

(2023) 04 TEL CK 0080
In the Telangana High Court
Case No : Writ Petition No. 14566 Of 2019

Dr M.Kumara Swamy

APPELLANT

Vs

State Of Telangana And Others

RESPONDENT

Date of Decision : 25-04-2023

Acts Referred:

Andhra Pradesh. Civil Services (Conduct) Rules, 1964 — Rule 3

Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 20(2)

Citation : (2023) 04 TEL CK 0080

Hon'ble Judges : Surepalli Nanda, J

Bench : Single Bench

Advocate : S.Satyanarayana Rao

Final Decision : Allowed

Judgement

1. Heard Mr Erigi Ganesh, the Learned Counsel appearing on behalf of the Petitioner and Mr R.Vinod Reddy, the Learned Standing Counsel appearing on behalf of the respondents.

2. This Writ Petition is filed praying to issue a Writ of Mandamus, declaring the action of the respondents in not releasing power supply to the petitioner factory situated in Sy.No.468, 471, 472 of Narasappaguda village Kottur Mandal, Ranga Reddy District as per his application, dated 28.02.2023 as wholly arbitrary illegal without jurisdiction and void and consequently direct the respondents to release power supply to the petitioner as requested in its application, dated 28. 02.2023 forth with.

3. The case of the Petitioner in brief, as per the averments made in the affidavit filed by the petitioner in support of the present writ petition, is as follows:

a) The petitioner has obtained lease of Ac.3-34 gts of land in Sy. No. 468, 471, 472 of Narasappaguda from the owners of the property on 12.11.2021. The petitioner wanted to establish a plastic recycling unit and started construction of

the unit and applied for power supply connection of 350 KVA on 28.02.2023 by paying the necessary fees and the application for the same has been acknowledged.

b) However, the respondents have not so far responded to the request for supply of electricity. As per Section 43 (1) of the Electricity Act, 2003, it mandates that the distribution licensee shall on the application by the owner or occupier of any premises give supply of electricity to such premises within one month after receipt of the application requiring such supply.

c) Upon enquiry with respondents' officials for not considering the application, the petitioner was informed that the previous lease holder M/s Shyam Baba Ferrow Alloys Private Limited has not paid the arrears of Electricity Charges and other charges.

d) Thereupon, the petitioner made enquires with his lessors about the arrears and the petitioner was informed that they hold a total extent of Ac.11.04 gts of land in Sy.No.469, 471, 472 of Narsappaguda Village and they have constructed go-downs in some area and during 2010 they have leased out Ac.6.35 gts to M/s Shyambaba Ferrow Alloys private limited, for which power supply of 5250 KVBA was obtained under Service No. MBN-880.

e) However, M/s Shyambaba Ferrow Alloys private limited has closed its operations during 2015 and the power supply was disconnected on 07.12.2015. The factory has adjusted the security deposit and paid the balance arrears of about Rs.77 lakhs and after disconnection of the C.C. bill for the month of December-2015 was raised and the said amount of about Rs.60 lakhs was also paid. They have also informed that the power was de-rated to 70 KVA but power was not released but raised C.C. bills from January, 2016 to April, 2016.

f) On the facts stated by the lessors, the petitioner made enquires, got legal advice and confirmed that the alleged dues if any are barred under section 56 (1) and (2) of the Electricity Act. Moreover, the law on limitation based on Section 56 is settled by the Judgment of the Hon'ble Supreme Court reported in 2011 SCC online page 870 in para nos. 14 & 15.

g) Alongside, this court also in the recent judgment in W.P.No.30913 of 2022, dated 21.04.2023 while referring to Section 56 (2) of the Electricity Act at para 14 held that, though the respondents have the authority to recover the dues of the previous owner from the existing owner or to deny fresh connection to the purchaser, it can be only be done with in the period of limitation prescribed under Section 56 (2) of the Electricity Act. This Court also referred two earlier judgments of this Court in W.P.NO.21179 of 2012 and W.P.NO.11676 of 2007 for the said propositions.

h) Therefore, the action of the respondents in not giving power supply to the petitioner is wholly arbitrary, illegal without jurisdiction and void. Hence this Writ Petition.

