BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu,
Vidyut Ombudsman

Dated: 24-08-2010

Appeal No. 28 of 2010

Between

Dr. P. Somanadha Rao,
Managing Partner,
Avanti Aquamarine,
17, Block "A", VUDA Complex,
Siripuram, Visakhapatnam – 530 003. ***… Appellant***

And

The Asst. Engineer / Opt / APEPDCL / Madhurawada / Visakhapatnam Dist
The Asst. Divisional Engineer / APEPDCL / Opt / Madhurawada
The Divisional Electrical Engineer / Opt / APEPDCL / Zone – I / Visakhapatnam
….Respondents

The appeal / representation dated 21.06. 2010 received on 24.06.2010 of the appellant has come up for final hearing before the Vidyut Ombudsman on 16.08.2010 in the presence of Dr. P. Somanadha Rao, the appellant and Sri G. Raj Kumar, DE (Operation) Zone -3, Sri V.A.N.Sreenivasa Rao, ADE, Madhurawada, present for respondents and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following :

AWARD

Aggrieved by the order passed by the Forum in C.G.No.140 / 2008-09 of Visakhapatnam dated 19.05.2010, the appellant preferred this appeal on 21.06.2010.

2. The appellant filed his compliant before the Forum for Redressal of Consumer Grievances of APEPDCL to the effect, that he is the Managing Director of Avanti Aquamarine with a request to drop the notice of short fall amount issued by the Assistant Accounts Officer / ERO / East since the lighting load exceeded 5% contracted load.

3. The Forum advised the DE / DPE / Visakhapatnam to inspect the service and he inspected the premises on 02.09.2008 and furnished that the consumer exceeded the lighting load over the contracted @ 5% and basing on the report, the Forum concluded, that there was excess over and above 5% of lighting load over the contracted load as per the conditions prevailing as on that date and also directed the complainant to pay the short fall amount, as intimated by the Assistant Accounts Officer.

4. Aggrieved by the said finding, the appellant preferred an appeal No. 24/2008 questioning the same, that the finding of Forum without looking in to the realities is liable to be set aside; and that they are not liable to pay the short fall amount and they have not exceeded the 5% contracted load and the readings obtained by the DE are not on correct data and the said finding is liable to be set aside.

5. After hearing both sides and after considering the material placed before this authority, the appeal was allowed by setting aside the impugned order and the matter was remitted back to the Forum to restore the same to its original number and dispose of the matter on merits, by giving opportunity, to both sides and also by answering the aspects pointed out by this authority in its award dated 24.02.2010.

6. This authority while remanding the matter to the Consumer Grievance Redressal Forum (CGRF) pointed about the basis for conclusion as to how the matters pertaining to Sri K.Madhusudana Reddy in CG No. 82/2008 and M/s.

Bala Tripura Sundari Aqua Products Pvt. Ltd in CG No. 5/2008 respectively are different from the Aqua culture of the appellant.

7. The Forum narrated the points pointed out by this authority in its order and answered the same after inspecting the premises on 21.04.2010 and arrived at a conclusion that the lighting load was 3.02KW and the contracted load of the service was 53.99HP or 40.27654KW and the load shall not exceed 5% of the above i.e 2.00KW, but the actual reading is 2.013827 KW, which is 5% load that is fixed in the tariff order 2003-04. The Forum has observed the particulars in arriving at a conclusion, that the load is 3020 = 3.02KW by taking the statistics as hereunder:

New Larval Section	heaters 1KW x 6	= 6KW
Algal Section	1 Ton A.C.	= 2KW
Blowers	10HP x 2	= 20HP
Pumps		
Seawater pumping		= 5HP
Transformer pumping	3x2	= 6HP
OHT Pump	3x1	= 3HP
Algal Pump	½ x1	= 0.5HP
		34.5 HP

34.5 HP or say 25.737 KW

8 + 25.737 = 33.737

The following is the Lighting Load:

