IN THE HIGH COURT OF JUDICATURE FOR THE STATE OF TELANGANA
HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA

WRIT PETITION No. 32607 OF 2011

05.08.2026

Between:

ITC Limited,
Rep. by its Divisional Chief Executive Officer
Sri Sanjay K. Singh

..... Petitioner

And

Northern Power Distribution Company of Andhra Pradesh Ltd.,
Rep. by its Managing Director & others

..... Respondents

O R D E R:

Petitioner is a company incorporated under the Companies Act and is engaged, *inter alia,* in the manufacture of paper and paperboards at its factory situated at Sarapaka, Burgampahad Mandal, Khammam District. It established and operates a 7.5 MW co-generation plant, two 21 MW co-generation/condensing plants, one 18.5 MW co-generation plant and one 14.8 MW co-generation power plant at its factory for generation of electricity along with process steam required for continuous manufacturing operations and other electricity needs. It also has three Diesel Generating Sets with an aggregate capacity of 3.416 MW as standby units. According to petitioner, these captive generating plants are sufficient to meet all its electricity requirements, while surplus electricity, whenever generated, is exported for sale through the grid. Petitioner has also contracted for a CMD of 5 MVA with the 1st respondent distribution licensee as an additional standby facility, and normally draws only the minimum consumption billing quantity, with substantial drawl beyond the minimum being infrequent.

1.1. Petitioner states that it is expanding its manufacturing facility by establishing an additional paper machine and a new 25 MW co-generation facility. For execution of the civil, structural and allied works relating to the new paper machine plant and the generating plant under construction, it entered into a contract with M/s Shapoorji Pallonji & Co. Ltd., under which they agreed to provide electricity free of cost to the contractor. The electricity used for construction activity was entirely generated from its own captive generating plants. It is further stated, during the course of construction work, the Divisional Engineer/DPE/Khammam of the 1st respondent conducted inspection at Petitioner's factory premises on 05.11.2011. Thereafter, they received Letter dated 29.11.2011 on 03.12.2011, purporting to be a provisional assessment order under Section 126 of the Electricity Act, 2003 (for short, 'the Act'), assessing Rs. 81,18,300/- for a period of six months on the allegation of 'usage of electricity for purpose other than sanctioned purpose'.

1.2. The impugned order alleges: (i) replacement of the failed R-phase CT; (ii) extension of supply from the Petitioner's captive generating plants to the paper machine plant and generating plant under construction; (iii) utilisation of electricity for a purpose other than the paper machine under the HT-I category for which the service connection had been sanctioned; (iv) re-sale of electricity to the outsourcing contractor, M/s Shapoorji Pallonji & Co. Ltd.; and (v) failure to obtain prior permission or consent from DISCOM or APPCC for the construction of the extension project, which was treated as amounting to theft of energy. On these allegations, respondents treated petitioner's actions as constituting unauthorised use of electricity under Section 126 of the Act and provisionally assessed electricity charges of Rs.81,18,300/- by applying the assessment rules contained in Appendix-XII read with Clause 9.3 of the General Terms and Conditions of Supply (GTCS). The amount was described as the 'cost of energy under un-authorised usage of supply'. According to petitioner, although the assessment appears to relate to the period from May to November 2011, the specific months are not expressly mentioned in the provisional assessment order.

2. In the counter filed on behalf of respondents, a preliminary objection was raised that Writ Petition is not

maintainable as an effective alternative remedy is available under the 2003 Act. Reliance in this regard, is placed on the judgment of the Hon'ble Supreme Court in ***Executive Engineer v. Sri Seetharama Rice Mill[1],*** wherein it was held that the High Court should ordinarily decline to exercise jurisdiction under Article 226 against orders passed under Section 126(3) of the Act. According to respondents, petitioner ought to have submitted objections to the provisional assessment and thereafter approached the Authorities under Section 42(5), which are expert statutory bodies, instead of bypassing the statutory remedy.