4. Counter Affidavit filed by Respondent No. 2, in brief, is as under:

a) Mr. Arun Kumar Goyal and Mrs. Megha Goyal are the owners of the land admeasuring Ac. 11.04 gts situated in Sy.No. 468, 469, 470, 471 and 472 of Narasapaguda Hamlet, Cheguru Village, Kothur Mandal and they have constructed godowns in the said land and the said persons have incorporated an Industry by name M/s. Sri Shyam Baba Ferro Alloys Pvt Ltd. Mr. Arun Kumar Goyal has leased the land admeasuring Ac 6.35gts in the above referred land to Ms. Sri Shyam Baba Ferro Alloys Pvt Ltd vide Registered Lease Deed dated 16.06.2010 bearing Doc. No.3734/2010 registered with the office of the Sub Registrar, Shadnagar.

b) M/s. Sri Shyam Baba Ferro Alloys Pvt. Ltd., have obtained a HT Service connection bearing SC No. RJN880 (Old SC No. MBM880) and the same was released on 15.06.2010 and industry commenced production from 01.08.2011 at Sy No.468, 469,470, 471, and 472 of Narsapaguda Hamlet, Cheguru Village, Kothur Mandal, Rangareddy District. The HT Agreement was signed by Mr. Arun Kumar Goyal in the capacity of Director and the contracted maximum demand of 5250 KVA was granted as per their application under HT Category - 1B (Ferro Alloys/ Steel industry).

c) Subsequently, the said company defaulted in paying the current consumption charges of Rs. 1,77,35,973/- and the service was disconnected on 07.12.2015 as per Section 56 of Electricity Act. The one-month notice was issued to the said company on 10.02.2016 and due to non-payment of dues the HT Agreement was terminated. At the time of termination of the agreement M/s. Shyam Baba Ferro Alloys Pvt. Ltd. bearing SC No. RJN880 was liable to pay of Rs.2,09,82,786/- as on 07.04.2016.

d) The said company was also liable to pay Rs. 1,15,48,249/- towards actual Fuel Surcharge Adjustment (without delay payment surcharge) as per the orders of the Honorable Supreme Court in CA. No. 5542 of 2016. The security deposit available with the Respondent company in respect of the service connection was Rs. 1,45,07,118/- and after adjusting/giving credit to the said company the total dues payable were Rs.2,09,82,786/- and same was communicated on 27.05.2016. The said company is also liable to pay the deemed energy charges of Rs.52,82,080/- which is subject matter of the pending Writ Petition bearing W.P No.27222 of 2012.

e) Mr. Arun Kumar Goyal in the capacity of the Director of M/s. Sri Shyam Baba Ferro Alloys Pvt. Ltd has approached the Respondent Company for restoration of supply under Sick Unit Revival Scheme. The Respondent Company considered the application and accorded the approval many times but the said company failed to clear the dues. The demand notices in respect of the dues were served on the Directors of the company i.e., Mr. Arun kumar Goyal and Mrs. Megha Goyal on 16.09.2021 but they failed to pay any amount.

f) The Respondents issued notices in Form - A dated 30.09.2019, Form - B dated

30.10.2019 and also a notice in Form - C was issued to the District Collector requesting the Revenue authorities to attach the properties of M/s. Shyam Baba Ferro Alloys Pvt. Ltd., under the Revenue Recovery Act, sell the immovable properties and transfer the sale proceeds to the Respondent company. In response to the request The Collector & District Magistrate, Ranga Reddy Dist., has instructed the Tahsildar, Kothur on 08.02.2023 to recover the Electricity Dues by means of arrears of land revenue under section 5 of the APSEB Recovery of dues Act 1984 in order to initiate action under R.R. Act., and also requested to direct the Registration/Revenue authorities/ not to alienate the immovable properties lying in the name of concerned Company/ Properties until obtaining the NOC from the TSSPDCL with regard to Electricity dues. The Directors of the said company inspite of receiving the above notices have not deposited any amount towards arrears of electricity dues.

