

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 22 -10-2010

Appeal No. 34 of 2010

Between

Sri Prakash Goenka
Managing Director
Devashree Ispat (P) Ltd
8-2-293/82, Plot No. 86, Prashasan Nagar
Road NO. 72, Jubilee Hills,
Film Nagar (PO), Hyderabad - 96

... Appellant

And

1. Divisional Engineer / Operation / Jedcherla/ CPDCL / Mahaboobnagar
2. Senior Accounts Officer/Operation/Mahaboobnagar/CPDCL/Mahaboobnagar
3. Superintending Engineer/ Operation/Mahaboobnagar circle CPDCL / Mahaboobnagar
- 4.General Manager (Revenue)/Corp office/ CPDCL/ Hyderabad
- 5.Superintending Engineer (Commercial)/Corp office/ CPDCL/ Hyderabad

....Respondents

The appeal / representation dated 23.07. 2010 (received on 24.07.2010) of the appellant has come up for final hearing before the Vidyut Ombudsman on 07.09.2010 at Hyderabad in the presence of Sri Prakash Goenka, appellant Sri K.Viswanath, representative of the appellant present and Sri C.Sai Prasad, SAO/ Mahaboobnagar, Sri K.Hara Prasad, GM(R) / CPDCL and Sri G.Bala Prakash JAO / Mahaboobnagar for respondents present and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following :

AWARD

M/s. Devashree Ispat (P) Ltd, appellant filed a complaint before the CGRF, APCPDCL to the effect that the respondents have levied voltage

surcharge of Rs.10.76 lakhs and Rs.0.67 lakhs even though they never exceeded the CMD except for a short period on 24.12.2009. The contention of the appellant is that their CMD is 4995 kVA and they have taken supply on 33kV as per rules and do not fall under the purview of voltage surcharge and voltage surcharge is relevant to contracted demand only and no where it relates to excess MD and RMD in tariff order. The respondents have levied voltage surcharge on the basis of RMD without prior approval from APERC and the APCPDCL has no intention to seek clarification from APERC; and that the appellant has represented the matter before the APCPDCL but in vain. The respondents have not considered it obligatory to get the clause voltage surcharge suitably amended within the frame work of rules and subsequently got printed with the new version and finally requested to render justice by directing the respondents to waive the voltage surcharge which was in gross violation of justice since the said levy is extrajudicial, harsh and illegal and the consumer cannot be made liable for any penalty accrued on account of capricious and changed stance of CPDCL and also claimed interest on the voltage surcharge which was paid under protest to avoid disconnection of service.

2. The gist of the written submissions filed by the respondents is briefly as follows:

The SAO/Operation/Mahaboobnagar, the 3rd respondent has submitted his reply in letter No. 201 dt.01.06.2010 that the complainants HT service was released with CMD of 4950 kVA in 2005 and they took additional CMD of 45 kVA in May 2007 totaling to 4995 kVA.

The respondents further stated that as per the HT agreement executed by the complainant, they are entitled to claim voltage surcharge in addition to the applicable tariff charges as per Tariff order.

The respondents also stated that they have levied voltage surcharge as per section 49 of EA as the complainant consumer exceeded the CMD from all sources by 145 kVA and voltage surcharge has been levied as per Tariff order and as per the instructions issued by corporate office vide CMD (commercial)

D.No.427 dt.21.06.2008 and is in order. The respondents enclosed copy of bill, copy of instructions received from corporate office dt.21.06.2008, copy of meter card and copy of DE/DPE test results.

The appellant himself was examined and narrated the same facts mentioned in the complaint. In the deposition of the complaint, he simply narrated the facts. The deposition of Sri H.Narayana Murthy, SE (Commercial) on behalf of the respondents reiterated the contention raised in the written submissions filed by them. The appellant and SE (Commercial) were examined by the Forum on 3 occasions and recorded their statements.

3. After hearing both the sides and after considering the material placed before the Forum, the Forum held that the levy of voltage surcharge by the respondents on the appellant service connection in the month of January 2010 for having exceeded the limit on declared voltage for 33kV is in order and correct and requires no intervention of the Forum as it did not find sufficient merit in the complaint and also made a suggestion to the respondents to take steps to incorporate in the tariff order regarding its implication on the voltage surcharge.

