HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

WEDNESDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND TWENTY

PRESENT

THE HON'BLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION Nos.12263, 12275, 13601 and 13614 of 2019

WRIT PETITION NO: 12263 OF 2019

Between:

MS Agarwal Foundries, Regd. Office, Rama Towards, 2nd Floor, 5-4-83, Mahatma Gandhi Road, Secunderabad, Rep. by its Managing Director, Pramod Agarwal.

...PETITIONER

AND

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, (IPC and RAC), TSSPDCL, Corporate Office, Mint Compound, Hyderabad.
3. The Superintending Engineer, Operation, Medak, TSSPDCL, Medak District.
4. The Senior Accounts Officer, TSSPDCL, Medak, Medak District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ in the nature of a Writ of Mandamus or any other appropriate writ, direction, order or orders declaring the action of the respondents in levying Deviation charges for drawl/over drawl power when grid frequency is below 49.85 for the months of January-2019 to May 2019 as wholly arbitrary, illegal, without jurisdiction, offending the principles of natural justice and void and consequently direct the respondents either to repay or adjust the amount in the further bills.

IA NO: 1 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 direct the respondents not to levy and collect any deviation charges from the petitioner.

IA NO: 2 OF 2019

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, (IPC and RAC), TSSPDCL, Corporate Office, Mint Compound, Hyderabad.
3. The Superintending Engineer, Operation, Medak, TSSPDCL, Medak District.
4. The Senior Accounts Officer, TSSPDCL, Medak, Medak District.

...Petitioners/Respondents

AND
MS Agarwal Foundries, Regd. Office, Rama Towards, 2nd Floor, 5-4-83, Mahatma Gandhi Road, Secunderabad, Rep. by its Managing Director, Pramod Agarwal.

...Respondent/Petitioner

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 vacate the interim orders dated 20-06-2019 in W.P. No.12263 of 2019 and dismiss the writ petition.

WRIT PETITION NO: 12275 OF 2019

Between:

Agarwal Foundries, Regd. Office at Rama Towards, 2nd Floor, 5-4-83, Mahatma Gandhi Road, Secunderabad, Rep. by its Proprietor, Pramod Agarwal.

...PETITIONER

AND

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, (IPC and RAC), TSSPDCL, Corporate Office, Mint Compound, Hyderabad.
3. The Superintending Engineer, Operation, Medchal, TSSPDCL, Medchal District.
4. The Senior Accounts Officer, TSSPDCL, Medchal, Medchal District

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ in the nature of a Writ of Mandamus or any other appropriate writ, direction, order or orders declaring the action of the respondents in levying Deviation charges for drawl/over drawl power when grid frequency is below 49.85 for the months of January-2019 to May 2019 as wholly arbitrary, illegal, without jurisdiction, offending the principles of natural justice and void and consequently direct the respondents either to repay or adjust the amount in the further bills.

IA NO: 1 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 direct the respondents not to levy and collect any deviation charges from the petitioner.

IA NO: 2 OF 2019

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, (IPC and RAC), TSSPDCL, Corporate Office, Mint Compound, Hyderabad.
3. The Superintending Engineer, Operation, Medchal, TSSPDCL, Medchal District.
4. The Senior Accounts Officer, TSSPDCL, Medchal, Medchal District

...Petitioner/Respondents

AND

Agarwal Foundries, Regd. Office at Rama Towards, 2nd Floor, 5-4-83, Mahatma Gandhi Road, Secunderabad, Rep. by its Proprietor, Pramod Agarwal.

...Respondents/Petitioner

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 vacate the

interim orders dated 20-06-2019 in W.P.No.12275 of 2019 and dismiss the writ petition.

WRIT PETITION NO: 13601 OF 2019

Between:

MS Agarwal Foundries Pvt. Ltd., Regd. Office, Rama Towards, 2nd Floor, 5-4-83, Mahatma Gandhi Road, Secunderabad, Rep. by its Managing Director, Pramod Agarwal.

...PETITIONER

AND

1. The TS TRANSCO, Rep. by its Chairman and Managing Director, Vidyut Soudha, Hyderabad.
2. The Southern Power Distribution Company Ltd, of Telangana State, Mint Compound, Hyderabad, Rep. by its Chairman and Managing Director.
3. The Chief Engineer, SLDC, TS TRANSCO, Vidyut Soudha, Hyderabad.
4. The Chief General Manager,(IPC and RAC), TSSPDCL, Corporate Office, Mint Compound, Hyderabad.
5. The Superintending Engineer, Operation, Medak, TSSPDCL, Medak District

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ in the nature of a Writ of Mandamus or any other appropriate writ, direction, order or orders declaring the action of the respondents in not issuing No Objection Certificate to the petitioner to avail open access power as wholly arbitrary, illegal, without jurisdiction, offending the principles of natural justice and void.

IA NO: 1 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 direct the respondents to issue No Objection certificate to the petitioner to enable it to avail open access power Pending disposal of the Writ Petition.

IA NO: 2 OF 2019

Between:

1. The TS TRANSCO, Rep. by its Chairman and Managing Director, Vidyut Soudha, Hyderabad.
2. The Southern Power Distribution Company Ltd, of Telangana State, Mint Compound, Hyderabad, Rep. by its Chairman and Managing Director.
3. The Chief Engineer, SLDC, TS TRANSCO, Vidyut Soudha, Hyderabad.
4. The Chief General Manager,(IPC and RAC), TSSPDCL, Corporate Office, Mint Compound, Hyderabad.
5. The Superintending Engineer, Operation, Medak, TSSPDCL, Medak District

...Petitioners/Respondents

AND

MS Agarwal Foundries Pvt. Ltd., Regd. Office, Rama Towards, 2nd Floor, 5-4-83, Mahatma Gandhi Road, Secunderabad, Rep. by its Managing Director, Pramod Agarwal.

...Respondent/Petitioner

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 vacate the

interim orders dated 04-07-2019 in WP. No.13601 of 2019 and dismiss the writ petition.

WRIT PETITION NO: 13614 OF 2019

Between:

Agarwal Foundries, Regd. Office at Rama Towards, 2nd Floor, 5-4-83, Mahatma Gandhi Road, Secunderabad, Rep. by its Proprietor, Pramod Agarwal.

...PETITIONER

AND

1. The TS TRANSCO, Rep. by its Chairman and Managing Director, Vidyut Soudha, Hyderabad.
2. The Southern Power Distribution Company Ltd of Telangana State, Mint Compound, Hyderabad, Rep. by its Chairman and Managing Director.
3. The Chief Engineer, SLDC, TS TRANSCO, Vidyut Soudha, Hyderabad.
4. The Chief General Manager, (IPC and RAC), TSSPDCL, Corporate Office. Mint Compound, Hyderabad.
5. The Superintending Engineer, Operation, Medchal, TSSPDCL, Medchal District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ in the nature of a Writ of Mandamus or any other appropriate writ, direction, order or orders declaring the action of the respondents in not issuing No Objection Certificate to the petitioner to avail open access power as wholly arbitrary, illegal, without jurisdiction, offending the principles of natural justice and void.

IA NO: 1 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 direct the respondents to issue No Objection certificate to the petitioner to enable it to avail open access power pending disposal of the writ petition.

IA NO: 2 OF 2019

Between:

1. The TS TRANSCO, Rep. by its Chairman and Managing Director. Vidyut Soudha, Hyderabad.
2. The Southern Power Distribution Company Ltd of Telangana State, Mint Compound, Hyderabad, Rep. by its Chairman and Managing Director.
3. The Chief Engineer, SLDC, TS TRANSCO, Vidyut Soudha, Hyderabad.
4. The Chief General Manager, (IPC and RAC), TSSPDCL, Corporate Office. Mint Compound, Hyderabad.
5. The Superintending Engineer, Operation, Medchal, TSSPDCL, Medchal District.