g) The contents of the para 6 and 7 where it is alleged that the dues are barred by Limitation as per Section 56 (2) of the Electricity Act, 2003 are denied. Section 56 of the Electricity Act is extracted hereunder:

Section 56. (Disconnection of supply in default of payment):

(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest, - (a) an amount equal to the sum claimed from him, or (b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

h) The Directors of Ms. Sri Shyam Baba Ferro Alloys Pvt.Ltd have been repeatedly informed about the pending dues and demands were raised to pay the

amounts but they deliberately failed to pay the CC dues and FSA charges as per the Orders of the Honorable Supreme Court and repeatedly addressed letters to restore the power supply under the Sick Unit Revival Scheme, recently the Director of Ms. Sri Shyam Baba Ferro Alloys Pvt. Ltd., has requested the respondent company to restore the supply under sick unit scheme on 08.05.2023, accordingly on 13.06.2023 the respondent company has accorded the approval for restoration of supply under sick unit revival scheme and requested to pay the amount of Rs.4,82,28,4721- as on 30.06.2023 along with delay payment surcharge on FSA as per the Orders of the Honorable Supreme Court on 28.06.2023, but fail to pay the same.

i) The following letters and notices have been issued from the date of disconnection in the year 2016.

1. Terminated notice issued on 27.05.2016
2. On the demand to pay the FSA charges as per the orders of the Honorable Supreme Court the respondent company has sanctioned 6 Nos. installments vide letter dated 18.05.2017.
3. Deemed Energy Charges notice issued on 24.01.2019.
4. Terminated dues communicated on 09.08.2019.
5. Form-A issued under R.R.Act on 30.09.2019.
6. Form-B issued under R.R.Act on 30.10.2019.
7. Form-C issued under R.R.Act on 14.12.2019.
8. Dues notice issued to Directors on 16.09.2021.
9. Disconnection of link service notice issued on 31.05.2022.
10. The Collector & District Magistrate issue instructions to the Tahsildar to initiate action under R.R.Act for Realization of Electricity dues on 08.02.2023.
11. Sick unit revival scheme for restoration of supply demand notice issued on 28.06.2023.

The above notices clearly disclose that the Respondent company is repeatedly demanding the dues from May 2016 onwards hence the demand made is within the period of limitation.

j) Mr. Arun Kumar Goyal with an intention to deny the dues to the Respondent company has executed the Deed of Cancellation of lease dated 22.04.2019. The Lessor in the said cancellation Deed is Mr. Arun Kumar Goyal and the same person is representing the Lessee Company as the Director. The Dues in respect of the Service connection can be demanded and collected from Mr. Arun Kumar Goyal and Mrs. Megha Goyal by lifting the Corporate Veil as they are the owners of the land and also the Directors of Ms. Sri Shyam Baba Ferro Alloys Pvt. Ltd.

k) Mr. Arun Kumar Goyal and Mrs. Megha Goyal with a view to avoid payment of the dues of Service connection bearing Sc. No. RJN880 of M/s. Shyam Baba Ferro Alloys Pvt. Ltd claimed to have leased the property inclusive of a godown to M/s. Elife cycle Management which is the petitioner herein by unregistered Lease Deed. The property leased to the petitioner company and the two godowns are situated in Sy. No. 468,469,470,471 and 472 of Narsapaguda Hamlet, Cheguru Village, Kothur Mandal, Rangareddy District.

l) The petitioner has applied for a new service connection on 28.02.2023 for a contracted Maximum demand of 350 KVA to be located in the Survey numbers where the dues of service connection bearing Sc. No. RIN880 in the name of Ms. Shyam Baba Ferro Alloys Pvt., amounting to Rs. 10,64,53, 291/- are pending as on 30.06.2023. New service connection cannot be released in favour of the petitioner as per the following clauses of General Terms and conditions of Supply.

m) The Honorable Supreme Court has specifically held that the duty to supply electricity under Section 43 of the Electricity Act 2003 is not absolute and is subject to such charges and compliances stipulated by the Electric utilities as part of application for supply of electricity. As per the above referred clauses of General Terms and conditions of Supply, and the Electricity Regulatory commission (Electricity Supply Code) Regulation 2004 which has been enacted in terms of Section 50 of the Electricity Act, 2003 the Respondent company is entitled to refuse to release a new service connection in favour of the petitioner company until the dues including FSA charges and Deemed energy charges in respect of service connection bearing Sc. No. RJN880 in the name of Ms. Sri Shyam Baba Ferro Alloys Pvt. are paid. Hence, the Writ Petition is without merits and is liable to be dismissed.

