

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**

**AND**

**THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR**

**+ WRIT PETITION Nos.37555 and 37599 of 2022**

% Date: 19.10.2023

# Telangana State Southern Power Distribution  
Company Limited, Rep. by its Chairman and  
Managing Director, Mint Compound, Hyderabad, and Others.  
... Petitioners

**v.**

\$ Union of India,  
Through Ministry of Power,  
Represented by the Secretary/Ministry of Power,  
Shram Shakti Bhawan, Rafi Marg, New Delhi-1, and others.  
... Respondents

! Counsel for the petitioners: **Mr. C.S.Vaidyanathan**,  
learned Senior Counsel representing  
Mr. Y.Rama Rao, learned counsel for the  
petitioners in W.P.No.37555 of 2022  
and  
also representing Mr. J.Ramachandra Rao,  
learned Additional Advocate General  
appearing for the petitioner in  
W.P.No.37599 of 2022.

^ Counsel for the respondents : **Mr. A.R.L.Sundaresan**,  
learned Additional Solicitor General of India  
representing Mr.K.L.N.Raghavendra Reddy  
learned Central Government Standing  
Counsel for respondents No.1, 3 and 4.

**Mr. P.Govind Reddy**,  
learned Special Counsel for  
the State of Andhra Pradesh  
representing respondent No.2.

**Mr. C.V.Mohan Reddy**,  
learned Senior Counsel  
representing Mr. M.Vidyasagar,  
learned counsel for respondent No.5

**Mr. J.Ashvini Kumar**,  
learned Standing Counsel for  
respondent No.6.

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

1. (1967) 2 SCR 109 : AIR 1967 SC 944
2. 1975 Supp SCC 1
3. (1986) 4 SCC 678
4. 1994 Supp (1) SCC 324
5. (1998) 5 SCC 170
6. (2000) 8 SCC 437
7. (2011) 13 SCC 344
8. (2017) 1 SCC 121
9. (2018) 7 SCC 1
10. (2019) 7 SCC 584
11. (2019) 18 SCC 769
12. (1960) 2 SCR 866 : AIR 1960 SC 610
13. (1980) 4 SCC 379
14. 1988 (Supp) SCC 47
15. (2000) 1 SCC 674
16. (2004) 6 SCC 672
17. (2006) 1 SCC 442
18. (2007) 8 SCC 449
19. (2008) 12 SCC 481
20. (2016) 10 SCC 28
21. 2020 SCC OnLine SC 847
22. AIR 1956 SC 593
23. AIR 1977 SC 1712
24. AIR 1971 SC 1542
25. (2010) 4 SCC 785
26. (1969) 2 SCC 262
27. 2023 SCC OnLine SC 621
28. (2008) 14 SCC 151
29. (2023) 6 SCC 1
30. (1998) 5 SCC 170
31. (1974) 2 SCC 121
32. 1964 AC 40
33. (2010) 10 SCC 534
34. (2010) 3 SCC 732
35. (2010) 9 SCC 486
36. (2010) 13 SCC 336
37. (2012) 5 SCC 480
38. (2015) 12 SCC 291
39. (2017) 8 SCC 307
40. (2004) 7 SCC 166
41. (2007) 6 SCC 120

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE**

**AND**

**THE HON'BLE SRI JUSTICE N.V.SHRAVAN KUMAR**

**WRIT PETITION Nos.37555 and 37599 of 2022**

**COMMON ORDER:** *(Per the Hon'ble the Chief Justice Alok Aradhe)*

W.P.No.37555 of 2022 is filed by the Telangana State Southern Power Distribution Company Limited, Telangana State Northern Power Distribution Company Limited and the Telangana State Power Coordination Committee, whereas W.P.No.37599 of 2022 is filed by the State of Telangana.

2. In both these petitions, petitioners have assailed the validity of the order dated 29.08.2022 passed by the Union of India under Section 92 of the Andhra Pradesh Reorganization Act, 2014 (hereinafter referred to as, "the 2014 Act"). By the said order, the Government of Telangana has been directed to pay a sum of Rs. 3441.78 crores towards the principal amount and a further amount of Rs.3315.14 crores towards the late payment surcharge to Government of Andhra Pradesh within a

period of thirty days. In order to appreciate the grievance of the petitioners, relevant facts need mention which are stated infra.

3. The petitioners in W.P.No.37555 of 2022 are the Power Distribution Companies for the State of Telangana incorporated under the Companies Act. The petitioners are wholly owned by the Government of Telangana. The petitioners procure power from the State Generating Companies, Central Generating Stations and Renewable Power Generating Companies and supply the same to several categories of consumers in the State of Telangana.

**(i) FACTS:**

4. Three Power Purchase Agreements (PPAs) have been executed on 22.12.2009 between the Andhra Pradesh Power Generation Corporation Limited (APGENCO) and Andhra Pradesh Distribution Companies for the period between 01.04.2006 and 31.03.2019. The erstwhile State of Andhra Pradesh was bifurcated into two successor

States, namely State of Telangana and State of Andhra Pradesh with effect from 02.06.2014 under the 2014 Act.

5. The State of Andhra Pradesh on 16.06.2014 unilaterally cancelled the PPAs. A communication dated 17.06.2014 was sent by the Government of Andhra Pradesh, Energy Department, to the Chairman & Managing Director, Transmission Corporation of Andhra Pradesh (APTRANSCO), to schedule power in the ratio of 65:35 from the projects located in Andhra Pradesh. It was stated therein that the Managing Director, APGENCO, had reported that the APGENCO had rescinded its PPAs for which there is no approval of Andhra Pradesh Electricity Regulatory Commission (APEREC). It was further stated in the aforesaid communication that CMD of APTRANSCO was requested to schedule the power generated in the projects located in State of Andhra Pradesh in respect of which PPAs have been rescinded in the ratio of 65:35, from the date of communication, to the Andhra Pradesh State Power Distribution Company Limited (APSPDCL) and the Eastern Power Distribution Company of Andhra

Pradesh Limited (APEPDCL) through the Andhra Pradesh State Load Despatch Center (APSLDC). The Power System Operation Corporation Limited (PSOCL) vide communication dated 18.06.2014 informed APSLDC that APSLDC shall continue with the supply of power as per the existing procedure. On 01.07.2014, Government of India under the Chairmanship of CEA constituted Neerja Mathur Committee with PSOCL, PGCIL, Secretaries of Energy, Government of Andhra Pradesh and Government of Telangana to resolve the power issues between State of Andhra Pradesh and the State of Telangana including the Power Purchase Agreements. The meeting of the Southern Regional Power Committee was held at Bangalore on 24.06.2014 where all participants, except APTRANSCO agreed that scheduling of power from APGENCO should continue as per the 2014 Act.

6. The Telangana Distribution Companies (TSDISCOMs) on 15.06.2014 floated the tenders for short-term procurement of power, as State of Andhra Pradesh did not schedule power from Krishnapatnam Power Plant.

The APERC in exercise of powers under Section 86(1)(b) of the Electricity Act, 2003, vide order dated 11.08.2014 held that unilateral recession of PPAs is not valid and the same cannot be unilaterally rescinded by APGENCO. Notwithstanding the directions of the APERC on 18.06.2014 and 11.08.2014, the State of Andhra Pradesh did not supply the power to the State of Telangana.

7. The Neerja Mathur Committee submitted its report on 29.07.2016 to the Secretary of Energy, Government of Telangana. However, the Secretary of Energy, Government of Telangana did not sign the report, as a result of which, the Government of India on 03.01.2018 dissolved the aforesaid Committee. The Andhra Pradesh Power Utilities filed company petitions on 08.01.2018 which were registered as CP (IB) No.57/9/HDB/ 2018 and 58/9/HDB/2018 in the National Company Law Tribunal. The TSDISCOMs filed O.P.No.59 of 2018 before the TSERC. The said Commission by an order dated 29.12.2018 directed the Andhra Pradesh Power Utilities

not to take any coercive measures against the TSDISCOMs.

