

BEFORE THE VIDYUT OMBUDSMAN

::Present::

C.Ramakrishna

Date: 26-03-2014

Appeal No.70 of 2013

Between

Sri. B.Venkanna (Proprietor),
M/s. Sri. Annapurna Agro Industries,
Para Boiled Rice Mill,
H.No.11-51, Main Road,
Station Ghanpur-Village & Mandal,
Warangal - Dist - 506 144.

... Appellant

And

1. The Assistant Engineer, Operation, Station Ghanpur.
2. The Assistant Divisional Engineer, Operation, Ghanpur.
3. The Divisional Engineer, Operation, Jangoan,
4. Senior Accounts Officer, Operation Circle, Warangal.
5. The Superintending Engineer, Operation, Warangal.

... Respondents

The above appeal filed on 25-05-2013 has come up for final hearing before the Vidyut Ombudsman on 22-03-2014 at Warangal. The appellant as well as the respondents were present. Having considered the appeal, the written and oral submissions made by the appellant and the respondents, the Vidyut Ombudsman passed the following:

AWARD

2. The appeal arose out of the grievance of the appellant that the respondents levied R & C penalties for the full month of September, 2012 instead of levying them on a proportionate basis.

3. On 25-05-2013 the appellant filed his appeal stating that, for the months of September, 2012 to November 2012 i.e., for 3 months, a penalty for Rs. 3,34,480 was levied; that his industry is located in Station Ghanpur on a mixed feeder; that the feeder experienced 6 to 8 hrs of load relief in addition to a couple of hours “line clear” taken by the respondents every day for maintenance; that therefore there is no continuous supply on the feeder; that hence R & C restrictions for consumers like him on such feeders should never have been allowed to be imposed; that the bill issued by the respondents for September, 2012 is wrong to the extent that instead of levying PDL and PCL charges for 10 days (in view of the fact that meter reading is taken on 22nd of every month) they were levied for the full month; that the CGRF, Warangal has also not appreciated the issue and did not give the relief sought for and that hence they are coming in appeal against the order of the CGRF; that the PDL and PCL charges should be waived for the entire period. The appellant enclosed a copy of the correspondence between the ADE, Station Ghanpur and the DE, Jangoan showing the particulars of load relief timings and incoming supply failure timings for the period 01-09-2012 to 30-11-2012 on the feeder. _

4. A notice was issued for hearing the case on 22-03-2014. The respondent SAO submitted his written submissions during the hearing stating that orders were issued by the Hon’ble APERC for implementing the R & C measures w.e.f 12-09-2012 for restricting power used by consumers; that the appellant utilised

power supply during R & C period beyond the permissible limit and hence the PDL and PCL charges were levied in their bills; that for the months of September to November 2012 no separate dispensation is there for consumers existing on mixed feeders; that exemption from penalties for non-compliance to R & C measures is not possible because of the fact that the consumer exists on a mixed feeder; that the burden on consumers existing on mixed feeders came to be reduced on 23-01-2013; that PDL and PCL charges for the month of September, 2012 were calculated as per the guidelines issued by their corporate office; that any deviation from calculation already made would lead to contravention of the directions issued by the Hon'ble APERC; that during the hearing conducted by the CGRF, the consumer had agreed to pay the penalties for the months of 10/2012 and 11/2012; that the amendment dated 22-01-2013 issued by the Hon'ble APERC is applicable prospectively; and that the appellant had not contested levy of FSA charges during the hearing before the CGRF. He enclosed copies of instructions issued by their corporate office and the calculation sheet for the bills raised.

5. The appellant is a Para Boiled Rice Mill industry located in Station Ghanpur Village having a CMD of 190 kVA. Though the appellant contested the levy of PDL and PCL charges for the months of October, 2012 and November, 2012 along with those of September, 2012 and also levy of FSA charges, he has not pressed for relief of PDL and PCL charges for October and November months and also regarding levy of FSA charges. His basic contention remains that for the month of September, 2012 the levy of PDL and PCL charges was not done on a proportionate basis.

6. Though the appellant was further pleading for total waiver of R&C penalties on the ground that his is an industry that is located in a rural area on a mixed feeder, during the course of the arguments he came to realize that the respondents are ready to release him a dedicated feeder, if he applies for one and pays for the same. Therefore, nothing stops him from having a dedicated feeder of his own provided he is willing to pay for the same and apply for it.