PERUSED THE RECORD

5. Paras 11 and 12 of the counter affidavit filed by Respondent No.3, read as under :

"11. It is submitted that Mr. Arun Kumar Goyal and Mrs. Megha Goyal with a view to avoid payment of the dues of Service connection bearing Sc. No. RJN880 of M/s. Shyam Baba Ferro Alloys Pvt. Ltd claimed to have leased the property inclusive of a godown to M/s. Elifecycle Management which is the petitioner herein by unregistered Lease Deed. The property leased to the petitioner company and the two godowns are situated in Sy. Nos. 468,469,470,471 and 472 of Narsapaguda Hamlet, Cheguru Village, Kothur Mandal, Shadnagar Taluk, Rangareddy District.

12. It is submitted that the petitioner has applied for a new service connection on 28.02.2023 for a contracted Maximum demand of 350 KVA to be located in the Survey numbers where the dues of service connection bearing Sc. No. RJN880 in the name of M/s. Shyam Baba Ferro Alloys Pvt Ltd amounting to Rs. 10,64,53, 291/- are pending as on 30.06.2023. New service connection cannot be released in favor of the petitioner as per the following clauses of General Terms and conditions of Supply.

6. Reply affidavit filed by the Petitioner, in particular, paras 8, 11, 12, 13 and 14, read as under :

"8. The averments in para 8 of the counter affidavit relate to Syam Baba Ferrow Alloys about the revival of the unit and various notices under Revenue Recovery Act, and they have no relevance to the issue in the writ petition. The respondents contention that demand notices were issued within the period of limitation and the judgments relied on by the petitioner have no application in view of the demand notices being without any substance. Issue of demand notices will not save the limitation. I submit that the judgments referred by the respondent have no application as it is not a case of reconnection of earlier service connection by Syam Baba Ferrow Alloys.

11. With reference to the averments in para 11 of the counter affidavit, I submit that admittedly Arun Kumar Goyal and his wife together owned a total Ac.11.04 guntas and the extent leased out to Syam Baba Ferrow Alloys was Ac.6.35 gts and there still remains an extent of Ac.4.09 guntas and out of that extent the petitioner has taken on lease an extent of Ac.3.9 guntas with two godowns in it.

12. The contentions in para 12 of the counter affidavit are misconceived. The respondents have not explained as to how the clauses in conditions of supply are applicable to the petitioner.

13. The judgment of the Hon'ble Supreme Court in Srigdhaa Beverages has no application to the case of the petitioner as he is not the purchaser of the property of M/s Syam Baba Ferrow Alloys.

14. With reference to the averments in para 14 of the counter affidavit, I submit that the decision of the Supreme Court in K.C.Ninan case has no application to the facts of the petitioners case as the premises under lease do not belong to the consumer M/s Syam Baba Ferrow Alloys. In this Judgment in para 43 to 53, the Hon'ble Court held that the consumer who commences consuming power at the premises will continue to be consumer as long as the premises is connected to the power system and they will have to pay the demand charges and minimum charges. I submit that the service to Syam Baba was disconnected on 07-12-2015 and the agreement was also terminated and hence the judgment has no application.

