

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 17 -06-2011

Appeal No. 49 of 2010

Between

M/s. The Yemmigannur Spinning Mills Ltd.
D.No.1/1397, Yemmigannur (Post)
Kurnool Dist.

... Appellant

And

1. Asst. Divisional Engineer / Operation / Yemmigannur/Kurnool
2. Senior Accounts Officer/Operation/Kurnool
3. Superintending Engineer/Operation/Kurnool

....Respondents

The appeal / representation filed dt.02.11.2010 (received on 03.11.2010) of the appellant has come up for final hearing before the Vidyut Ombudsman on 30.03.2011 at Hyderabad, in the presence of Sri P.Neelappa for the appellant and Sri G.Timmayya JAO/HT.Rev/Kurnool, Sri A.Kuru Murthy, UDC/HT.Rev/Kurnool and Sri N.Jaleel, Sr.Assistant for 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 Forum to consider his request for waiver of monthly minimum charges levied by the respondents during lockout / closure from 1998 onwards and the complainant also stated that it was a sick mill and cannot

afford to pay the amounts levied during the lockout periods with surcharges, penal charges, etc. After deduction of said amounts, the dues would be only Rs.13.56lakhs and also requested finally the Forum to arrange for waiver of minimum charges levied during disconnection period along with the surcharges and penal charges against the said mill.

2. The respondent No.2 filed his written submissions as hereunder:

“The complainant's service was disconnected repeatedly on 26.09.1998, 05.11.1999, 25.08.2000 and 29.02.2008 for non-payment of CC charges. The respondent SAO also submitted that the complainants had taken reconnection on payment of installments even on termination of agreement and they have not even paid the installments regularly and as such the arrears had accumulated along with the late payment surcharges and penal charges for non-payment of installments within due dates”.

3. The Forum has examined the petitioner and recorded his statement. He stated that besides raising monthly minimum charges and surcharges during the disconnected periods October 98 to August 99, September 2000 to January 2001 and July 2008 to October 2008, the respondents had also charged 52% interest on pending arrears and requested the Forum to withdraw the said claims. He has also further stated that he applied for deration of load from October 1998 and again in September 2000 from 1300 kVA to 300 kVA but it was not done.

4. The ADE/O/Yemmiganur was examined and he stated that he will submit his written submissions within one week. Again the matter was adjourned to a later date. Sri S.Vijaya Bhaskar , SAO/O/Kurnool was examined and he stated that they are not having any powers to waive the monthly minimum charges raised during the disconnection period and surcharges levied on arrears as per the rules and regulations of the licensee. The representation regarding deration of load was not available in the office records. The service was under disconnection from 25.08.2000 and the agreement was terminated on 25.12.2000.

5. After hearing both sides and after considering the material placed before the Forum, the Forum observed as hereunder:

- *“Raising of monthly minimum bills during disconnection period from October 98 to January 99 and again from January 99 to August 99 and from August 2000 to December 2000 by the respondents were also in order and as per the existing rules.*
- *Raising of surcharges on arrears and penal charges on installments (for not paying within due dates) by the respondents were in order and as per rules.*
- *The complainants have not produced / submitted any valid and sufficient reasons / documents to the Forum for waiver of monthly minimums raised in disconnection period and for waiver of surcharges and penal charges levied by the respondents.*
- *This Forum has no powers for waiver of any charges on sympathetic grounds.*
- *There is also no chance of reducing bill from October 2000 to December 2000 on the plea that the complainants have applied for deration of load during September 2000 as the respondents have to derate the load only after the expiry of 3 months notice by the consumer as per the existing rules.*

In view of the above the Forum rejects the complaint as it has no valid grounds of merits.

The complaint is disposed off accordingly.”

6. Aggrieved by the said order, the appellant filed this appeal questioning the same that the department demanded minimum charges during the lockout/closure period. The appellant has taken reconnection on 05.09.1999 but along with CC charges and APCPDCL collected the following charges extra as penal interest and penal damages.

| | | Late payment | Penal damage | surcharge |
|------|-----------|---------------------|---------------------|------------------|
| Sept | Bill 1999 | 218978.29 | 205692.97 | 7958.00 |
| Oct | 1999 | 234381 | 220162 | 5383 |
| Nov | 1999 | 11337 | Nil | Nil |
| Dec | 1999 | 158089 | 149523.3. | Nil |
| Jan | 2000 | 170197 | 157533 | 56 |
| Feb | 2000 | 178511 | 155229 | 4851 |
| Mar | 2000 | 184253 | 164451 | 995 |
| | | 1155746 | 1052591 | 19243 |

| | | | | |
|-------------------------|------|----------------|----------------|-------------|
| Apr | 2000 | 181199 | 158302 | 1819 |
| May | 2000 | 172227 | 150597 | 4394 |
| June | 2000 | 192465 | 159089 | Nil |
| July | 2000 | Nil | Nil | Nil |
| Aug | 2000 | 22854 | 23135 | Nil |
| | | 568745 | 468025 | 6683 |
| Sep 99 to March 2000 | | 1155746 | 1052591 | |
| | | 1724491 | 1521616 | |
| Sep & Aug 98 | | 133550 | | |
| | | 1858046 | | |

| | | | | |
|--|-----------------------|---|---|--|
| Surcharge on FeA | Sep 99 to Jan 2000 | 116022 + 1251 = Rs.117273 | | |
| The above all together Late payment + Penal + surcharges | | 1862888+1520616+ 117273+25926 = Rs.3526703 | (late payment, penal interest, surcharge, interest on ED | |
| Total amount paid extra as penal interest | | 3526703 | | |
| Minimum charges from 1998 Sept to Aug 2000 | | 2280618 | | |
| | | 5807321 | | |
| The minimum charges Sep, Oct 2000 to Nov 2000, Dec 2000 & Jan 2000 | | 1863613 | | |
| Then July 2008 to Nov 2008 | | 715000 | | |
| | | 8385934 | | |
| Out of which our deposit adjusted | | 4073200 | | |
| | | 12459134 | | |

