BEFORE THE HON'BLE TELANGANA STATE ELECTRICITY REGULATORYCOMMISSION

AT ITS OFFICE AT 11-4-660, V[TH] FLOOR, SINGARENI BHAVAN,
RED HILLS, HYDERABAD, TELANGANA – 500 004

I.A. No. 9 of 2017 in O.P. No. 16 of 2005
I.A. No. 10 of 2017 in O.P. No. 13 of 2006
I.A. No. 11 of 2017 in O.P. No. 5 of 2007
I.A. No. 12 of 2017 in O.P. No. 73 of 2012
I.A. No. 13 of 2017 in O.P. No. 74 of 2012
I.A. No. 14 of 2017 in O.P. No. 75 of 2012
I.A. No. 15 of 2017 in O.P. No. 76 of 2012
I.A. No. 16 of 2017 in O.P. No. 77 of 2012
O.P. No.13 of 2017 & O.P. No. 14 of 2017

In the matter of fresh determination of Cross Subsidy Surcharge to be levied for the FYs 2005-06 to 2014-15 in respect of the Open Access consumers by TSDISCOMs under Section 42 of the Electricity Act, 2003 pursuant to directions given by the Hon'ble High Court in its Common Order dated 12.02.2020 in W.P. No. 21936 of 2018 & others.

BETWEEN:

TSSPDCL & TSNPDCL

… Petitioners

OBJECTIONS FILED ON BEHALF OF THE OBJECTOR:

M/s. My Home Industries Private Limited

…Objector

It is submitted that the Objector is a private limited company incorporated under the provisions of Companies Act, 1956, *inter-alia* engaged in the business of manufacturing and selling of Cement. It is submitted that M/s. My Home Industries Private Limited has one of its units located at Mellacheruvu Village and Mandal, Suryapet District, State of Telangana. The Objector had entered into an HT Agreement with the then APCPDCL (presently TSSPDCL) for availing power supply at 132 kV vide HT Service Connection SPT-351 (previously NLG-351).

For My Home Industries Private Limited

B. Muralidhara Rao
Company Secretary &
Sr. Vice President (Legal)
Membership No. FCS 4789

BACKGROUND:

1. It is humbly submitted that the erstwhile APERC for the undivided state of Andhra Pradesh State for the first time determined the Cross Subsidy Surcharges (CSS) by adopting embedded cost method for computing surcharge for different consumer categories vide order dated 21.09.2005 in OP No. 16 of 2005, and Order dated 29.08.2006 in O.P. No. 13 of 2006, for FY 2005-06 and FY 2006-07 respectively. The erstwhile APERC also initiated proceedings in O.P. No. 5 of 2007 for determining the CSS and AS for FY 2007-08 by issuing a public notice. However, as the erstwhile Commission considered that it required some more time to complete the proceedings, passed interim order dated 28.03.2007 provisionally extending rates of CSS determined for 2006-07 from 01.04.2007 till the commission passes a final order subject to adjustment. No proceedings were initiated by APERC relating to FY 2007-08 to 2011-12. Aggrieved with the method of determination of CSS by the erstwhile APERC, some companies challenged such determination for FY 2005-06 and FY 2006-07 before Hon'ble APTEL (Appellate Tribunal for Electricity) which has allowed the appeals vide order dated 05.07.2007 in Appeal Nos. 169-172 of 2005 & 248-249 of 2006 and directed the erstwhile APERC to compute the cross subsidy surcharge, which consumers are required to pay for use of open access in accordance with the Surcharge Formula specified in para 8.5 of the National Tariff Policy, 2006 for FY 2006-07 and subsequent years. The erstwhile APERC carried the matter in appeal vide Civil Appeal Nos. 4936-4941 of 2007 before the Hon'ble Supreme Court challenging the order of the Hon'ble APTEL. By order dated 05.05.2008, the Hon'ble Supreme Court stayed the order of the Hon'ble APTEL and by subsequent order dated 04.12.2009, the interim order dated 05.05.2008 was made to remain operative till final disposal of the Civil Appeals. The Hon'ble Supreme Court dismissed the Civil Appeal Nos. 4936-4941 of 2007 on 31.03.2016.