7. CLAUSE 5.9.4.3 TERMINATION OF LT AGREEMENT AND HT AGREEMENT ON ACCOUNT OF DISCONNECTION READS AS UNDER :

"5.9.4.3: Termination of LT Agreement and HT Agreement on account of disconnection:

Where any consumer, whose supply is disconnected for non-payment of any amount due to the Company on any account, fails to pay such dues and regularise his account within three Months from the date of disconnection, the Company shall after completion of 3 months period, issue one Month notice for termination of the LT or HT Agreement, as the case may be. If the consumer still

fails to regularise the account, the Company shall terminate the Agreement with effect from the date of expiry of the said one-Month notice. Such termination shall be without prejudice to the rights and obligations incurred or accrued prior to such termination.

Provided that where the Company fails to issue notice or terminate the Agreement as prescribed above, the consumer shall not be liable to pay the minimum charges for the period beyond 4 months from the date of disconnection and the Agreement shall be deemed to have been terminated at the end of 4 months period from the date of disconnection.

Provided further that where the minimum period of the Agreement is not yet completed by the date of such termination, the consumer shall be liable to pay the minimum charges as otherwise applicable calculated up to the date of completion of the period of Agreement.

In the case of consumers who were sanctioned phased Contracted Demand and supply released for initial or intermediary phased demands, the consumer may seek deferment or cancellation of such of the phased demands which are scheduled beyond minimum period of Agreement, by giving three Months notice in advance or in lieu thereof pay three months charges towards such deferment and cancellation of such phased demands.

8. Clause 8.4 of GTCS, reads as under :

"Transfer of Service connection:

The seller of the property should clear all the dues to the company before selling such property. If the seller did not clear the dues as mentioned above, the company may refuse to supply electricity to the premises through the already existing connection or refuse to give a new connection to the premises till all the dues to the company are cleared."

DISCUSSION AND CONCLUSION:

DISCUSSION :

9. It is the specific case of the Petitioner that the Petitioner obtained lease of Ac.3.34 gts., of land in Sy.No.468, 471, 472 of Narasappaguda from the owners of the property i.e., Sri Arun Goyal and his wife on 12.11.2021 and the Petitioner wanted to establish a plastic recycling unit and started construction of the unit and applied for power supply connection of 350 KVA on 28.02.2023 by paying the necessary fees and the Respondents had even acknowledged the said application, but however, the Respondents did not respond to the request of the Petitioner for power supply connection. Aggrieved by the same the Petitioner approached the Court by filing the present writ petition.

10. Counter affidavit has been filed on behalf of Respondent No.2 and 3 by the 3rd Respondent herein and a specific plea is taken in the said counter affidavit that the Petitioner had applied for a new service connection on 28.02.2023 for a

contracted maximum demand of 350 KVA to be located in the survey numbers where the dues of service connection bearing SC.No.RJN880 in the name of M/s. Shyam Baba Ferro Alloys Pvt. Ltd., amounting to Rs.10,64,53,291/- are pending as on 30.06.2023 and further that as per clause 5.9.4.3 pertaining to termination of LT Agreement and HT Agreement on account of disconnection and as per Clause 8.4 of GTCS the Respondent Company is entitled to refuse the release of new service connection until the dues of the earlier service connection are paid and therefore the Writ Petition has to be dismissed.

CONCLUSION :

11. Section 43 of the Electricity Act, 2003 reads as under :

(1) [Save as otherwise provided in this Act, every distribution] licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

[Explanation.--For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.]

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

12. Section 56 of the Electricity Act, 2003, reads as under :

SECTION 56 DISCONNECTION OF SUPPLY IN DEFAULT OF PAYMENT

(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,--

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

13. The learned counsel appearing on behalf of the Respondents placed reliance on two judgments of the Apex Court reported in (1) (2020) 6 SCC 404 in TSSPDCL vs. Srigdhaa Beverages and (2) K.C.Ninan vs. State SEB (2023) SCC Online 663, dated 19.05.2023 in support of the specific plea that the Respondent Company is entitled to refuse to release a new service connection in favour of the Petitioner company until the dues including FSA charges and deemed energy charges in respect of service connection bearing SC.No.RJN880 in the name of M/s. Sri Shyam Baba Ferro Alloys Pvt., Ltd., are paid.