...Petitioners/Respondents

AND

Agarwal Foundries, Regd. Office at Rama Towards, 2nd Floor, 5-4-83, Mahatma Gandhi Road, Secunderabad, Rep. by its Proprietor, Pramod Agarwal.

...Respondent/Petitioner

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 vacate the

interim orders dated 05-07-2019 in W.P.No.13614 of 2019 and dismiss the writ petition.

Counsel for the Petitioner in all W.Ps.: SRI. M.P. CHANDRAMOULI

Counsel for the Respondents in all W.Ps.: SRI J. RAMACHANDER RAO, ADDITIONAL ADVOCATE GENERAL REPRESENTING SRI R. VINOD REDDY, SC FOR TSSPDCL

The Court made the following: COMMON ORDER

HONOURABLE SRI JUSTICE K. LAKSHMAN

WRIT PETITION Nos.12263, 12275, 13601 AND 13614 OF 2019

COMMON ORDER:

MS Agarwal Foundries filed W.P. No.12263 of 2019 to declare the action of the respondents in levying deviation charges for drawl / over drawl power when grid frequency is below 49.85 for the months of January, 2019 to May, 2019, as arbitrary and illegal, and for consequential direction to the respondents either to repay or adjust the amount in further bills. Agarwal Foundries, a proprietary concern, filed W.P. No.12275 of 2019 for the above said relief.

2. MS Agarwal Foundries Private Limited filed W.P. No.13601 of 2019 to declare the action of the respondents in not issuing No Objection Certificate (NOC) to the petitioner to avail open access power as illegal. The above said Agarwal Foundries filed W.P. No.13614 of 2019 seeking similar relief as sought in W.P. No.13601 of 2019.

3. The pleadings in all the above said writ petitions are common, interconnected and, therefore, the same are being disposed of by way of a common order.

4. Heard Mr. M.P. Chandramouli, learned counsel for the petitioner in all the writ petitions and Mr. J. Ramachander Rao, learned Additional Advocate General, representing Mr. R. Vinod Reddy, learned Standing Counsel appearing on behalf of the respondents.

W.P.Nos. 12263 AND 12275 OF 2019

5. **CONTENTIONS OF THE PETITIONER**:

i) MS Agarwal Foundries, petitioner in W.P. No.12263 of 2019, is a manufacturer of High Class Ferrous and Non-ferrous Castings in the factory situated at Chetla Gouraram, Toopran Mandal, Medak District. It was drawing power from respondent No.1 DISCOM with Service No. MDK 893 with CMD of 250000 KVA. Apart from the said supply, the petitioner is also purchasing power from Indian Energy Exchange for Short IEX from APGPCL and Maruthi Ispath (Captive Generation) under Open Access Facility provided under Section 42 of the Electricity Act, 2003 (hereinafter referred to as 'Act, 2003').

ii) Whereas, the petitioner in W.P. No.12275 of 2019 i.e., Agarwal Foundries, a proprietary concern, is a manufacturer of Steel and it is drawing power from respondent No.1 DISCOM with Service No.MCL.No.620 in the factory situated at Pet Basheerabad, Medchal District. It is drawing power from respondent No.1 DISCOM with Service No. MCL 620 with CMD of 6500 KVA. Apart from the said supply, the petitioner is also purchasing power from Indian Energy Exchange for Short IEX from APGPCL and Maruthi Ispath (Captive Generation) under Open Access Facility provided under Section 42 of the Act, 2003.

iii) The Central Electricity Regulatory Commission (CERC) passed a Regulation called Open Access Inter-state Regulation, 2008, to regulate the inter-state open access. The erstwhile A.P. Electricity Regulation Commission passed Open Access Terms and Conditions Regulation, 2005 to regulate the Open Access within the State which is now adopted to the Telangana State.

iv) Another relevant Regulation issued by APERC is the *interim* balancing and settlement Regulation for open access transactions. As per the said Code, licensee has to do monthly balancing. Under Clause - 20 of CERC Regulation, 2008, cover injection or under injection of power and over drawl or under drawl of power is dealt with and deviations will be accounted in the intra state accounting scheme. The CERC issued a Regulation called deviation settlement mechanism and related matters Regulation, 2014. As per Regulation - 5 (1), the charges for the deviations for all the time-blocks shall be payable for over drawl by the buyer and under injection by the seller and receivable for under drawl by the buyer and over injection by the seller and shall be worked out on the average frequency of a time block at the rates specified in the table. As per Regulation - 7 (4), in addition to charges for deviation as stipulated under Regulation - 5 of the Regulations, additional charge for deviation shall be applicable for over injection / under drawl of electricity for each time block by a seller / buyer as the case may be when grid frequency is "50.10 Hz and above" at the rates equivalent

to charges of deviation correspondent to the grid frequency of "below 50.01 Hz, but not below 50.00 Hz". 7.44 is amended by 4th amendment Regulation by substituting "50.01 Hz and above by the word "50.05 Hz and above".

v) The power consumed by Agarwal Foundries from all the sources shall be within the CMD of 6500 KVA, MS Agarwal Foundries from all the sources shall be within the CMD of 250000 KVA. Both the petitioners have not consumed power from open access sources over and above the quantity purchased and scheduled. They underutilize the power from other sources. In proof of the same, the petitioners have filed chart for the period from January, 2019 to April, 2019.

vi) Both the petitioners are not the buyers of open access power for its entire requirements. They are the consumers of respondent No.1 DISCOM and they paid demand charges for 80% of the CMD of 25000 KVA and 6500 KVA respectively, whether it utilizes power to maintain the permissible grid frequency or not from DISCOM. Therefore, the petitioners cannot be brought under 2014 Regulation. Even if the petitioners have drawn power when the grid frequency is below 49.85, there is no violation as the total drawn power minus the open access power is charged by the DISCOM as its power. In proof of the same, they have filed the chart. If deviation charges are levied for the consumption, it amounts to double levy.

vii) The charging provision is Regulation -5 of 2014. As per the said regulation, charges for deviation shall be payable for over drawl by the buyer and under injection by the seller. Both the petitioners never overdrew the power. In proof of the same, they filed statement for the months of January, 2019 to May, 2019 and also C.C. bills.

viii) The petitioner in W.P. No.12263 of 2019 has received C.C. bill for the month of March, 2019, in which an amount of Rs.14,74,465/- was levied as additional deviation charges. There upon the petitioner verified the abstract of energy deviation and found that there was no deviation contemplated under Clause - 5 of CERC Regulation 2014 and also there is no additional deviation of more than 12% as stipulated in Regulation - 7. Whereas, the petitioner in W.P. No.12275 of 2019, realized that in the C.C. bills of January to April, deviation charges were levied as additional deviation charges for drawn energy. There upon, it verified the abstract of energy deviation and found that there was no deviation contemplated under Clause 5 of CERC Regulation, 2014 and also there was no additional deviation of more than 12% as stipulated in Regulation - 7. Therefore, the levy of additional deviation charges is illegal and thus, they addressed letters dated 18.04.2019 and 05.05.2019 respectively to respondent No.2 stating that when deviation is shown as 'NIL' in the abstract, there cannot be any additional deviation charges, and requested for withdrawal of the levy. Despite receiving and acknowledging the

letter dated 09.05.2019, there was no response from the respondents. The respondents have not furnished as to the drawl or over drawl particulars in the schedules and, therefore, the said action of the respondents is against the principles of natural justice. However, after receipting the letter dated 18.04.2019, respondent No.2 gave a reply dated 30.04.2019 stating that as per Clause 8 of CERC Regulation, 2014 and Clause - 4.6 of the 4th amendment Regulation, 2018, additional charges for deviation for over drawls for each time block when grid frequency is below 49.85 Hz shall be payable. But, respondent No.2 has not addressed the objection raised by the petitioner in the said reply. Therefore, it has addressed another letter dated 05.06.2019 stating that it is not disputing the provisions of the Regulation to charge additional deviation charges when the limit is crossed, but the fact that when it has not utilized the power over above the stipulated percentage as to how the charges are levied is not answered. The petitioner has received Rs.38,928/- for utilization of power. To the said letter, respondent No.2 gave a reply stating that deviation energy over drawn when the frequency is 49.85 Hz and above is zero and, therefore, the charges are NIL as shown in Columns 7 to 9. But, deviation energy over drawn when the frequency is below 49.85 Hz is 1,75,532 Units as shown in Column 10, a sum of Rs.14,74,465/- is charged. In support of the same, respondent No.2 has annexed an abstract of statement by charging the heading of the last column as 'deviation energy over drawn when the frequency is below 49.85 Hz'. In the said abstract of statement

annexed to C.C. bill, the heading of the last column is 'deviation of energy drawn when the frequency is below 49.85 Hz'. In the annexures to the C.C. bills for January to May, 2019 also similar headings are appeared. Thus, there is lot of difference from drawn energy and over drawn energy when the frequency is below 49.85 Hz. The former does not attract any deviation charges and, therefore, in the annexure to the letter, respondent No.2 altered drawn energy as over drawn energy. Respondent No.2 has not furnished as to the drawl or over drawl particulars in the schedules. Therefore, the said in action on the part of respondents is against the principles of natural justice.