2. After a long lapse of more than five years, the erstwhile APERC suo-moto initiated proceedings for determination of CSS for FY 2007-08 to 2012-13 by issuing public notice dated 16.07.2012. Objections were filed contending that

For My Home Industries Private Limited

B. Muralidhara Rao
Company Secretary &
Sr. Vice President (Legal)
Membership No. FCS 4789

APERC has no power to determine any tariff or charges or surcharge with retrospective effect in respect of past periods and further that no provision specifically provides for determination of CSS retrospectively under the Electricity Act, 2003 nor any Regulation made there-under provides for such exercise of power and that any decision or order of APERC can have only prospective effect from the date of publication/modification for future transactions and therefore APERC cannot determine CSS for the period FY 2007-08 to FY 2011-12 and for 2012-13. Though APERC initiated single proceedings without any OP numbers, passed six separate and distinct orders in O.P. Nos. 5 of 2007 & 73 to 77 of 2012 which are in identical terms.

3. It is submitted that the orders dated 26.10.2012 passed by APERC were assailed in W.P. No. 34215 of 2012 and batch by various consumers on the ground that the Commission did not have any powers to determine CSS retrospectively besides adopting methodology which was set-aside by APTEL. The Hon'ble High Court passed interim orders suspending the order passed by APERC. In view of the orders of the Hon'ble Supreme Court dated 31.03.2016, the Hon'ble High Court by a common order dated 20.06.2016, set aside the orders of the erstwhile APERC and remitted back the matters to APERC or the TSERC for consideration afresh keeping all the legal and factual objections at large.

4. It is humbly submitted that in accordance with the orders of the Hon'ble Supreme Court and Hon'ble High Court, the APERC re-determined the CSS for FY 2005-06 to FY 2012-13 and FY 2015-16 by following the due process contemplated under the Act, Regulations and Rules. The APERC by said order though has re-determined CSS for the period FY 2005-06 to FY 2012-13 and FY 2015-16 for all the years CSS determined for OA consumers having HT-1(A) - Industry General drawing power at 33 kV & 132 kV Voltage level were determined as "0", therefore none of the consumers had any grievance. The said determination was made in respect of two DISCOMs, APEPDCL & APSPDCL.

For My Home Industries Private Limited

B. Muralidhara Rao
Company Secretary &
Sr. Vice President (Legal)
Membership No. FCS 4789

5. It is respectfully submitted that the DISCOMs, i.e., TSSPDCL and TSNPDCL filed applications vide I.A. No. 9 of 2017 in O.P. No. 16 of 2005, I.A. No. 10 of 2017 in O.P. No. 13 of 2006, I.A. No.11 of 2017 in O.P. No. 5 of 2007, I.A. No. 12 of 2017 in O.P. No. 73 of 2012, I.A. No. 13 of 2017 in O.P. No. 74 of 2012, I.A. No. 14 of 2017 in O.P. No. 75 of 2012, I.A. No. 15 of 2017 in O.P. No. 76 of 2012, I.A. No. 16 of 2017 in O.P. No. 77 of 2012, O.P. No. 13 of 2017 requesting the Hon'ble TSERC to re-determine the Cross Subsidy Surcharge for the financial years 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and also filed O.P. No. 14 of 2017 for determining CSS for financial year 2014-15. Though the original petitions pertaining to the years from 2005-06 to 2013-14 were never before the Hon'ble Commission and though the Hon'ble Commission has no jurisdiction to adjudicate the applications filed by the TSSPDCL along with TSNPDCL for these years, the interlocutory applications were numbered and it appears that these applications have been put up on the website of the Hon'ble Commission calling for objections as can be seem from the order. Further, for the year 2013-14, the erstwhile Commission determined 'Nil' CSS for the said year vide order dated 13.08.2013 in O.P. No. 54 of 2013 and though a review petition was preferred, it was dismissed vide order dated 22.01.2014 in R.P. No.1 of 2013 and the order has become final. Strangely the TSSPDCL and TSNPDCL have filed O.P. No. 13 of 2017 seeking fresh determination of CSS for the very same year. For the year 2014-15 the TSSPDCL has not filed applications for determination of CSS and as such it was not determined by this Hon'ble Commission. Later, after a lapse of 3 years, the TSSPDCL has filed O.P. No. 14 of 2017 for determination of CSS for the period 2014-15, which is not lawful.

