THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.3309 of 2012

ORDER:

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

> '..to issue a writ in the nature of a Writ of Mandamus or any other appropriate writ direction or order declaring the action of the respondents in not treating the 33 KV Agarwal Industrial dedicated feeder as the dedicated feeder of the 1st petitioner as arbitrary, illegal and void and consequently to direct the respondents to treat the 33 KV Agarwal Industrial dedicated feeder as dedicated feeder of the 1st petitioner.'

2. I have heard the submissions of *Sri M.P. Chandramouli,* learned counsel appearing for the writ petitioners, and of *Sri R. Vinod Reddy,* learned Standing Counsel for TS Transco. I have perused the material record.

3. From the pleadings and submissions, the facts that emerge for consideration, in brief, are as follows:

The 1st petitioner-factory and the 2nd petitioner-factory, which are sister concerns, are located at a distance of 2 K.Ms. The 2nd petitioner-factory, M/s. Agarwal Foundaries Pvt., Ltd., opted for having a dedicated feeder with connected load of 9000 HP 33 KV supply. Therefore, it made an application, dated 29.11.2006, to the concerned officer of APCPDCL. Pursuant thereto, the Superintending Engineer, Operation Circle, Medak at Sangareddy, addressed a letter to the Chief General Manager, RR Zone, APCPDCL, with his proposal for an amount of Rs.5,05,340/- towards extension of supply to one No.5500 KVA Addl.CMD over and above existing 2500 KVA CMD with connected load of 5600 HP totalling to 8000 KVA CMD with connected load of 9000 HP 33 KV supply

(Dedicated Feeder) to the end petitioner-factory. In the said letter, he requested to process the proposal and communicate the sanction of estimate. The Chief General Manager (OP), Ranga Reddy Zone, APCPDCL, in his turn addressed a letter, dated 04.12.2006, to the Chief General Manager (Coml.), APCPDCL, Singareni Bhavan, requesting for according necessary sanction in that regard. Ultimately, a detailed estimation for erection of 33 KV VCB with control panel was prepared. Eventually, 33 KV independent dedicated feeder was provided to the 2nd petitioner-factory and the 2nd petitioner-factory drew power through the said feeder; it being an exclusive dedicated feeder of the 2nd petitioner-factory. It is popularly known as Agarwal industrial feeder. While so, the 2nd petitioner-factory on account of expansion undertaken by it required enhanced power through 132 KV transmission line. It constructed 132 KV transmission line at its own cost and the line was commissioned in July, 2009. Since then, the 33 KV feeder of Agarwal Foundaries, that is, the dedicated feeder of the 2nd petitioner-factory became idle. While so, the 1st petitioner-factory, which is the sister concern of the 2nd petitioner-factory, wanted to utilise the said 33 KV line. When a request was made in that regard, the Board of Directors of the 2nd petitioner- factory resolved, on 10.07.2009, agreeing to transfer the existing 33 KV dedicated feeder to the sister concern, that is, the 1st petitioner- factory. Hence, the 1st petitioner-factory filed an application before the Divisional Engineer (Operation), Toopran, for supply of power on the said 33 KV dedicated feeder to it by erecting a link line of 0.03 KM at its cost. The Divisional Engineer Electrical Operation, APCPDCL, Toopran, by a memo, dated 10.08.2009, accorded sanction for an amount of Rs.43,020/- gross towards extension of supply to E/S for erection of 0.03 KM of interlinking 33 KV line from 33 KV