4. Aggrieved by the said order, the appellant preferred this appeal questioning the same projecting the following grounds:

- (i) levy of voltage surcharge for RMD exceeding the voltage level, was actually not covered by any tariff order nor approved by APERC, the competent authority.
- (ii) From 01.04.2009, the tariff condition has been revised and included in the Tariff order 2009-10, by APERC and the penalties imposed for RMD exceeding over CMD are as follows:

Exceeding RMD over CMD	Demand charges on excess demand	Excess charges on excess energy
100 to 120%	2 times of normal charge	Normal
Above 120% and up to 200%	2 times of normal charge	1.5 times of normal charge
More than 200%	2 times normal charge	2 times of normal charge

Excess demand and energy shall be computed as follows:

Excess demand = (RMD – CMD) if RMD is more than CMD with licensee

Excess energy = (excess demand/RMD) x recorded energy.

- (iii) This clause was applicable only for consumers, who have been availing the CMD at voltages different from the prescribed voltage and who did not change over to receive supply at specified voltage, in spite of six months' notice indicating that they want to continue to avail the CMD at the same voltage.
- (iv) The clause 1.B. of General Conditions of HT supply was applicable only for consumers, who have been availing CMD at voltages different (lower) from the stipulated voltages and who did not change over to stipulated voltage, in spite of six months' notice indicating that they want to continue to avail the CMD at the same (different / lower) voltage.
- (v) The voltage surcharge under clause 1.B. of General Conditions of supply is applicable to services, where the consumer has been availing CMD in excess of the voltage level and not RMD.
- (vi) The voltage surcharge was meant to be levied on consumers who have been availing supply at voltage less than the specified, if they fail to make arrangements within a period of 6 months as per BP MS No.607 dt.21.07.1981 is irrelevant in this case. The said BP was pertaining to the year 1981 and the declared voltages at which the supply is to be availed for the CMD has already been mentioned in the tariff orders from time to time and no notice of 6 months to switch over

to the higher voltage is required as per agreement of the complainant company.

- (vii) The report of the DPE which says that the excess voltage may be due to variation / fluctuation in consumer's load or may be system voltage fluctuations, does not appear to have been taken into consideration, to extend benefit of doubt and set aside the voltage surcharge levied.
- (viii) Hence, it is requested that due consideration be given to the merits of the case, and the claim of voltage surcharge may be set aside for the simple reason that the penalty levied by the Discom was with no authority; and that the voltage surcharge clause 1B of General conditions of HT supply is applicable to certain category of consumers and not to their case.

5. Now, the point for consideration is, "whether the impugned order dated 06.07.2010 is liable to be set aside, if so, on what grounds?"

6. Sri Prakash Goenka, appellant and Sri K.Viswanath Gupta, representative of the appellant present and submitted that there is no voltage surcharge in the tariff order itself. In case of RMD and the voltage surcharge defined under the tariff order is not applicable to the case of this appellant and clause 12.3.2 of GTCS approved by the APERC does not deal with the voltage surcharge and the reliance made by the Forum on the finding of the Hon'ble High Court in W.P.No. 678/2000 is not applicable to the facts of this case and the appeal preferred by the appellant is to be allowed by setting aside the impugned order.

7. Whereas, the respondents Sri C.Sai Prasad, SAO and Sri K.Hara Prasad, GM(Revenue) present and stated that they have levied the surcharge when the appellant exceeded the CMD limit and the imposition made by them is in accordance with the procedure and the Forum has rightly observed the same and the appeal is liable to be dismissed.

8. It is an admitted fact that the appellant is having CMD of 4995 kVA at 33kV common feeder. It is also an admitted fact that during December 2010 RMD of the appellant was 5140 kVA. Thus, it is evident that an excess of 145 kVA beyond the CMD was recorded.

9. The contention of the respondents that they have levied the additional charges for maximum demand in excess of contracted demand as per clause 6 of General Conditions of HT Supply of tariff order, for which the appellant has not raised any objection. The respondents have levied voltage surcharge of Rs.10.67lakhs on the ground that the appellant has exceeded 145 kVA in excess to the CMD on the ground that 33kV common feeder would cause hazard situation in the system. It is also clear from the record that the voltage surcharge is levied under clause 1B of General Conditions of HT supply of tariff order which reads as follows:

B. VOLTAGE SURCHARGE

H.T. consumers who are now getting supply at voltage different from the declared voltages and who want to continue taking supply at the same voltage will be charged as per the rates indicated below:

Sl.No	Contracted Demand with Licensee and other sources (in kVA)	Voltage at which Supply should be availed (in kV)	Voltage at which consumer is availing supply (in kV)	Rates % extra over the normal rates	
				Demand Charges	Energy Charges
(A) For HT Consumers availing supply through common feeders					
1	1501 to 5000	33	11	12%	10%
2	Above 5000	132 or 220	66 or Below	12%	10%
(B) For HT Consumers availing supply through independent feeders					
1	2501 to 10000 kVA	33	11	12%	10%
2	Above 10000 kVA	132 or 220	66 or Below	12%	10%
Note: The FSA will be extra as applicable					

10. The main contention raised by the appellant is that the clause on which the respondents imposed voltage surcharge is not applicable to his case, as he has exceeded the limit for 2 hours on 24.12.2009.