2.1. It is stated, petitioner operates a captive co-generation power plant for its paper and paperboard manufacturing unit and supplies surplus electricity to the State utilities/Distribution Companies through the open access mechanism. Such captive generation and supply are governed by Section 9 of the Act, which permits construction, maintenance and operation of captive generating plants and dedicated transmission lines, regulates supply through the grid, dispenses with the requirement of a licence for supply in accordance with the Act, and grants open access for carrying electricity from the captive generating plant to the place of use.

[1] (2012) 2 SCC 108

2.2. According to respondents, supply of surplus electricity by petitioner is governed by Section 42 of the Act, Regulation No.2 of 2005 (Open Access Regulations) and Regulation No.2 of 2006 (Interim Balancing Settlement Code). Regulation No.2 of 2005 requires payment of transmission charges, wheeling charges and other applicable charges by open access users. Clause 10(4) of Regulation No.2 of 2006 provides that energy injected by an Open Access Generator in excess of the scheduled capacity shall not be accounted for and only the scheduled capacity at the exit point shall be treated as supplied.

2.3. Respondents contend that petitioner admittedly supplied electricity generated from its captive generating plant to M/s Shapoorji Pallonji & Co. Ltd., which was executing the construction of the new generating station. Since M/s Shapoorji Pallonji & Co. Ltd. is a separate legal entity incorporated under the Companies Act, such supply is governed by Section 42 and the above Regulations and is liable for cross-subsidy surcharge, open access charges, SLDC charges and compliance with the statutory settlement mechanism. Respondents rely upon Section 2(70) of the Act, which defines 'supply' as sale of electricity to a licensee or consumer, and upon the judgment of the Hon'ble Supreme Court in ***A.P. Gas Power Corporation***

Ltd. v. A.P. State Regulatory Commission[2], wherein supply of electricity to a sister concern was held to constitute 'supply'. It is contended that M/s Shapoorji Pallonji & Co. Ltd. is a consumer and could obtain electricity only from the Distribution Licensees or through an Open Access Generator after complying with the Act, the Regulations and payment of applicable charges. Since Petitioner's captive generating plant remained connected to the grid, Clause 10(4) of Regulation No.2 of 2006 entitled Respondents to the balance energy not accounted for and vested corresponding rights in them.

2.4. Respondents further contend that during inspection, it was noticed that petitioner was supplying electricity to M/s Shapoorji Pallonji & Co. Ltd., the Engineering, Procurement and Construction contractor for the new power generating station. Such utilisation of electricity for an entity other than petitioner's paper and paperboard manufacturing unit is stated to be prohibited by law, detrimental to the interests of the Respondents and the Distribution Companies, and amounts to unauthorised use of electricity attracting liability under Clause 9 of the General Terms and Conditions of Supply, 2006. Reliance is also placed on paragraph 37 of the judgment in ***Sri Seetharama Rice Mill***, wherein the Hon'ble

[2] (2004) 10 SCC 511

Supreme Court held that the object of Section 126 is to prevent misuse or unauthorised use of electricity and consequent revenue loss. It is therefore, contended that petitioner is not entitled to relief under Article 226 of the Constitution of India.

2.5. Respondents further state that although establishment of a new generating project is governed by Section 7 of the Act, supply of electricity to M/s Shapoorji Pallonji & Co. Ltd. without complying with Sections 9 and 42 of the Electricity Act, 2003, Regulation No.2 of 2005 and Regulation No.2 of 2006 constitutes 'supply' under the Electricity Act, 2003 and amounts to unauthorised use of electricity. Consequently, the provisional assessment is stated to have been made strictly in accordance with law.

2.6. Respondents state that although a captive generating plant may utilise electricity for its own purposes and export or supply surplus electricity, such supply is permissible only upon compliance with Section 42 of the Act and the applicable Regulations. Since petitioner failed to comply with those requirements before supplying electricity to M/s Shapoorji Pallonji & Co. Ltd., the supply is unauthorised and attracts liability under Clause 9 of the General Terms and Conditions of Supply, 2006. As petitioner's generating plant is connected to the grid, the electricity generated must be accounted for in accordance with the Regulations and the Respondents acquire vested rights under Clause 10(4) of Regulation No.2 of 2006.

