BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 25 -10-2010

Appeal No. 23 of 2010

Between

M/s. Sri Sai Baba Ginning Factory
Pochera Village, Boath Mandal
Adilabad Dist.

… Appellant

And

1. Senior Accounts Officer / Operation circle / NPDCL / Adilabad
2. Divisional Engineer / Operation Circle / NPDCL / Adilabad

….Respondents

The appeal / representation dated 27.05. 2010 of the appellant has come up for final hearing before the Vidyut Ombudsman on 12.10.2010 at Hyderabad in the presence of Sri K.Srinivasa Rao, advocate for the appellant, present and Sri J.R.Chavan, DE/O/Adilabad and Sri D.Narahari JAO for respondents present on 20.09.2010 and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following :

AWARD

The appellant herein filed a complaint before the Forum against the respondents that SC No. HT-275 of M/s. Sri Sai Baba Ginning Factory, Pochera village, Boath – Mandal, Adilabad Dist was provided during the month of November 2009, under off-season basis (November – April). The respondents have not provided off-season benefits and also requested to provide off-season benefits, but they refused on the ground that the maximum demand exceeded

and cannot provide off-season benefits. The power factor has come down to 0.24 due to the maximum demand exceeding. Hence, requested the Forum to do justice.

2. Against the averments of the said complaint, the Senior Accounts Officer/Operation Circle / Adilabad filed his written submissions as hereunder:

(i) M/s. Sri Sai Baba Ginning Factory, Pochera-village, Boath-Mandal in Adilabat Dist SC No.ADB 275, was charged on 12.02.2008.

(ii) As per agreement the seasonal period of factory is November to April and simultaneously off season of factory is May to October and contracted maximum demand of factory 315kVA.

(iii) as per schedule, the HT CC bills were prepared and dispatched to consumer. The consumer was also paid the CC charges as per bill amount.

(iv) The consumer has submitted a representation and stated that the off seasonal benefits are not given and requested to arrange the off season benefits.

(v) In this connection, it is to submit that it is seen from the CC bill of 05/09 issued in 06/09 and CC bill of 06/09 issued 07/09 i.e, off season of factory the recorded maximum demand is 156 & 118 respectively.

(vi) The consumer has exceeded 30% of the contracted demand during off season period.

(vii) As per GTCS based on the recorded maximum demand or 30% of the contracted demand whichever is higher has to be taken into account. In this contents, the consumer exceeded 30% of CMD during off season. Hence the consumer ADB 275 is not entitled for off season benefits during the off season period from May 2009 to October 2009.

(viii) Further, it is also submit as per Terms and conditions that any consumer who after declaring the period seasonal consumers power for his main plant during off season period shall not be entitled to this concession during that year.

(ix) The consumer has exceeded 30% of CMD during 05/09 & 06/09 hence the benefits of off season concession has not given during that year. The CC bills from 05/09 to 10/09.

3. After hearing both side and after considering the material placed before the Forum, the Forum held that the power factor surcharge is leviable on the total amount of CC charges billed for the month, as per the existing provisions without providing any off-season benefits to the appellant as his monthly consumption exceeded 30% of CMD during off-season and dismissed the complaint of the appellant as not maintainable.

4. Aggrieved by the said order, the appellant preferred this appeal questioning the same, that their CMD is 315kVA and being a seasonal industry is entitled for off-season tariff as per the Tariff order of APERC. The seasonal period of the factory is November to April and off-season is May to October. The Forum committed a grave error in concluding the contention of the appellant that exceeding the maximum demand is due to low power factor (LPF) does not appear to be justified. The Forum observed that LPF cannot only be the reason for increase in monthly demand but it is only one of the reasons and increase in monthly demand due to LPF cannot be quantified and the conclusion is without any basis, devoid of merit and reveals lack of total understanding on the part of the Forum. The factory did not run during off-season period. The details of energy consumption during off-season period and during seasonal period are in Table -1 and 2 respectively. The average consumption during off-season period is 2120 units and the average consumption during seasonal period is 63390units. It is 1/30 times that of seasonal period which shows that the appellant is not running during off-season period and exceeding demand for 2 months May and June is due to LPF. The Forum did not consider the said contention and wrongly concluded that the appellant is not entitled for off-season benefit. The conclusion arrived by the Forum that increase in the monthly demand due to LPF does not

appear to be justified and the same cannot be quantified are wrong and bad in law. The appellant is prepared to pay LPF and monthly minimum charges as per the Tariff order. The power factor should be levied as per actual consumption. The respondents levied power factor surcharge on minimum consumption and also collected excess amount of Rs.1,12,725/-. As per table-4 the respondents levied LPF for December 2009, February and April 2010 on minimum consumption and in all collected excess amount of Rs.25,941/-. The appellant is entitled for refund of Rs.1,38,666/- which was levied in violation of tariff order issued by APERC and the appeal preferred by him is to be allowed by setting aside the impugned order.