6. It is submitted that the Hon'ble TSERC proceeded to re-determine CSS without proper notice to the affected parties and accordingly by Common Order dated 06.04.2018 re-determined the CSS for the FYs 2005-06 to 2014-15. The above said order was challenged in W.P. No. 21936 of 2018 & batch before the Hon'ble High Court of Telangana, in which initially there was stay for enforcement of

For My Home Industries Private Limited

B. Muralidhara Rao
Company Secretary &
Sr. Vice President (Legal)
Membership No. FCS 4789

Commission determined the same. The Commission has no power to determine any tariff, charges or surcharges with retrospect effect in respect of past periods. In fact these orders making retrospective determination were challenged before the Hon'ble High Court in W.P. No. 21936 of 2018 & batch. The Hon'ble High Court while setting aside the orders of this Hon'ble Commission has granted liberty to the affected parties to participate in the present proceedings and issues raised on the writ petitions were kept at large, thereby allowing them to raise all and every possible objections.

e. The proceedings in respect of FY 2005-06 & 2006-07 in pursuance to the Common Judgment dated 05.07.2007 of the Hon'ble APTEL, whereby the matter was remanded back to erstwhile APERC for re-determination of CSS as confirmed by Hon'ble Supreme Court. Therefore, the scope of remand shall be strictly limited to the extent as directed therein.

f. The erstwhile APERC was approached by then DISCOMs for determination of CSS in O.P. No. 5 of 2007 expressly for 2007-08 alone, in which the then Commission passed an Interim order dated 28.03.2007 continuing the previous rate of 2006-07 as an interim measure till it passed final order in the proceedings pending before it. Except this proceeding for FY 2007-08, there were no other proceedings for the later years i.e., 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13. In the absence of which question of determining CSS for those years by way of independent process in the year 2017 alleged to be a interlocutory application in O.P. Nos. 73, 74, 75, 76 and 77 of 2012 doesn't arise and such exercise is completely unknown to law and impermissible. Even otherwise such proceedings tantamount to retrospective determination of CSS, which is impermissible and Hon'ble Commission has no power or jurisdiction to undertake such an exercise.

g. For the year 2013-14, the erstwhile APERC determined 'Nil' CSS for the said year vide orders dated 13.08.2013 in O.P. No. 54 of 2013 and though a review petition was preferred, it was dismissed vide order dated 22.01.2014 in R.P. No.

For My Home Industries Private Limited

B. Muralidhara Rao
Company Secretary &
Sr. Vice President (Legal)
Membership No. FCS 4789

CSS was granted and subsequently by judgment dated 12.02.2020, all the WP's came to be disposed and remanded the matter back to this Hon'ble Commission for re-determination after giving notice to all the affected parties. The Hon'ble High Court has, while remanding back the matters, observed that the writ petitioners are entitled to raise all legal objections and factual objections on merits of the matter.

LEGAL SUBMISSIONS/OBJECTIONS:

a. In pursuance to Andhra Pradesh Reorganisation Act, 2014 and creation of State of Telangana and consequent constitution of this Hon'ble Commission on 03.11.2014, any proceedings which was pending, or concerning for the period prior to the constitution of this Commission, including any remand proceedings cannot be dealt with by this Commission, as it would not vest with any jurisdiction to decide those matters as the provisions of Reorganization Act does not authorize this Hon'ble Commission in any manner except for the limitation provided under the Act which concern or fall within the exclusive jurisdiction of State of Telangana.

