

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 28-07-2012

Appeal No. 25 of 2012

Between

Sri P.Rajesham
S/o.P.Shankaram
M/s. Mallikarjuna Rice Mill, H.No. 1-42/13, Plot No.13,
Pravelli Enclave, Miyapur
Hyderabad.

... Appellant

And

1. Asst Divisional Engineer /Operation / APNPDCL / Godavarikhani
2. Asst. Accounts Officer / ERO / APNPDCL / Godavarikhani
3. Divisional Engineer / Operation / APNPDCL / Peddapally
4. Divisional Engineer / Operation / APNPDCL / Manthani

....Respondents

The appeal / representation filed on 18.01.2011 of the appellant has come up for final hearing before the Vidyut Ombudsman on 07.07.2012 at Hyderabad in the presence of Sri P. Rajesham appellant and his counsel Sri. K. Ram Murthy and Sri. V. Srinivas, AAO, B. Sathyanarayana Rao, AAO, and Madhusudan ADE, Godavarikhani, for respondents present and having stood for consideration till this day, the Vidyut Ombudsman passed / issued the following:

AWARD

The appellant filed a complaint before the Forum on 22.11.2010 to the effect that he is having SCNo.691 at Godavarikhani. In the complaint, he has narrated the following grounds:

(i) In the earlier instance, the department has imposed LPF surcharge plus penalty on the above said service connection and disconnected the service. He filed a complaint before the CGRF on 06.02.2006.

(ii) The Forum issued orders in CG No.52 giving instructions to pay the 50% of pending arrears against his service. Basing on the orders he preferred an appeal 12/2006 to the Vidyut Ombudsman and the Vidyut Ombudsman passed an order to waive the LPF surcharge + capacitor surcharge + penalty.

(iii) After considering his appeal and thereafter two months, the machinery was spoiled and the industry could not be survived till to date.

(iv) He requested the department to waive the minimum charges for the period not running the industry, without taking into consideration of the earlier benefit given by the department.

2. The respondent No.2 filed his written submissions in an elaborate manner and stated that an amount of Rs. 80,234 for outstanding and 3 installments were granted as here under:

I Installment - 30,324 = 00 (Paid on 08.12.2003)

II Installment - 25,000 = 00

III Installment - 25,000 = 00

Total : 80,324 = 00

After giving all the benefits from 4/2004 to 12/2005 an amount of Rs. 82,323 was withdraw. Still there is balance amount to be paid by him. He is not entitled to the sick industry benefits for the second time.

3. The CGM /Operation/Commercial & IPC / NPDCL/ Warangal also filed his written submissions:

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

“(a) the case is not entertainable

(b) the case is not under the purview of Forum

(c) the respondents are directed to act accordingly.”

5. Aggrieved by the said order, the appellant preferred an appeal to this authority, questioning the same, that they issued sick industry benefit in the earlier occasion and removed the monthly minimum charges and when he has applied for the same sick industry benefit, they refused on the ground that the benefit was already given to him.

6. After hearing both sides, this authority passed its order on 11.02.2011 holding as hereunder

“The respondents are directed to give service connection to the appellant forthwith by giving sick industry benefits to his industry. The respondents are directed to comply this order within 15 days from the date of receipt of this order. No order as to costs.”

7. Against the said order, the respondents herein filed WP.No. 1024 / 2011 questioning the said order passed by this authority. The appellant herein also filed WP.No. 22922 of 2011 on the file of the Hon’ble High Court in support of his contention. The Hon’ble High Court delivered its common order on 26.08.2011. The Hon’ble High Court held

“Prima facie, the aforesaid contention appears sustainable. Learned counsel appearing for the consumer industry very fairly submits that part of the order giving operative direction to extend the sick industry benefit without determination as to whether such benefit is extendable to the consumer industry or not, cannot be sustained. In that view of the matter, the operative direction given by the Ombudsman under the impugned order is not sustainable and liable to be set aside.”

It was also further held by the Hon’ble High Court as

“The Forum while considering the case in C.G.No. 297 of 2010 as directed herein above shall also consider the application of the consumer industry for restoring the service connection subject to such conditions, as the Forum deems fit and appropriate. It is made clear that if the adjudication of the grievance of the consumer industry takes time, the Forum would be free to entertain the application of the consumer industry for restoring service connection as an interim measure and pass appropriate orders thereon in accordance with law.”