Masaipet (Seetarama Spinners) industrial feeder emanating from 132/33 KV Manoharabad SS to the existing 33 KV Agarwal industrial feeder to provide dedicated feeder to Seetarama Spinners in Kallakal section of Toopran Mandal. Thereupon, the Divisional Engineer, Elec. Operation, APCPDCL, Toopran, addressed a letter, dated 10.08.2009, to the Superintending Engineer, Operation, Medak Circle at Sangareddy, stating verbatim as follows: 'Estimate for 0.03 KM of interlinking 33 KV line from 33 KV Masaipet (Seetarama Spinners) industrial feeder emanating from 132/33KV Manoharabad SS to existing 33 KV Agarwal Industrial feeder to provide dedicated feeder to Seetaram Spinners in Kallakal Section in Toopran Mandal, Medak dist., has been sanctioned vide reference to the above cited. The consumer has given consent letter for execute the work under turnkey basis and ready to pay supervision charges. Hence, it is requested to accord the approval for execute the work under Turnkey basis and ready to pay supervision charges. Hence it is requested to accord the approval for execute the work under Turnkey basis.' A letter, dated 19.08.2009, was addressed by Superintending Engineer, Operation Circle, Medak, to the 1st petitioner- factory according approval for taking up the works by the 1st petitioner- factory on turnkey basis. Thus, the said Superintending Engineer gave his approval for erection of 0.03 KM of interlinking 33 KV line at the cost of the 1st petitioner factory and on payment of Rs.4,300/- as supervision charges. Accordingly, the 1st petitioner-factory deposited the required amount and the connecting line of 0.03 KM was completed and the line was commissioned on 17.09.2009 and from that day, the 1st petitioner- factory is receiving power through 33 KV dedicated feeder. In the electricity consumption bills of the 2nd petitioner-factory, it is being mentioned as 33 KV feeder that is dedicated feeder of the 2nd petitioner-factory but the same was not being mentioned in the CC bills of the 1st petitioner-factory. Therefore, the 1st petitioner-factory is making representations to mention the same in the consumption bills of the 1st petitioner-factory. Be that as it may.

4. Now the grievance of the writ petitioners-factories is that they came to know that the officers of the respondents/APCPDCL are attempting to give power supply to some other factory through the writ petitioners' factories 33 KV dedicated feeder. Therefore, a letter, dated 17.03.2011, was addressed by the 1st petitioner-factory to the Superintending Engineer, APCPDCL, Sanga Reddy, Medak District, *inter alia,* stating all the facts and complaining that in all the energy bills received by the 1st petitioner- factory it is not being stated that the feeder is a dedicated feeder and that the 1st petitioner-factory was given to understand that on the said exclusive dedicated feeder, the Superintending Engineer is preparing and intending to give connection to some third parties on the line of the factory of the 1st petitioner and that the same is bad, wrong and illegal. In the said letter, the 1st petitioner-factory requested to desist from giving any such connection to any third party and to remove the illegal line if already given from the dedicated feeder and inform it accordingly. The 1st petitioner-factory also addressed a letter, dated 06.04.2011, to the Chairman and Managing Director, APCPDCL, *inter alia,* requesting not to give supply line from the dedicated feeder of the 1st petitioner-factory to any other factory and that if the same is allowed, the dedicated feeder becomes a common feeder and that it will lead to problems of supply and fluctuations and would attract surcharge, if consumption crosses 5000 KVA. Another letter, dated 17.01.2012, was also addressed by the 1st

petitioner-factory to the Chairman and Managing Director on the same lines. Ultimately, the Chief General Manager (Coml.) APCPDCL addressed a letter, dated 30.12.2011, to M/s.Seetaram Spinners Pvt.Ltd., that is, the 1st petitioner-factory informing that the request of the 1st petitioner-factory to declare the feeder as 'dedicated feeder' instead of 'common feeder' has not been considered as the 1st petitioner-factory has not paid full cost of service line charge including take off arrangement at 132/33 KV substation as per the General Terms and Conditions of Supply (GTCS). Aggrieved thereof, this writ petition is filed to declare the action of the respondents in not treating the 33 KV dedicated feeder as the dedicated feeder of the 1st petitioner-factory as arbitrary, illegal and direct them to treat it as a dedicated feeder of the 1st petitioner-factory.

