

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: -08-2010

Appeal No. 35 of 2010

Between

Sri Venkateswara Vijayalakshmi Rice Mill
Contractors: Samthapudi Satyanarayana Raju & Co.
Bhimavaram - 534203
W.G.Dist.

... Appellant

And

1. Assistant Engineer/Operation/APEPDCL/ Bhimavaram
2. Asst. Divisional Engineer / Operation / APEPDCL / Bhimavaram
3. Divisional Electrical Engineer / Operation / APEPDCL / Bhimavaram
4. Asst. Accounts Officer / ERO / APEPDCL / Bhimavaram

....Respondents

The appeal / representation dt. 07.07.2010 received on 29.07.2010 of the appellant has come up for final hearing before the Vidyut Ombudsman on 17.08.2010 at Visakhapatnam heard the appellant represented by Sri K.Satish and Sri Y.Srinivasa Rao, AAO/ERO/Bhimavaram, Sri P.Vijay Babu, UDC/ERO/Bhimavaram on behalf of respondents present, and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following:

AWARD

The appellant filed a complaint before the Consumer Grievance Redressal Forum (Forum), APEPDCL to withdraw the notice for payment of shortfall amount issued by AAO and also to stop the same incorporating the same in CC bills.

2. The respondent No.4 has submitted his written submissions as hereunder:-

(i) It is to submit that the electricity service connection no. 6874 under Cat-III of Bhimavaram D1 released in favour of M/s. Venkateswara Vijaya Lakshmi Rice Mill with connect and contracted load of 75HP (CMD 62.16) on date

(ii) It is to submit that the Internal Audit Party M/s. Ratnam Devaji and Company audited on the accounts of Electricity Revenue Office, Bhimavaram for the period 2008-09 during 10/09, 11/09.

(iii) It is to submit that the internal audit party has submitted internal audit report on 28.11.2009. It is to submit that the said service was billed under Cat-IIIA and HT Cat-I shortfall has been arrived and included in the CC bill regularly in every month with effect from 3/09.

(iv) It is to submit that the internal audit party audited the consumption pattern of the said service for the period 2008-09 and identified HT shortfall amount for the period 8/08,10/08 to 1/09 and arrived Rs.43925/-. Copy of the audit shortfall notice was already submitted vide Lr.No.1899/19, dt.23.12.2009.

(v) It is to submit that basing on the above audit report this office issued 15 days notice to the said consumer vide this office letter no. 1899, dt.23.12.2009, wherein it is requested to pay the audit of Rs.43925/-.

Therefore as per the MRB's and it is reviewed and noticed that the above consumer has exceeded contracted demand for the period from 7/08 to 2/09 and is liable to pay HT Cat-I shortfall.

3. The further contention of the respondent is that the consumer has exceeded contracted demand for the period from 8/08,10/08 to 1/09 and he is liable to pay HT Cat-I shortfall amounting to Rs.43925/- for the year 2008-09 and the same was issued by duly observing all tariff conditions and stated in the tariff booklet. It is also further mentioned that certain guidelines were issued by APERC for LT Cat-III(A) normal services in the above said tariff orders that the connected load of the consumer shall not exceed his contracted load, except in

case of LT Cat-III(A) optional demand tariff consumers, if the contracted load of the consumer is found in excess of his contracted load, the provisions of General Terms & Conditions of Supply (GTCS) separately notified shall be applied. As per clause 12.3.3.3 where the total connected load is above 75HP/56KW, the services will be billed at the HT Cat-I tariff rates from the consumption month, in which, the unauthorized additional load is detected till such additional load is removed and got inspected by the designated officer of the company. Double time tariff which is clearly mentioned in the Tariff order 2008-09, a notice was issued to the consumer for payment of the amount. Aggrieved by the said notice, the appellant filed the complaint before the Forum.

4. After hearing both sides and after considering the material available before the Forum, the Forum observed that the complainants RMD exceeded the CMD and the complainant shall be liable to pay the shortfall amount raised by the respondent No.4 and directed them to pay the same.

5. Aggrieved by the said order, the appellant filed this appeal, questioning the same, that the excess charges levied under HT Cat-I for the LT Cat-III(A) service for which the CMD exceeded and to avoid incorporation shortfall amounts in the CC bills is to be withdrawn.

6. Now, the point for consideration is, “whether the impugned order, dated 29.04.2010, is liable to be set aside? If so, on what grounds?”

7. The appellant is represented by Sri K.Satish and he submitted that he is LT consumer with 75HP and running rice mill and the respondents have fixed HT TVR meter along with CTPT meter installed in their office stating that the sensitive meters are kept for their purpose. Later billing was made after 2 months and they have taken 3% less figure to tally the same with their meter. There is a difference and all of a sudden, removed the meter kept in their office.

As per the orders, they removed the same and they have served notice without giving any time to explain the same, nor to rectify the same. They have incorporated the data according to their choice in accordance with the alleged tariff orders or GTCS and the appeal preferred by him is to be allowed by setting aside the impugned order.