(A) Lighting load for Labs

Maturisation	= 240W
Spawning	= 80W
New Larval	= 360W
Post larval	= 160W
Egg ceased Room	= 160W
Algal Section	= 200W
Old Larval	= 160W
Artimea	= 240W
	1720W

(B) Lighting load for others

Office:
Fans 2 x 60W = 12W
(Appellant noted as 40W)
Tube lights = 120W

Staff Sections:
Fans 3 x 60W =180W
Tube lights 5 x 40W =200W

Generator:
Fans 2 x 60W = 120W
Yard lighting 9 x 40W = 360W

1300W

A + B = 1720 + 1300 = 3020 = 3.02KW.

At present, the disputed load of heaters, some motive load and Air Conditioners have not been taken into consideration as lighting load. Inspite of this, the lighting load is more than 5% of contracted load applicable at that time and directed the appellant to pay shortfall amount raised by the AAO/ERO without any exemption and disposed the case accordingly.

8. Aggrieved by this order, the appellant preferred this appeal questioning the same that process load is 13.24HP + 20HP + 14.5HP = 47.74HP and the lighting load is 1.55HP, the total load is 49.29HP but he has got the contracted load for the service at 53.99HP which is less than the contracted load under consumption. It is also further mentioned in his written arguments that the appellant's industry is similar to the other two industries. In the above said CG No. 82/2008, the Forum observed, that the "process heater load and lighting on culture area is a process load. It is considered as process load" and the same is not considered in his order; and that they have simply ignored the report of the AE, who arrived at a conclusion, that the lighting load was only 2.14%. The report of the DE was taken into consideration ignoring the other material by the Forum. There is no inaccuracy in the reports of AE and DE and the benefit should be given to the consumer.

9. It is also further mentioned in his written arguments that the Forum has not followed the directions of the appellate authority and simply relied on the inspection made by them and they have given two different values and they are contrary to the earlier reports and the report which is favourable to the appellant is to be taken into consideration. It is also pointed out, that the inspecting officers inspected the premises in the absence of persons running the shrimp hatchery and they do not have any experience in running the same. The conclusion arrived by the Forum is that the lights fixed in the sheds are also meant for the purpose of observations of persons during the night and all the lights in the sheds may not be exclusively for the process; and that the lights fixed are for lighting also is erroneous and the same is liable to be set aside.

10. It is also further mentioned that the industry requires lighting for the purpose of photosensitive activity and that should be through process load and cannot be treated as lighting load, though the same has been explained by the appellant, the engineers have not considered the opinion expressed by the appellant and arrived at a different conclusion and the same is not on sound lines and the same is liable to be set aside.

11. It is also the case of the appellant that in culture areas like Algal, Maturation, Larval Rearing facilities require sufficient light for growing shrimp larvae. Actually, the live feeds it was given to the larvae grow in required light aeration and sufficient temperature. Algae is a live plant feed needs high illumination to grow its blooms, it is a very important live feed for early shrimp larvae (Zoea and Mysis). Artemia is a cyst (egg) imported from USA for a hatching out this Artemia cyst needs to maintain sufficient light (1000 lux) equivalent to two tube lights. Whatever the lighting used in the culture areas like algal, maturation, larval, artemia, it is strictly for the purpose of growing / rearing the shrimp larvae. So, it cannot be taken as lighting load and the appeal preferred by the appellant is to be allowed by setting aside the impugned order.

12. The respondents are represented by Sri G.Raj Kumar, DE/O/Zone-3 and Sri V.A.N.Sreenivasa Rao, ADE/Madhuravada present at the time of hearing of the appeal at Visakhapatnam and the appellant also present before this authority on the same day and the matter was heard in their presence. The appellant reiterated the grounds mentioned in the written submissions.

13. The respondents represented that the Forum has rightly considered all the aspects and directions given by the Vidyut Ombudsman, while remanding the matter and there are no grounds to interfere with the same and the appeal is liable to be dismissed.