b. This Hon'ble Commission is a new Commission constituted by G.O.Ms. 14 dated 01.11.2014 notified by the Government of Telangana exercising powers under Section 83 of the 2003 Act and so it cannot determine CSS for the period anterior to its constitution. In other words, this Hon'ble Commission does not have jurisdiction to deal with matters pertaining to the period before its constitution.

c. This Hon'ble Commission cannot determine CSS for two different DISCOMs severing the claims confining to State of Telangana when factually initial claims were made for the entire State of Andhra Pradesh consisting of four DISCOMs.

d. This Hon'ble Commission by its notice intends to determine CSS for the period 2005-06 to 2014-15, which is nothing but retrospective determination in as much as for the said period the DISCOMs have never claimed CSS nor has the

For My Home Industries Private Limited

B. Muralidhara Rao
Company Secretary &
Sr. Vice President (Legal)
Membership No. FCS 4789

1 of 2013 and the order has become final. Strangely the TSSPDCL has filed O.P. No. 13 of 2017 seeking fresh determination for the very same period once again which is not permissible and this Hon'ble Commission shouldn't have entertained the said application. On the contrary, the Hon'ble Commission determined CSS for the year 2013-14, which is illegal and void. Further, the Hon'ble Commission adopted all the previous Regulations and Orders of the erstwhile APERC which were passed before its constitution vide Regulation No. 1 of 2014. Therefore, having adopted the previous orders, the Hon'ble Commission is precluded from re-determining the CSS.

h. For the years 2010-11, 2011-12, and 2012-13, the DISCOMs were unable to meet the power demand scenario and therefore sought intervention of the APERC for imposing Restriction & Control measures ("R & C measures"). In pursuance to the applications, the then APERC passed various orders from time to time imposing R & C measures in particularly on all HT consumers. The objector may be permitted to refer to the above said orders during the course of hearing. In all these orders, erstwhile APERC had stipulated that those who avail power supply through Open Access shall not be liable for CSS, in as much as, it is at the behest of the DISCOMs, the R & C measures were imposed. This scenario continued till R & C measures were recalled and even subsequently also for the year 2013-14, for which year there was "Nil" determination. So therefore, the present exercise for re-determination of CSS for the above years is impermissible and without jurisdiction.

i. For the year 2014-15 after a lapse of 3 years, the TSSPDCL has filed O.P. No. 14 of 2017 for determination of CSS by filing a condonation of delay petition. Surprisingly, the Hon'ble Commission has condoned the delay and determined the CSS for the year 2014-15 which is legally impermissible as it amounts to retrospective levy. Neither the provisions of the Electricity Act, 2003 nor any of the Regulations framed by the Hon'ble Commission empower it to entertain the application after such inordinate delay amounting to retrospective determination.

For My Home Industries Private Limited

B. Muralidhara Rao
Company Secretary &
Sr. Vice President (Legal)
Membership No. FCS 4789

Even otherwise, no reasons are assigned for condonation of such inordinate delay.

j. Similar exercise was undertaken by the present APERC and by order dated 19.11.2016, whereby the CSS determined for FY 2005-06 to 2012-13 in respect of 11 kV, 33 kV and 132 kV HT consumers across APEPDCL & APSPDCL was determined as "0". Having regard to the actual data of cost of purchases, wheeling charges and losses incurred for respective categories qua average realisation as per the formulae specified in National Tariff Policy, 2006, therefore the proposals placed before the Hon'ble Commission with the data requires stricter verification and prudence check as there cannot be a situation that for similarly placed distribution companies who are procuring power through APPCC cannot result in a different values and figures in determining the CSS.

k. All the aforesaid grounds are taken without prejudice to one another. The Objector craves leave of the Hon'ble Commission to raise any additional or modified grounds at any time during the course of the proceedings.