2.7. It is clarified that Respondents have never disputed Petitioner's utilisation of electricity for manufacture of paper and paperboards. However, supply of electricity to another company can be made only through dedicated transmission lines laid in accordance with the technical standards prescribed under the Act. Since M/s Shapoorji Pallonji & Co. Ltd. is a separate consumer, the lines used cannot be treated as dedicated transmission lines and were not approved by the Chief Electrical Inspector. Accordingly, the method adopted by the Petitioner is stated to be contrary to law.

2.8. Petitioner is not permitted in law to supply power *de hors* Section 9 and 42 of the Act, Regulation 2 of 2005 (open Access regulation) and Regulation 2 of 2006 (Interim balancing settlement code). Even if the said consumer is undertaking construction of new generating station, still the same would fall within the meaning of supply as defined under the Act and the interpretation of word supply as given by the Hon'ble Supreme Court. Therefore, the said acts would fall within the meaning of unauthorized use of Electricity. According to respondents, such transfer constitutes sale and supply of electricity without compliance with the Act. They contend that any person establishing a power generating station must obtain electricity either from the Distribution Licensees or through an Open Access Generator after complying with the statutory provisions and payment of applicable charges, and petitioner cannot claim unrestricted authority to supply electricity merely because it generated the same in its captive plant. It is contended that petitioner continued to enjoy standby supply from the Respondents and that Clause 10(4) of Regulation No.2 of 2006 confers vested rights upon the Respondents over the Petitioner's generated electricity in the absence of a valid scheduled consumer.

3. In reply to the preliminary objection regarding maintainability, petitioner states that no efficacious or effective alternative remedy is available against proceedings initiated without jurisdiction and contrary to law. Filing objections before the Assessing Officer would be an empty formality where the very initiation of proceedings under Section 126 of the Act is without jurisdiction. Petitioner distinguishes the judgment of the Hon'ble Supreme Court in ***Executive Engineer v. Sri Seetharama Rice Mill (supra)*** by contending that the said case related to excess demand of electricity supplied by the licensee beyond the sanctioned limit, whereas the present case concerns electricity generated from petitioner's own captive

generating plant and not supplied by the licensee. Therefore, the issue is whether Section 126 of the Act is applicable to electricity not supplied by the licensee and whether the Assessing Officer has jurisdiction to invoke the said provision. Petitioner further contends that the impugned provisional assessment order is barred by limitation as it was served on 03.12.2011 beyond the five-day period prescribed under Clause 9.2.2 of the General Terms and Conditions of Supply (GTCS).

3.1. Petitioner denies the allegations made by respondents and contends that electricity generated from its captive power plant was utilised only for construction of petitioner's own new power station within its premises. It is asserted that use of such electricity by M/s Shapoorji Pallonji & Co. Ltd., engaged as the contractor for construction of petitioner's new power plant, does not amount to sale or supply of electricity to the contractor, and no permission is required under any law for such utilisation. It is contended, the provisions relating to open access have no application to the present case and respondents' reliance on the open access provisions is incorrect and mischievous. Petitioner also denies respondents' contention that such utilisation of captive power is prohibited by law and reiterates that it is legally entitled to utilise electricity generated from its own captive generating plant for its own purposes.

4. Heard Sri K. Gopal Choudary, learned Senior Counsel for petitioner as well as Sri A. Chandra Shaker, learned Standing Counsel for Respondents 1 to 3. Learned Senior Counsel places reliance on the order dated 18.06.2024 of the High Court of Andhra Pradesh at Amaravathi, in similar set of facts.

5. On a consideration of the material available on record including the synopsis and written submissions submitted by learned Standing Counsel, it is to be seen, the principal issue for consideration is whether the proceedings initiated under Section 126 of the Electricity Act, 2003 against petitioner are legally-sustainable in respect of electricity generated from petitioner's own captive generating plant and utilised within its own premises for construction of its additional paper machine and new co-generation plant.