11. If clause 1B of HT supply tariff order is examined closely, it shows that the HT consumers who are now getting supply at voltage different from the declared voltage and *who want* to continue taking supply at the same will be charged as per the rates indicated in the table mentioned there under. It does not speak incase of excess at one time or two times than the CMD but deals with the case when the declared voltage is exceeded and when he wants to continue the supply at the same voltage, he will be charged under the above said clause. In this case, no application is filed by the appellant herein, to continue the supply at the same voltage i.e, 5140 and above. It is only the stray instance at which there is an excess of 145 kVA for which the respondents are entitled to collect the additional charges as per the tariff conditions or as per the GTCS but not by imposing voltage surcharge as defined in 1B of General conditions of HT supply of tariff order. The Forum has also reiterated clause 2 of General conditions of HT supply. It is only a provision incorporated with regard to estimation of the voltage when it exceeds the declared voltage and it is no way connected to the voltage surcharge.

12. The Forum has relied upon clause 12.3.2 of GTCS approved by the APERC in support of their contention to the effect that they are entitled to levy voltage surcharge. The said clause reads as follows:

“12.3.2

If at any time the Maximum Demand of an HT consumer exceeds his Contracted Demand or LT consumer exceeds the Contracted Load without prior approval of the Company, the consumer shall be liable to compensate the Company for all damages occasioned to its equipment or machinery if any, by reason of this default, and shall also be liable to pay the charges payable by him on account of such increase in demand or load and penalty, as prescribed by the Commission from time to time,

without prejudice to this right the Company may also cause the supply to consumer to be disconnected. “

13. It is nowhere claimed that damage / hazardous situation is occurred to the equipment of the company or its machinery, if any, by reason of the excess RMD. In case of any damage caused, no doubt the appellant has to reimburse the same. The above said clause does not enure the right of the company to collect the charges payable by him on account of such excess in demand / load. It also provides a right to impose penalty as prescribed by the Commission from time to time, but it does not speak about the collection of voltage surcharge under this clause. They have not imposed any penalty, but they have imposed voltage surcharge for which they are not entitled to collect the same.

14. No doubt the Forum has relied upon the ruling given by the Hon'ble High Court in W.P.No. 678/2000 with regard to levy of voltage surcharge. The above said ruling is delivered under Electricity (Supply) Act, 1948 but not under EA 2003. S.49 of E(S) Act, 1948 gives a right to the company to impose voltage surcharge, but there is no such provision in the EA 2003. Furthermore, E(S) Act, 1948 is repealed under S.185 of EA 2003. Hence, the above said ruling is not applicable to the facts of the case on hand. If it is a case of frequent increase in the demand than the contracted demand and if the same is observed by the authorities, they can impose any penalty, indulging unauthorized use of electricity under S.126 of EA 2003 by making provisional assessment and also can take coercive steps either in the form of disconnection or in the form of regularizing by obtaining an application from the consumer. If the consumer refuses to take excess load, in spite of the frequent increase in the demand, the authorities are at liberty to impose any penalty by looking into the conduct of the consumer. Here in this case there is only one instance under which the consumer exceeded 145 kVA beyond the contracted load and the department is at liberty to collect the charges payable for the excess usage than the contracted demand and other additional charges for maximum demand in excess of the contracted demand as laid down in rule 6 of General conditions of HT supply but not in the form of

voltage surcharge as the case of the appellant does not come within the definition of voltage surcharge.

15. In the light of the above said discussion, I am of the opinion that the impugned order of the Forum confirming the imposition of the voltage surcharge is liable to be set aside.

16. In the result, the appeal is allowed. The amount, if any, paid by the appellant under protest is liable to be refunded and instead of refunding the same, the same may be adjusted in the future CC bills of the appellant. No order as to costs.

This order is corrected and signed on this day of 22nd October 2010

VIDYUT OMBUDSMAN