5. Now, the point for consideration is, "whether the impugned order dated 22.04.2010 of the appellant is liable to be set aside, if so, on what grounds?"

6. The learned counsel for the appellant argued that the rule does not speak rejection of off-season benefits if it exceeded 30% of CMD during off-season and infact it has not exceeded the same. He has also further argued that the respondents have erroneously collected the amounts of Rs.1,12,275/- plus Rs.25,942/- totaling to Rs.1,38,666/- is liable to be refunded. The tables filed by him have clearly disclosed about the facts on ground and ground realities. The claim made by him for February and April 2010 is not tenable and stated that the same may be treated as not pressed.

7. Whereas, Sri J.R.Chavan, DE/O/Adilabad and Sri D.Narahari, JAO present at the time of hearing of the appeal and submitted some replies to the tables filed by the appellant and also argued that they have refunded the amount and filed letter dated 17.09.2010 to the effect that Rs.1,13,194/- was revised and issued JE proceedings in the August 2010 CC bills.

8. It is clear from the above said facts that the respondents have rejected the off-season benefit on the ground that the appellant has exceeded the 30%

consumption during off-season is the only ground for rejection. Part A – HT Tariff 'B' clause (5) deals with seasonal industries of the Tariff order 2009-10 which reads as follows:

> *"Where a consumer avails supply of energy for manufacture of sugar or ice or salt, decorticating, ginning and pressing, cotton seed oil mills, fruit processing, tobacco processing and re-drying and for such other industries or processes as may be approved by the Commission from time to time principally during certain seasons or limited periods in the year and his main plant is regularly closed down during certain months of the year, he may be charged for the months during which the plant is shut down (which period shall be referred to as the off-season period) as follows under H.T. Category-II rates."*

To avail the seasonal benefit is subject to the conditions mentioned there under. Sub-clause (vii) which reads as follows:

> *"Any consumer who after declaring the period of season consumes power for his main plant during the off-season period, shall not be entitled to this concession during that year."*

10. It is no where mentioned that the plant consumed power during the off-season period. If the plant consumes the power during off-season period, no doubt, it is not entitled to the concession during that period. As per Table-3 off-season for the month of May 2009 shows 3000units, they have not exceeded these units during the entire period. Whereas as per Table –4 during seasonal period (November – April) they are ranging from 19940 units to 55060 units and in the month of April it is only 2320 units. So it cannot be said that he has consumed more than 30% of CMD as quantified by the respondents for off-season benefit. In the month of December, there is an excess collection of Rs.24817.31ps charged and no explanation is given for the same as if it comes out of using the power for the plant during off-season period. It should be only the actual units consumed during November-April but not with an average of 2000 and odd. No evidence is placed before the Forum or before this authority that the power is used for the industry during the declared off-season period. At least to attract condition No.7 specifically in the above said tariff order, the Forum has failed to appreciate the said aspect and erroneously concluded that the appellant is not entitled for the off-season benefit without looking into the facts. If

it is established that the LPF is the only reason for increase in monthly demand, it stands at different footing but it is one of the reasons and that cannot be conclusive proof to impose quantifying penalty and the Forum has failed to appreciate the said aspect depending on probability and possibility but that itself is not sufficient to arrive at such a conclusion. When rights of the consumer are going to be effected it should be on specific ground but not on probability or possibility or on summaries.

11. It is not the case of the respondents that they are not collecting excess usage by issuing bills for the same. When they are collecting regularly bills for the excess and rejecting the off-season benefits to which the appellant is entitled under the above said clause mentioned in the Tariff order 2009-10 is not sustainable and the same is liable to be set aside.

12. In the light of the above said discussion, I am of the opinion that the Forum is erred in holding that the appellant is not entitled to the off-season benefit and the appellant is certainly entitled to the same. Incase of LPF that can be dealt with in accordance with GTCS since the amount of Rs.1,13,194/- is refunded and the same need not be answered once again.

13. In the result, the appeal is allowed setting aside the impugned order and the respondents are at liberty to deal with the LPF in accordance with GTCS but not by rejecting the off-season benefit and by collecting excess amount of Rs.24,813.17ps to which the appellant is entitled under law. No order as to costs.

This order is corrected and signed on this day of 25th October 2010

VIDYUT OMBUDSMAN