14. This Court opines that in view of the fact that the Petitioner had obtained lease of Ac.3.34 gts., of land in Sy.No.468, 471, 472 of Narsappaguda from the owners of the property Sri Arun Goyal and his wife on 12.11.2021, the Petitioner is the lessee of the subject premises from Sri Arun Goyal and his wife and not from Shyam Baba Ferro Alloys and therefore the Petitioner is an independent entity entitled for supply of power. The Petitioner at para 11 of the reply affidavit specifically contended that Arun Kumar Goyal and his wife together owned a total

Ac.11.04 gts., and the extent leased out to Shyam Baba Ferro Alloys was Ac.6.35 gts., and there still remains an extent of Ac.4.09 gts., and out of that extent the Petitioner has taken on lease an extent of Ac.3.09 gts., with two godowns in it and that the Respondents are laboring under misconception that the Petitioner is the lessee of the premises from Shyam Baba Ferro Alloys but in fact the Petitioner is an independent entity entitled for supply of power and has got nothing to do with the service connection No.RJN-

880. There seems to be force in the said plea of the Petitioner in view of the fact that the Hon'ble Apex Court in its judgment in K.C.Ninan vs. Kerala State Electricity Board reported in 2023 SCC online 663 decided on 19.05.2023 at para 43 to 53 observed that the consumer who commences consuming power at the premises will continue to be consumer as long as the premises is connected to the power system and they will have to pay the demand charges and minimum charges and the counter affidavit filed by Respondent No.3 at para 4 clearly observed that the said service to Shyam Baba was disconnected on 07.12.2015 as per Sec.56 of the Electricity Act and the HT Agreement was also terminated by issuing one month notice on 10.02.2016 due to non-payment of dues. Therefore this Court opines the said judgment has no application to the facts of the present case. A bare perusal of the judgment of the Apex Court in TSSPDCL vs. Srigdhaa Beverages reported in (2020) 6 SCC 404 relied upon by the Counsel for the Respondent also has no application to the case of the Petitioner herein since the Petitioner is not the purchaser of the property of M/s.Shyam Baba Ferro Alloys.

15. This Court opines that in the present case the request of the Petitioner is not for reconnection of earlier service connection held by Shyam Baba Ferro Alloys but is a case of release of power supply to the Petitioner as requested in Petitioner's application dated 28.02.2023 and this Court opines that the Petitioner is entitled for the said relief for the following reasons :

16. In the present case, arrears pertaining to M/s Shyambaba Ferrow Alloys Private Limited are relating to the period prior to 2015 and the said power supply even as per the counter affidavit filed by respondent No.3 (para 4) was disconnected on 07.12.2015 itself.

a) The law of limitation based on Sec.66 of the Electricity Act is settled by the Judgment dated 05.10.2021 of the Apex Court reported in (2011) SCC Online page 870 in M/s Prem Cottex v Uttar Haryana Bijli Vitran Nigam. The Hon'ble Apex Court at paras 14 and 15 of the said judgment observed as under :

14. But a careful reading of Section 56 (2) would show that the bar contained therein is not merely with respect to disconnection of supply but also with respect to recovery. If Sub-section (2) of Section 56 is dissected into two parts it will read as follows:

(i) No sum due from any consumer under this Section shall be recoverable after the period of two years from the date when such sum became first due: and

(ii) The licensee shall not cut off the supply of electricity

15. Therefore, the bar actually operates on two distinct rights of the licensee, namely. (i) the right to recover; and (ii) the right to disconnect. The bar with reference to the enforcement of the right to disconnect is actually an exception to the law of limitation. Under the law of limitation, what is extinguished is the remedy and not the right. To be precise, what is extinguished by the law of limitation, is the remedy through a court of law and not a remedy available, if any, de hors through a court of law. However, section 56 (2) bars not merely the normal remedy of recovery but also bars the remedy of disconnect in. This is why we think that the second part of section 56(2) is an exception to the law of limitation”.

b) The Apex Court in the judgment dated 02.09.2011 reported in (2011) 12 SCC page 314 in Chandu Khamaru vs. Nayan Malik, at para 7 considered the legal obligations mandated by Sections 42 and 43 of the Electricity Act and held that these provisions make it clear that a distribution licensee has a statutory duty to supply electricity to an owner or occupier of the premises as they have statutory right to apply for and obtain such electricity supply from distribution license.