ix) The deviation charges are not applicable to the petitioners as they are the consumers of the DISCOM. Even if deviation charges are applicable for the power drawn through open access, even then the petitioners never over drawn, but always under drawn and the DISCOM paid for the under drawl. Thus, the action of the respondents in levying deviation charges for the drawn power when grid frequency is below 49.85 Hz for the period from January, 2019 to May, 2019 is wholly arbitrary and illegal. The petitioners, under the threat of disconnection, have paid the deviation charges under protest for the months of January to April, 2019 and the respondents are liable either to repay or adjust the same towards over drawl and drawl power when grid.frequency is below 49.85 Hz.

x) With the above said contentions, the petitioners sought to declare the action of the respondents in levying deviation charges for drawl / over drawl power when grid frequency is below 49.85 Hz for the months of January to May, 2019 as illegal and sought for a consequential direction to the respondents either to repay or adjust the amount in the further bills.

6. This Court vide order dated 20.06.2019, granted *interim* stay as prayed for in W.P. Nos.12263 and 12275 of 2019 i.e., the respondents are directed not to levy and collect any deviation charges from the petitioner.

7. **CONTENTIONS OF THE RESPONDENTS**:

i) Respondent No.2 has filed counter denying the allegations levelled by the petitioners in both the writ petitions. Inter-state open access transactions are regulated by CERC Open Access Regulations, 2008. The petitioners have wrongly based their entire case on APERC Open Access Regulations 2 of 2005. The provisions of Regulation 2 of 2005 govern only intra-state open access transactions.

ii) There are two types of transactions, through which the petitioners are availing open access power; (a) Short Term Inter - State (Bilateral) - by this method, the petitioners approach the generator for purchasing power and directly pay the cost of power to the generator. The power that is purchased by the petitioners is wheeled up to delivery point of the petitioners by TS TRANSCO and

DISCOM i.e., TSSPDCL. As the petitioners are availing open access power from generator located in other States, the transactions are regulated / governed by CERC Regulations 2008 and subsequent amendments; (b) Short - Term Inter State (Collective) - is an open access transaction availed by the petitioners / consumers through the power exchange (IEX). In this transaction, the generators directly deal with IEX and offer to sell power and IEX in turn identifies the consumers who are willing to purchase the power and routes the power to the purchaser. The purchaser directly pays the cost of power to IEX which in turns pays the same to the generator. The power exchange (IEX) is regulated by CERC. As the petitioners are availing open access power from IEX, the transactions are regulated / governed by CERC Regulations, 2008 and subsequent amendments.

iii) The petitioners are availing the open access power under short term inter-state (Collective) transactions regularly as per the Inter - State Regulations framed by CERC (Open Access in Inter - State Transmission) Regulations, 2008 and its subsequent amendments. The CERC Regulations have laid down the procedural methodology for application and grant of open access on the Inter - State Transmission System and settlement of the availed energy through the open access transaction as per CERC (Deviation Settlement Mechanism and related matters) Regulations, 2014. The main objective of CERC Regulations (Deviation Settlement Mechanism and related matters) Regulations, 2014 is to maintain grid

discipline and grid security as envisaged under the Grid Code through 'commercial mechanism' for deviation settlement through drawl and injection of electricity by users of the grid. In order to maintain the grid discipline and security only, the said Regulation was formulated to streamline the energy transacted through open access within the permissible limits.

iv) As per the CERC, Open Access Regulations, 2008 and the subsequent amendments, the consumer has to submit drawl schedules (for each 15 minutes time blocks) to Southern Regional Load Dispatch Centre (SRLDC) on day ahead basis i.e., one day in advance. The petitioners have to draw the power as per the Schedule given to SRLDC and if there are any deviations committed, the applicable unscheduled interchange charges (UI Charges) are levied on the petitioners as per CERC Regulations and subsequent amendments. As per the said regulations, the UI charges for deviation for each 0.01 Hz step is equivalent to 35.60 paise/kWh in the frequency range of 50.05 – 50.00 Hz and 20.84 paise/Kwh in frequency range 'below 50 Hz' to 'below 49.70 Hz'.

v) If the petitioners are aggrieved by any of regulations issued either by CERC or by SERC, they have to approach the Appellate Tribunal for Electricity constituted under Section 111 of the Act, 2003. The petitioners have not availed the said remedy and, therefore, the present writ petitions are liable to be dismissed on the said ground alone.

vi) Respondent No.2 has relied upon Clause - 6 of CERC (Deviation Settlement Mechanism and related matters) Regulation, 2014. CERC (Deviation Settlement Mechanism and related matters) Regulation, 2014 were amended from time to time with an objective to bring about the desired discipline in grid operation and also to create a frame work to discourage open access users from deviating their schedules. The open access users are bound to adhere to their schedules and should not indulge in over drawl or under drawl of power during low frequency or high frequency. The CERC has issued fourth amendment to DSM dated 20.11.2018 w.e.f. 01.01.2019 and as per which, the operational frequency band width has been narrowed down from 49.70Hz and 50.10 to 49.85 IIz and 50.05 Hz respectively for safe and secure operation of grid to maintain stability and discipline. For violation of the band width either by over drawl or under drawl, the petitioners / consumers are liable to pay charges / penalties as stipulated in CERC (Deviation Settlement Mechanism and related matters) Regulation, 2014 and subsequent amendments.

vii) The important Clauses 4.3 and 4.13 of the said amended Regulations, 2018 were relied upon by respondent No.2. As the petitioners are availing power through power exchange (IEX) from Maruthi Power located in Andhra Pradesh State and from TSSPDCL under short term inter generator - state open access, the said amendment Regulations, 2018 is applicable to the petitioners. Any inter-state open access user is bound to follow the Deviation

Settlement Mechanism Regulations of CERC issued from time to time.

viii) The respondent company has not imposed any power restrictions on the petitioners and is supplying power to them 24 x 7 hours. But, the petitioners have opted willing for open access power. The respondent company has issued NOC to them for availing power through open access at their request. Any open access consumer is bound to follow CERC Open Access Regulations, 2018 as amended from time to time and it is the prime responsibility of open access consumer to maintain grid discipline by means of not deviating the open access power schedules as procured by the petitioners themselves. But, the petitioners have deviated the open access power schedules either by means of under drawl / over drawls in certain time blocks and created indiscipline in the grid causing grid insecurity and the petitioners are solely responsible for the same.