6. Learned Senior Counsel Sri Gopal Chowdary submits that Section 126 of the Act applies only to the electricity supplied or arranged to be supplied by the licensee and has no application to the electricity generated by petitioner itself in its own captive generating plants established at its factory premises and was utilised for construction of its own

expansion project. On the other hand, learned Standing Counsel submits that petitioner extended supply from captive generating plants to contractors and subsidiaries; such acts fall within 'supply' under Section 2(70) of the Act and amounts to unauthorised use under Section 126. Hence, the claim of petitioner that Section 126 does not apply to captive generation is misconceived as once connected to grid, regulations apply. In this connection, learned Standing Counsel relies on the judgment of the Hon'ble Supreme Court in ***AP Gas Power Corporation Ltd.*** to contend that even supply to sister concerns constitutes supply and in the present case, the supply was made to a different entity. It is further argued that Sections 9 and 42 of the Act mandate compliance with open access regulations; APERC Regulations 2 of 2005 and 2 of 2006 require payment of wheeling charges, cross-subsidy surcharge, SLDC charges and adherence to balance settlement code and Clause 10(4) of Regulation 2 of 2006 entitles respondents to account surplus energy and avail unscheduled injecting free of cost.

7. First and foremost, it is appropriate to note that in the impugned provisional assessment order, the nature of irregularity was recorded as 'electricity was used for purpose other than sanctioned purpose', hence, petitioner is guilty of

unauthorised use of electricity under Section 126 of the Act. In this connection, it is to be seen that unauthorised use of electricity falls under Section 126(6)(b)(ii) of the Act. The case of respondents is that petitioner has unauthorisedly extended supply from captive generating plant of M/s ITC Limited to the new paper Machine Plant – 7 and new power generation station of 1 x 25 MW under construction where there is no regular service connection /supply and the connected load of about 275 KW is being utilised for the purpose, which is nothing but re-sale of energy by way of extending supply to the outsourcing contractor M/s Shapoorji Palloni & Co. Ltd.. It is also stated that all the power generators / IPPs have to take prior permission or consent from the respective DISCOMs or from APPCC for utilisation of energy from the existing project for construction of extension project otherwise the unauthorised utilisation of energy tantamount to theft of energy. But, in the impugned order, respondents have not specified the provision which require prior permission / approval for utilisation of the energy generated by petitioner within its premises. According to respondents, the inspection revealed unauthorised extension of supply to construction activity and contractors; records prepared by inspection authority are presumed correct unless rebutted and in this case, petitioner did not establish that the report was not in accordance with law and they also failed to file any objection as mandated under law. Here, it is to be seen, it is not the case of respondents that petitioner is unauthorisedly using the electricity supplied by the 1st respondent nor is it their case that petitioner is availing power generated by an agency and injected to the grid maintained by the 1st respondent without any permission or approval as required under law / regulations.

8. Respondents have nowhere disputed the existence of petitioner's captive generating plants, their generating capacity, or the fact that electricity was generated by petitioner itself. Their entire defence proceeds on the footing that such electricity was supplied to M/s Shapoorji Pallonji & Co. Ltd., the Engineering, Procurement and Construction contractor. Thus, the foundational fact that the electricity originated from petitioner's own captive generating plant remains undisputed.

9. Section 126 of the Electricity Act, 2003 empowers the Assessing Officer to assess charges where there is 'unauthorised use of electricity'. The jurisdiction under Section 126 cannot be assumed merely because electricity is used in a manner which, according to the Distribution Licensee, violates certain regulatory provisions. Before invoking Section 126, the Authority must establish that the facts alleged fall within the

statutory expression 'unauthorised use of electricity'. Petitioner specifically contends that electricity was never drawn from respondents for construction activity but was generated from its own captive generating plant. Therefore, the very jurisdictional fact required for invoking Section 126 is seriously disputed.

