

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 02 -03-2013

Appeal No. 86 of 2012

Between

Sri. Pankaj Agarwal,
M/s. Jagadish Cotton Industries Pvt. Ltd
Rampur Road, Adilabad – 504 001.

... Appellant

And

1. Assistant Engineer / Operation / APNPDCL/ Town / Adilabad
2. Asst. Divisional Engineer / Operation / APNPDCL / Town / Adilabad
3. Divisional Engineer / Operation / APNPDCL / Adilabad
- 4.. Senior Accounts Officer / Operation Circle / APNPDCL / Adilabad
5. Superintending Engineer / Operation / APNPDCL / Adilabad

.....Respondents

The appeal / representation filed on 26.11.2012 of the appellant has come up for final hearing before the Vidyut Ombudsman on 08.01.2013. Sri A.Gattaiah Advocate filed vakalat for the appellant and Sri E.Damodar, ADE/Op/Rural/Adilabad, Sri A.Rajesham, ADE/Op/Town/Adilabad and Sri D.Narahari, JAO/HT / Adilabad 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 against the Respondents for Redressal of his Grievances and stated as hereunder:

- I. They have already submitted their point of contention to the Superintending Engineer, Divisional Engineer, Assistant Divisional Engineer and Senior Accounts Office, but till date they did not get any reply.
 - ii. The demand raised by the department is for RMD for off season which is less than 15% of CMD. It is unimaginable to think that the main plant can run with 15% of CMD.
 - iii. The above shortfall is levied in the bill only to harass them and put mental burden on them.
 - iv. kindly look into the matter keenly and do the needful.
2. The Senior Accounts Officer/Operation Circle/Adilabad has submitted his written submissions as hereunder:

- i. The off season period of the above service was July to October. The Recorded Maximum Demand and Consumption furnished by Assistant Divisional Engineer/Operation/Town/Adilabad is as below :-

Month	CMD Load	RMD	Consumption
07/11	525 KVA	76.00	4440
08/11		76.00	3120
09/11		20.00	4080
10/11		120.00	4480

- ii. As per Conditions No. viii of Schedule of Retail Supply Tariff and Terms and Conditions for the Year 2011-12, "Any consumer who after declaring the period of season consumes power for his main plant during the off season period, shall not be entitled to this concession during that year".
- iii. The above recorded maximum demand and consumption clearly confirms that the main plant is functioned during the off season period.
- iv. Hence Assistant Divisional Engineer/Operation/Town/Adilabad was requested vide this Office Memo. No. SE/OP/ADB/SAO/JAO(HT)/D. No. 1605/11, Date : 14.12.2011 to submit a detailed report to take a decision on allowing seasonal benefit to the consumer.

- v. Further the matter was reminded vide this Office Memo No. SE/OP/ ADB/SAO/JAO (HT)/D. No. 218/11/Dt. 01.02.12. But Assistant Divisional Engineer/Operation/Town/Adilabad failed to submit the detailed report.
- vi. Hence a 15 days notice was issued to the consumer vide this Office Lr. No. 437/11, Dt. 03.03.2012 and requested to pay the shortfall amount of Rs. 4,80,804/- (By revising the C.C. bills for the months 07/11 to 10/11 with normal tariff).
- vii. Further it was informed that in case of any objections regarding disallowing of seasonal benefit, the same may raise to the Superintending Engineer/Operation/ Adilabad (Through Assistant Divisional Engineer/ Operation/ Town/ Adilabad within 15 days from the date of receipt of the notice).
- viii. But the consumer failed to pay the shortfall amount and no objections were received through Assistant Divisional Engineer/ Operation/ Town/Adilabad, hence the shortfall amount was included in C.C. bill for the month of 04/2012.
- ix. Further it is to submit that consumer has paid the above shortfall amount under protest vide P.R. No. 66341, Dt. 30.07.12.