ix) As the petitioners are not consumers of respondent company alone and drawing its entire power from it, but drawing power through open access, the petitioners cannot over draw power when grid frequency is below 49.85 Hz, which is a bar as per the CERC Deviation Settlement Mechanism Regulations, 2018. These deviations by the petitioners would in turn affect the respondent's company power schedules and deviation charges for such energy over drawn when grid frequency is below 49.85 Hz is levied on to the respondent company by Southern Region Load Dispatch Centre and

the same is passed on to the petitioners. The deviation charges are collected by the SRLDC for causing indiscipline in the grid by over drawl / under drawl of energy. The deviation charges imposed by SRLDC on the respondent company are in addition to the power purchase cost by it. Hence, the same is collected from the petitioners and it is not a double levy. The contention of the petitioners that they never overdrawn the power and that the respondent company is levying charges amounts to double levy, is factually incorrect.

x) The petitioners are not meeting its entire power requirements through open access and, therefore, they are drawing power from the respondent company also. The quantity of power drawn by them from the respondent company is infirm. As the petitioners are not only drawing its entire power requirements from the respondent company, but also drawing power under inter-state open access system, CERC DSM Amendment Regulations, 2018 are also applicable on them. There is no exemption of applicability of CERC DSM Regulations, 2018 either partially or totally to any consumer seeking power through open access.

xi) The petitioners have over drawn the energy when grid frequency is below 49.85 Hz and deviation charges towards over drawn energy when grid frequency is below 49.85 Hz have to be paid by the petitioners to the respondent company. For the energy under drawn by the petitioners less than the open access power, the deviation charges towards energy under drawn is already adjusted as

shown in the annexure. The petitioners are meeting its power requirements partially through open access and partially from the respondent company. As per the CERC DSM Regulations, 2014, deviations (over drawl / under drawl) are to be reckoned for each 15 minutes time block. The energy that is over drawn by the petitioners more than open access power when grid frequency is above 49.85 Hz, the Deviation Charges on the quantum of energy over drawn is applicable as per CERC DSM Amendment Regulations, 2018. But, the same is not collected from the petitioners. Only additional deviation charges towards energy over drawn by the petitioner when grid frequency is below 49.85 Hz as per the CERC DSM Amendment Regulations, 2018 is charged to the petitioners and the same is liable to be paid by them.

xii) The petitioners are wrongly interpreting that deviation energy over drawn when grid frequency is above 49.85 Hz shown as NIL in the day wise energy abstract, hence, the petitioners are not liable to pay the deviation charges. From the abstract, it is clearly evident that there are two columns of Deviation Energy over drawn. (i) Deviation energy over drawn when grid frequency is above 49.85 Hz; and (ii) Deviation energy over drawn when grid frequency is below 49.85 Hz. In the abstract of March, 2019, deviation energy over drawn when grid frequency is above 49.85 Hz is shown as NIL, and deviation energy over drawn when grid frequency is below 49.85 Hz is 1,75,532 Units in respect of the petitioner in W.P.No.12263 of

2019, and 20,270 Units in respect of the petitioner in W.P. No.12275 of 2019. Hence, additional deviation charges of Rs.14,74,465/- for energy over drawn when grid frequency is below 49.85 Hz in respect of the petitioner in W.P. No.12263 of 2019, while an amount of Rs.1,70,252/- in respect of the petitioner in W.P. No.12275 of 2019. Thus, both the petitioners are wrongly contending that additional charges are levied when they have not over drawn the power than the stipulated percentage when grid frequency is below 49.85 Hz.

xiii) As per Regulation - 7 (Limits on Deviation Volume and consequences of crossing limits) of the Principal Regulations, 2014, clause (1) strictly no over drawl of electricity is allowed when grid frequency is below 49.70 Hz which amended to below 49.85 Hz in Amendment Regulations, 2018. Any over drawl of energy when grid frequency is below 49.85 Hz would pose a threat to grid security. Hence, additional deviation charges, as stated above, for energy over drawn when grid frequency is below 49.85 Hz, is to be paid by both the petitioners.

xiv) The petitioners having availed the incentives earlier, is now refusing to comply with the above Regulations, 2014 and pay the UI charges for deviations which are applicable at present. Respondent No.2 has mentioned the incentives paid to the petitioners from April, 2018 to December, 2018, and also the charges levied for the deviations from January, 2019 to May, 2019 as per 4th amendment w.e.f. 01.01.2019 in a tabular form. The information furnished in the

tabular form clearly demonstrates that the petitioners were getting incentives after the fourth amendment to DSM by CERC. The petitioners started disputing the penal charges imposed due to improper scheduling of their energy which has affected the grid discipline and is having huge impact on the grid stability. The CERC (Deviation Settlement Mechanism and Related Matters) Regulations, 2014 and all amendments are also applicable to the State DISCOMS i.e., TSSPDCL. The State Load Dispatch Centre (SLDC) imposes the UI charges on the TSSPDCL collectively for the entire deviations in its operational area. The TSSPDCL pays the total deviation charges to the SLDC and in turn collects the said charges from its open access consumers based on deviations committed by each consumer. Respondent No.2 has also shown the details of deviation charges paid by the TSSPDCL collectively for the deviations by its open access consumers in a tabular form. By referring to the same, it is contended by respondent No.2 that it is the prime responsibility of any open access user to draw power within open access power schedule to safe guard the electricity grid. The deviations (over drawl / under drawl) by open access consumer will adversely affect the transmission and distribution net work of the respondent company.

xv) The TSSPDCL, as a distribution licensee, is also liable to comply with the terms and conditions of the CERC Regulations and has to follow the same methodologies and it has to pay deviation charges for the deviations made by intra-state entities and has to

collect the same from the petitioners for the deviations made by the petitioners from their scheduled energy. The petitioners have over drawn energy more than open access power scheduled when grid frequency is below 49.85 Hz. Therefore, the bills issued to the petitioners including additional deviation charges of Rs.1,70,252/- and Rs.59,57,310/- for the months of January, 2019 to May, 2019 in respect of the petitioners in W.P. Nos.12275 and 12263 of 2019 respectively are correct and legal and in accordance with CERC DSM Amendment Regulations, 2018.

xvi) Both the petitioners have deviated from power schedules and, therefore, they are liable to pay UI charges which are already demanded. Both the petitioners are still indulging in grid indiscipline by over drawing power more than what is scheduled through open access. Due to over drawl of open access power by the petitioners, there is likelihood of tripping of grid which would result in great loss to the respondent and other consumers.

xvii) With the above contentions, respondent No.2 sought to dismiss both the writ petitions by vacating the *interim* orders granted by this Court earlier.

8. Mr. M.P. Chandramouli, learned counsel for the petitioner, would submit that as per Section 42 of the Act, 2003, it shall be the duty of a distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in his area of supply

and to supply electricity in accordance with the provisions contained in the Act. As per Regulation - 5 of the CERC 2014, charges for deviations for all the time-blocks shall be payable for over drawl by buyer and under- injection by seller and receivable for under-drawl by buyer and over-injection by seller and shall be worked out on an average frequency of a time-block at the rates specified in the table mentioned therein. As per the said table, not below 49.85 average frequency of the time block (Hz) refers Rs.490.60 (paise/kWh) towards charges for deviation. As per Regulation - 7, over-drawls / under drawls of electricity by any buyer during a time block shall not exceed 12% of its scheduled drawl or 150 MW, whichever is lower, when grid frequency is "49.70" Hz and above. Provided that no over drawl of electricity by any buyer shall be permissible when grid frequency is "below 49.70 Hz". He would further submit that even as per the counter filed by respondent No.2, the petitioners are not directly drawing the power in open access. 80% of power is contractual demand. Irrespective of the fact whether the petitioners are using the same or not, the respondents are charging the same double.

9. It is further contended by the learned counsel for the petitioners that the petitioners are not the buyers of open access power for its entire requirements, but they are the consumers of respondent No.1 DISCOM and they paid demand charges for 80% of CMD of Rs.25000 KVA and 6500 KVA respectively, whether it utilizes power

or not from the DISCOM. Therefore, the DISCOM is bound to maintain the permissible grid frequency. The petitioners cannot be brought under 2014 Regulation. The said contentions were not adverted to by respondent No.2 in its counter. Therefore, it is deemed that the said contentions are admitted by respondent No.2. Respondent No.2 has also not considered the contention of the petitioners with regard to levy of additional deviation charges and also the contentions that on verification of abstract of energy deviation, the petitioners found that there is no deviation contemplated under Clause - 5 of CERC Regulation, 2014, and also there is no additional deviation of more than 12% as stipulated in Regulation - 7. As such, levy of additional deviation charges is illegal.