8. The respondents are represented by AAO and he submitted his written submissions and they are hereunder:

The audit department verified the case of the appellant and submitted report, in which an amount of Rs.43925/- as shortfall due to non-levy of HT billing, as the CMD of 62.16kVA on contracted load of 75HP exceeded by the complainant for the months of 8/08,10/08 to 01/09 and for the above said purpose HT billing was made. The power factor shall be calculated upto two decimal places. The power factor of the consumer's installation shall not be less than 0.85 upto 2002-03 and the same was changed from 0.85 to 0.90 w.e.f 01.04.2003. The additional charges for maximum demand in excess of contracted demand was levied as per the provisions of Retail Tariff Order, Voltage Surcharge of General Conditions of HT supply read with required GTCS clause 12.3.3.3. The estimation is made in accordance with the GTCS, as well, Tariff order and the same is in sound lines and the impugned order is liable to be confirmed by dismissing the appeal.

9. In the notice served on the appellant, it was simply mentioned as 62.7 as CMD though there is no wording of CMD in the LT Cat-III(A). It is only there, in HT service LT-Cat-III(B). The contracted load is 75HP equivalent to 56KW. How it is arrived 62.7 as CMD is not explained by the respondents, in the notice dt.23.12.2009. It is simply mentioned as CMD 62.7, RMD 64.2 excess as 1.50 for the month of 08/08 like wise 4.90 for 10/08, 2.50 for 11/08, 5.90 for 12/08 and 7.00 for 1/09, as excess demand. It is only connected load that has to be taken, but not CMD, as the same is also clearly mentioned in 12.3.2 of GTCS. The wording used in the above clause of the LT consumer exceeds contracted load

without prior approval of the company, they have to compensate for the damages caused, etc. It is not mentioned in the above said clause as the CMD. The fixation of CMD by the respondents is not correct, as the same is divided by the power factor of 0.90 to arrive at the CMD, though it is not mentioned anywhere, either in the tariff order or in the GTCS.

10. Though the Forum has elaborately discussed the above conditions of the complainant and findings of the Forum without looking into the *ratio decidendi* incorporated either in the Tariff order or in the GTCS. The Forum has categorically mentioned, the failure on the part of the respondent No.4 and respondent No.1 for their non observations of the readings till, the same is detected by the internal audit team.

11. The Forum has observed that the appellant is liable to pay the same. It is also mentioned in the written arguments of the respondents that the appellant is liable to pay under clause 12.3.3.3. Infact the said clause is applicable to the cases above 75HP or the cases totaling connected load of 150HP under LT Cat-III(B). Clause 12.3.3.1 reads as follows:

“12.3.3.1 Where the total Connected Load is 75 HP/56 kW or 150HP in cases of LT Cat III(B) or below at the time of detection:

- (i) One Month notice shall be given to regularise the additional Connected Load for payment of required service line charges, development charges and consumption deposit, in accordance with the format prescribed in Appendix IX.*
- (ii) Service of consumers who do not get the additional loads regularised, shall be disconnected immediately on expiry of notice period and these services shall remain under disconnection, until they are regularised.”*

12. Here there is no such notice given to the appellant nor personal inspection is made by any of the officials of the respondents to verify physically about the

exact connected load and utilization of the same by the appellant at the relevant point of time.

13. When once personal inspection is made and if it is found that there is excess load being connected by the appellant and if the total connected load is more than 75HP, the service can be billed under HT category otherwise, the penal charges shall be levied under LT category provisions. If he fails to pay the same, the service can be disconnected in accordance with the procedure.

14. Here in this case, no personal inspection is made and demand notice is issued basing on the report of the internal audit report behind the back of the appellant adopted the procedure of imposing penalty by invoking clause 12.3.2. The above said clause gives power to follow the procedure for imposing penalty if the contracted load exceeds without the prior approval.

15. It is necessary to note that the purpose of providing M.D. meter is to levy LPF penal charges and it is only to have a continuous check on the use of connected load. If the meter records more demand than the contracted load, the concerned officer shall inspect the premises physically and to follow due procedure contemplated under 12.3.3.3 of GTCS. But billing cannot be made simply basing on the maximum demand recorded by the meter. The respondents herein have not followed the procedure contemplated under the above said GTCS of the Commission.

16. In this case, no notice is served on him either under clause 12.3.3.1 or under 12.3.3.3 of GTCS. They have simply made demand basing on the internal audit report without making any personal inspection. They may have the connected load of 75HP and he may consume more by adding some more HP, but the same has to be personally inspected and after verification only, he can

ask him to remove the additional load or to regularise the additional load by collecting additional deposit, development charges, etc., and also by imposing penalty for the exceeded load. No such procedure is adopted and infact, the procedure adopted in fixing the CMD is not only against to the tariff conditions, but also against to the principles of natural justice. The Forum has failed to observe these aspects and simply ordered to pay the amounts demanded. Hence, the same is liable to be set aside.

17. In the result, the appeal is allowed by setting aside the impugned order and the respondents are directed to verify the service connection of the appellant in person and if any excess load is there, they can proceed with the said GTCS by giving notice to regularize or to remove the excess load within 30 days from the date of receipt of this order.

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

VIDYUT OMBUDSMAN