8. The Andhra Pradesh Power Utilities challenged the order of the TSERC before the High Court of Andhra Pradesh in W.P.No.42577 of 2018, in which no interim order was granted. On 19.08.2019, the Telangana and Andhra Pradesh Power Utilities signed a reconciliation statement for all power utilities of both States and it was agreed upon that the power utilities issues will be settled at State level.

9. The company petitions filed by the Andhra Pradesh Power Utilities were withdrawn on 03.09.2021 by it. Thereafter, on 07.09.2021 the Andhra Pradesh Power Utilities filed W.P.No.21638 of 2021 before this Court against the State of Telangana for payment of post bifurcation dues i.e., a sum of Rs.6283.68 crores which includes the principal amount as well as the amount of interest. The aforesaid writ petition was however withdrawn by the Andhra Pradesh Power Utilities on 09.06.2022.



10. The State of Andhra Pradesh thereafter approached the Ministry of Power and Ministry of Home Affairs, Government of India, for intervention to get the power purchase dues. The Government of Telangana by communication dated 06.11.2021 informed the Union of India regarding pending dues payable to it by the State of Andhra Pradesh. The Telangana State Power Generation Corporation Limited (TSGENCO) filed a writ petition, namely W.P.No.25240 of 2022, for payment of post-bifurcation dues amounting to Rs.4774 crores to the State of Telangana. The TSTRANSCO filed another writ petition, namely W.P.No.34824 of 2022, to make payment of Rs.1730 crores to the State of Telangana. The TSDISCOMs also filed a writ petition, namely W.P.No.25788 of 2022, to pay the post-bifurcation dues of Rs.11324 crores to the State of Telangana. All the three writ petitions are still pending and are *sub judice*.

11. An office memorandum and a notice of meeting was issued by the Union of India, Ministry of Home Affairs, stating that meeting would be conducted on 08.02.2022

for resolving the issues arising under the 2014 Act. In the aforesaid office memorandum, it was stated that meeting of Dispute Resolution Sub Committee was scheduled to be held on 17.02.2022.

12. The matter was referred to the Solicitor General of India for seeking an opinion. On 12.03.2022, the Solicitor General of India opined that since the matter is *sub judice* before the High Court, it is not appropriate for the Central Government to issue directions to the State of Telangana for payment of power purchase dues.

13. Thereafter, on 28.05.2022 the meeting of the 12<sup>th</sup> Standing Committee of Southern Zonal Council was held at Thiruvananthapuram. The Committee decided to keep the agenda item of “post-bifurcation power utilities dues” for discussion in the 30<sup>th</sup> Southern Zonal Council meeting which was to be held on 03.09.2022. The Andhra Pradesh Utilities withdrew the writ petition, namely W.P.No.21638 of 2021, filed by it.

14. The State of Andhra Pradesh on 19.08.2022 has filed a writ petition under Article 32 of the Constitution of India, namely W.P (C).No.1091 of 2022, against the Union of India and the State of Telangana for payment of post-bifurcation dues. Thereafter, on 19.08.2022, a further opinion was given by the Solicitor General of India, in which it was stated that since there is no stay in the proceeding, any lawful action can be taken by the Union of India to proceed with the matter in relation to power purchase dues which shall be subject to the result of the legal proceedings as well as subject to the challenge by the aggrieved party in an appropriate judicial forum.

15. Thereafter, a draft order was prepared. In the minutes of Southern Zonal Council meeting held on 04.08.2022, it was recorded that views of State of Telangana shall be taken and the matter was directed to be taken up on the next meeting on 03.09.2022. However, the impugned order was passed on 29.08.2022 by the Union of India under Section 92 of the 2014 Act directing the State of Telangana to pay the dues for power supplied

by the State of Andhra Pradesh to the State of Telangana between the period from 02.06.2014 to 10.06.2017. The State of Telangana was directed to pay a sum of Rs.3441.78 crores towards the principal amount and a sum of Rs.3315.14 crores towards the late payment of surcharge to the State of Andhra Pradesh within thirty days.

16. Thereafter, the State of Telangana sent a communication on 11.09.2022 to the Government of India pointing out that the order dated 29.08.2022 has been passed without affording an opportunity to it and thereafter, the same is bad in law. The instant writ petitions were filed on 26.09.2022. In the aforesaid factual background these writ petitions arise for consideration.

**(ii) SUBMISSIONS OF Mr. C.S.VAIDYANATHAN, LEARNED SENIOR COUNSEL FOR THE PETITIONERS IN BOTH THE WRIT PETITIONS:**

17. Learned Senior Counsel for the petitioners submitted that thirty-one PPAs were executed between the APGENCO

or APTRANSCO or DISCOMS in the pre-existing undivided State of Andhra Pradesh. It is further submitted that the aforesaid PPAs were executed between 2000 and 2013 and under the provisions of the 2014 Act, they were to continue in operation beyond 02.06.2014 also. It is contended that Section 92 of the 2014 Act read with Part C of Schedule XII of the said Act provided that the existing PPAs with respective DISCOMs shall continue, for both the ongoing projects and projects under construction. It is further submitted that notwithstanding the aforesaid statutory mandate, the APGENCO sought to disturb the supply of electricity to the TSDISCOMs after reorganisation of the States. Thereupon, the PSOCL directed the APGENCO to continue to supply of power to the TSDISCOMs and pursuant to the directions issued by the PSOCL, the APGENCO supplied power to the TSDISCOMs between 02.06.2014 and 10.06.2017. It is pointed out that the dispute in the present writ petitions is with regard to the non-payment of amounts alleged to be due to the APGENCO from the TSDISCOMs in respect of the supply of power during the aforesaid period.

18. It is further submitted that the parties to the PPAs which include APGENCO provide that in case of disputes between the parties, the same is to be settled between the Chief Executives by negotiations, failing which the same has to be referred for arbitration and it is also pointed out that the PPAs contain a provision that in the event of disputes and differences, the State Regulatory Commission has to settle such disputes. It is argued that the APGENCO has neither chosen to adopt any of the procedure contemplated by the PPAs nor has invoked the powers of the State Regulatory Commission.

19. It is contended that the TSDISCOMs have filed O.P.No.59 of 2018 before the TSERC in which by an interim order dated 29.12.2018, the said Commission has restrained the Andhra Pradesh Power Utilities from taking any coercive action. The order passed by the said Commission is pending adjudication in a writ petition, before the High Court of Andhra Pradesh and in the said writ petition, no interim order has been granted.

20. It is submitted that the APGENCO had filed a writ petition, namely W.P.No.21638 of 2021, which was withdrawn by them on 09.06.2022. It is further submitted that APGENCO has no authority to make a request to the Union of India to exercise power under Section 92 of the 2014 Act. It is also submitted that Section 92 of the 2014 Act has no application to the facts of the case, as the dispute is between a generating company and distribution companies which, in any case, has to be adjudicated by the Electricity Regulatory Commission under the provisions of the Electricity Act, 2003.

21. It has been pointed out that the writ petition filed by the State of Andhra Pradesh under Article 32 of the Constitution of India, namely W.P (C).No.1091 of 2022, for resolution of the disputes pertaining to post-bifurcation between the State of Andhra Pradesh and State of Telangana is pending before the Supreme Court. It is urged that even though in the impugned order dated 29.08.2022, the Government of India has rightly noted

that the dues relate to supply of power by APGENCO to TSDISCOMs, the Union of India has erred in directing the State of Telangana to make payment to the State of Andhra Pradesh, even though, Section 92 of the 2014 Act has no application to the facts of the case.

