

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 19 -01-2011

Appeal No. 55 of 2010

Between

Sri D.Sammiah

Vice President

M/s. Sirpur Paper Mills Ltd

Sirpur Khagaz Nagar, Adilabad Dist.

... Appellant

And

1. Divisional Engineer/Operation/Sirpur Khagaz nagar
- 2 Senior Accounts Officer/Operation Circle/Adilabad
3. Superintending Engineer/Operation/Adilabad
4. CGM/Operation,IPC&Commercial/Warangal.

....Respondents

The appeal / representation filed on 07.12.2010 of the appellant has come up for final hearing before the Vidyut Ombudsman on 03.11.2010 at Hyderabad in the presence of Sri Srikrishna Modani, Vice President, Sri M.Krishna MohanRao, Jt.Manager for the appellant present and Sri G.Siva Ram, DE/O/Sirpur Khagaznagar 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 dt.14.10.2010 before the Forum under clause 5(7) of APERC Regulation No. 1 of 2004 read with Section 42(5) of EA 2003 claiming that from 10.09.2010 to 22.09.2010 they did not get power from APNPDCL and they suffered heavily on account of grid power interruption for 12 days. The company is unable to bear financial loss incurred during the above said period and

also projected and narrated the following grounds in the complaint filed by them in the Forum.

- (i) for the month of September 2010, NPDCL charged demand charges of Rs.32,50,000 (13000 KVS x 250/kVA)
- (ii) the NPDCL charges Rs.1,08,333/- per day towards maximum demand charges.
- (iii) the sirpur paper mills requested the NPDCL to pay back the demand charges for 12 days period in which there is no NPDCL power. The total amount comes to Rs.13,00,000/-.
- (iv) the sirpur paper mills requested the NPDCL to deduct the Rs.13,00,000/- amount in the next month power bill i.e., in October 2010 power bill.
- (v) hence they requested the Forum to look into the matter and do justice.

2. The respondent No.2 filed his written submissions by narrating the following grounds:

- (i) It is to submit that the waiver of maximum demand charges in respect of HT SC No. ADB-009, M/s. Sirpur Paper Mills Ltd. Sirpur Khagaz Nagar, was issued bill for the month of 09/10 as per the Tariff order for the year 2010-11 issued by APERC vide Lr.No.Secy/S-361-A/Secy/EAS-RS-TO-10-11/15/2010, dt.22.07.2010.
- (ii) As per clause 15.4 of GTCS there is no provision of waiver of demand charges and the company Chairman and Managing Director /NPDCL/Warangal has informed the above consumer vide CMD/Dir(F)/CGM(Expr)/GM(R)/AO(R)/ JAO(HT)/ D.No.638/10,dt,01.10.10 and stated there is no provision of waiver of maximum demand charges.

3. After hearing both sides and after considering material placed before the Forum, the Forum has come to a conclusion that there is no necessity to revise the bill excluding the period of 10.09.2010 to 22.09.2010 vide clause 15.4 of GTCS and rejected the request made by the appellant.

5. Aggrieved by the said order, the appellant preferred this appeal questioning the same, that Sirpur Paper Mills is dependant 50% on grid power for their power

needs and non-availability of grid power for 12 days suffered them heavily to the tune of six crores and as per the clause of agreement NPDCL will provide them uninterrupted and quality power to the mills on continuous basis. If they had given power, they would not have lost heavily revenue to a tune of six crores and now requested at least to waive the maximum demand charges for a period of 12 days and this fact has been lost sight of by the Forum and the appeal preferred by them is to be allowed by setting aside the impugned order.

6. Now, the point for consideration is, “whether the impugned order dt.22.11.2010 is liable to be set aside? If so, on what grounds?”

7. Sri Srikrishna Modani, Vice President, Sri M.Krishna MohanRao, Jt.Manager (Electrical) for the appellant present and submitted that they sustained heavy loss to a tune of six crores due to failure of supply of power for a period of 12 days and that the maximum demand charges for the non supply of power for 12 days may kindly be withdrawn as the unit itself is running in losses and with great difficulty they are continuing the same and they have also submitted a letter dt.06.01.2011 on the same lines to that effect.