7. The contention of the appellant about lot of load relief being there on the feeder and also about incoming supply failures being there on the feeder are found to be true. They are supported by the records produced. Thus, it is true that there is no continuous supply on the feeder. But his contention that because of this, R&C measures should not be made applicable to consumers located on such feeders is found untenable, because nothing prevented heavy consumers like them from asking for and applying for dedicated feeders of their own. The Hon'ble Commission had taken into account the existence of various types of consumers, and had accordingly approved an R&C dispensation keeping the available power in view. His further contention that only proportionate penalties should have been levied for the month of September is found to be having substance. When the R&C dispensation came into existence from 12-09-2012, the levy of PDL and PCL charges should have been proportionately applied for consumers.

8. To the extent that the CGRF also has not gone into the issue of proportionate levy, its order is found to be wanting and hence the same is to be set aside.

9. The respondents' contention that no separate dispensation existed for the months of September 2012 to November 2012 is correct. Their further contention that exemption from levy of PDL and PCL charges during the R&C period for those of the consumers who are existing on mixed feeders -- especially during the period September, 2012 to November, 2012 -- is found to be correct, as the relaxed dispensation for such consumers has been authorized by the Hon'ble APERC only on and from 23-1-2013. The guidelines issued by their corporate office (a copy of which was made available during hearing) are found to be wanting to the extent that they do not cover proportionate levy of PDL and PCL charges for the month of September, 2012. Hence, their Corporate Office saying that they have obtained oral clarifications from the Hon'ble Commission before giving their guidelines cannot be given credence to. The Hon'ble Commission never gives any oral clarifications; it will always give clear directions in writing. Hence, it cannot be said that the Hon'ble Commission had authorized the levy of PDL and PCL charges for the entire month of September, 2012. Their contention that the appellant has agreed for FSA charges and R&C penalties for the months of October, 2012 and November, 2012 is borne by the appellant's confirmation during the hearing.

10. Having gone through the appeal papers filed, the written submissions of the respondent SAO and the oral submissions made by the respondents as well as appellant during hearing on 22-03-2014, it is found that no separate dispensation existed for consumers on mixed feeders during the period September, 2012 to November, 2012. Waiver of R & C penalties based on the ground that the consumer existed on a mixed feeder cannot hence be considered. A perusal of the amendment order issued by the Hon'ble APERC on 22-01-2013 reveals that the order is effective only prospectively. Hence the

relief that was extended by this amendment order cannot be made applicable for the months of September, 2012 to November, 2012. The guidelines issued by the Corporate Office of APNPDCL, to the extent that they appear to be authorizing the levy of PDL and PCL charges for the entire month of September, 2012 are read down. The appellant's agreement about liability to FSA charges and R&C penalties for the months of October, 2012 and November, 2012 are taken note of.

11. Hence it is hereby ordered that:

- a. The respondent officers shall recalculate the PDL and PCL charges for the month of September, 2012 on a proportionate basis and issue a revised bill accordingly to the appellant herein.
- b. As the Hon'ble APERC decided to waive R & C penalties to the extent of 50% vide their order dated 08-08-2013, the respondent officers shall take this aspect also into consideration and revise the bills relating to R & C penalties of this consumer accordingly.
- c. On such revised bill being raised for payment, the appellant herein shall pay the same without further protest.
- d. The CGRF's order is set aside.

12. Within 30 days from the date of receipt of this order, the appellant shall communicate his acceptance of this award in writing to the undersigned duly serving copies of the same on the respondents. The respondent officers shall affect the revision of the bills directed as supra within 15 days from the date of receipt of communication of acceptance of this award from the appellant herein. The respondents shall report compliance about the implementation of the order within 15 days from there after.

This order is corrected and signed on this 26th day of March, 2014.

VIDYUT OMBUDSMAN

To

1. Sri. B.Venkanna (Proprietor), M/s. Sri. Annapurna Agro Industries,
Para Boiled Rice Mill, H.No.11-51, Main Road, Station
Ghanpur-Village & Mandal, Warangal - Dist - 506 144.
2. The Assistant Engineer, Operation, Station Ghanpur.
3. The Assistant Divisional Engineer, Operation, Ghanpur.
4. The Divisional Engineer, Operation, Jangoan,
5. Senior Accounts Officer, Operation Circle, Warangal.
6. The Superintending Engineer, Operation, Warangal.

Copy to:

1. The Chairperson, CGRF, APNPDCL, 'Vidyut Bhavan', Nakkalagutta,
Hanamkonda, Warangal - 506 001.
2. The Secretary, APERC, 11-4-660, 5th Floor, Singareni Bhavan, Red
Hills, Hyderabad-04.