22. It is also pointed that Government of India proceeds on the basis that the claims of Government of Telangana have not been substantiated by any documents, which is factually incorrect. It is submitted that in any case, no opportunity of hearing has been given to the State of Telangana before recording the aforesaid finding. While referring to the notes of the Ministry of Home Affairs, it is contended that the notes exhibit absolute lack of application of mind. It is argued that the Central Government is not constituted as dispute settling authority in respect of the dues between the generating companies and the transmission companies under the 2014 Act. It is further argued that Section 92 of the 2014 Act does not confer any adjudicatory power.



23. Alternatively, it is submitted that in any case, before issuing the impugned direction, an opportunity of hearing ought to have been given to the State of Telangana. It is urged that dispute resolution between two States has to be made by an independent adjudicatory machinery after separation of executive and judicial functions and the Central Government cannot usurp such functions.

24. Learned Senior Counsel has taken us through various paragraphs of the communication styled as “objections of Government of Telangana” dated 11.09.2022 sent by the Chief Secretary, Government of Telangana, to the Union of India as well as the order dated 11.08.2014 passed by the APERC. It is further submitted that the aforesaid order dated 11.08.2014 has not been challenged and therefore, PPAs are valid. Our attention has also been invited to the prayer made in W.P.No.42577 of 2018 filed by the Andhra Pradesh Power Utilities and it is pointed out that no interim order has been passed in the said writ petition.

25. Learned Senior Counsel for the petitioners while referring to Section 86 of the Electricity Act pointed out that Section 86(1)(f) of the said Act deals with the adjudication of disputes between the licensees and generating companies and the dispute between the APGENCO and TSDISCOMS is squarely covered under Section 86(1)(f) of the Electricity Act. It is pointed out that as per Section 92 of the 2014 Act, the expression “*directions and orders issued by the Central Government*” therein does not confer any adjudicatory power on the Central Government. It is submitted that the petitioners have not been heard before passing the impugned order, in purported exercise of powers under Section 92 of the 2014 Act. It is contended that the counter affidavit filed on behalf of the Union of India does not deal with the issues raised in the writ petitions.

26. In support of the aforesaid submissions, learned Senior Counsel has placed reliance on the decisions of the Supreme Court in **Mangal Singh vs. Union of India**<sup>1</sup>,

---

<sup>1</sup> (1967) 2 SCR 109 : AIR 1967 SC 944

**Indira Nehru Gandhi Smt. vs. Shri Raj Narain<sup>2</sup>,  
Harbhajan Singh Dhalla vs. Union of India<sup>3</sup>,  
R.C.Poudyal vs. Union of India<sup>4</sup>, S.K.Bhargava vs.  
Collector, Chandigarh<sup>5</sup>, Dadu vs. State of  
Maharashtra<sup>6</sup>, State of Himachal Pradesh vs. Union of  
India<sup>7</sup>, Punjab Termination of Agreement Act, 2004, In  
Re<sup>8</sup>, Kalpana Mehta vs. Union of India<sup>9</sup>, State of  
Madhya Pradesh vs. Lafarge Dealers Association<sup>10</sup> and  
Telangana Judges Association vs. Union of India<sup>11</sup>.**

**(iii) SUBMISSIONS OF Mr. A.R.L.SUNDARESAN,  
LEARNED ADDITIONAL SOLICITOR GENERAL OF  
INDIA:**

27. On the other hand, learned Additional Solicitor General of India submits that in the proceeding leading to passing of the order dated 29.08.2022 under Section 92 of the 2014 Act, Secretaries of both the States were present.

---

<sup>2</sup> 1975 Supp SCC 1

<sup>3</sup> (1986) 4 SCC 678

<sup>4</sup> 1994 Supp (1) SCC 324

<sup>5</sup> (1998) 5 SCC 170

<sup>6</sup> (2000) 8 SCC 437

<sup>7</sup> (2011) 13 SCC 344

<sup>8</sup> (2017) 1 SCC 121

<sup>9</sup> (2018) 7 SCC 1

<sup>10</sup> (2019) 7 SCC 584

<sup>11</sup> (2019) 18 SCC 769

It is contended that the quantum of the amount due by the TSDISCOMs to the APGENCO is not in dispute. It is argued that the contention raised by the petitioners that no opportunity of hearing was afforded to them is incorrect. It is submitted that on the basis of admission with regard to the quantum of the amount payable by TSDISCOMs to APGENCO, the order dated 29.08.2022 was passed.

28. It is argued that there is no element of adjudication in the order. It is pointed out the principal amount of Rs. 3441.78 crores (Rs.3442 crores) was admitted in the communication which was sent by the Minister for Finance, Health, Medical & Family Welfare, Government of Telangana, dated 05.06.2022. It is further pointed out that under the PPAs, the petitioners are liable to pay the amount of surcharge on the principal amount. It is urged that the TSDISCOMs are the companies owned by the Government of Telangana and therefore, the State Government and TSDISCOMs go hand in hand. It is

pointed out that the successor States are not parties to the PPAs.

**(iv) SUBMISSIONS OF Mr. C.V.MOHAN REDDY, LEARNED SENIOR COUNSEL APPEARING FOR APGENCO:**

29. On the other hand, learned Senior Counsel for APGENCO submitted that it is not open for the petitioners to club the demerger issues under Section 53 of the 2014 Act with the issues arising out of post bifurcation of the State. It is further submitted that the Central Government in exercise of powers under Section 92 of the 2014 Act has exercised the statutory powers and the order cannot be equated with a judicial order. It is further submitted that the petitioners on 08.11.2021, 17.02.2022, 28.05.2022, 17.06.2022 and on 03.09.2022 have admitted their liability. The order passed by the Central Government is based on the liability admitted by the petitioners and therefore, the contention that the impugned order dated 29.08.2022 has been passed in violation of the principles of natural justice, is misconceived. Alternatively, it is

contended that even assuming that the order may have been passed in violation of the principles of natural justice, since no prejudice has been caused to the petitioners, the exercise of remand of matter to the Central Government would be an empty formality.

30. It is further submitted that Section 53 of the 2014 Act deals with assets and liabilities of State undertakings and Section 53(2) thereof provides that upon apportionment of the assets and liabilities, such assets and liabilities shall be transferred in physical form on mutual agreement or by making payment or adjustment through any other mode as may be agreed to by the successor States.

31. It is also submitted that PPAs were not approved by the APERC and the same was dissolved. It is further submitted that the petitioners are guilty of suppression of material facts as they have failed to disclose the factum of meeting held on 08.11.2021 as well as the minutes of the meeting dated 17.02.2022 of the Dispute Resolution Committee. It is contended that the writ petitions are

therefore liable to be dismissed in view of suppression of material facts. It is further contended that the writ petitions even otherwise are not maintainable to adjudicate the dispute between the two States, namely the State of Telangana and the State of Andhra Pradesh and the Supreme Court alone is competent to adjudicate the dispute under Article 131 of the Constitution of India.

32. It is contended that the language of Section 92 of the 2014 Act is plain and unambiguous and has to be read along with Sections 68, 69 and 75 of the said Act and the golden rule of interpretation as well as the principle of literal interpretation of the statute has to be applied while interpreting Section 92 of the 2014 Act. It is further contended that the principle of *Noscitur A Sociis* does not apply to expression 'principles, guidelines, directions and orders' issued under Section 92 of the 2014 Act. It is also submitted that the appropriate remedy for the State of Telangana is to approach the Supreme Court under Article 131 of the Constitution of India. In support of the aforesaid submissions, reliance has been placed on the

decisions of the Supreme Court in **State Bank of Bombay vs. Hospital Mazdoor Sabha**<sup>12</sup>, **S.L.Kapoor vs. Jagmohan**<sup>13</sup>, **Bank of India vs. M/s.Vijay Transport**<sup>14</sup>, **Brindavan Bangle Stores vs. Assistant Commissioner of Commercial Taxes**<sup>15</sup>, **Maulavi Hussein Haji Abraham Umarji vs. State of Gujarat**<sup>16</sup>, **Tashi Delek Gaming Solutions Ltd. vs. State of Karnataka**<sup>17</sup>, **Prestige Lights Ltd. vs. State Bank of India**<sup>18</sup>, **K.D.Sharma vs. Steel Authority of India Limited**<sup>19</sup>, **Union of India vs. Meghmani Organics Limited**<sup>20</sup> and **State of U.P vs. Sudhir Kumar Singh**<sup>21</sup>.