5. The case of the Officers of the APCPDCL, in brief, is this:

As per clause no.5.3.2.2 of GTCS approved by the AP Electricity Regulatory Commission, notwithstanding the fact that a portion or full cost of the service line has been paid for by the consumer, the service line shall be the property of the Company and it shall maintain it at its own cost and that the Company has the right to use the service line for supply of energy to any other person/s and the moment the line is charged or commissioned, it will become the property of the Company the next moment, irrespective of the fact whether the charges were paid and the usage of the line was by the consumer, who has erected it. 1st petitioner-factory made an application to extend the power supply through the existing 33 KV dedicated feeder of the 2nd petitioner-factory in the name of the 1st petitioner-factory through and by erecting the link line of 0.03 KM at the cost of the 1st petitioner-factory. The estimation has been sanctioned and the supply is extended through the 33 KV dedicated feeder. The logic behind extending the power supply through this 33 KV feeder is that when the 2nd petitioner-factory is utilising its supply through 33 KV independent feeder from 132/33 KV Manoharabad substation, the 1st petitioner-factory is utilizing the supply by tapping on the 33/11 KV Masaipet feeder which is also emanating from the same 132/33 KV Manoharabad substation. Just because an estimation was got sanctioned for erecting the line of 0.03 KM, it does not entitle the 1st petitioner-factory to claim the feeder as a dedicated feeder of the 1st petitioner-factory. The contention raised by the petitioners-factories is that they are sister concerns and that the 2nd petitioner-factory passed a board resolution transferring the 33 KV dedicated feeder of the 2nd petitioner-factory to the 1st petitioner-factory. The line itself is the property of CPDCL from the very moment it is charged and the concept of owning of 33/11 KV feeder in the name of the 2nd petitioner-factory does not arise and the transfer of same by the 2nd petitioner-factory to the 1st petitioner-factory is void *ab initio*. As per clause no.3.2.2.2 of GTCS approved by APERC, if HT consumers are intending to avail supply through independent feeders from the sub-station, the consumers shall pay full cost of service line as per standards specified by the Company including take off arrangements at the substation. Since the 2nd petitioner-factory had paid the full amount for take off arrangements at the substation, the feeder is treated as 33 KV dedicated feeder and the same was mentioned in the regular current consumption bills issued to the 2nd petitioner factory. As the said amounts were not paid by the 1st petitioner factory, the feeder cannot be changed as dedicated feeder and it cannot be mentioned as a dedicated feeder in the CC bills issued to the 1st petitioner-factory. When the 2nd petitioner-factory opted for 132/33 KV line and when its existing 33/11 KV dedicated feeder became idle, every right on the existing 33/11 KV feeder vested in CPDCL. Recently there was 33/11 substation erected at Chetla Gowararam Village for which supply was extended through this idle line. The request of the 1st petitioner-factory was denied in consonance with clause no.3.2.2.3 of GTCS as the 1st petitioner-factory has not paid any cost for the take off arrangements at 132/33 KV Manoharabad substation. The 33 KV dedicated feeder in the name of the 2nd petitioner-factory has become the property of CPDCL from the very moment the line was charged in the year 2006. It cannot be declared as the dedicated feeder of the 1st petitioner-factory.

6. The case of the petitioners, in reply, is that the relaxation under clause 3.2.2.3 is subject to the fulfilment of the following conditions which are stated in tariff order: (i) The consumer should have an exclusive dedicated feeder from the sub-station; and, (ii) The consumer shall pay full cost of the service line as per standards specified by Company including take off arrangements at sub-station. Clause no.5.3.2.2 of GTCS is relevant to the case on hand. Since the 1st petitioner-factory is the sister concern of the 2nd petitioner-factory and as by a resolution of the Board of the 2nd petitioner-factory the dedicated feeder was transferred by the 2nd petitioner-factory to the 1st petitioner-factory and as the 3rd respondent accepted the same, the contentions of the respondents are untenable.

7. Both the learned counsel while making submissions reiterated the pleadings of the respective parties.

8. I have gone through the material documents. I have bestowed my attention to the facts and submissions. From the pleadings of the

parties and the submissions made, the following aspects emerge for consideration.