c) The Apex Court in the judgment dated 15.12.1995 reported in (1996) 2 SCC 549 in Chameli Singh and Others vs. State of UP and Another in its judgment observed at para 8 as under :

“Right to shelter, therefore includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation and other civic amenities like roads etc., and therefore right to shelter does not mean a mere right to a roof over one’s head but right to all the infrastructure necessary to enable a human being to live and develop as a human being”.

d) This Hon’ble Court in its recent judgment in W.P.No.30913 of 2022, dated 21.04.2023 while referring to Section 56(2) of the Electricity Act at para 14 observed as under :

“Thus, though the respondents have the authority to recover the dues of the previous owner from the existing owner or to deny fresh connection to the purchaser, it can only be done within the period of limitation prescribed under Section 56(2) of the Act. Admittedly, in this case, property was purchased in the public auction and the official liquidator has given public notices with regard to the liquidation process and calling for objections with regard to the same. Admittedly, the respondents have not filed any claim petition before the official liquidator within the prescribed period and therefore the liquidation process has been completed. The petitioners therefore cannot be considered as having the link service with the previous owner and raising the demand after a period of nearly more than ten years is clearly barred by limitation. This Court, in the cases relied upon by the learned counsel for the petitioners, have clearly held so. Further, the Hon’ble High Court of Andhra Pradesh at Amaravathi has also gone

into the issue as to whether a claim which was not raised during the liquidation process, can be raised subsequently and following the decision of the Hon'ble Supreme Court in the case of Ghanashyam Mishra and Sons Private Limited (cited supra) it was held that such a claim is not permissible.

17. This Court opines that Electricity being a basic necessity, is an integral part of right to life as enshrined under Article 21 of the Constitution of India, therefore as long as an individual is in possession of the property in the capacity of owner or occupier he or she is entitled for supply of electricity and he or she cannot be deprived of electricity since it is settled proposition of law that electricity is one of the fundamental rights for existence and protected under Article 21 of the Constitution of India.

18. The preamble to the constitution of India guarantees right of every person to justice, social, economic and political. When socio and economic justice is the mandate of the constitution of India it is a travesty of justice to deny electricity to the Petitioner and in fact access to electricity should be construed as human right.

19. Taking into consideration of the above said facts and circumstances of the case and observations of the Apex Court in the various judgments (1) Judgment dated 05.10.2021 of the Apex Court reported in (2011) SCC Online page 870 in M/s Prem Cottex v Uttar Haryana Bijli Vitran Nigam (2) judgment dated 02.09.2011 reported in (2011) 12 SCC page 314 in Chandu Khamaru vs. Nayan Malik (3) judgment dated 15.12.1995 reported in (1996) 2 SCC 549 in Chameli Singh and Others vs. State of UP and Another (4) judgment in W.P.No.30913 of 2022, dated 21.04.2023 (referred to and extracted above) and in view of the discussion and conclusion arrived at as above, since electricity is a basic amenity in life and an integral part of right to life within the meaning of Article 21 of the Constitution of India and taking into consideration Section 42, 43 and 56 of the Electricity Act, 2003 this Court opines that the Electricity Act, imposes a statutory duty on the Respondents herein to provide electricity connection to the Petitioner within one month after receipt of the application requiring such supply. The writ petition is accordingly allowed as prayed for and the Respondents are directed to consider the application of the petitioner for power supply connection of 350 KVA dated 28.02.2023, in the light of the observations of the Apex Court, in various judgments referred to and extracted above and make every endeavor to provide electricity to the Petitioner without any delay. The respondents are directed to release electricity power supply to the Petitioner Plastic Recycling Factory situated in Sy.No.468, 471, 472 of Narasappaguda Village, Kothur Mandal, Ranga Reddy District, within a period of one week from the date of receipt of the copy of the order.

Miscellaneous petitions, if any, pending shall stand closed.