

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.20212 of 2018

ORDER :

Heard the counsel for petitioner, and Sri R. Vinod Reddy, counsel for respondent nos.1 to 5.

2. The petitioner has filed this Writ Petition challenging the action of respondents in not permitting him to avail power through open access for additional load of 3210 KVA on its dedicated feeder.

3. The petitioner contends that he had made an application on 26.09.2015 requesting the respondents to provide a dedicated feeder to him; to provide the same, the respondents proposed to erect a 33KV inter-linking line of 0.5 kilometers for separation of M/s. Dura Line India Pvt. Ltd and another small unit of petitioner which are on Thimmapur 33K.V. feeder, and to facilitate 33 K.V. Ennar Express feeder to petitioner as a dedicated feeder, since the Ennar factory was closed; that he was directed to pay Rs.2,03,420/- towards supervision charges which he paid, and subsequently a sum of Rs.81,085/- was also charged for providing C.T's, P.T's and ABT Meters, Check Meters, Stand-By Meters, etc.; that petitioner paid the said amount on 17.02.2016, and the 3rd respondent submitted his report to the Chief General Manager of 1st respondent-Company by his letter dt.25.02.2016 specifically mentioning that petitioner is having dedicated feeder from 132/33K.V. Sub-Station, Kothur; when petitioner intended to avail open access, he applied for permission and

the 3rd respondent through a letter dt.17.02.2017, submitted feasibility report mentioning that feeder of petitioner is a dedicated feeder; after the dedicated feeder was provided, the petitioner started availing open access power from May, 2016 till February, 2018, and even in the 'No Objection Certificate', which was issued every month for availing open access, it is mentioned that petitioner's feeder is a 'dedicated feeder'. The petitioner contends that when petitioner intended to avail the already sanctioned 3210 KVA and addressed a letter dt.05.01.2018 to the Chief General Manager requesting him for release of additional load, the respondents instead of releasing additional load, illegally treated the feeder of petitioner as a 'common feeder' instead of a 'dedicated feeder' without any notice to petitioner and refused to give 'No Objection Certificate' for open access as a 'dedicated feeder' in the month of March, 2018. Therefore petitioner challenges the unilateral action of respondents in treating the feeder made available to petitioner as a common feeder, and in denying open access from April, 2018 on the pretext that the feeder is not a dedicated feeder.

4. Counter-affidavit is filed by 2nd respondent taking a plea that there is no 'dedicated feeder' for petitioner and the power being provided to petitioner and to M/s.Duraline India Pvt. Ltd. is from 33KV Ennar Feeder only and not from Thimmapur Sub-Station; that petitioner has, on his own, described the Ennar Feeder as his own dedicated feeder and he never opted for dedicated feeder nor did he pay any amount towards the same. It is contended that petitioner is

wrongly interpreting the correspondence with respondents claiming that Ennar Feeder should be treated as his own dedicated feeder; that the petitioner applied for additional C.M.D. of 3210 K.V.A., and by letter dt.24.03.2016 he was informed to pay a sum of Rs.86,67,000/-, towards providing the additional C.M.D. and other incidental charges, and since he did not pay this amount the additional C.M.D. was not sanctioned; that the respondent-Officials, by over-sight, in some of the letters might have mentioned that petitioner had a 'dedicated feeder'.

5. It is contended that the petitioner cannot rely on typographical errors to claim that the feeder through which he is being provided power is a dedicated feeder exclusively to him; that petitioner did not comply with any of the conditions of the general terms and conditions of supply in respect of a dedicated feeder; that petitioner should avail open access power for the entire 24 hours (round-the-clock supply) as is applicable to all common feeders; and that he can be provided with 15 minutes time slot only on a dedicated feeder.

6. Reply-affidavit is filed by petitioner relying on the letter dt.29.07.2016 of 2nd respondent himself referring to a feeder made available to petitioner as a 'dedicated feeder', and also stating that the said feeder was charged on 27.02.2016; and also a letter dt.03.07.2015 of the Assistant Divisional Engineer, Operation, Shadnagar, addressed to 2nd respondent, indicating dismantling the service to Ennar Steels and Alloys Pvt. Ltd on 02.07.2015, and to CGK Steels Pvt. Ltd. also on the same day.

7. The petitioner contends that as per the general terms and conditions of supply quoted by respondents the consumer can draw power upto 5000 KVA on a Common 33 KV Feeder, but when it is a dedicated feeder the consumer can draw power upto 10,000 KVA and that was why it had applied for additional load of 3210 KVA, making the total load as 8200 KVA; that if the feeder is not dedicated feeder the additional load would not have been sanctioned, but by the letter dt.24.03.2016, the 3rd respondent sanctioned the estimate for releasing additional load of 33 KV dedicated feeder; and this clinches the issue, and now it is not open to respondents to state otherwise.