The 2nd petitioner-factory was initially provided with 33 KV independent dedicated feeder and drew power through the said feeder from Manoharabad substation and the said feeder was exclusive feeder of the 2nd petitioner-factory and it was laid at its own costs and, hence, it was being mentioned in its consumption bills that it is its dedicated feeder. All these facts are admitted. It is also admitted that when the 2nd petitioner-factory opted for extension, it required 133/32 KV transmission line and accordingly it constructed 132 KV transmission line with its own costs and the line was commissioned in the month of July, 1999, and that thereafter its 33 KV dedicated feeder became idle. According to it, the 1st petitioner-factory is its sister concern. Therefore, the Board of the 2nd petitioner-factory passed a resolution transferring its dedicated feeder to the 1st petitioner-factory, however, without the intervention of the electricity Company. Thereafter the 1st petitioner- factory made a request and accordingly estimate for erection of 0.03 KM length of line for inter linking 33 KV line from 33KV Masaipet (Seetarama Spinners) industrial feeder emanating from 132/33 KV Manoharabad substation to existing 33 KV Agarwal Industrial feeder has been sanctioned to provide dedicated feeder to Seetarama Spinners in Kallkal section in Toopran Mandal of Medak. In-fact the 1st petitioner-factory gave consent letter for execution of the work under turnkey basis and expressed readiness to pay supervision charges and paid the charges for erection of 0.03 KM interlinking line. In this background, the Divisional Engineer concerned sought approval from the Superintending Engineer concerned to execute the work under turnkey basis. Accordingly, sanction was accorded by Divisional Engineer for an amount of Rs.43,020/- towards extension of supply to E/S for erection of 0.03 KM of interlinking 33 KV line from 33 KV Masaipet (seetarama Spinners) industrial feeder emanating from 132/33 KV Manoharabad Substation to existing 33 KV Agarwal industrial feeder to provide dedicated feeder to Seetaram spinners in Kallakal Section in Toopran Mandal, Medak District, and it was decided that an amount of Rs.43,020/- towards estimated cost, SLC charges and development charges should be collected before taking up the work. After the estimate was sanctioned, approval also is accorded for taking up the said works by the 1st petitioner-factory itself on turnkey basis. Admittedly, in the consumption bills of the 1st petitioner-factory, it is not being mentioned that the 33 KV feeder is its dedicated feeder.

9. The grievance of the petitioners-factories is that the officers of the APCPDCL are intending and trying to provide power supply connection to some other third parties through the 33 KV dedicated feeder. It is manifest that this dedicated feeder is originally the dedicated feeder of the 2nd petitioner-factory. By a resolution of its Board the 2nd petitioner-factory transferred its dedicated feeder to the 1st petitioner- factory as it was lying idle, on the 2nd petitioner-factory going for expansion and obtaining 132 KV transmission line on its own cost and on commission of such transmission line in the month of July, 2009. Thus, without the intervention of the concerned authority of the Electricity Company, the said resolution was passed. Be that as it may. According to the respondents, notwithstanding the fact that a portion or full cost of the service line has been paid for by the consumer, the service line shall be the property of the Electricity Company and it shall maintain it at its own cost and that the Electricity Company has the right to use the service line for supply of energy to any other person/s and

that the moment the line is charged or commissioned, it will become the property of the Electricity Company the next moment, irrespective of the fact whether the charges were paid and the usage of the line was by the consumer, who has erected it. The concept of owning of 33/KV feeder in the name of the 2nd petitioner-factory does not arise and the transfer of the said feeder by board resolution between the petitioners-factories is void *ab initio*. It is also the case of the respondents that when the 2nd petitioner-factory opted for 132/33 KV line and when its existing 33/11 KV dedicated feeder became idle, every right on the existing 33/11 KV feeder vested in CPDCL. Having regard to the rival contentions, it is necessary to refer to the following 'terms and conditions of supply'.