14. Now, the point for consideration is, “whether the impugned order dated 21.06.2010, is liable to set aside? If so on what grounds? ”

15. It appears that the Forum has inspected the premises on 21.04.2010 and arrived at an end that the lighting load for labs at 1720W whereas lighting load for others is 1300W, both are clubbed and arrived at a conclusion that it was at 3020 = 3.02KW.

16. The AE / Operation / Sagarnagar submitted a report on 06.08.2008 and arrived at a conclusion as hereunder:

> "*The percentage of lighting load as compared to the total load of the premises is only 2.14%, which is less than 5% or 10% of the limit as prescribed by the tariff order."*

17. Whereas, the DE/DPE in his report dated 09.09.2008 arrived at a conclusion that it is 5.835KW and it exceeded the 5% of the lighting load. In the order dated 18.06.2008 in CG No. 82/2008 in the case of M/s. Bay Fry Hatcheries, it was pointed out that the process heater load was not the lighting load. Hence, lighting load inspected was less than 5%. Even according to the information furnished in the impugned order, the light is used for Maturisation (240W), Spawning (80W), New Larval (360W), Post Larval (160W), Egg ceased room (160W), Algal Section (200W), Old larval (160W) and Artimea (240W) the total load is 1720W. The Forum has arrived at a conclusion, that it is not processing load and it is only lighting load equivalent with that of lighting load for others like Fans, Staff sections, office fans, etc. The Forum has arrived the load towards labs as hereunder:

(A) Lighting load for Labs

Maturisation	= 240W
Spawning	= 80W
New Larval	= 360W
Post larval	= 160W
Egg ceased Room	= 160W
Algal Section	= 200W
Old Larval	= 160W
Artimea	= 240W

	1720W
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18. If the above said lighting is for maturisation etc shown in the Table-A is not used properly, the entire processing will be spoiled. It is necessary at this juncture to quote one example to arrive at a conclusion as to whether the said lighting is a lighting under process or lighting for other purposes. For example, in a processing unit of diamonds, if lighting is used for sharpening of the diamonds, can be called as lighting for processing or the light used for other purpose. The sharpening of the diamond will be through the rays sent from the light and it can certainly be said that it is used for processing purpose, but not light used for other purpose.

19. The above said discussion clearly shows that it is a process load but not lighting load used for other purposes. It is also clear from the record or from the regulations of APERC, there are no specific guidelines distinguishing the lighting loads used for other purposes and the purposes for lighting. That is the reason why, the Forum is not in a position to distinguish or differentiate one from the other. At times, they are using it as process load and in some other cases they are treating it as lighting load for other purposes. It is necessary to incorporate the same by the Commission in the Tariff itself distinguishing the lighting loads used for manufacturing purposes or processing purposes and lighting load for other purposes. Hence, it is necessary to attach the lighting load for labs as process purpose but not lighting load for others.

20. Having come to a conclusion in other matter in CG No. 5/2008 pertaining to M/s. Bala Tripura Sundari Aqua Products Ltd that the lighting and heater for process purpose is treated as process load, how it can be distinguished with the load utilized by the appellant for the above said purpose in Table-A is not explained clearly in the impugned order.

21. It is clear from the above said discussion, that the very usage of the lighting which is highly essential for the purpose of processing; it cannot be said that it is a lighting load other than processing. Hence, the Forum ought to have

excluded the said load used for labs from the lighting load and if it is excluded it would have been 1.3KW which is less than 5% i.e 2 KW. This simple analogy is missed by the Forum by making its observation and I feel that the impugned order passed by the Forum is liable to be set aside.

22. In the result, the appeal is allowed by setting aside the impugned order passed by the Forum. No order as to costs.

This order is corrected and signed on this day of 24th August, 2010

VIDYUT OMBUDSMAN