**(v) SUBMISSIONS OF Mr. P.GOVIND REDDY, LEARNED SPECIAL COUNSEL FOR STATE OF ANDHRA PRADESH:**

33. Learned Special Counsel for the State of Andhra Pradesh has adopted the submissions made by the learned Senior Counsel appearing for APGENCO.

---

<sup>12</sup> (1960) 2 SCR 866 : AIR 1960 SC 610

<sup>13</sup> (1980) 4 SCC 379

<sup>14</sup> 1988 (Supp) SCC 47

<sup>15</sup> (2000) 1 SCC 674

<sup>16</sup> (2004) 6 SCC 672

<sup>17</sup> (2006) 1 SCC 442

<sup>18</sup> (2007) 8 SCC 449

<sup>19</sup> (2008) 12 SCC 481

<sup>20</sup> (2016) 10 SCC 28

<sup>21</sup> 2020 SCC OnLine SC 847



**(vi) REJOINDER SUBMISSIONS:**

34. By way of rejoinder submission, learned Senior Counsel for the petitioners has submitted that every action of the State or its instrumentality should be fair and legitimate. It is pointed out that even though in the minutes of meeting recorded on 04.08.2022, it was recorded that the views of Telangana shall be heard and the matter was to be taken up in the next meeting i.e., 03.09.2022, without hearing the State of Telangana, an order was passed on 29.08.2022. It is, therefore, contended that any action in undue haste has to be termed as arbitrary and a presumption of *mala fide* arises. It is also contended that there is no clear or unambiguous admission with regard to liability of the petitioners to pay the amount to APGENCO and it is not open to pick up one part of the admission and ignore the other part. It is argued that before an admission can be acted upon, the same has to be categorical, conspicuous and deliberate with a view to bound by the decision.

35. It is also urged that admission cannot be dissected and if it is made subject to a condition, it must either be accepted subject to the condition or not at all. It is also argued that even if the APERC was dissolved subsequently, the order of restraint passed by it binds APGENCO. Reference has also been made to Rule 2(h) of the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 and it has been pointed out that the same is not outstanding dues within the meaning of the Rules as much as the recovery of the same has been stayed by the Andhra Pradesh Electricity Regulatory Commission. It is contended that the impugned order be set aside and the parties should be given liberty to avail the remedies available to them in law. Lastly, it is urged that the dispute between APGENCO and TSDISCOMs should be resolved in an amicable manner preferably through mediation.

**(vii) ANALYSIS:**

36. We have considered the rival submissions made on both sides and perused the record. The Andhra Pradesh

Reorganisation Act, 2014 is an Act to provide reorganisation of the existing State of Andhra Pradesh and the matters connected therewith. The erstwhile State of Andhra Pradesh was bifurcated into two successor States, namely State of Telangana and State of Andhra Pradesh with effect from 02.06.2014. Section 2(j) of the 2014 Act defines the expression 'successor State' to mean successor State in relation to the existing State of Andhra Pradesh, means the State of Andhra Pradesh or the State of Telangana, as the case may be. Part VI of the 2014 Act deals with apportionment of assets and liabilities. Section 53 deals with assets and liabilities of State Undertakings. Section 65 mandates that where successor States of Andhra Pradesh and Telangana agree that the benefit or burden of any particular asset or liability should be apportioned between them in a manner other than that provided for in the foregoing provisions of this Part, notwithstanding anything contained the foregoing provisions of the Part, the benefit or burden of that asset or liability shall be apportioned in the manner agreed upon. Section 66 of the 2014 Act deals with the power of

the Central Government to order allocation or adjustments in certain cases.

37. Part X of the 2014 Act deals with infrastructure and special economic measures. Section 92 mandates that the successor States to follow principles, guidelines, directions and orders issued by Central Government. Section 92 and Para 7 of Twelfth Schedule-C of the 2014 Act are extracted below for the facility of reference:

**92. Successor States to follow principles, guidelines etc., issued by Central Government:** The principles, guidelines, directions and orders issued by the Central Government, on and from the appointed day, on matters relating to coal, oil and natural gas, and power generation, transmission and distribution as enumerated in the Twelfth Schedule shall be implemented by the successor States.

**Para 7 of Twelfth Schedule C:**

7. For a period of ten years, the successor State that has a deficit of electricity shall have the first right of refusal for the purchase of surplus power from the other successor State.

38. Thus, from perusal of para 7 of Twelfth Schedule-C of the 2014 Act, it is evident that for a period of ten years, the successor State, that has a deficit of electricity shall have first right of refusal for the purchase of surplus power from the other successor State.

39. Admittedly, thirty-one Power Purchase Agreements (PPAs) were executed between APGENCO or APTRANSCO or DISCOMs between the period from 2002 and 2013 and were continued to be in operation for a period of ten years. The dispute in these petitions pertains to supply of power by APGENCO to TSDISCOMs between the period from 02.06.2014 and 10.06.2017. Before proceeding further, it is apposite to take note of the following issues which arise for consideration in these petitions.

**(viii) ISSUES:**

(i) Whether alternative forums are available under Power Purchase Agreements (PPAs) for resolution of disputes arising between the APGENCO and TSDISCOMs?

(ii) Whether without resorting to the forum prescribed under the Power Purchase Agreements (PPAs),

APGENCO has approached the Central Government under Section 92 of the 2014 Act?

(iii) Whether TSDISCOMs have admitted the quantum of the amount payable by them to APGENCO on account of supply of electricity for the period from 02.06.2014 to 10.06.2017 and whether the said admission binds TSDISCOMs?

(iv) Whether in a dispute requiring determination of sum due, principles of natural justice have to be followed and reasons have to be given in support of the order? and

(v) Whether the order dated 29.08.2022 passed by the Central Government under Section 92 of the 2014 Act is vitiated in law as the same has been passed without affording an opportunity of hearing to TSDISCOMs?

***(ix) Issues (i) and (ii):***

***(i) Whether alternative forums are available under Power Purchase Agreements for resolution of disputes arising between the APGENCO and TSDISCOMs?***

***(ii) Whether without resorting to the forum prescribed under the Power Purchase Agreements,***

***APGENCO has approached the Central Government under Section 92 of the 2014 Act?***

40. Admittedly thirty-one PPAs were executed between the parties which were to remain in force for a period of ten years in view of para 7 of Twelfth Schedule-C of the 2014 Act. The PPAs contain a mode of resolution of dispute firstly by negotiations between the Chief Executives, failing which, settlement of dispute through arbitration was to be resorted to. The relevant clause for 20 of the PPA reads as under:

All differences or disputes between the parties arising out of or in connection with this Agreement shall be endeavoured to be settled amicably through negotiation between the Chief Executives of the respective parties failing which shall be settled by arbitration as provided herein.

In the event of any such differences or disputes between parties, any party may by a written notice of 30 days to the other party request Andhra Pradesh Regulatory Commission (APEREC) to settle such disputes.