10. Respondents have attempted to justify the proceedings by relying upon Sections 9 and 42 of the Act, Regulation No.2 of 2005, Regulation No.2 of 2006 and Clause 9 of the General Terms and Conditions of Supply. Section 9 of the Act governs captive generation, allowing any person or company to construct, maintain and operate a captive generating plant and dedicated transmission lines without needing a formal generation license. Section 42 outlines the duties of a power distribution licensee and mandates the rollout of open access, surcharges for alternative power sourcing and consumer grievance redressal forums. According to respondents, their allegation essentially is that petitioner failed to comply with the statutory mechanism governing open access and supply of electricity to another entity. Such alleged non-compliance may, if otherwise established, attract consequences contemplated under those statutory provisions. However, respondents have not demonstrated how every alleged breach of Sections 9 or 42 automatically becomes 'unauthorised use of electricity' under

Section 126. The jurisdiction under Section 126 cannot be enlarged by importing alleged violations of other provisions of the Act or Regulations.

11. Learned Standing Counsel for Respondents laid emphasis on the fact that M/s Shapoorji Pallonji & Co. Ltd. is a separate legal entity, therefore, use of electricity by the contractor amounts to supply of electricity to another consumer. However, petitioner's specific plea is that M/s Shapoorji Pallonji & Co. Ltd. was merely an Engineering, Procurement and Construction contractor executing construction of petitioner's own generating station within their premises and that electricity was provided free of cost under the construction contract. Petitioner has further asserted that there was neither sale nor supply of electricity to the contractor and the contractor utilised electricity on behalf of petitioner in executing their own project. Respondents have not produced any material to establish that contractor independently consumed electricity as a separate consumer or that electricity was commercially sold to it. Mere execution of construction work by a contractor does not, by itself, conclusively establish transfer or sale of electricity.

12. Respondents have repeatedly relied upon the legal status of M/s Shapoorji Pallonji & Co. Ltd. as an independent

company. However, corporate personality alone cannot determine the applicability of Section 126. The real question is the nature and purpose of the consumption. The pleadings indicate that electricity was utilised exclusively for construction of petitioner's own additional paper machine and new co-generation plant situated within their premises. Respondents do not dispute that construction related to petitioner's own project. Therefore, the mere fact that physical work was executed by a contractor cannot automatically convert such utilisation into unauthorised use attracting Section 126.

13. Another significant aspect is that the provisional assessment itself proceeds on the assumption that petitioner committed 'theft of energy', whereas the proceedings have admittedly been initiated under Section 126 dealing with unauthorised use of electricity. Theft of electricity is separately dealt with under Section 135 of the Act. Respondents themselves have chosen not to initiate proceedings under Section 135. This itself indicates that the allegations do not satisfy the statutory ingredients of theft and respondents have attempted to invoke Section 126 in circumstances which do not clearly fall within its scope.

14. Yet another argument by learned Standing Counsel is that Writ Petition is barred by availability of alternative

remedy under Section 127 of the Act. Reliance in this regard is placed on the judgment of the Hon'ble Supreme Court in ***Seetharama Rice Mill's case (supra)***. Petitioner has specifically distinguished the said judgment by contending that it concerned electricity supplied by the licensee and excess connected load, whereas the present case concerns electricity generated from petitioner's own captive generating plant. This distinction assumes significance because the present challenge is directed not merely against the quantum of assessment but against the very assumption of jurisdiction under Section 126. It is well-settled that where the action of the Authority is alleged to be wholly without jurisdiction, the existence of an alternative statutory remedy is not an absolute bar to the exercise of jurisdiction under Article 226. The challenge raised by the petitioner goes to the root of the competence of the Assessing Officer to invoke Section 126 itself.

15. In the light of the above discussion, this Court is of the considered opinion that respondents have failed to establish the jurisdictional foundation necessary for invoking Section 126 of the Act. Consequently, the impugned order is liable to be set aside.

16. The Writ Petition is therefore, allowed, setting aside the proceedings dated 29.11.2011. No costs.

17. Consequently, the miscellaneous petitions pending, if any, shall stand closed.

NAGESH BHEEMAPAKA, J

05th August 2026

ksld