10. The learned counsel for the petitioners would also submit that the petitioners have to obtain NOC from the respondents to avail open access power. Accordingly, they have submitted appropriate applications for NOC dated 27.06.2019. Despite receiving and acknowledging the same, the respondents' authorities did not issue NOC. Thus, the petitioners have addressed two letters dated 22.06.2019 and 01.07.2019 to the Chief General Manager to look into the matter and direct the concerned to issue NOC. Even then, there is no response. Therefore, Agarwal Foundries filed W.P. No.13614 of 2019 and MS Agarwal Foundries Pvt. Ltd., filed W.P.No.13601 of 2019 to declare the action of respondents in not issuing NOC to the petitioners to avail open excess power as illegal.

11. Mr. J. Ramachander Rao, learned Additional Advocate General, would submit that grid frequency is the criterion. The respondent company has not imposed any power restrictions on the petitioners, and supplying power to the petitioners 24 x 7 hours. But, the petitioners have opted willing for open access power. The respondent company has issued NOC to the petitioners for availing power through open access at their request. Any open access consumer is bound to follow CERC Open Access Regulations, 2018 as amended from time to time and it is the prime responsibility of open access consumer to maintain grid discipline by means of not deviating the open access power schedules as procured by the petitioners themselves. The petitioners are drawing power through short term inter-state open access in addition from respondent company. The petitioners have over drawn energy over and above the open access power schedule when grid frequency is below 49.85 Hz. Hence, the additional deviation charges towards energy over drawn should be paid by the petitioners. He has relied upon Clause - 2 (b) of CERC (Deviation Settlement Mechanism and related matters) Regulation, 2014, which deals with **'actual drawal'**, and as per which, actual drawl in a time block means electricity drawn by a buyer, as the case may be, measured by the interface meters. Clause - 2 (h) deals with **'Deviation'**, and as per which, deviation in a time block for a seller means its total actual injection minus its total scheduled generation and for a buyer means its total actual drawl minus its total scheduled drawl. Clause - 2 (q) deals with **'time-**

block' , and as per which, time-block means a time block of 15 minutes, for which specified electrical parameters and quantities are recorded by special energy meter, with first time block starting at 00:0 hrs:. Clause - 5 deals with '**charges for deviations**'. Clause - 7 deals with '**limits on deviation volume and consequences of crossing limits**'. Therefore, the petitioners shall not draw power over and above and under drawl when grid frequency at 49.70Hz and above. As per Clause - 7.6, in addition to charges for deviation as stipulated under regulation - 5 of these Regulations, Additional Charge for deviation shall be applicable for over-drawl or under-injection of electricity when grid frequency is "below 49.70 Hz" in accordance with methodology specified in Clause - 8 of this regulation and the same shall be equivalent to 100% of the charge for deviation of 824.04 Paise/kWh corresponding to grid frequency "below 49.70 Hz". Provided further that additional charge for Deviation for under-injection of electricity by a seller, during the time-block when grid frequency is "below 49.70 Hz" by the generating stations regulated by CERC using coal or lignite or gas supplied under Administered Price Mechanism (APM) as the fuel in accordance with methodology specified in Clause -8 of the regulation shall be equivalent to 100% of the Cap Rate for Deviations of 303.04 Paise/kWh. Additional Charges for 'deviation' shall not be applicable for net over drawls by a region as a whole from other regions.

12. The learned Additional Advocate General has also referred to CERC amendment dated 20.11.2018 which came into effect from 01.01.2019. As per Clause - 4.3 of the said amendment Regulation, in second proviso to Clause (1) of Regulation 7 of the Principal Regulations, the words "below 49.70 Hz" shall be substituted by the words "below 49.85 Hz" and the words "50.10 Hz and above" shall be substituted by the words "50.05 Hz and above". As per Clause - 4.16, in clause (8) of Regulation 7 of the Principal Regulations, the words "below 49.70 Hz" shall be substituted by the words "below 49.85 Hz".

13. By referring to the above said clauses, the learned Additional Advocate General would submit that the petitioners herein having deviated from power schedules are liable to pay UI charges which are already demanded. The petitioners are drawing power through inter-state open access system from the respondent company. The petitioners have over drawn energy from open access power schedules when frequency is below 49.85 Hz. and, therefore, additional deviation charges towards energy over and above should be paid by the petitioners. But, the petitioners are wrongly interpreting that deviation energy over drawn when grid frequency is above 49.85 Hz shown as NIL in the day wise energy abstract, hence, the petitioners are not liable to pay deviation charges.

14. The learned Additional Advocate General has also placed reliance on the principle laid down by the Apex Court in **Central**

Power Distribution Company v. Central Electricity Regulatory Commission[1].

CONSIDERATION OF THE COURT:

15. In view of the above rival contentions, it is not in dispute that CERC, New Delhi, has issued Notification dated 06.01.2014, in exercise of powers conferred under Section 178 of the Act, 2003. The objectives of the said Regulations are to maintain grid discipline and grid security as envisaged under the Grid Code through the commercial mechanism for deviation Settlement through drawl and injection of electricity by the users of grid. The said regulations are applicable to sellers and buyers involved in the transactions facilitated through short-term open access or medium-term open access or long-term access in inter-State transmission of electricity. The amendments that have been taken place in both the said Notifications are as under:

Clauses of CERC	Description of clause as per Notification dated 06.01.2014	Amendment as per Notification dated 20.11.2018
Clause - 7 (1)	The over-drawls / under drawls of electricity by any buyer during a time block shall not exceed 12% of its scheduled drawl or 150 MW, whichever is lower, when grid frequency is '49.70 Hz and above'	**As per Clause - 4.3**: In second proviso to clause (1) of Regulation 7 of the Principal Regulations, the words "below 49.70 Hz" shall be substituted by the words "below 49.85 Hz" and the words "50.10 Hz and above" shall be substituted by the words "50.05 Hz and above"
Clause - 7 (6)	In addition to charges for deviation as stipulated under Regulation 5 of these Regulations, additional charge for deviation shall be applicable for over-drawl or under-injection of electricity when grid frequency is "below 49.70 Hz' in accordance with the	**As per Clause - 4.13**: In Clause (6) of Regulation 7 of the Principal Regulations, the words "below 49.70 Hz in accordance with the methodology specified in clause (8) of this regulation and the same shall be equivalent to 100% of the Charge for Deviation of 824.04 Paise / kWh corresponding to the grid frequency of 'below 49.70 Hz' shall be

[1] (2007) 8 SCC 197

	methodology specified in clause (8) of this regulation and the same shall be equivalent to 100% of the charge for deviation of 824.04 Paise/kWh corresponding to the grid frequency of "below 49.70 Hz"	substituted by the words "below 49.85 Hz in accordance with the methodology specified in clause (8) of this regulation and the same shall be equivalent to 100% of the Charge for Deviation of 800 paise / kWh corresponding to the grid frequency of 'below 49.85 Hz' shall be substituted by the words "below 49.85 Hz in accordance with the methodology specified in clause (8) of this regulation and the same shall be equivalent to 100% of the charge for Deviation of 800 Piase / kWh corresponding to the grid frequency of 'below 49.85Hz'.
Clause - 7 (8)	The additional charge for deviation for over-drawls and under-injection of electricity for each time block when grid frequency is "below 49.70 Hz" shall be as specified by the Commission as a percentage of the charges for the deviation corresponding to average grid frequency of the time block with due consideration to the behaviour of the buyers and sellers towards grid discipline. Provided that the Commission may specify different rates for Additional Charges for Deviation for over drawls and under injections and for different ranges of frequencies 'below 49.70 Hz.'	**As per Clause 4.16**: In clause (8) of Regulation 7 of the Principal Regulations, the words "below 49.70 Hz" shall be substituted by the words "below 49.85 Hz".