7. The Executive Director submitted a representation dated 15.04.2011 narrating all the grounds mentioned therein but in para 11, he has categorically mentioned that they are prepared to pay the late payment charges and surcharges from September 1999 to August 2000, but the appellant's mill is not liable to pay the penal interest charges shown in column – 16 in the chart maintained by APCPDCL due to financial crisis and loss suffered by the appellant's mill. The respondents are having the deposit of appellant's mill but they are giving interest only at 3% per annum. Whereas, they are collecting 57% interest on appellant's mill which is highly exorbitant and excessive. They have also not considered for de-rating of load and the appeal preferred by the appellant is to be allowed by setting aside the impugned order.

8. Now, the point for consideration is, "whether the impugned order dt.20.09.2010 is liable to be set aside or modified ? If so, on what grounds?"

9. The appellant Sri P.Neelappa present before this authority on 30.03.2011 and represented his case. Whereas, Sri G.Timmayya JAO/HT.Rev/Kurnool, Sri A.Kuru Murthy, UDC/HT.Rev/Kurnool and Sri N.Jaleel, Sr.Assistant present on behalf of the respondents and submitted their respective arguments.

10. The appellant has approached before this authority. Meanwhile, raised an objection for collection of penal charges of all the amounts and collection of minimum charges for more than four months and ultimately stated that he has no objection for other amounts which are claiming by the respondents and the appeal preferred by him is to be allowed by setting aside the impugned order on the grounds which he claimed in his written arguments.

11. The respondents have furnished the entire information in the table before this authority. As per the said table they have made demand in accordance with the Tariff order and the GTCS and they have no power to waive any of the claims made by the appellant and the appeal preferred by the appellant is liable to be dismissed.

12. It is clear from the record that the respondents have raised monthly minimum bills for four months from the date of disconnection 26.09.1998 up to the termination of the agreement dt.26.01.1999. Again, the service was brought to live on the request of the complainant. The monthly minimum bill was raised for seven months from 28.01.1999 to 31.08.1999 duly revoking the agreement. Again, the service was disconnected on 25.08.2000. The monthly minimum bill was raised up to four months up to the termination of the agreement. The monthly minimum bills were not raised from January 2001 to June 2002 i.e, for a period of sixteen months on reconnection of service and on revoking of agreement on 11.06.2002. The Forum has observed that the appellant has not paid the CC charges regularly in full amounts and paid only part amounts as such arrears accumulated with surcharges. The appellant has also did not strictly adhere to due dates for payment of installments of amounts and as such the respondents levied penal charges. It is also clear from the record that the de-ration of load is not done from 1300 kVA to 200 kVA but finally at the time of revoking the agreement, the appellant took 500 kVA load from June 2002 onwards.

13. As per the demand, the respondents are claiming Rs.94,78,076/- from the appellant but the appellant is claiming that he is liable to pay only the late payment, interest charges and surcharges but not the other claims made by the respondents.

14. The main grievance made by the appellant is that he is not liable to pay penal interest as well minimum charges more than 3 months and that he is not liable to pay the amount demanded at 1300 kVA as he sought for de-ration of 300 kVA and surrendered 1000 kVA on 08.10.1998.

15. So far as the first point about the liability to pay penal interest is concerned, there is a specific provision in the old Terms & Condition of Supply dt.03.01.1999 under clause 34(a) that when the consumer has sought payment of electricity charges, consumption deposit or any other charges in installments and when the same is granted to the consumer and failed to pay the same is liable to pay additional charges leviable due to belated payment as per clause 32.2 under old Terms & Condition of Supply and

the interest is to be paid @ 24% per annum, on the amount outstanding out of the charges allowed to paid in installments. So, the claim made by the appellant is not sustainable and the same is liable to be rejected.

16. So far as the claim made by the appellant with regard liability of minimum charges is concerned under clause 26.10 of old Terms & Condition of Supply. When the supply is disconnected fails to pay the dues and if it thinks fit, after completion of the three months period, issue one month notice for termination of the agreement and after expiry of the said one month notice, the agreement can be terminated. But in this case, the minimum charges were raised for a period of seven months from 28.01.1999 to 31.08.1999 for revoking the agreement. It is against to the said rule and the same is confined to four months and the minimum charges for those three months in addition to the four months is liable to be deducted.

17. So far as the de-ration of KVA is concerned, it is very clear from the letter dated 08.09.2000 addressed by the appellant for de-ration from 1100 kVA to 200 kVA and the same was also acknowledged by ADE but he did not do so. No reason was assigned by the respondents as to why the same was not derated and how the minimum charges were levied on the total load ignoring the fact of its de-ration. It is against to the principles of natural justice. So far as the other claims are concerned, they are in accordance with the procedure and they cannot be waived.

18. In the light of the above said discussions, the appeal is allowed in part directing the respondents to follow the directions given as hereunder:

- (i) de-ration of KVA is to be given and the calculation has to be made accordingly. As a sequel, the interest, delayed payment surcharge levied to that extent of derated power has to be deleted.
- (ii) Three months minimum charges together with interest and delayed payment surcharge, etc., have to be deleted from total claim.

19. After making detailed revised calculations, notice has to be served on the appellant and the appellant has to pay the same as specified by the respondents. No order as costs.

This order is corrected and signed on this day of 17th June, 2011

VIDYUT OMBUDSMAN