8. After passing the above said order by the Hon'ble High Court, the Chairperson of CGRF NPDCL passed an order on 02.11.2011 by himself alone as hereunder:

“While so, on verification of the records the Forum came to a definitive conclusion that there is no trace of material or established evidence for extending sick industry benefits second time. Accordingly your case is not entertained.”

9. Against the said order, the appellant preferred the appeal 2 / 2012 to this authority and this authority passed an order as hereunder:

“In the result, the matter is remanded back to the Forum to consider the application of the consumer industry for restoring the service connection subject to such conditions as the Forum deems fit and appropriate. Nothing is to be considered on the feasibility of sick industry benefits. This aspect need not be discussed in the order and verify the feasibility of giving the service connection and if the required conditions are prepared to be complied by the petitioner industry, consider the restoration of service connection, as that is the intention of the order of the Hon'ble High Court. The order has to be passed by the Forum i.e., by the Members and the Chairperson available on that day but not by addressing a letter to the party concerned. The original CG No. 297/2010 has to be restored to file and pass order accordingly. The applications submitted by the consumer are herewith enclosed to this order.”

10. In pursuance of the above said direction, the Forum entertained the petition and restored the same as CG.No. 297/A/2012 of Karimnagar circle and passed the impugned order on 29.02.2012 and held as hereunder.

“Keeping in view of the above all, and award passed by the Vidyut Ombudsman in Appeal No. 2 of 2012, Dated. 12.01.2012, the Forum has come to a conclusion to pass the order restoring the orders already passed in C.G.No. 297/2010, Dated. 10.01.2011, that the respondents are directed to collect an amount of outstanding C.C. charges up to 06/2007 and surcharge thereon and monthly minimum charges from 07/2007 to 02/2012 from complainant for revoking the service connection.

The total amount as arrived shall be collected from the consumer in three equal installments. Soon after payment of First installment by the complainant, the service connection shall be revoked by giving reconnection to run the industry as requested by the consumer.

Further, the respondents are also directed to rectify the problem according to the Terms and Conditions of Supply if any available inconNECTION with fixing of meter before the transformer due to which high consumption is recorded in the meter as requested by the consumer.

The complainant is also requested to pay all the arrears pending against the S.C. No. GDK-691, Cat-III (A) as per the total figure arrived by the respondents till-to-the month of reconnection is going to be issued along with the arrears pending prior to the disconnection period also.

The total amount of arrears pending as arrived by the respondents shall be cleared in three installments by the complainant as desired by him and agreed to pay during the hearing conducted for restoration of his service connection to run the industry as requested by him.

The respondents are directed to submit the detailed compliance report duly implementing these orders within 15 days from the date of receipt of this order to the Forum without fail.”

11. Aggrieved by the said order, the appellant preferred this appeal questioning the order of the Forum as hereunder.

(i) The Forum admitted that the appellants service connection is not proper and result in loss to the consumer industry and that the respondents are liable to pay 54,000 per annum at the rate of 3.75 per unit from 2001 to till date the appellant is not liable to pay Rs. 34,024.

(ii) No notice is issued to the consumer industry for payment of the defaulted amount.

(iii) No notice is served for disconnection and it is illegal.

(iv) The respondents have imposed all types of charges on the appellant, but nothing is served on him for payment or otherwise.

(v) There is no default as such, the disconnection is illegal and manipulated and colorable exercise of power by respondents.

(vi) The sick industry benefit for the first time is given but not for all the months, since not matching the number of units consumed and the actual bills.

(vii) The Forum, did not understand the immediate service connection is necessary for the consumer industry in spite of expressly given orders by the Hon'ble High Court in its common order.

(viii) As the disconnection is illegal the appellant is not responsible for the minimum charges if any accrued on that basis.

12. Now the point for consideration is, whether the impugned order is liable to be set aside? If so on what grounds?

13. The learned counsel for the appellant argued that the respondents have disconnected the service connection on three occasions without issuing any notice, though it is mandatory under section 56 (1) of E Act, 2003. It is also further argued by him that the Jharkhand Ombudman passed an order in appeal No. EOJ 06 / 2010 to the effect that the disconnection of supply of the service connection of the consumer on two occasions is illegal and ordered for issuing revised energy bills on the basis of the direction given by him and hence, the service connection is to be restored. It is also further argued that the facts of the above said case are similar to the facts of this case on hand and therefore, the impugned order is liable to be set aside.

14. The official respondents who appeared before this authority, argued that they have followed the rules and disconnected the same after waiting for a long time and the appellant is creating hurdles by one after the other and the appeal preferred by the appellant is liable to be dismissed.