41. Thus, from perusal of the aforesaid clause of the PPAs, it is evident that the PPAs envisage resolution of disputes through negotiations at the first instance and

thereafter, by arbitration. In addition, a party after giving notice of thirty days to the other party was also given the liberty to approach APERC for settlement of disputes. Therefore, the issue (i) is answered in the affirmative by stating that the alternative forums are available under PPAs for resolution of dispute between APGENCO and TSDISCOMs. The APGENCO without resorting to the forum prescribed under the PPAs approached the Central Government under Section 92 of the 2014 Act. Therefore, the issue (ii) namely, without resorting to the forum prescribed under the Power Purchase Agreements, APGENCO has approached the Central Government under Section 92 of the 2014 Act is also answered in the affirmative.

***(x) Issue (iii): Whether TSDISCOMs have admitted the quantum of the amount payable by them to APGENCO on account of supply of electricity for the period from 02.06.2014 to 10.06.2017 and whether the said admission binds TSDISCOMs?***

42. The requirement in law is that an admission must be clear, precise and not vague or ambiguous. (See **Nagubai**



**Ammal vs. B.Shama Rao**<sup>22</sup>). Similar view has been taken in **Sita Ram vs. Ram Chandra**<sup>23</sup> and it has been held that before any statement can be used as an admission, it must be shown to be unambiguous and clear on the point in the issue. In **C.Koteswara Rao vs. C.Subba Rao**<sup>24</sup>, it has been held that before the right of a party can be considered to have been defeated on the basis of an alleged admission made by him, the implication of the statement made by him has to be clear and conclusive and there must be no doubt or ambiguity about it. A qualified admission would not be acted upon against a party, as the same is neither unequivocal nor unconditional.

43. Now, we may advert to the admissions made on behalf of TSDISCOMs which has been relied upon by APGENCO. A Dispute Resolution Sub Committee was formed, as per directions of Union Home Secretary to provide for a suitable platform for sorting out the bilateral issues between the successor States of Telangana and

---

<sup>22</sup> AIR 1956 SC 593

<sup>23</sup> AIR 1977 SC 1712

<sup>24</sup> AIR 1971 SC 1542

Andhra Pradesh. A meeting of the said Committee was held on 17.02.2022, and summary of discussion of the said meeting was recorded. The relevant extract reads as under:

**1. Payment of power dues to APGENCO by TSDISCOM:**

**Views of Telangana:**

Representative of Government of Telangana stated that from the very beginning they are willing to settle the issue and made some progress also. But AP Utilities went to NCLT. Subsequently, they withdrew the case from NCLT and filed a Writ Petition in High Court of Telangana, which is sub-judice now. In fact, Telangana has no dispute regarding the amount of dues however, the amount receivable by Telangana should be taken into account while settling the dues. But still if Government of Andhra Pradesh is willing to settle, out of the court, Government of Telangana is open for settlement. Government of Telangana reiterated that partial settlement of issue is not acceptable to them and they will go by total settlement of the issue.

**Views of Andhra Pradesh:**

Representatives of Government of Andhra Pradesh stated that the power was supplied as per directions of Government of India till June, 2017. TSDISCOM had made part payment to APGENCO. However still an amount of Rs.3442 crore as principal and Rs.3014 crore as late payment surcharge on 31<sup>st</sup> December, 2021 is outstanding as per the PPA clause. It has to be delinked with other de-merger issues of Power Utilities. Petition filed in High Court of Telangana also does not come in the way of settlement of these power dues keeping in view of PPA and directions of Government of India. Further, there are not any orders by the High Court prohibiting any directions in this regard by Government of India. Government of Andhra Pradesh requests that suitable orders be issued under Andhra Pradesh Reorganisation Act, by the Government of India.

**Views of Ministry of Power:**

Representative of Ministry of Power informed that the matter has been referred to law on 03.02.2022, on following issues:

- i) Can the order under Section 92 be given for the payment?
- ii) Can this amount be deducted from the account of Telangana and be credited to account of Andhra Pradesh?

Joint Secretary (CS) requested Government of Telangana that other issue raised by them emanates from Schedule XII, Part (C)-Power, Para-8, Andhra Pradesh Reorganisation Act. It should be treated as a separate matter and will be examined separately by the MHA, otherwise it would be difficult for MHA to address and resolve the issue.

**Conclusion:**

**Joint Secretary (CS) suggested that after getting the views of Ministry of Law, the Ministry of Power may communicate the same to both the State Governments and Ministry of Home Affairs, for their comments. Further action will be taken on the issue based on the comments of both the State Governments and opinion of Ministry of Power thereon.**

44. Thus, from perusal of the aforesaid relevant extract of the meeting, it is evident that there is no unambiguous or clear admission on behalf of the State of Telangana. The State of Telangana has reiterated that partial settlement of the issue is not accepted to it and it would abide by the total settlement of the issue.

45. 29<sup>th</sup> Meeting of Southern Zonal Council was held on 14.11.2021 at Thiruvananthapuram. Thereafter, the deliberations were held in the Standing Committee on 28.05.2022. Agenda item No.8 in the said meeting pertains to dues by power utilities of Telangana to Andhra Pradesh on account of cost of power. The discussions on agenda item No.8 reads as under:

**3. (Agenda Item 8): Dues of Rs.6015 crores to be paid by Power Utilities of Telangana to Andhra Pradesh towards the cost of power supplied by Andhra Pradesh after the State bifurcation:**

Government of Telangana informed the Committee that there are many demerger related issues between Andhra Pradesh and Telangana power utilities which have to be settled and once all these issues are settled, the post merger of APGENCO dues will also be squared off. In fact, Telangana Power Utilities have to get around Rs.17,828.00 crores from Andhra Pradesh Power utilities and after setting off the dues payable to the Andhra Pradesh Power Utilities, Telangana GENCO has to get Rs.12,940.00 crore. Government of Telangana has also brought to the notice of the Committee about the transfer of share of Telangana amounting to Rs.2884 crore

(Rs.2172 crore and Rs.712 crore) in the Employee Trust Funds (Pension, Gratuity, EL Encashment, PF and Gratuity Trust) still being maintained by APGENCO and APTRANSCO. The Committee was further informed about the discussions on the issue before the Dispute Resolution Sub-Committee held on 17.02.2022 wherein the Joint Secretary (CS) suggested that after getting the views of Ministry of Law, the Ministry of Power may communicate the same to both the Governments and MHA for their comments. Action will be taken on the issue based on the comments of both the State Governments and the opinion of Ministry of Power thereon.

As per the opinion of the Ministry of Law and Justice, Department of Legal Affairs, Government of India Section 92 of the Andhra Pradesh Reorganisation Act, 2014 confers on Government of India unambiguous powers to issue directions to the State of Government of Telangana for payment to the State of Andhra Pradesh. Since the matter is sub-judice before the Court of Law, it would not be appropriate for the Government of India to issue such direction under Section 92 of the Andhra Pradesh Reorganisation Act, 2014.

Energy Secretary, Government of Andhra Pradesh in letter dated 19.05.2022 addressed the Ministry of Power that APGENCO has decided to withdraw WP No.21638 of 2021 and requested to issue direction under Section 92 of the Andhra Pradesh Reorganisation Act, 2014 for release of Rs.6628 crore to APGENCO.

The Committee has decided to keep the item for discussion in the 30<sup>th</sup> South Zonal Council meeting during August, 2022.

Thus, it is evident that in this meeting also, there is no clear or unambiguous admission of liability by the State of Telangana.

46. A communication dated 05.06.2022 was sent by Ministry of Finance, Health, Medical and Family Welfare, Government of Telangana to the Central Government. Paras 6 to 8 of the aforesaid communication read as under:

6. In the 12<sup>th</sup> meeting of the Standing Committee of Southern Zonal Council held on 28.05.2022 at Thiruvananthapuram, one of the agenda items relates to the legal opinion on the dues payable by APTRANSCO to Telangana. In

the Agenda note, it is mentioned that since the matter is sub judice before a court of law, it may not be proper for Government of India to issue any directions in the matter.

