

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

FRIDAY, THE THIRD DAY OF JANUARY
TWO THOUSAND AND TWENTY

PRESENT

**THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY**

WRIT APPEAL NO: 80 OF 2019

Writ Appeal under clause 15 of the Letters Patent appeal preferred against the order dated 28-09-2018 in W.P.No.25144 of 2017 on the file of the High Court.

Between:

1. The Southern Power Distribution Company Ltd., of Telangana State, Mint Compound, Hyderabad, Rep by its Chairman and Managing Director.
2. The Chief General Manager, TSSPDCL, (IPC) 4th Floor, Corporate office, Mint Compound Office, Mint Compound, Hyderabad.
3. The Superintending Engineer, Operation circle, TSSPDCL, Corporate office, 1 Floor, Mint Compound, Hyderabad.

...APPELLANTS/RESPONDENTS

AND

1. Mahalakshmi Profiles (p) Ltd, (S.C. No SDP-735) Kallakal Village, Toopran Mandal, Now Manaharabad Mandal, Medak District- 520012 Rep by its Director, Sri Vinod Kumar Agarwal S/o Late Sri Mohanlal Agarwal Aged about 48 years, R/ H. No 156, Netaji Nagar Colony, Mehdiapatnam Ring Road, Hyderabad.
2. The State Load Despatch Centre (52DC), By its chief engineer, TSTRANSCO, Vidyuth Soudha, Hyderabad.

....RESPONDENT/PETITIONER

...RESPONDENT/RESPONDENT NO. 4

IA NO: 2 OF 2019

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 stay the operation of orders dated 28-09-2018 in WP. No. 25144 of 2017 pending the Writ Appeal

**Counsel for the Appellants: SRI R. VINOD REDDY
SC FOR TSTRANSCO**

Counsel for Respondent No. 1: SRI M. P. CHANDRAMOULI

Counsel for Respondent No. 2: ----

The Court made the following: ORDER

JUDGMENT: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

The present writ appeal is filed by the Southern Power Distribution Company Ltd. (SPDCL) aggrieved by the order, dated 28.09.2018, passed in W.P.No.25144 of 2017. The said writ petition was filed by the respondent No.1, the writ petitioner, seeking to declare the action of the appellants herein in not permitting the writ petitioner to avail the Open Access Power to its factory, as arbitrary, illegal, without jurisdiction, discriminatory and consequently to permit the petitioner to avail the same. The learned Single Judge while allowing the said writ petition has directed the appellants to permit the respondent No.1 to avail open access power to its factory.

2. The parties hereinafter are referred to as they were arrayed in W.P.No.25144 of 2017.

3. The brief facts of the case are that the petitioner, which is a Company and a consumer of the respondent No.1, under HT Category-I, applied for Open Access Power to the Chief General Manager, TSSPDCL; the same was approved. In accordance with the letter, dated 02.12.2013, the petitioner deposited the required amount by way of Demand Draft on 04.02.2014. The Chief General Manager by another letter, dated 31.12.2013, directed the petitioner to replace the existing metering C.Ts and P.Ts with new ones. Accordingly, the petitioner approached the Superintending Engineer, who issued a letter, dated 23.01.2014, for payment of Rs.71,934/- towards the cost of 3 C.Ts. The petitioner paid the said amount by way

of Demand Draft, dated 03.02.2014; and the C.Ts. were also released. The petitioner procured the P.Ts. from a private agency. Thereafter, the two new meters and the C.Ts. and P.Ts. were fitted and tested; every arrangement for availing the open access was made ready. Thereafter, the nodal agency directed the petitioner to obtain 'No Due Certificate' from the DISCOM. The said No Due Certificate was accordingly obtained on 23.09.2014 from the Superintendent Engineer, TSSPDCL. Subsequently, the petitioner was directed to provide ABT meter, and the same was purchased by the petitioner at the cost of Rs.86,447.50 ps., and tested by D.E. MNC. Thereafter, the petitioner was told to take open access on 24 hours basis. But the petitioner, which is a Hot Rolled Strip Mill and running only 12 hours per day, did not avail the said facility. Subsequently, in June, 2017, the petitioner has taken additional load of 4500 KVA in order to start an Induction Furnace, which runs for 24 hours per day. Therefore, the petitioner requested the official respondents to permit it to avail the Open Access Power on 24 hours basis. But the respondents did not permit the petitioner to do so. Questioning the said decision, the petitioner filed the writ petition.

