



**BEFORE THE VIDYUT OMBUDSMAN
Andhra Pradesh & Telangana**

:: Present ::

C. Ramakrishna

Date: 13-09-2014

Appeal No. 103 of 2013

Between

**M/s. Paramatma Cottons (P) Ltd, NH 7 Road, VIII, Rampur (Rural),
Adilabad Dist - 504 001**

... Appellants

And

- 1. The Superintending Engineer, Operation, TSNPDCL, Bhuktapur, Power House Compound, Adilabad 504 001.**
- 2. The Assistant Divisional Engineer (Rural), Operation, TSNPDCL, Adilabad.**
- 3. The Divisional Engineer, Operation, TSNPDCL, Adilabad**
- 4. The Senior Accounts Officer, TSNPDCL, Adilabad.**

... Respondents

The above appeal filed on 23-09-2013 has come up for final hearing before the Vidyut Ombudsman on 09-09-2014 at Hyderabad. The appellants, as well as respondents 3 & 4 above were present. Having considered the appeal, the written and oral submissions made by the appellants and the respondents, the Vidyut Ombudsman passed the following:

AWARD

2. The appeal arose out of the grievance of the appellants that denial of seasonal tariff benefit to them by the respondents is contrary to law and also the supply agreement between them the respondent DISCOM.

3. The appellants stated in their appeal that theirs is a seasonal industry, the seasonal period being November to May; that they have entered into agreement with the DISCOM on 19-11-2011 clearly mentioning the season as November to May and that the agreement so entered into allows them to draw 500 kVA of electricity during the season period and a minimal amount during off-season period; that the appellants operated their plant according to the agreement; that they received a notice dated 25-03-2013 saying that it is assumed that the main plant was functioning in the off season period and as such the benefit of off season tariff is disallowed; that they have replied to the said notice saying that they had not operated the main plant in the off season period i.e., from 01-06-2013 to 31-10-2012; that a copy of the MRI dump which would clearly show whether or not they have consumed during off season period, even when asked for by them, is not being provided by the respondents; that the respondents have demanded an amount of Rs. 5,72,238/- towards the disallowed seasonal tariff benefit; that the amount was paid by them under coercion in protest; that while the billing cycle could be in the middle of the month, the rates applicable to the season are on the whole month basis and therefore, the usage of the plant from 18-05-2012 to 31-05-2012 is during the season; that the assumption that the last bill reading date means the end of the season is not correct; that the CGRF had erred in holding that the season period would end on 18-05-2013, the last meter

reading date in the season period; that clause 2.2.39 of the GTCS clearly defines the month as a calendar month and that for the purpose of billing, a month can be considered as the period between two consecutive meter readings; that the assumption by the CGRF that the appellants have used the plant during the off season period based merely on the finding that more number of units have been used in the particular billing cycle is wrong and is liable to be rejected; and that therefore, the order of the CGRF be set aside, the action of the respondents in disallowing the seasonable benefit be struck down and they be directed to refund, with interest, the said amount collected under coercion. They enclosed lot of material in support of their contention.

4. Notices were issued for hearing the matter directing the respondents to file their written submissions, if any, in the matter. But for the respondent ADE, no other respondent filed any written submission. The respondent ADE stated in his written submission that off season period for the appellants is from June to October; that the service had recorded a maximum demand as shown below:

Recorded Consumption as per the MRB with MF for Units & MD = 80					
Date	CMD in kVA	RMD in kVA	Consumption		
			in kWh	kVAh	Lighting
23-06-2012	500	214.14	29152	31386.4	5022
23-07-2012		17.49	1833.6	3322.4	532
24-08-2012		14.98	1472	2397.6	384
24-08-2012		16.6	1196.8	1592	255
23-09-2012		13.1	483.2	725.6	116
19-10-2012		153.36	3212.8	3799.2	608

5. The respondent ADE went on to submit that as per the above RMD recorded during the off season period, a 15 days shortfall notice was issued to the consumer on 25-03-2013 and was included in the CC bill; that the

consumer approached the CGRF and that the CGRF also advised the consumer to pay the shortfall; that based on the above figures, it is clear that the consumer had used the supply during off season period and hence the seasonal benefit is to be disallowed to them. He enclosed along with his written submissions some documents.

6. During the course of the hearings, the appellants, while reiterating their contentions, stressed on two basic points. One is that their season commences on the first day of the month of November and closes on the last day of the month of May. Therefore, they contend that, there is nothing wrong in running their machinery by using the electricity supply from 18-05-2012 to the end of May, 2012. The appellants contend that the respondents are wrong in interpreting the meter reading date in month of May, 2012 as the end of season. Their contention is that the season comes to a close only on 31-05-2012 and not on any day prior to that. Therefore, they argue, that the consumption made by them from 18-05-2012 to 31-05-2012 cannot be construed as consumption during off season period. They say that it is the consumption for this period which is getting reflected in the meter reading book dated 23-06-2012 and that therefore, there is no usage of main plant during the off season period that commenced on 1st June and ended with the meter reading date on 23-06-2012. They contended that what is reflected in the meter readings dated 19-10-2012 is only their consumption for the off season period and 3212 kWh units or 3799 units in kVAh is not even one tenth of their regular consumption during the season period and hence it is clear that they have never used their main plant during off season period.

7. The second point the appellants stressed was that the consumption recorded by their service during the off season period had never gone beyond the permissible limits to be subjected to any penal action by way of withdrawal of seasonal benefit. The spike in consumption that is seen in the billing month commencing in October, 2012 and ending in November, was on account of their servicing their machinery before the commencement of the next season and that they have not otherwise operated their machinery at all in the off season period. They argued that their averments can be supported by the MRI dump that can be produced by the respondents.