In view of the position explained in detail above, I earnestly request you to ensure that the pending dues claimed by the Government of Andhra Pradesh are not adjusted against the market borrowing limits of Telangana. As the Ministry of Home Affairs has a major role in a dispute resolution on matters relating to bifurcation, I request that the matter may be taken up with the Ministry of Finance. Never in the past, claims of inter-State dues were taken into account while fixing borrowing limits of a State under the Fiscal Responsibility and Budget Management Act.

Thus, it is evident that the aforesaid communication also does not contain any admission of liability.

47. Thereafter, second meeting of dispute resolution committee was held on 17.06.2022 on the bilateral issues arising out of the 2014 Act. The issue with regard to payment of power dues to APGENCO by TSDISCOMs was



discussed and deliberated. The relevant extract reads as under:

**(i) Review of issues discussed in meeting held on 17.02.2022:**

**(a) Payment of power dues to APGENCO by TSDISCOM:**

**Views of Telangana:**

CMD, TSGENCO & TSTRANSCO reiterated that if they settle all the dues from Andhra Pradesh Power Utilities they have to get more than 12,500 crores from Andhra Pradesh. He informed that they have come to know last week only that APGENCO has withdrawn the Writ Petition (WP) filed in the High Court. Government of Telangana contested the withdrawal of WPs by the Government of Andhra Pradesh and subsequently two Writ Petitions have been filed by the TSGENCO and TSDISCOMs in the High Court of Telangana few days back and it is sub-judice now.

He stated that the TS Utilities have been put to more hardship than the AP Utilities. First, cancellation of PPAs by the Andhra Pradesh. Secondly, Telangana is also not getting much power from the Tungabhadra Project. Finally, after bifurcation of employees, gratuity and pension payments are also being made by the

Telangana State but the trust funds are with AP Utilities.

**Views of Andhra Pradesh:**

Principal Secretary, Finance stated that AP Power Utilities are suffering due to huge amount of power dues pending from TSDISCOM against the power supplied, at the directions of Government of India. Therefore, prolonging the matter at this time would not be very fair and tenable and MHA should intervene in the matter.

**Views of Ministry of Power:**

Chief Engineer, Ministry of Power stated that after the withdrawal of case by Andhra Pradesh Government, they are trying to settle out the dues that are being claimed by both the State Governments. After that, Ministry of Power may issue an order under Section 92 of the Act directing the amount payable by one State to another in whatever process the Ministry of Power finds it suitable. It can be through the devolution from the Central Payments to the State Governments. However, Ministry of Power stated that they are unaware about the filing of two WPs by the Government of Telangana in the High Court of Telangana.

**Joint Secretary, CS, MHA:**

JS (CS) stated that if we want to move forward on the issue, then the court cases cannot be a

right way of doing it. He sought to know whether the Government of Telangana is willing to withdraw the case from the High Court to settle the issue amicably. Government of Telangana informed that they want to decide the matter through Court only, as the matter is spilling over to other issues including borrowings of the State.

**Decision:**

MHA will be taking up the matter with Ministry of Power and Ministry of Law for their comments to decide further course of action on the issue.

Thus, from perusal of aforesaid extract, it is axiomatic that in this meeting also, there is no admission of the liability by TSDISCOMs. On the other hand, the CMD of TSGENCO and TSTRANSCO reiterated that it has to recover Rs.12,500 crores from the State of Andhra Pradesh.

48. Thereafter, the 30<sup>th</sup> Meeting of Southern Zonal Council was held at Thiruvananthapuram on 03.09.2022. The issue relating to dues payable by power utilities of Telangana, to APGENCO was also discussed. The relevant extract of the minutes of the meeting reads as under:

**3. Dues of Rs.6015 crore to be paid by Power Utilities of Telangana to Andhra Pradesh towards Cost of Power supplied by Andhra Pradesh after State Bifurcation** (sponsored by Government of Andhra Pradesh).

**Secretary, ISCS** informed that the issue is regarding dues of Rs.6015 crore which are to be paid by the power utilities of Telangana to Andhra Pradesh towards the cost of power supplied. It was also informed that the Ministry of Power has issued an order in the matter and directed Telangana to pay the amount to Andhra Pradesh.

**Representative of Government of Telangana** stated that as per the minutes of the 12<sup>th</sup> Standing Committee meeting, the views of Telangana were to be heard at the time when the Government of India were to decide on the matter. He also pointed out that several representations were given by the State Government wherein it was requested that all the issues related to the bifurcation of power utilities of Andhra Pradesh and Telangana be considered in totality rather than just the power purchase dues and that these representations are still pending with the Ministry of Power.

**Special Chief Secretary, Government of Telangana** added that though it is a commercial

issue under the power purchase agreement, the Ministry of Power has issued a direction under the Andhra Pradesh Reorganisation Act, 2014, using the powers under Section 92 of the Act. He requested that using the same powers, the other issues which are raised by Telangana also need to be resolved because these issues are arising out of the bifurcation only unlike the issue of power dues which is a consequence of the PPA.

Thus, from perusal of the aforesaid extract, it is evident that in the aforesaid meeting also, there is no admission of the liability on behalf of State of Telangana.

49. Thus, from the material on record, the admission, if any, can be at best to be a qualified admission. The TSDISCOMs have not clearly or unambiguously admitted the quantum of amount payable by them to APGENCO on account of supply of electricity between the period from 02.06.2014 to 10.06.2017. The admission, if any, is conditional as the TSDISCOMs have insisted for total settlement of the amount either due to it or payable by it. The aforesaid admission in any case does not bind the TSDISCOMs as only a part of statement cannot be acted

upon relied against the petitioners. The issue (iii) is answered in the negative by stating that TSDISCOMs have not admitted the quantum of amount payable by them on account of electricity for a period from 02.06.2014 to 10.06.2017 and the aforesaid admission which is qualified does not bind TSDISCOMs.

***(xi) Issue (iv) Whether in a dispute requiring determination of sum due, principles of natural justice have to be followed and reasons have to be given in support of the order?***

50. In **CCT vs. Shukla and Brothers**<sup>25</sup>, the Supreme Court discussed the basic ingredients of principles of justice and importance of well reasoned order. It was held that the doctrine of *audi alteram partem* has three basic essentials, firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely must be granted an opportunity of being heard. Secondly, the authority concerned should provide a fair and transparent procedure and lastly, the

---

<sup>25</sup> (2010) 4 SCC 785

authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order.

51. A Constitution Bench of Supreme Court in **A.K.Kraipak vs. Union of India**<sup>26</sup> held that twin anchors on which principles of natural justice rest in the judicial process, (i) whether quasi-judicial or administrative in nature are *Nemo Judex In Causa Sua*, i.e., no person shall be a judge in his own cause as justice should not only be done, but should manifestly be seen to be done and (ii) *audi alteram partem*, i.e., a person affected by a judicial, quasi-judicial or administrative action must be afforded an opportunity of hearing before any decision is taken. It has further been held that as every organ of the State is controlled and regulated by the rule of law, there is a requirement to act justly and fairly and not capriciously and arbitrarily. It has further been held that when a complaint is made that principle of natural justice has been contravened, the Court must decide whether observance of that rule was necessary for fair and just

---

<sup>26</sup> (1969) 2 SCC 262

decision in the facts of the case. The aforesaid principles were referred to with approval in **Aureliano Fernandes vs. State of Goa**<sup>27</sup>.

52. It is a well settled legal proposition that unless a statutory provision either specifically or necessary implication excludes the application of principles of natural justice, because in that event Court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into provisions of a statute particularly when order has adverse civil consequences. (See **SAHARA (FIRM) Lucknow v. CIT**<sup>28</sup>). In **SBI v. Rajesh Agarwal**<sup>29</sup>, it was held that principles of natural justice have to be read into a statutory provision to save it from vice of arbitrariness so that a well reasoned order has to be passed. It was further held that principles of natural justice act as a guarantee against arbitrary action both in terms of procedure and substance by the quasi-judicial and administrative authorities.