3.2.2.2 HT consumers intending to avail supply through independent feeders from substation

For total Contracted Demand by applicants seeking HT supply through independent feeders from the sub-stations, with the Company and all other sources like APGPCL, Mini Hydel, Wind Power, MPPs, Co-Generating Plants etc shall be: Contracted Demand	Voltage level
Upto 2500 kVA	11 kV
2501 kVA to 10000 kVA	33 kV
Above 10000 kVA	132 kV or 220 kV

3.2.2.3 The relaxations under this clause are subject to the fulfilment of following conditions as stated in the Tariff Order:

i The consumer should have an exclusive dedicated feeder from the sub-station.

ii The consumer shall pay full cost of the service line as per standards specified by Company including take off arrangements at sub-station.

5.3.2.2 Notwithstanding the fact that a portion or full cost of the service line has been paid for by the consumer, the service line shall be the property of the Company, which shall maintain it at its own cost. The Company shall also have the right to use the service line for supply of energy to any other person(s).

Admittedly, since the 2nd petitioner-factory has paid full amount for take off arrangements at the substation, the feeder is treated as 33 KV dedicated feeder of the 2nd petitioner-factory and the same was also mentioned in its consumption bills. Thus, the said amounts were not paid by the 1st petitioner-factory. Therefore, since each petitioner-factory being an independent entity and consumer, the respondents contend that the feeder cannot be changed as a dedicated feeder of the 1st petitioner-factory and it cannot be mentioned in its consumption bills as its dedicated feeder. Admittedly when the 2nd petitioner-factory went for expansion and opted for 132/33 KV line, the existing 33/11 KV dedicated feeder became idle. The Electricity Company contends that every right in said existing idle feeder vested in the Electricity Company. Further, the moment the line was charged in the year 2006 there is no possibility to declare the 33 KV feeder as the dedicated feeder of the 1st petitioner-factory. In-fact, on erection of 33/11 substation at Chatla Gowraram village extension of supply was given through this idle line. Learned standing counsel rightly contends that the petitioners 1 and 2 being independent private limited companies are juristic persons. Without the intervention and approval of the concerned authority of APCPDCL, they are not entitled to transfer the dedicated feeder of the 2nd petitioner-factory to the 1st petitioner-factory and any such transfer without the consent and sanction of the officers of the CPDCL is void. Further, clause 5.3.2.2 of GTCS clearly postulates that notwithstanding the fact that a portion of the cost has been paid by the consumer the service line shall be the property of the Electricity Company and the Electricity Company shall maintain it at its own cost and shall also have the right to use the service line for supply of energy to any other person/s. The 2nd petitioner-factory is utilising its supply from 33 KV independent feeder from 132/33 KV Manoharabad sub station and the 1st petitioner-factory is utilising the supply by tapping on 33/11 KV Masaipet

KV which is also emanating from the same 132/33 Manoharabad sub station. When the 2nd petitioner-factory went for expansion and started using its supply from 132/33 KV independent feeder, the 1st petitioner-factory complained that the supply from 33/11 KV Masaipet feeder is frequently going off and requested to extend the power supply to the 1st petitioner-factory through the existing 33/11 KV dedicated feeder of the 2nd petitioner-factory. Admittedly, as pointed out in the counter of the respondents, the 1st petitioner-factory did not pay full service line cost as per standards specified by the Government including take off arrangements at the substation. Eventually, the request of the 1st petitioner-factory was denied as it is opposed to clause 3.2.2.3, which is extracted supra, and as the 1st petitioner-factory has not paid full cost of service line charges including take off arrangements at 132/33 KV substation. When once the line was charged in the year 2006 and 33 KV dedicated feeder of the 2nd petitioner-factory became idle, it has become the property of CPDCL and, therefore, the contention of the respondents that the feeder cannot be declared as 33 KV dedicated feeder of the 1st petitioner-factory, in the facts and circumstances of case, merits acceptance.

10. In that view of the matter, this Court finds that there is no merit in the writ petition and the writ petition is liable to be dismissed.

11. In the result, the Writ Petition is dismissed.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

M.SEETHARAMA MURTI, J

01.06.2017
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