4. The learned Single Judge by Order, dated 28.09.2018, allowed the writ petition directing the official respondents to permit the petitioner to avail Open Access Power. Assailing the order of the learned Single Judge, the authorities of the Southern Power Distribution Company Ltd. (SPDCL) are before this Court by way of writ appeal.

5. The learned Counsel appearing for the appellants has assailed the correctness of the order of the learned Single Judge mainly on the ground that if the load is more than 5000 KVA, the consumer has to opt for a dedicated feeder under 33 KV as per clauses 3.2.2.1 and 3.2.2.2 of the General Terms and Conditions of Supply and also as per the terms and conditions of HT supply for the Tariff Order for the financial year 2017-2018. If the consumer is not willing to opt for a dedicated feeder, he has to avail the supply at 132 KV voltage under mixed feeder for the load of above 5000 KVA. As the petitioner has opted for a dedicated feeder only for the purpose of availing the load over 5000 KVA, and not for the purpose of open access, the official respondents are justified in not permitting the petitioner to avail the open access. He further contended that the official respondents do not have the required availability of distribution network. Hence, the DISCOM is not in a position to grant the open access to the petitioner. Moreover, the DISCOMs themselves are giving an uninterrupted electricity supply for 24 hours. Thus, there is no need for the petitioner to avail the open access. Therefore, the appellants have requested this Court to set aside the impugned order of the learned Single Judge.

6. Per contra, the learned Counsel appearing for the respondent No.1/writ petitioner vehemently argued that the official respondents, having made the petitioner believe that the open access system would be granted made him to spend lakhs of rupees in procuring the required meters and other equipments. After the installation of the required equipment,

they cannot be now allowed to recant their promise and take a stand that they will not grant open access system, or that the consumers cannot purchase the power from any other power generators. The DISCOMs will bill the consumer as per the actual consumption after deducting the power which has been purchased by the consumer from a third party. Thus, the official respondents cannot discriminate against the petitioner, while extending the facility to the other factories to open access system.

7. Heard Mr. R.Vinod Reddy, the learned Counsel appearing for the appellants, and Mr. P.Chandramouli, the learned Counsel appearing for the respondent No.1. Perused the order passed by the learned Single Judge.

8. The learned Single Judge has allowed the writ petition mainly on the ground that the official respondents have themselves admitted that the petitioner has a dedicated/independent feeder after it has taken the additional load of 4500 KVA, and the petitioner had erected a dedicated line in the year 2017. It is an admitted fact that the official 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 Andhra Pradesh Electricity Regulatory Commission. The respondents have introduced the system of open access and they themselves have given the necessary permission and directed the petitioner to install the necessary equipments/meters required for open

access. Once the petitioner has purchased the necessary equipments/meters, and had incurred huge amounts for installation of the same, the respondents cannot now turn around and come up with some lame excuses.

9. At this juncture, it is appropriate to deal with the *doctrine of estoppel* in order to dispose of the present writ appeal. Section 115 of the Indian Evidence, which deals with the *doctrine of estoppel*, reads as under:-

When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.

10. In **B.L.SREEDHAR v. K.M.MUNIREDDY (2003) 2 SCC 355)** the Hon'ble Supreme Court while dealing with the above said *doctrine of estoppel*, at paragraph Nos.18 and 30, has held as under:

18.Though estoppel is described as a mere rule of evidence, it may have the effect of creating substantive rights as against the person estopped. An estoppel, which enables a party as against another party to claim a right of property which in fact he does not possess is described as estoppel by negligence or by conduct or by representation or by holding out ostensible authority.

