

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.25144 of 2017

ORDER:

Petitioner is a Company registered under the Companies Act, 1956 (for short “the Act”) and is a consumer of the 1st respondent with HT Category-I Service Connection No.SDP:735 with CMD which is presently 7500 KVA.

2. Aggrieved by the action of the respondents in not allowing the petitioner to draw power from Open Access Source, this Writ Petition is filed.

3. Petitioner contends that it applied to the 2nd respondent seeking his approval for availing Open Access Power, that he approved the same and thereafter addressed a letter dt.02-12-2013 providing, ‘on cost basis’ 2 numbers of 33 KV.25/1A Open Access meters of 0.25 class on payment of Rs.2,50,000/- and asked the petitioner to contact the 3rd respondent for further information; this amount was paid on 04-02-2014 by way of Demand Draft and the meters were released from the stores of the respondents; later existing meter C.Ts. and P.Ts were also replaced; every arrangement for availing open access was made ready; that the Nodal Agency directed the petitioner to obtain No Due certificate from the DISCOM for granting no objection to avail open access; petitioner obtained the same on 23-09-2014 from the 3rd respondent; at that stage, petitioner was directed to provide ABT meter, which it purchased from

manufacturers, as it was not available in the stores, by paying Rs.86,447.50 Ps and though it was tested by the DE.MNC, it was not fitted.

4. Petitioner contends petitioner was told then that it has to take open access on 24 basis, but the petitioner was running a Hot Rolled strip mill only 12 hours per day and so could not avail 24 hours open access; subsequently in June, 2017, petitioner started Induction Furnace which run for 24 hours, and then it requested the respondents to permit to avail open access vide letter dt.18-07-2017, but the respondents have not permitted the petitioner to avail Open Access Power and have also not assigned any reasons why petitioner is not being allowed the same. Petitioner contends that this action of the respondents violates Section 42 of the Electricity Act, 2003 and Regulation 2 of 2005.

5. Petitioner contends that the A.P. Electricity Regulatory Commission issued Regulation-2 of 2005 on 01-07-2005 notifying terms and conditions of Open Access Power to intra-State Transmission and Distribution Networks; under the said Regulation, Open Access users are categorized as 'long term open access users' where the requirement of open access is two years and more, and 'short term open access' in other cases; Clause-6 of Regulation 2 of 2005 prescribes the criteria for allowing open access and clause 7.2 stipulates that the existing users of open access may continue to avail open access and shall pay the transmission, wheeling and any other charges as per the agreement; that respondents cannot discriminate

against the petitioner by allowing other HT industries to avail open access power while preventing petitioner from availing open access power.

6. Counter-affidavit was filed by 2nd respondent taking a plea that ABT Main and Check meters as well as CTs and PTs were installed by petitioner in 2013 pursuant to order dt.02-02-2015 issued by the Telangana State Electricity Regulatory Commission (TSERC) and that installation of the said equipment and energy meters cannot thus said to have been installed only for the purpose of availing open access facility.

7. This stand cannot be countenanced since petitioner had installed the said equipment and energy meters in 2013 itself much before the order dt.02-02-2015 of the TSERC, that too when the TSERC itself had not come into existence.

8. A further contention is raised in the counter-affidavit that petitioner being a consumer fed through Mixed/Express Feeder, it cannot be allowed open access due to operational constraints.

9. Petitioner refuted the same by filing a reply affidavit pointing out that it is drawing power on an independent dedicated feeder and 2nd respondent had issued proceedings in June, 2017 admitting that petitioner was having a dedicated feeder in response to petitioner's request dt.22-08-2017, and the contention of the respondents that petitioner is not having an independent feeder is contrary to record.

Petitioner pointed out that in September, 2014 when the petitioner obtained No Objection and No Due certificate to avail open access the feeder was a 'mixed feeder', that a consumer on a mixed feeder also can draw open access power, but petitioner was told to have open access power on 24 hours basis, which it could not do so.

Petitioner further pointed out that initially petitioner had only 3000 KVA but later petitioner took 4500 KVA in June, 2017 making the total load of 7500 KVA; and for loads more than 5000 KVA, a 33 KV 'common feeder' was not be permitted; and so the petitioner erected a 'dedicated feeder' and had applied for permission for utilization of open access power from IEX; and that the petitioner was already utilizing open access power from APGPCL.

Petitioner pointed that from Manoharabad sub-station of respondents, four other Companies i.e. Sitaram Spinners, K.V.Rolling Mills, M.S.Agarwal Foundaries Pvt. Ltd., and Rama Spinners were utilizing open access power and petitioner was discriminated against.

Petitioner also pointed out that the letter dt.04-08-2017 issued by 2nd respondent after filing of the Writ Petition refusing permission to avail open access on the alleged ground of non-availability of distribution network corridor cannot stand since such a reason has not been assigned in the counter-affidavit filed subsequently.

10. I completely agree with the contentions of the learned counsel for petitioner.

11. Once the respondents have themselves admitted that the petitioner has a dedicated/independent feeder after it took additional load of 4500 KVA, and the 2nd respondent himself sanctioned such additional load, for which the petitioner erected a dedicated line in 2017, the reason assigned in the counter-affidavit that the petitioner is being fed through mixed/express feeder, is factually incorrect.

12. Once the respondents have developed and are maintaining distribution network as per the provisions of the Act, and have introduced 'open access' governed by Regulation 2 of 2005 of APERC, they cannot deny such open access to the petitioner by giving dubious reasons in counter-affidavit and discriminate the petitioner vis-à-vis other HT industries in the area.

13. Accordingly, the Writ Petition is allowed, the proceedings dt.04-08-2017 of the 2nd respondent is set aside, and 1st respondent is directed to permit the petitioner to avail open access to its factory, if necessary, by fixing ABT meter. No costs.

14. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 28-09-2018

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