16. Thus, the CERC has brought the above said amendments vide Notification dated 20.11.2018 w.e.f. 01.01.2019 in exercise of powers conferred on it under Section 178 of the Act, 2003. It is the main contention of the petitioners in both the writ petitions that the petitioners cannot be brought under Regulations, 2014, since they are consumers of respondent No.1 DISCOM, and they pay the demand charges for 80% of the CMD of Rs.25000 KVA and 6500 KVA respectively, whether it utilizes power or not from DISCOM. Therefore, DISCOM is bound to maintain the permissible grid frequency. Even if the petitioners have drawn power when grid

frequency is below 49.85, there is no violation as the total drawn power minus open access power is charged by the DISCOM as its power. If deviation charges are levied for the consumption, it amounts to double levy. As per Regulation - 5 of the CERC, 2014, charges for deviation shall be payable for over drawl by the buyer and under-injection by the seller. The petitioners never over drawn the power and it is evident from the abstract of statement annexed to the CC bills. Both the petitioners have paid deviation charges under protest for the period from January, 2019 to April, 2019 on account of threat of disconnection.

17. Respondent No.2 has filed a detailed counter adverting to the allegations levelled by the petitioners along with supporting documents. It is relevant to note that the petitioners in both the writ petitions have not filed any rejoinder to the counter filed by respondent No.2 refuting the stand taken by the respondents.

18. The above stated facts would reveal that both the petitioners are consumers of respondent No.2 Company having contracted maximum demand of 25000 KVA and 6500 KVA respectively. They have HT agreement for supply of power from TSSPDCL. Both the petitioners are availing open access power from various sources i.e., generator of M/s. Maruthi Ispath & Energy Private Limited located in A.P., Andhra Pradesh Gas Power Corporation Limited (APGPCL) and Indian Energy Exchange (IEX) regularly under Inter State Short Term Open Access since 2013. The

inter-state open access transactions are regulated by CERC Open Access Regulations, 2008.

19. It is the specific contention of respondent No.2 that provisions of Regulation - 2 of 2005 govern only intra-state open access transactions. The inter-state open access transactions are regulated by CERC Open Access Regulations, 2008. According to respondent No.2, the petitioners have wrongly based their entire case on APERC Open Access Regulation - 2 of 2005. Respondent No.2 has filed CERC (Open Access in Inter-State Transmission) Regulations, 2008. Clause - 1 (1) of the said Regulations dated 25.01.2008, specifically says that these regulations shall apply to the applications made for grant of open access for energy transfer schedules commencing on or after 1.4.2008 for use of transmission lines or associated facilities with such lines on the inter-state transmission system. Therefore, in CERC Regulations, 2014 issued vide Notification dated 06.01.2014 also, it is stated that these regulations shall be applicable to sellers and buyers involved in the transactions facilitated through short-term open access or medium-term open access or long-term access in inter-State transmission of electricity. Though certain amendments were brought to the Regulations, 2014 with regard to the scope of the said regulations, there is no amendment. Thus, CERC Regulations, 2014 dated 06.01.2014 are applicable to sellers and buyers involved in the transactions facilitated through short-term open access or medium-

term open access or long-term access in inter-State transmission of electricity. In view of the same, the contention of the petitioners that they cannot be brought under the Regulations, 2014 is unsustainable.

20. In view of the above discussion and with regard to the specific provisions, CERC Regulations, 2014 are applicable to both the petitioners, since they are purchasing power from Indian Energy Exchange (IEX), Andhra Pradesh Gas Power Corporation Limited (APGPCL) and generator of M/s. Maruthi Ispath (Captive Generation) under open access facility as per Section 42 of the Act, 2003. In the replies dated 30.04.2019 and 10.05.2019 respectively, submitted by respondent No.1 Company - SPDCL to MS Agarwal Foundries, petitioner in W.P.No.12263 of 2019, has specifically mentioned about the same.

21. It is relevant to note that in the reply dated 30.04.2019, respondent No.1 has specifically mentioned that as per Clause 8 of CERC Regulations, 2014 and Clause 4.16 in fourth amendment Regulations, 2018, which came into force w.e.f. 01.01.2019, the additional charge for deviation for over-drawls for each time block when grid frequency is below 49.85 Hz shall be payable for over drawl by the buyer. As per the said Clause, no buyer is allowed to over-draw the energy when grid frequency is below 49.85 Hz. If it is deviated then charges for deviation must be paid. By referring to the same, respondent No.1 has specifically informed MS Agarwal Foundries Private Limited that an amount of Rs.14,74,465/- was

levied in the bill for the month of March, 2019, as per clause 4.16 in fourth amendment Regulations, 2018 which came into force w.e.f. 01.01.2019. Even, in another reply dated 10.05.2019, respondent No.1 has informed specifically to MS Agarwal Foundries.

22. By referring to the IIT C.C. bill for the month of March, 2019, dated 26.03.2019 issued by respondent No.1 in respect of M/s. Agarwal Foundries (P) Ltd., Mr. M.P. Chandramouli, learned counsel for the petitioners, would contend that the respondents' authorities have levied UI charges illegally. He has also referred to the figures mentioned in the bill with regard to unscheduled interchange charges and drawn chargeable amounts and also the Units consumed by the petitioners. By referring to the abstract with regard to inter-state open access consumer day wise deviation energy for the period from 19.02.2019 to 26.03.2019, the learned counsel would further contend that deviation energy drawn when frequency is below 49.85 Hz, 175532 Units were consumed by the petitioner. By referring to the same, the learned counsel would submit that the respondents' authorities have specifically levied deviation charges for drawl / over drawl when grid frequency is below 49.85 Hz for the months of January, 2019 to May, 2019 is illegal. It is trite to note that Section 111 of the Act, 2003 deals with '**appeal to Appellate Tribunal**', and as per which, any person aggrieved by an order made by an Adjudicating Officer under the Act (except under section 127) or an order made by appropriate Commission under the Act may prefer an

appeal to the Appellate Tribunal for Electricity. Provided that any person appealing against the order of Adjudicating Officer levying any penalty shall, while filing the appeal, deposit the amount of such penalty.

23. As discussed above, it is the contention of the petitioners that the petitioners cannot be brought under Regulations, 2014. Whereas, the above stated CERC Regulations, 2008, Regulations, 2014 and the amendments brought to it vide notification dated 20.11.2018, CERC Regulations, 2014 are applicable to the transactions facilitated through short-term open access or medium-term open access or long-term access in inter-State transmission of electricity. Admittedly, both the petitioners are in inter-state transmission of electricity with open access. Therefore, if at all, the petitioners are aggrieved that CERC Regulations are not applicable to them, they have to invoke the procedure laid down under Section - 111 of the Act, 2003 by way of filing an appeal before the Appellate Tribunal, since according to the petitioners herein, CERC Regulations, 2014 are not applicable to them. But, they did not avail such remedy.