8. It is contended that respondents are not right in contending that petitioner is being provided power of 4990 KVA from a mixed feeder named as 33 KV Ennar Feeder; that prior to the separation of lines by erecting the inter-linking lines, the said Ennar Feeder was used to supply power to M/s.Ennar Steels, Dura Line Pvt. Ltd and CGK Steels, but not after it was made a dedicated feeder, by closing the supply of power to Ennar Steels and CGK Steels, and dismantling everything. Thus, it is reiterated that petitioner was provided existing 33 KV common feeder as dedicated feeder by diverting the existing two consumers to other feeders. The petitioner contends that it never claimed that it is receiving power from Thimmapur Sub-Station; that it was not the petitioner who treated the feeder as a dedicated feeder, but both respondent nos.2 and 3 admitted that it was a dedicated feeder in the above referred correspondence, and it is preposterous to

claim that the mention of the feeder as a dedicated feeder by them is a typographical mistake. It is stated that though an undertaking was taken from petitioner, it was given not voluntarily, but was given under unavoidable circumstances, as the respondents refused to accept open access on the dedicated feeder.

9. I have noted the contentions of both sides.

10. The proceedings dt.14.10.2015 of 3rd respondent itself refers to separation of 2 Nos.H.T. Services of M/s.Dura-line India Pvt. Ltd. having C.M.D. of 1510 KVA and another unit of petitioner tagged on to the Thimmapur Feeder by facilitating the existing 33KV Ennar Express Feeder to 33 KV 'Dedicated' Feeder of petitioner by erection of 0.5 Km. 33 KV inter-linking line, including P.T's, C.T's for providing open access to petitioner.

11. The 3rd respondent also addressed letter dt.25.02.2016 to the Chief General Manager of 1st respondent specifically stating that petitioner is having a 'dedicated feeder' and he also issued proceedings dt.24.03.2016 giving estimate for cancellation of supply to petitioner for release of additional C.M.D. 3210 KVA.

12. Even the 2nd respondent, who is sub-ordinate to 3rd respondent, issued letter dt.29.07.2016 stating that the erection of the 33 KV inter-linking line for facilitating the 33 KV 'dedicated feeder' to petitioner was charged on 22.02.2016.

13. The Assistant Divisional Engineer, Operation, Shadnagar addressed a letter dt.03.07.2015 to the 2nd respondent stating that the CTs, PTs and Meters provided to M/s. Ennar Steels & Alloys, Kothur and M/s.CGK Steel (P) Ltd., Thimmapur have been dismantled on 02.07.2015.

14. In the light of this overwhelming evidence and admission of the 2nd respondent himself in the letter dt.29.07.2016 and that of the 3rd respondent, who is superior in rank to the 2nd respondent in issuing proceedings dt.14.10.2015, 25.02.2016 and 24.03.2016, it cannot be contended, as is being done by the 2nd respondent, that there is no dedicated feeder provided to petitioner at all. Such a *volte face* by the respondents is not permissible on the pretext that there was a typographical error in the above referred letters.

15. Also, if there was no dedicated feeder to the petitioner, the 3rd respondent could not have sanctioned 3210 KVA additional load to petitioner vide proceedings dt.24.03.2016.

16. Even the 'No Objection Certificate' issued by the Chief Engineer of the T.S.S.L.D.C. on 30.05.2016 for the period 01.06.2016 to 30.06.2016 clearly mentions that there is a dedicated feeder to the petitioner.

17. However, on 14.03.2018, the word '*dedicated*' was removed in the 'Standing Clearance' / 'No Objection Certificate' issued by the said Official who mentioned it only as Ennar Feeder. When the Ennar

power had been disconnected to M/s.Ennar Steels, Dura Line Pvt. Ltd and CGK Steels and made a dedicated feeder to the petitioner by the above referred letters, the respondents are *estopped* from contending that the petitioner did not have a dedicated feeder.

18. In this view of the matter, the Writ Petition is allowed. The action of respondents in not permitting the petitioner to avail power through open access is declared as arbitrary, illegal and violative of Article 14 of the Constitution of India; and the respondents are directed to permit the petitioner to avail power through open access on its dedicated feeder, and release the additional load of 3210 KVA sanctioned to it. No order as to costs.

19. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 16.07.2018

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