---

<sup>27</sup> 2023 SCC OnLine SC 621

<sup>28</sup> (2008) 14 SCC 151

<sup>29</sup> (2023) 6 SCC 1



53. In **S.K.Bhargava vs. Collector, Chandigadh**<sup>30</sup>, it has been held that in a dispute requiring determination of a sum due, the principles of natural justice especially hearing the party from whom the amount is sought to be recovered must be followed. A fair and proper opportunity of hearing has to be given to the persons who may be affected by the order and reasons have to be assigned in support of the order which may be passed, which is the basic principle of natural justice. The principles of natural justice have to be complied with in letter and spirit. In **SBI vs. Rajesh Agarwal** (supra), the Supreme Court held that if there is a power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of that power. It has been held that every proceeding or order which entails civil consequences or affects a citizen should be strictly in accordance with principles of natural justice.

---

<sup>30</sup> (1998) 5 SCC 170

54. In **Nawab Khan Abbas Khan vs. State of Gujarat**<sup>31</sup>, the Supreme Court while placing reliance on landmark case of **Ridge vs. Baldwin**<sup>32</sup> held that the duty to hear, is a fundamental right and constitutional requirement and if an order is passed in violation of natural justice, the same is void. The aforesaid view was reiterated in **Mohd. Yunus Khan vs. State of Uttar Pradesh**<sup>33</sup>.

55. In **Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik**<sup>34</sup>, the Supreme Court held that reasons are the heartbeat of every conclusion, apart from being an essential feature of the principles of natural justice, that ensure transparency and fairness, in the decision making process. (See **Maya Devi vs. Raj Kumari Batra**<sup>35</sup>, **Sant Lal Gupta v. Modern Cooperative Group Housing Society Limited**<sup>36</sup>, **Union of India v. Talwinder Singh**<sup>37</sup>,

---

<sup>31</sup> (1974) 2 SCC 121

<sup>32</sup> 1964 AC 40

<sup>33</sup> (2010) 10 SCC 534

<sup>34</sup> (2010) 3 SCC 732

<sup>35</sup> (2010) 9 SCC 486

<sup>36</sup> (2010) 13 SCC 336

<sup>37</sup> (2012) 5 SCC 480

**Union of India v. Ravinder Kumar<sup>38</sup> and Union of India v. Kumho Petrochemicals Limited<sup>39</sup>).**

56. Section 92 of the 2014 Act confers a statutory power to issue guidelines, directions or orders. The action of Central Government is governed by rule of law and it is under an obligation to act justly and fairly. The Central Government can pass an order which may have adverse civil consequences. On plain reading of Section 92 of the 2014 Act, it is axiomatic that it does not neither expressly or by necessary implication, exclude the principles of natural justice, therefore, the principles of natural justice have to be read into Section 92 of the 2014 Act. The observance of principles of natural justice is necessary for a fair and just decision under Section 92 of the 2014 Act. In any case, the order or direction creates a civil liability for the petitioners, the observance of principles of natural justice is all the more necessary. Therefore, the issue (iv) is answered in the affirmative by stating that in a dispute

---

<sup>38</sup> (2015) 12 SCC 291

<sup>39</sup> (2017) 8 SCC 307

requiring determination of amount due, the principles of natural justice have to be followed.

***(xii) Issue (v): Whether the order dated 29.08.2022 passed by the Central Government under Section 92 of the 2014 Act is vitiated in law as the same has been passed without affording an opportunity of hearing to TSDISCOMs?***

57. The proceedings under Section 92 of the 2014 Act were initiated on the basis of the communication dated 14.07.2021 sent by Chief Minister of Andhra Pradesh titled as “Non-payment of power dues of Rs.6111.88 crores by Government of Telangana/Power Discoms” for supply of power by APGENCO to Telangana DISCOMs for a period from 02.06.2014 to 10.06.2017. The Central Government was requested to deduct the amount from Union Devolutions of Government of Telangana and to settle the dues. Thereafter, a meeting of the representatives was held on 08.11.2021. The issue was discussed in the meeting of the committee held on 25.01.2022 under the Chairmanship of Secretary, Ministry of Finance. We have

already referred to the meetings of the committee held from time to time in the preceding paragraphs.

58. We have perused the note file produced by the learned Additional Solicitor General of India. The relevant extract of the minutes of meeting of Southern Zonal Council held on 28.05.2022 read as under:

**8. Dues of Rs.6015 crore to be paid by Power Utilities of Telangana to Andhra Pradesh towards cost of Power Supplied by Andhra Pradesh after State Bifurcation (Sponsored by Government of Andhra Pradesh).**

**Secretary, ISCS** informed that the issue is regarding the dues of Rs.6015.22 crores payable by Telangana utilities to the APGENCO for power supplied on the directions of GoI upto June, 2017. Government of Andhra Pradesh has requested GoI to prevail over the State of Telangana and arrange payment to APGENCO (or), alternatively GoI may direct the Telangana State to include Rs.6015.22 crore dues to APGENCO under Tranche II loan of Atma Nirbhar Scheme that is being availed by TSDISCOMs. Initially, the amount was Rs.6015.22 crores but now the amount has become slightly higher. In the 29<sup>th</sup> meeting of the

Southern Zonal Council, it was decided that the Union Home Secretary will call a meeting to resolve the issue.

It was also brought to the notice in the meeting that a committee constituted by MHA on dispute resolution had discussed the matter with the representatives of Governments of Andhra Pradesh and Telangana. On the recommendations of the Committee, matter was referred to the Law Ministry by the Ministry of Power and that Law Ministry has conveyed its opinion to M/o Power according to which since the matter is *sub judice* before a Court of Law and during pendency of dispute between Andhra Pradesh and Telangana in the Telangana High Court, it would not be appropriate for the GoI to issue any direction under Section 92 of the Andhra Pradesh Reorganisation Act, 2014.

It was also mentioned that Government of Andhra Pradesh has informed that APGENCO has decided to withdraw the writ petition from the High Court and they have requested GoI to issue direction in the matter.

**Representative of Government of Andhra Pradesh** intimated that Energy Secretary of the State has already sent letter informing the updated status to M/o Power.

**Representative of M/o Power** stated that the Ministry will take appropriate action once the letter of withdrawal of case by Government of Andhra Pradesh is received. In this context, **Special Chief Secretary, Government of Telangana** requested that they should also be heard in the matter and Energy Secretary of their State had sent communication regarding this.

The **Standing Committee** treated the item as **Pending** with the advice that Andhra Pradesh will share the letter with the M/o Power and also Telangana's views to be heard at the time when the GoI gives direction in this matter.

59. Thus, it is evident that the matter was to be taken up in the next meeting of Southern Zonal Council on 03.09.2022. However, the order was passed on 29.08.2022 by the Central Government. We have carefully perused the minutes of meetings recorded by Southern Zonal Council. We have also carefully perused the proceedings initiated by the Central Government under Section 92 of the 2014 Act. From perusal of the minutes of meetings of Southern Zonal Council as well as the note sheets in respect of proceedings under Section 92 of the

2014 Act, no notice was given to the State of Telangana or to TSDISCOMs before passing the impugned order. Similarly, from perusal of proceedings under Section 92 of the 2014 Act, it is evident that the same was initiated on the basis of communication dated 14.07.2014 addressed by the Chief Minister of State of Andhra Pradesh. Thereupon, a meeting of representatives of the Government of Andhra Pradesh and the Government of Telangana was held on 08.11.2021. The Chief Minister of State of Andhra Pradesh again sent a communication on 14.07.2021. Thereafter, on 27.01.2022 advice from the Ministry of Law and Justice was sought and the note sheets were recorded on 31.01.2022, 11.09.2022 and 08.07.2022. Thus, from perusal of the note sheets, it is evident that neither any notice nor any opportunity of hearing was afforded either to the State of Telangana or to TSDISCOMs before passing the order dated 29.08.2022.