8. Whereas the respondents are represented by Sri G.Siva Ram, DE/Op/Sirpur Khagaznagar present and stated that the power failure was only due to act of God and it is not merely because of power cut, the exemption was not given in Tariff order 2010-11 and the appeal preferred by them is liable to be dismissed.

9. The respondents have simply relied upon clause 15.4 of GTCS which reads as follows:

“15.4 The Company shall not be liable for any claims for loss or damage or compensation whatsoever arising out of failure of supply when such failure is due either directly or indirectly to force majeure conditions (factors beyond the control of the Company) as specified in the ‘Standards of Performance’ Regulation issued by the Commission.”

In the above said clause, it is clearly mentioned that failure of supply is due to force majeure conditions either directly or indirectly as specified in the Standards of

Performance of Regulation issued by the Commission. The Commission issued Regulation No. 7/2004. Clause 6 of the said regulation reads as follows:

- “6(1) The standards of performance specified in this Regulation shall remain suspended during Force Majeure conditions such as war, mutiny, civil commotion, riot, flood, cyclone, lightning, earthquake or other force and strike, lockout, fire affecting the Licensee’s installations and activities.*
- 6(2) Non-compliance of a standard contained in this Regulation shall not be treated as a violation, and the Distribution Licensee shall not be required to pay any compensation to affected consumer(s), if such violation is caused due to grid failure, a fault on the Transmission Licensee’s network or on account of instructions given by SLDC, over which the Distribution Licensee has no reasonable control.”*

10. The force majeure conditions are incorporated in clause 6(1) of the Regulation. In case of grid failure, no doubt it is not in the hands of any officials of the respondents and protection is given only from claiming compensation by the consumer. The respondents have rejected the claim by invoking the clause 15.4 of GTCS. As per the above said clause, the company is not liable to pay any damages, loss or compensation incase of any force majeure conditions. Here, the appellant is not claiming compensation or damage or loss sustained by him but waiver of maximum demand charges for 12 days for which the supply was not made available. It is neither covered either in the said clause or in the Regulation.

11. No doubt, it is the duty of the respondents to establish that it is the act of force majeure (Act of God) since heavy burden lies on the respondents and the burden cast upon them is not discharged. They have simply invoked the above said clause on the ground that the tariff order is silent with regard to the waiver of maximum demand charges. Even if the waiver is not mentioned in the tariff order, but to invoke clause 15.4 of GTCS , it is for the respondents to place sufficient material before the Forum or before this authority. No material is forthcoming and the burden cast upon the respondents is not discharged. This authority has asked the CGRF to produce the letter filed by SAO and the same was faxed to this authority. Even in the said letter under they have not mentioned the conditions of clause 15.4 of GTCS.

It is not mentioned the failure of power force majeure. Nothing is mentioned in the said letter about any one of the conditions referred in the said clause. This shows the callous attitude on the part of the respondents towards the consumer who suffered for a period of 12 days with complete darkness. Had it been established that the failure of power supply is due to force majeure, no doubt, the appellant has no right to claim any waiver. As the burden cast upon them is not discharged, the appellant is certainly entitled to the relief claimed with regard to the waiver of maximum demand charges for 12 days. Though the appellant has filed complaint before the Forum claiming compensation for the loss sustained by them and also claimed waiver of maximum demand charges for 12 days. But they filed this appeal claiming only waiver of maximum demand charges for the above said period of 12 days. Since they have not pressed the claim for compensation in the appeal grounds itself and this authority has to restrict its finding only to the claim for waiver of maximum demand charges. The approach made by the appellant is in accordance with the legitimate right and the respondents have failed to establish their claim that it was due to force majeure condition. The appellant is entitled to the relief to the extent of waiver of maximum demand charges.

12. In the result, the appeal is allowed. The claim for waiver of maximum demand charges is allowed and the respondents are directed to adjust the same in future bills. The respondents are also directed to comply the orders of this authority within 30 days from the date of receipt of this order. No order as to costs.

This order is corrected and signed on this day of 19th January 2011

VIDYUT OMBUDSMAN