HT service connection Nos.074 and 075, as on 31.12.2004, are Rs.29,69,558/- and Rs.1,01,846/- respectively. However, while not considering the request of the petitioner for refund of the deposit, the Chief General Manager of APSPDCL addressed a letter, dated 21.02.2006, to the petitioner and the 2nd respondent to settle their claim in a competent Court of law before securing payment of the additional security deposit. Even as per the permission or sanction accorded, refund of deposit shall be to the petitioner and not to the 2nd respondent/buyer. However, the Chief General Manager (Expenditure), APSPDCL, by letter dated 21.02.2006, informed both the petitioner and the 2nd respondent that both the petitioner/seller and the 2nd respondent/purchaser have represented for refund of the balance consumption deposit after dismantlement of the above services and hence, the matter has been referred to Board Legal Council and it is decided to refund the amount on the basis of a

Court verdict. He, therefore, requested both the petitioner and the 2nd respondent to have the claim settled in a competent Court of law and produce the verdict of the Court for taking necessary action. Thus, the 1st respondent authority without refunding the deposit directed the petitioner and the 2nd respondent to have their claims settled in a competent Court of law and then make a claim for refund of the deposit. However, giving a go by to its own earlier commitment and sanction for refund in favour of the petitioner and its clear stand that the petitioner and the 2nd respondent have to settle the claim in a competent Court of law and produce the verdict for taking necessary action, the 1st respondent authority, for reasons best known only to the 2nd respondent and the 1st respondent, issued order, dated 18.03.2006, for refunding the security balance deposit in favour of the 2nd respondent and refunded the amount of Rs.29,61,272/- to the 2nd respondent by way of two bankers cheques dated 29.03.2006 and 28.04.2006 for Rs.25,53,351/- and Rs.4,07,921/- respectively by obtaining an indemnity bond from the 2nd respondent that in case of any dispute by the petitioner, it is the responsibility of the 2nd respondent to settle the outstanding claim of the original claimant, the petitioner. Such action of the 1st respondent contrary to its own earlier stand that there are conflicting claims certainly smells arbitrariness and unfairness. More over the refund that was to be made was committed and the refund was sanctioned to the petitioner and not to the 2nd respondent. Thus, the refund of the deposit by the 1st respondent to the 2nd respondent contrary to its own stand and commitment and even without informing and providing an opportunity to the petitioner is clearly arbitrary, illegal, unfair and is in contravention of the contract, the statutory provisions, Constitutional mandate and the principles of natural justice. What made the 1st respondent authority to ignore its earlier commitment, sanction orders and stand and then refund the amount to the 2nd respondent by taking an indemnity bond remains un-explained. It is not even the case of the 2nd respondent that at the time of such refund and payment, a legal opinion was again obtained and that as per the legal opinion, payment was made by the 1st respondent authority to the 2nd respondent. Even as per the facts and the revised agreement between the petitioner and the 1st respondent, the privity of contract is between the petitioner and the 1st respondent and there is no privity of contract between the respondents 1 and 2. The 1st respondent being an instrumentality of the State ought to have acted in a fair, just and reasonable manner and could not have issued the proceedings, dated 18.03.2006, for refunding the balance security deposit to the 2nd respondent without even giving any information or an opportunity of hearing to the petitioner, which is statutorily entitled for the refund of the security deposit in view of the relevant provision of Section 47 of the Electricity Act, 2003 which postulates that 'the distribution licencee shall pay the interest equivalent to the bank rate or more, as may be specified by the concerned State Commission, on the security referred to in sub-section (1) and refund such security on the request of the person, who gave such security'. Therefore, as rightly contended by the writ petitioner, the action of the 1st respondent authority in refunding the security deposit amount in a sum of Rs.29,61,272/- to the 2nd respondent is purely arbitrary, unjust, unfair and illegal and, therefore, cannot be approved, more particularly, when the 1st respondent authority has earlier committed itself and sanctioned the refund to the petitioner and later has taken a stand that the refund will be made on the basis of a Court verdict and directed the petitioner and the 2nd respondent to settle the claim in a competent Court of law and violated its own commitment, sanction and stand. The said action of the 1st respondent, which is impugned in this writ petition, clearly indicates that in this matter, there is something more than that meets the eye, which does not warrant approval of this Court.

10. In the decision in Kumari Srilekha Vidyarthi v. State of U.P [(1991) 1 SCC 212], the Supreme Court held as follows:

> "The impact of every State action is also on public interest... It is really the nature of its personality as State which is significant and must characterize all its actions, in whatever field, and not the nature of function, contractual or otherwise, which is decisive of the nature of scrutiny permitted for examining the validity of its act. The requirement of Article 14 being the duty to act fairly, justly and reasonably, there is nothing which militates against the concept of requiring the State always to so act, even in contractual matters."

It is clear from the above observations of the Supreme Court that once the instrumentality of the State is a party to the contract, it has an obligation in law to act fairly, justly and reasonably, which is the requirement of Article 14 of the Constitution of India. Therefore, the impugned action of the 1st respondent herein, which is an instrumentality of the State, is in contravention of the above said requirement and therefore, this Court has no hesitation in holding that this Court can issue suitable directions to remedy the injustice occasioned to the writ petitioner on account of the said action of the 1st respondent. Viewed thus, this Court finds that the action of the 1st respondent, which is arbitrary, unfair and illegal, cannot be sustained. On the above analysis, this Court finds that the request in the writ petition is having acceptable merit and that the writ petition deserves to be allowed.

11. In the result, the Writ Petition is allowed with costs directing the 1st respondent to forthwith refund to the writ petitioner the security deposit in a sum of Rs.29,61,272/- with interest at 12% per annum simple from the date of illegal refund to the 2nd respondent, i.e., 28.04.2006, till the date of the last payment. The 1st respondent shall pay the amount as ordered within one month from the date of receipt of a copy of this order. On failure to do so, the petitioner is at liberty to pursue legal remedies for recovery of the amount with interest till the date of payment or realization. It is needless to mention that in view of the indemnity bond said to have been obtained by the 1st

respondent from the 2^{nd} respondent, the 1^{st} respondent is at liberty, if it so chooses, to recover the said amount from the 2^{nd} respondent.

Pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

09^{th} February, 2017
RAR