60. Before passing the order dated 29.08.2022, no notice has been given either to State of Telangana or to TSDISCOMs with regard to its liability to pay the amount



due by it to APGENCO. Undoubtedly, TSDISCOMs are liable to pay the amount on account of power utilised by it from APGENCO for a period from 02.06.2014 to 10.06.2017. However, the quantum of the amount has to be determined after affording an opportunity of hearing to it.

61. The impugned order dated 29.08.2022 reads as under:

**ORDER**

**Subject: Direction for payment of power dues by Government of Telangana/Power DISCOMs to Government of Andhra Pradesh under Section 92 of the Andhra Pradesh Reorganisation Act, 2014 – Reg.**

\*\*\*\*\*

WHEREAS Andhra Pradesh Reorganisation Act, 2014, came into effect from 02.06.2014.

WHEREAS, Schedule XII (Section 92) of the Andhra Pradesh Reorganisation Act, 2014, *inter-alia* provides as under:-

*“C.Power  
2. Existing Power Purchase Agreements (PPAs) with respective DISCOMs shall continue for both on-*

*going projects and projects under construction.*

-----

*7. For a period of ten years, the successor State that has a deficit or electricity shall have the first right of refusal for the purchase of surplus power from the other successor State”.*

WHEREAS Power System Operation Corporation (POSOCO) in its letter 18.06.2014 conveyed that during the meeting held on 28.03.2014, APSLDC shall continue supply of power according to the schedule in force as on 02.06.2014. In accordance with the decision taken, APGENCO supplied power to TSDISCOMs.

WHEREAS APGENCO had supplied power to Telangana DISCOMs, post bifurcation from 02.06.2014 to 10.06.2017, under clause C.2 of Schedule XII of Andhra Pradesh Reorganisation Act, 2014. So this issue is related to power supply dues.

Representations have been received from State of Andhra Pradesh that Telangana has not paid for the power supplied to that State from 02.06.2014 to 10.06.2017.

WHEREAS there is no dispute regarding the amount to be paid for the power dues – the principal amount being Rs.3441.78 crores, and late payment surcharge being Rs.3315.14 crores (upto 31.07.2022) to be paid in addition to the

principal amount as per the applicable provisions.

Every right of one party entails a corresponding duty, right and duty are co-joined and as such Telangana must pay the power dues to Andhra Pradesh for electricity supplied to them under the orders of the Government of India issued under the Andhra Pradesh Reorganisation Act, 2014.

Therefore, Government of India, in exercise of powers vested in it under Section 92 of Andhra Pradesh Reorganisation Act, 2014, hereby orders that the successor State of Telangana shall pay the due amount as mentioned in this order to the successor State of Andhra Pradesh within a time frame of 30 days.

62. Thus, it is evident that the impugned order is cryptic and proceeds on the assumption that there is no dispute with regard to the amount to be paid for power dues to APGENCO. As stated supra, there is no clear and unambiguous admission on behalf of either State of Telangana or TSDISCOMs with regard to its liability to pay the amount due on account of electricity supply. The impugned order, dated 29.08.2022 suffers from the vice of

non-application of mind as well. In any case, it ought to have been appreciated that the dispute was with regard to quantum of amount payable by TSDISCOMs to APGENCO and therefore, the State of Telangana could not have been made liable to pay the amount as TSDISCOMs are separate distinct legal entities from the State Government. Therefore, the issue (v) is answered by stating that the order dated 29.08.2022 passed by the Central Government is vitiated in law as the same has been passed without affording an opportunity either to the State Government or to TSDISCOMs.

63. In view of the aforesaid conclusion, it is not necessary for us to examine the contention urged on behalf of the petitioners whether under Section 92 of the 2014 Act, Central Government has power to adjudicate the dispute and whether the same being a judicial power, the Central Government cannot encroach or usurp the same under Section 92 of the 2014 Act. In any case, it ought to have been appreciated that the powers under Section 92 could not have been invoked to adjudicate the

dispute of quantum of amount between a generating company, i.e., APGENCO and distribution companies of the State of Telangana, i.e., TSDISCOMs. The power under Section 92 of the 2014 Act can be invoked by the Central Government to issue guidelines, directions and orders and to issue principles to the successor States. Under Section 92 of the 2014 Act, the disputes between two States can be resolved. Therefore, Section 92 of the 2014 Act has no application to the obtaining factual matrix of these cases, as the dispute pertains between a generation company and distribution companies.

64. Now we may deal with the submissions made on behalf of APGENCO. In **S.J.S. Business Enterprises (P) Limited vs. State of Bihar**<sup>40</sup>, the Supreme Court while dealing with the issue of maintainability of the writ petition under Article 226 of the Constitution of India on the ground of suppression of material facts, has held that general rule of denial of relief is only applicable when the suppressed fact is a material one, something which

---

<sup>40</sup> (2004) 7 SCC 166

would have an effect on merits of the case. In **Arunima Baruah vs. Union of India**<sup>41</sup>, the Supreme Court has held that what would amount to suppression of material fact would depend on the facts and circumstances of the case. The solitary issue in these petitions is about the validity of the order dated 29.08.2022, under Section 92 of the 2014 Act. The non-mentioning of the meeting which was held on 08.11.2021 as well as non-mentioning of minutes of meeting dated 17.02.2022 which does not contain any unequivocal and clear admission on behalf of the petitioners, as already held supra, does not debar the petitioners from invoking the jurisdiction of this court under Article 226 of the Constitution of India. The petitioners have pleaded the relevant facts and therefore, contention that they are disentitled to any relief under Article 226 of the Constitution of India on account of suppression of facts is misconceived.

65. Article 131 of the Constitution of India deals with original jurisdiction of the Supreme Court. Article 131

---

<sup>41</sup> (2007) 6 SCC 120

provides that Supreme Court shall, to the exclusion of any other court, has original jurisdiction in any dispute- (a) between the Government of India and one or more States; or (b) between the Government of India and any State or States on one side and one or more other States on the other; or between two or more States, if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. In the instant cases, the dispute essentially relates to quantum of amount due from TSDISCOMs, namely Distribution companies to APGENCO, namely a generation company. The dispute is not in relation to two States. Therefore, the contention that the State of Telangana should approach Supreme Court under Article 131 of the Constitution of India does not deserve acceptance.

66. In the preceding paragraphs, it has already been held that there is no clear or unambiguous admission on behalf of TSDISCOMs with regard to its liability to pay the amount to APGENCO. Therefore, the order passed under

Section 92 of the 2014 Act, which has civil consequences could not have been passed without affording an opportunity of hearing to TSDISCOMs and therefore, it cannot be said that compliance with principles of natural justice, in the facts of the case, is an empty formality. The aforesaid submission made on behalf of APGENCO does not deserve acceptance.

**(xiii) CONCLUSION:**

67. For the aforementioned reasons, the impugned order dated 29.08.2022 passed by the Union of India is hereby quashed. However, liberty is reserved to parties to take recourse to such remedy as made available in law. The dispute is between the entities owned and controlled by the State of Telangana and the State of Andhra Pradesh. In the facts of the cases, in our opinion, it is eminently desirable that the dispute between them is resolved amicably, preferably through mediation. We hope and trust that State of Telangana and its distribution companies and the State of Andhra Pradesh and its



generating company make an earnest endeavour to sort out the disputes between them through mediation.

68. Accordingly, the writ petitions are disposed of.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

---

**ALOK ARADHE, CJ**

---

**N.V.SHRAVAN KUMAR, J**

19.10.2023

Note: LR copy to be marked.  
(By order)  
pln/vs