15. It is an admitted fact that the appellant is availing power supply to his rice mill at Godavarikhani, Karimnagar District for a connected load of 74 HP from 31.10.2001 with SCC No. GNR / 691 under LT category 3A industrial normal category. This service was provided with metering on HT side of the DTR as per the conditions specified in the tariff order in May 2003 and power factor was added to the bill from the month of Decembers 2002 to March 2003 and it was continued to be levied every month. On that he filed a petition before the CGRF and when the Forum did not consider his request, he approached the appellate authority and filed appeal No. 12 / 2006. The service connection was under disconnection from march 2004 and bill stopped by July 2004. The appellate authority passed an award directing the respondents to withdraw the LP surcharge from December 2002 o February 2004.

16. The appellant industry was declared as sick industry in the month of March 2006 and the service was reconnected in the month of February 2006. Again, he filed

CG.No. 52 / 2006 questioning the levy of power factor surcharge and an amount of Rs. 42,089/- was withdrawn as per the order of the forum in the month of June 2006. Again the consumer approached CGRF in CG.No; 146 / 2007 for waiver of capacity surcharge. In compliance of the said order, an amount of Rs. 12,954 was withdrawn in April 2007. After that the service was again disconnected for non payment of arrears of Rs. 28,733 to the end of April 2007 and bill was stopped by June 2007. Against that disconnection, he applied for revival of sick industry benefit in the month of November 2007. The same was disallowed. Again he applied for the same relief of sick industry benefit on 26.08.2010. The same was not considered as he had already availed sick industry benefit. He Filed CG. No. 297 / 2007 before the CGRF for availment of sick industry and the same was rejected by the forum. Against that order, he preferred an appeal 1 / 2011 and the appellate authority allowed the benefit of the sick industry. Against that order the matter went to the Hon'ble High Court in W.P.No. 1024/2011 and W.P.No. 22922 / 2011 and the Hon'ble High Court remanded the matter to the CGRF for fresh disposal and also denied the availment of sick industry benefit for the second time. After remand the CGRF addressed a letter dated 02.11.2011 on that he preferred appeal 2 / 2012 before this authority. This authority remanded the same to follow the guide lines of the Hon'ble High Court. The Forum passed the impugned order, which is the subject matter in this appeal.

17. The main contentions raised by the counsel for the appellant is that no notice is issued under section 56 (1) of E Act, 2003 and the entire procedure adopted by the respondents is illegal, since the litigation is running from 2002 onwards. The disconnections are made right from 2004 onwards. The appellant never raised this issue at any point of time. He has kept quite all the time for several years and raised the issue for the 1st time before this authority. He never harped upon the same at any point of time. The very silence on the part of the appellant for a long period cannot help him in any manner. Even before the Hon'ble High Court he never raised this aspect. His silence for several years estops from raising the same plea.

18. It is pertinent to note that in the very bill issued by the respondents, give a due date for payment of the amount. If payment is not made before due date, it attracts

surcharge and disconnection. It is nowhere pleaded that the disconnection is made before expiry of 15 days after serving the monthly bill, which contemplates disconnection for non-payment of the bill amount. Hence it cannot be said that no notice is served on the consumers. The above said decision relied on by the counsel for the appellant is not applicable to the facts of this case.

19. The disconnection was made by April 2007 for the second time. The respondents are precluded from collecting beyond July 2007. The Forum has observed in the impugned order to collect the amounts from July 2007, till February 2012. The said procedure is unknown to law. The respondents are at liberty to collect the minimum charges for 3 more months one month after disconnection as per the general terms and conditions of the supply. For example if a person takes a service for a period of 2 years by entering into an agreement for that period and commits default in paying the service connection in the very next month of agreement the service connection may be disconnected and the minimum charges will be collected till expiry of agreement period that is 2 years period + 3 months and there after there will be no contractual liability in between the parties.

20. In the light of the above said observations and in the light of the material on record I am of the opinion that the impugned order is partly incorrect and that the same is partly liable to be set aside i.e., collection of minimum charges till February, 2012.

21. The respondents are hereby directed to collect the minimum charges upto July, 2007 from the amount outstanding by April, 2007 together with interest in accordance with rules. With this observation, this appeal is disposed. If the appellant pays the amount, the respondents are directed to restore the service connection considering it as a new connection. No orders as to costs.

This order is corrected and signed on this day of 28th July, 2012

Sd/-

VIDYUT OMBUDSMAN