24. As discussed above, as per Clause - 2 (1) (b) of the Regulations, 2014, 'actual drawl' in a time-block means electricity drawn by a buyer, as the case may be, measured by the interface meters. As per Clause - 2 (1) (h), deviation in a time-block for a seller means its total actual injection minus its total scheduled generation

and for a buyer means its total actual drawl minus its total scheduled drawl. As per clause - 2 (1) (q), time-block means, a time block of 15 minutes, for which specified electrical parameters and quantities are recorded by special energy meter, with first time block starting at 00.00 hrs. Clause - 5 of the said Regulations deals with 'charges for deviations'. The same are specifically mentioned in the tabular form. By way of amendment vide Notification, dated 20.11.2018, as per Clause - 4.3, in second proviso to Clause (1) of Regulation 7 of the Principal Regulations i.e., 2014 Regulations, the words " below 49.70 Hz" shall be substituted by the words "below 49.85 Hz", and the words "50.10 Hz and above" shall be substituted by the words "50.05 Hz and above". Like-wise, as per Clause 4.13, in Clause (6) of Regulation - 7 of the Regulations, 2014, the words "below 49.70 Hz in accordance with the methodology specified in clause (8) of this regulation and the same shall be equivalent to 100% of the Charge for Deviation of 824.04 Paise / kWh corresponding to the grid frequency of 'below 49.70 Hz'" shall be substituted by the words "below 49.85 Hz in accordance with methodology specified in clause (8) of this regulation and the same shall be equivalent to 100% of the Charge for Deviation of 800 Paise / kWh corresponding to grid frequency of 'below 49.85 Hz'. As per clause 4.16, in Clause 8 of Regulation 7 of the Regulations, 2014, the words "below 49.70 Hz" shall be substituted by the words "below 49.85 Hz". The said amendments were brought by CERC in exercise of powers conferred on it under Section 178 of the Act, 2003. Admittedly, both the petitioners did not

file any appeal challenging either Regulations, 2014 or the amendments brought in vide Notification dated 20.11.2018 w.e.f. 01.01.2019 by way of filing an appeal under Section 111 of the Act, 2003. Therefore, the said regulations including the amendments brought in vide Notification dated 20.11.2018 are applicable to both the petitioners.

25. It is contended by respondent No.2 Company that it has not imposed any power restrictions on the petitioners and it has been supplying power to the petitioners 24 x 7 hours. The petitioners were willing for open access power. Respondent No.2 has issued NOC to the petitioners for availing power through open access as per their own request. Any open access consumer is bound to follow CERC Open Access Regulations, 2018 as amended from time to time and it is the prime responsibility of open access consumer to maintain grid discipline by means of not deviating open access power schedules as procured by the petitioners themselves. It is also specifically contended by respondent No.2 in the counter that the petitioners are not consumers of respondent No.2 company alone and drawing its entire power from respondent No.2 company, but drawing power through open access, the petitioners cannot over draw power when grid frequency is below 49.85 Hz which is a bar as per the CERC Deviation Settlement Mechanism Regulations, 2018. The said contentions are not adverted to by the petitioners by way of filing reply. The said deviations by the petitioners would in turn affect

respondent No.2 company power schedules and the deviation charges for such energy over drawn when grid frequency is below 49.85 Hz is levied on respondent No.2 company by SRLDC and the same is passed on to the petitioners. The deviation charges are collected by SRLDC for causing indiscipline in the grid by over drawl / under drawl of energy.

26. It is also specifically contended by respondent No.2 in the counter that SLDC imposed UI charges on TSSPDCL collectively for the entire deviations in its operational area. The TSSPDCL pays total deviation charges to SLDC and in turn collects the said charges from its open access consumers based on deviations committed by each consumer. Respondent No.2 has specifically mentioned the details of deviation charges paid by the TSSPDCL collectively for deviations by its open access consumers in a tabular form in paragraph No.14. The petitioners herein have not filed any reply adverting to the said contentions of respondent No.2. Thus, as rightly contended by respondent No.2 that, it is the prime responsibility of open access consumer to maintain grid discipline by means of not deviating open access power schedules, as procured by the petitioners themselves. Thus, both the petitioners have deviated open access power schedules and, therefore, the respondents' authorities have rightly levied UI charges on them. It is also apt to note that respondent No.2 company has already paid deviation charges to SLDC for the period from October, 2018 to June, 2019 as mentioned in the tabular form in

paragraph No.14 of the counter. It is also trite to note that the petitioners have already paid the deviation charges for the months of January, 2019 to April, 2019 under the threat of disconnection.

27. It is also relevant to note that in **Central Power Distribution Company**[1], the Apex Court had an occasion to deal with unscheduled interchange charges. By referring to the various provisions, the Apex Court held as under:

> "10. In addition to two charges, a third charge contemplated in the ABT scheme is for the unscheduled interchange of power (UI charges). The UI charges are payable depending upon what is deviated from the schedule and also subject to the grid conditions at that point of time. This element was introduced to bring about the effective discipline in the system. Under this system UI charges will be payable, if:
>
> i) a generator generates more than the schedule, thereby increasing the frequency;
>
> ii) a generator generates less than the schedule, thereby decreasing the frequency;
>
> iii) a beneficiary overdraws power, thereby decreasing the frequency;
>
> iv) a beneficiary under draws power, thereby increasing the frequency.
>
> 11. It is thus clear from the above that UI charges are a commercial mechanism to maintain grid discipline. The UI charges penalises whosoever caused grid indiscipline, whether generator (NTPC) or distributor, is subject to payment of UI charges who are not following the schedule. The UI charges are not payable if the appellants maintain their drawl of electricity consistent with the schedule given by themselves. Therefore, there is no merit in the

contention of the appellants that the UI charges are by way of penalty."

It further held as under:

"22.1. The application of Availability Based Tariff and imposition of Unscheduled Interchange (UI) charges are essential part of the Functions of the Central Commission under Section 79(1)(h) of the Electricity Act, 2003 which reads to specify Grid Code having regard to the Grid Standards, and Sub-section (2) of Section 28 read with Section 178(2)(g) dealing with the Central Commission's powers to frame Grid Code. The maintenance of Grid discipline envisaged under the Grid Code is regulated by the mechanism of ABT and UI charges. There is no basis for the appellant to contend that unless something is a part of Tariff the Central Commission cannot exercise powers and functions. The ABT and UI charges are commercial mechanism to control the utilities in scheduling, dispatch and drawl and the UI charges are tariff or charges payable for deviations. In the facts and circumstances mentioned above the legal position is clear and there is no ambiguity in respect of the jurisdiction of the Central Commission.

.....

24. As already noticed, the Central Commission has the power and function to evolve commercial mechanism such as imposition of UI charges to regulate and discipline. It is well settled that a power to regulate includes within it the power to enforce.

25. In the facts and circumstances as alluded, and as per the Scheme of the Electricity Act, 2003 mentioned above, the Central Commission has the plenary power to regulate the Grid, particularly in the context of the Grid being integrated and connected across the region comprising of more than one State. The State Grid cannot

be isolated and can be seen as independent from the region."

28. In view of the above discussion and also the principle in **Central Power Distribution Company**[1], the petitioners herein failed to make out a case to declare the action of the respondents in levying deviation charges for drawl / over drawl power when grid frequency is below 49.85 for the months of January, 2019 to May, 2019 as illegal. Thus, both the writ petitions are liable to be dismissed.

W.P. Nos.13601 AND 13614 OF 2019

29. The above said writ petitions are filed by MS Agarwal Foundries Private Limited and Agarwal Foundaries respectively. The relief sought therein is to declare the action of the respondents in not issuing NOC to the petitioners to avail open access power as wholly illegal. The petitioners filed applications on 27.06.2019 for issue of NOC, but the respondents have not furnished the same. Therefore, according to the petitioners, they have addressed letters dated 22.06.2019 and 01.07.2019 respectively to respondent No.4 to look into the matter and direct the concerned to issue NOC, but the respondents' authorities have not issued the same.

30. A perusal of the entire record would reveal that the petitioners in both the writ petitions have filed letters dated 22.06.2019 addressed to respondent No.4 informing about filing of W.P. No.12263 and 12275 of 2019 and W.P. Nos.35828 and 35829 of 2013. In the said letters, it is stated that the petitioners have

mentioned about the *interim* orders granted by this Court in the said writ petitions with regard to collection of deviation charges well in advance, so that there should not be any trouble for them in getting NOC for open access for the month of July, 2019. In spite of keeping the respondents up dated and paying all their dues, fees and applying for NOC well in advance, they have not been given NOC. The said action of the respondents is forcing the petitioners from getting power through open access and which in turn makes a negative financial impact on them every single day, as their business is energy intensive. It is further stated by the petitioners in the said letter that the act of neither providing NOC, nor denying it through proper correspondence shows non-compliance of the orders of this Court by the respondents' authorities. By stating so, the petitioners sought to provide NOC at the earliest. Though the petitioners have stated that they have made application for issuance of NOC at the earliest, well in advance, vide letter dated 22.06.2019, as stated above, in the letter dated 22.06.2019, both the petitioners have not requested the respondents' authorities to issue NOC. They have informed only filing of writ petitions and passing of *interim* orders by this Court in the said writ petitions. Thus, it appears from the said discussion, the petitioners have sought NOC only through letter dated 01.07.2019.