30. If a man either by words or by conduct has intimated that he consents to an act which has been done and that he will not offer any opposition to it, although it could not have been lawfully done without his consent, and he thereby induces others to do that which they

otherwise might have abstained from, he cannot question the legality of the act he had sanctioned to the prejudice of those who have so given faith to his words or to the fair inference to be drawn from his conduct.

11. The Hon'ble Supreme Court in **INDIRA BAI v. NAND KISHORE (1990) 4 SCC 668**, has held as under:

3. Estoppel is a rule of equity flowing out of fairness striking on behaviour deficient in good faith. It operates as a check on spurious conduct by preventing the inducer from taking advantage and assailing forfeiture already accomplished. It is invoked and applied to aid the law in administration of justice. But for it great many injustice may have been perpetrated. Present case is a glaring example of it. True no notice was given by the seller but the trial court and the appellate court concurred that the pre-emptor not only came to know of the sale immediately but he assisted the appellant purchaser in raising construction which went on for five months. Having thus persuaded, rather misled, the purchaser by his own conduct that he acquiesced in his ownership he somersaulted to grab the property with constructions by staking his own claim and attempting to unsettle the legal effect of his own conduct by taking recourse to law. To curb and control such unwarranted conduct the courts have extended the broad and paramount considerations of equity, to transactions and assurances, express or implied to avoid injustice.

12. That, in view of the above enunciated doctrine of estoppel, the respondents by their declaration, act have made the petitioner to believe that they will be granted Open Access and incur substantial expenditure cannot now be allowed to retract from the same. The respondents cannot be allowed

to defeat the right that has come into existence in favour of the petitioner on the basis of the above *doctrine of estoppel*.

13. It is seen that on the earlier occasion, the respondents have themselves agreed to give the open access on 24 hours basis, but at that particular point of time, the petitioners requirement only 12 hours per day. Therefore, it did not avail the same. But, subsequently, when the petitioner started an Induction Furnace which runs for 24 hours per day, he has again re-applied for the open access. The respondents, instead of granting the open access, have taken legally untenable grounds for denying the open access viz., that installation of the said equipment and energy meters cannot be said to have been installed only for the purpose of availing open access facilities; that the charges for installation of the meters were not paid; that the petitioner being a consumer fed through Mixed/Express Feeder cannot be allowed open access due to operational constrains like maintaining the balance between supply and demand, short term or long term access; that the petitioner is a short term consumer, and during emergencies, it is not possible to control the short term open access consumer existing on mixed/express feeder; that the dedicated feeder is not taken etc. As rightly held by the learned Single Judge, when the respondents are allowing the open access to other factories and companies, the said facility cannot be denied to the petitioner on legally untenable grounds, and it cannot be discriminated.

14. In view of the above mentioned facts and circumstances, we do not find any merit in the present appeal, and the same is hereby dismissed. The appellants are directed to comply with the order passed by the learned Single Judge within two weeks from the date of receipt of a copy of this order.

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

SD/-K.SRINIVASA RAO
DEPUTY REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Chairman and Managing Director, Southern Power Distribution Company Ltd., of Telangana State, Mint Compound, Hyderabad.
2. The Chief General Manager, TSSPDCL, (IPC) 4th Floor, Corporate office, Mint Compound Office, Mint Compound, Hyderabad.
3. The Superintending Engineer, Operation circle. TSSPDCL. Corporate office, 1st Floor, Mint Compound, Hyderabad.
4. The Chief Engineer, State Load Despatch Centre (52DC), TSTRANSCO, Vidyuth Soudha, Hyderabad.
5. One CC to Sri R. Vinod Reddy, Standing Counsel for TSSPDCL (OPUC)
6. One CC to Sri M. P. Chandramouli, Advocate (OPUC)
7. Two CD Copies

MBC



HIGH COURT

DATED: 03/01/2020



JUDGMENT

WA.No.80 of 2019

DISMISSING THE WRIT APPEAL

WITHOUT COSTS

⑧ VLV
20/6/20