For My Home Industries Private Limited

OBJECTOR

B. Muralidhara Rao
Company Secretary &
Sr. Vice President (Legal)
Membership No. FCS 4789

PLACE : HYDERABAD
DATE : 30.05.2024

For My Home Industries Private Limited

B. Muralidhara Rao
Company Secretary &
Sr. Vice President (Legal)
Membership No. FCS 4789

BEFORE THE TELANGANA STATE ELECTRICITY RGULATORY COMMISION
At : Singareni Bhavan, Hyderabad

I.A. No. 9 of 2017 in O.P. No. 16 of 2005
I.A. No. 10 of 2017 in O.P. No. 13 of 2006
I.A. No. 11 of 2017 in O.P. No. 5 of 2007
I.A. No. 12 of 2017 in O.P. No. 73 of 2012
I.A. No. 13 of 2017 in O.P. No. 74 of 2012
I.A. No. 14 of 2017 in O.P. No. 75 of 2012
I.A. No. 15 of 2017 in O.P. No. 76 of 2012
I.A. No. 16 of 2017 in O.P. No. 77 of 2012
O.P. No.13 of 2017 & O.P. No. 14 of 2017

Between:
M/s.Southern Power Distribution Company of Telangana Limited & anr.
...Petitioners.

Versus

My Home Industries Private Limited ...Respondent/Objectioner

I/We, **My Home Industries Private Limited,** Regd. Office at: 9th Floor, Block-3, My Home Hub, Madhapur, Hyderabad – 500 081, Rep. by its Company Secretary & Senior Vice President (Legal), Sri. B.Muralidhara Rao, S/o. B.Papa Rao, Aged about: 54 years, R/o. Hyderabad.
OBJECTIONER

In the above Petitions do hereby appoint and retain

CHALLA GUNARANJAN (7751)

M. SRIDHAR,
DEEPAK CHOWDARY

Advocate of the High Court to appear for me/us in the above Appeal/Petition and to conduct and prosecute (or defend) the same and all proceeding that may be taken in respect of any application connected with the same or any decree or order passed therein, including all applications for return of documents or the receipt of any money that may be payable to me/us in the said appeal/Petition and also to appear in all applications under clause XV of the Letters Patent and in all applications for review of Judgement and for leave to appeal to the Supreme Court of India.

For My Home Industries Private Limited

B. Muralidhara Rao
Company Secretary &
Sr. Vice President (Legal)
Membership No. FCS 4789

I certify that the contents of this Vakalat were read over and explained in **ENGLISH** my presence to the executant or executants who appeared perfectly to understand/understood the same and made His/Her/Their signature or thumb impression in my presence.

Executed before me on 14th day of ~~May~~ June, 2024

ADVOCATE, HYDERABAD

S.P.CHAKRAPANI
ADVOCATE
#1-8-609/19, Prasant Avenue,
Adj. to SBI Bank, Anandnagar,
Khairatabad, Hyderabad-500 004.
Cell : 9441219659

Before the Telangana State Electricity Rgulatory Commision
At : Singareni Bhavan, Hyderabad

I.A. No. 9 of 2017 in O.P. No. 16 of 2005
I.A. No. 10 of 2017 in O.P. No. 13 of 2006
I.A. No. 11 of 2017 in O.P. No. 5 of 2007
I.A. No. 12 of 2017 in O.P. No. 73 of 2012
I.A. No. 13 of 2017 in O.P. No. 74 of 2012
I.A. No. 14 of 2017 in O.P. No. 75 of 2012
I.A. No. 15 of 2017 in O.P. No. 76 of 2012
I.A. No. 16 of 2017 in O.P. No. 77 of 2012
O.P. No.13 of 2017 & O.P. No. 14 of 2017

Between:
M/s.Southern Power Distribution Company of Telangana Limited & anr.
…Petitioners.

Versus

My Home Industries Private Limited
…Respondent/Objectioner

VAKALAT
(Accepted)

Date: 15-06-2024

CHALLA GUNARANJAN (7751)

Advocates
Counsel for **Objectioner**
Flat No.101 | Krishnaveni Pride | H.No.8-3-833/204 | Kamalapuri Colony | Hyderabad | Telangana 500 045
Tel: +91-40-2475 4758
Email: cgr@ckrassociates.in