31. In the counter filed by respondent No.4 in W.P.Nos.13601 and 13614 of 2019, as per Clause - 6 (1) of CERC Regulations, 2008, an open access customer or power exchange (on behalf of buyers and

sellers) intending to avail of open access for use of transmission lines or associated facilities for such lines on the inter-state transmission system, shall make an application to the Nodal Agency in accordance with regulations. As per the said regulations, the petitioners are submitting inter-state open access application to Nodal Agency i.e., SRLDC, open access entity need to submit 'No Objection' clearance from the concerned SLDC with respect to bilateral transaction. As per Clause - 8 (2), when a State utility or an intra-state entity proposes to participate in trading through a power exchange, it shall obtain 'no objection' or a prior standing clearance from the State Load Dispatch Centre in such form as may be prescribed in the detailed procedure, specifying MW up to which entity may submit a buy or sell bid in a power exchange. It is further contended by respondent No.4 that the petitioners are trying to misinterpret the procedure laid down in the Regulations. The petitioners, at first, have to apply to SLDC for issuance of NOC which has to be forwarded to Nodal Agency i.e., SRLDC for allowing the scheduling of open access power. The Nodal Agency, in turn, will direct TSSPDCL for issuance of clearance, and the said clearance shall be given by TSSPDCL based on technical feasibility and clearing all the dues with respect to open access charges. The unscheduled interchange charges which are levied on the petitioners also part of "open access charges". Only after payment of open access dues and also after verifying technical feasibility for wheeling power, "clearance" shall be issued and directly sent online to SLDC. The SLDC shall, in turn, issue NOC to the consumer, who,

in turn, shall have to submit the same to SRLDC for availing open access. It is also further contended by respondent No.4 that for bilateral transaction, OA applicant directly corresponds with SLDC and TSSPDCL, whereas in respect of collective transaction, the member of IEX i.e., Power Exchange corresponds with SLDC and TSSPDCL. The open access applicant shall have to pay applicable charges i.e, application fee payable to SLDC, wheeling charges to DISCOM at the time of making application for OA, as per the Regulations.

32. It is relevant to note that both the petitioners have filed reply affidavit to the counter affidavit filed by respondent No.4 contending that the said writ petitions are only consequential to W.P. Nos.12263 and 12275 of 2019 filed by them challenging the action of respondents in levying and demanding deviation charges. If at all the issue in the said writ petitions is decided, the issue in the present writ petitions subsists. Therefore, the averments in the counter affidavit which mainly relate to the case in W.P. Nos.12263 and 12275 of 2019 have no relevance to these writ petitions. Thus, the petitioners have not adverted to the said contentions of respondent No.4, more particularly, with regard to the procedure explained by respondent No.4 in the counter with regard to obtaining NOC. Admittedly, the petitioners in both the writ petitions have not followed the said procedure. They have simply made application dated 01.07.2019 with a request to issue NOC. It is also apt to note that the petitioners herein

are relying upon the orders dated 16.12.2013 in WPMP No.44558 and 44559 of 2013 in W.P. No.35828 and 35829 of 2013 respectively, and by referring to the same, the petitioners have obtained interim orders dated 05.07.2019 in the present writ petitions for a period of two (02) weeks. A perusal of the interim orders dated 16.12.2013 in WPMP No.44558 and 44559 of 2013 in W.P. No.35828 and 35829 of 2013, respectively, would reveal that the challenge in the said writ petitions is as follows:

> "…. 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 introducing Format A and Format B in the place of Format in Annexurel prescribed by APERC under Regulation2 of 2005 for applying to Nodel Agency for issuance of No Objection Certificate for availing open access Energy as wholly arbitrary illegal without jurisdiction and void and consequently direct the respondents to follow Format given in Annexurel to Regulation2 of 2005 to issue no objection Certificate and pass…"

> …issue writ in the nature of a Writ of Mandamus or any other appropriate writ direction or order declaring the action of the respondents in introducing Format A and Format B in tile place of Format in Annexurel prescribed by APERC under Regulation2 of 2005 for applying to Nodel Agency for issuance of No Objection Certificate for availing open access Energy as wholly arbitrary illegal without jurisdiction and void and consequently direct the respondents to follow Format given in Annexurel to Regulation2 of 2005 to issue no objection Certificate and pass…"

33. The petitioners have sought *interim* relief directing the SLDC, represented by its Chief Engineer, AP TRANSCO, Vidhut Souda, Hyderabad, to issue NOC to the petitioner to avail open access energy from IEX and the Trader M/s HMM Infra Ltd., for the month of December 2013 without insisting for production of No Dues Certificate from APCPDCL. Thus, the challenge and the *interim* order sought by the petitioners in the said two writ petitions are different from the *lis* involved in the present writ petitions. This Court in the order dated 16.12.2013, in the said writ petitions, specifically mentioned that the petitioner wants to avail open access energy. It is also stated that open access charges will be paid by the traders in advance and DISCOMS enter agreement with the consumers under the provisions of the Electricity Act, 2003, for recovery of dues from the consumer. In spite of dues, open access energy is purchased from energy exchanges through traders and DISCOMS are facilitating utilization of energy through open access system by the consumer. If any dues are there to DISCOMS, they can always recover by invoking provisions of the Act, 2003.

34. Since, energy through open access is obtained by consumer from third party through traders, the respondents cannot insist for No due certificate in respect of dues to DISCOMS. If the petitioners want to avail energy through open access, DISCOMS may not insist for No due certificate for the dues to DISCOMS. Once open access charges are paid, the petitioners may be permitted to avail open access subject

to other conditions. However, it is open for DISCOMS to take appropriate action according to provisions of the Act, 2003, for recovery of dues. But, whereas, in the present case, as discussed supra, the subject matter in the writ petition Nos.35828 and 35829 of 2013 are different from the subject matter of present writ petitions. Thus, the present W.P. Nos.13601 and 13614 of 2019 fails and accordingly, the same are liable to be dismissed.

35. In view of the above discussion, all the Writ Petitions are dismissed. The interim orders granted by this Court earlier stand vacated. However, there shall be no order as to costs.

As a sequel, miscellaneous petitions, if any, pending in these writ petitions shall stand closed.

SD/- K. SAILESHI
ASSISTANT 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, (IPC and RAC), TSSPDCL, Corporate Office, Mint Compound, Hyderabad.
3. The Superintending Engineer, Operation, Medak, TSSPDCL, Medak District.
4. The Senior Accounts Officer, TSSPDCL, Medak, Medak District.
6. The Chairman and Managing Director, TS TRANSCO, Vidyut Soudha, Hyderabad.
7. The Chief Engineer, SLDC, TS TRANSCO, Vidyut Soudha, Hyderabad.
8. The Superintending Engineer, Operation, Medchal, TSSPDCL, Medchal District.
5. Four CCs to Sri M.P. Chandramouli Advocate [OPUC]
6. Two CCs to the Additional Advocate General, High Court for the State of Telangana at Hyderabad. [OUT]
7. One CC to Sri R. Vinod Reddy, SC FOR TSSPDCL [OPUC]
8. Two CD Copies

CHR

HIGH COURT

DATED:30/12/2020



COMMON ORDER

WRIT PETITION Nos.12263, 12275,
13601 and 13614 of 2019

DISMISSING THE WRIT PETITIONS
AS WITHDRAWN
WITHOUT COSTS

(14) VLV 5/1/21