8. The respondents contended that the 153.36 kVA demand that is recorded in the MRB dated 19-10-2012 could only be due to the appellants using the main plant during off season period. This authority is not convinced with this argument. When the units in kWh and kVAh are less than a tenth of the usual consumption of the appellants during the season period, such an inference cannot be drawn based merely on the recorded demand. The respondents were unable to produce the MRI data that the appellants have been requesting for. Instead, what they produced was only a billing report which does not contain the day wise details of the electricity consumption in the service connection of the appellants. During the course of the hearings also, this authority directed the respondents to come up with their MRI dump, to no avail. By a mere submission of some total figures, the respondents tried to convince this authority that the appellants have used their machinery during off season period.

9. The respondents' interpretation that the period between two consecutive meter readings shall also be regarded as a month for the purpose

of billing the charges and hence the consumption made by the appellants from the meter reading date to the end of the month necessarily falls out of the season period, is wrong. Month means a calendar month. Once the agreement between the DISCOM and the consumer shows that the season period is between November and May of the consecutive year, it means that the season period is from 1st of November to the 31st May of the consecutive year. The meter of the consumer might have been read on 18-05-2014 or any other date prior to 31-May-2012 as per the billing practice of the DISCOM. That does not make period from the meter reading date to the end of May, 2012 as an off-season period. Reliance is placed on Section 9 of General Clauses Act, 1897 which defines commencement and termination of time as:

(1) In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

(2) This section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.

10. Clause 14 of the agreement between the DISCOM and the consumer shows that the season period is from November to May. Whether or not the said period will include the period from 1st of November to the 31st day of the month of May can be decided by looking at section 9 of the General

Clauses Act referred above. A reading of section 9 of the General Clauses Act makes it clear that in defining a period, the beginning date of the month that commences the period is taken and the ending date of the period that ends the period is taken as the ending of the period. Therefore, there is no doubt that the season period for the consumer is from 1st of November to the 31st of May of the succeeding year.

11. The only issue that needs to be decided in this appeal is whether or not the appellants used their machinery during the period 1st June, 2012 to 31st October, 2012. The respondents concluded that they did use the machinery of the main plant during this period by drawing an inference to their meter reading book details and the billing report copies that they have submitted. As these two records did not show the day wise consumption of the appellants during the off season period, it is difficult to surmise that the appellants had put their main plant to use during the off season period. In spite of the issue of the MRI dumps cropping up again and again before the CGRF and during the hearings before this authority also, the respondents were not able to produce the MRI dump of the appellants' service connection for the period in question. In the absence of the MRI dump, it cannot be conclusively proved that the appellants did use the main plant during the off season period. Therefore, the issue is held in favour of the appellants and consequently the action of the respondents in denying the appellants the seasonal tariff benefit is liable to be set aside.

12. The CGRF erred in giving a finding, without going through the MRI data, that the appellants had consumed power during off season period. With the billing record and meter reading book data that is submitted before this

authority, such a conclusion cannot be arrived at. The CGRF also erred in holding that the consumer can use upto 30% of their CMD, but not to the main plant. Neither the agreement nor the tariff conditions prescribed by the Hon'ble Commission support such a view. There is no such ceiling of 30% laid down anywhere. The only time that the mention of 30% with reference to the HT supply is made in the tariff order is in regard to the levy of demand charges. The relevant table from para 213.5.1.1 of the tariff order is extracted hereunder:

DEMAND CHARGES & ENERGY CHARGES FOR OFF SEASON TARIFF		
Voltage of Supply	Demand Charges Rs/kVA /month of Billing Demand#	Energy Charges Paise/kVAh
132 kV and above	250	510
33 kV	250	535
11 kV	250	597
# Based on the Recorded Maximum Demand or 30% of the Contracted Demand whichever is higher		

13. What this says is that the demand charges during off season period shall be taken as 30% of the contracted demand or recorded maximum demand whichever is higher. There is no ceiling of 30% of the CMD for consumption during off season period. Hence, the order of the CGRF is set aside.

14. Therefore, it is hereby ordered that:

- a. the respondents shall withdraw the demand of Rs. 5,72,238/- raised on the appellants within 15 days from the date of receipt of this order;
- b. the respondents shall adjust this amount towards the current and future electricity charges of the consumer appellants

herein; and

- c. the respondents shall communicate their compliance with this order within 30 days from the date of receipt of this order.

15. This order is corrected and signed on this 13th day of September, 2014.

VIDYUT OMBUDSMAN

To

1. Sri. Vinod, M/s. Paramatma Cottons (P) Ltd, NH 7 Road, VIII, Rampur (Rural), Adilabad Dist - 504 001
2. The Superintending Engineer, Operation, TSNPDCL, Bhuktapur, Power House Compound, Adilabad 504 001.
3. The Assistant Divisional Engineer (Rural), Operation, TSNPDCL, Adilabad.
4. The Divisional Engineer, Operation, TSNPDCL, Adilabad
5. The Senior Accounts Officer, TSNPDCL, Adilabad.

Copy to:

6. The Chairman, C.G.R.F-1 (Rural), TSSPDCL, Door No. 8-3-167/14, GTS Colony, Vengalraonagar Colony, Erragadda, Hyderabad - 500 045.
7. The Secretary, APERC, 11-4-660, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad - 500 004