3. The Assistant Divisional Engineer/Operation/Town/Adilabad has submitted his written submissions as hereunder:

- i. He has inspected the premises of HT service S.C. No. ADB-239 of M/s. Jagadish Cotton Industries, Rampur Road in Adilabad Rural Section of Operation, Sub-Division, Rural, Adilabad on 12.10.12 and found that the following load particulars of main plant and lighting load connected to the service is as follows :-

Recorded Consumption As Per the Records					Present Status of the Service	
Month	CMD in KVA	RMD in KVA	Consumption		Connected Load	
			Main Plant	Lighting	Main Plant in KVA	Lighting in KW
07/11	525	76.00	4440	743	500	10.5
08/11		76.00	3120	723		
09/11		20.00	4080	865		
10/11		120.00	4480	1279		

- ii. Further at present the load particulars of the main plant of service are available but not utilizing by the consumer due to off season of industry.
- iii. But in the same time the lighting load available at present on the service is utilizing by the consumer during the period of off season also.
- iv. In the view of above recorded maximum demand clearly confirms that the main plant is not functioned during the off season period. The contracted load of the service is 525 KVA.
- v. If the supply is extended to the main plant the recorded maximum demand and consumption could have been boosted to the very high level.
- vi. In this connection it is to submit that during July 2011 and August 2011 and October 2011 the consumer utilized supply for trail run the main plant after overhauling and annual maintenance after completion of season and before starting the season.
- vii. Further it is to submit that on enquiry it is learnt that during off season period there will no be any arrival of cotton in the market. Hence without raw material the consumer cannot run his main plant for production.
- viii. In the light of above facts, it is requested to allow him the off season benefit for the Year 2011-12.
- ix. Further it is to submit that, the consumer of the said service was already paid the said shortfall amount under protest Rs. 4,80,804/- (In words Four Lakhs Eighty Thousand Eight Hundred Four Rupees only) vide PR. No. 66341, Dt. 30.07.12.

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

- i. **The complainant is advised to pay the shortfall levied by the respondent in connection with consumed power for his main plant during the off season period declared from July to October 2011.**
- ii. **The respondents are directed to collect the shortfall**

amount as per the Tariff Order 2011-2012 during the off season period. Ignore if already paid by the complainant in connection with above subject.

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

- i. The appellant was declared off season period of the above service from July 2011 to October 2011.
- ii. The appellant has used the main plant during the off season period basing on the RMD & consumption recorded during the off season period is imaginary & far from truth. It does not confirm that the main plant is functioned during the off season period with just 23% RMD load of CMD. It cannot run with even 50% of CMD load. The RMD and consumption during the off season period from 7/11 to 10/11 never exceeded to 23% of CMD.
- iii. They never stated that they have consumed power to the main plant maximum of 30% of CMD during the off season period but they have stated in their letter dated 14.03.2012 addressed to SE/O/Adilabad that "their CMD is 525 KVA and that they are entitled to use 30% of the same in the off season period". But the Forum has wrongly interpreted and added the words in the sentence of "Consumed power to his main plant". Even though they never consumed power to run main plant during off season period as 23% of CMD load is not enough to run the main plant.
- iv. They never consumed power for their main plant during the off season period. This has been confirmed by the ADE/D/Town/Adilabad vide his letter dt.30.08.2012 received by the Forum on 03.09.2012 in reply to the Fourm's notice dt.31.07.2012.
- v. The reply of the ADE/D/Town/Adilabad clearly indicates that there are no records available whether the supply to the main plant utilized or not. Once again they confirm that the power is not utilized to main plant.

- vi. After examination of the reports submitted by the respondents, the Forum came to a conclusion that the complainant has consumed power for his main plant during the off season period by violating the declaration period given by the complainant as per Condition No.viii of Schedule of Retail Supply Tariff 2011-12. It is imaginary and based on fictitious reports.
 - vii. The tariff itself allows entitlement to utilize power up to 30% of the contracted demand during the off season period.
 - viii. The meager RMD & consumption which is less than 23% of CMD load cannot be attributed / confirmed as main plant functioned during the off season period thus, they have not violated the terms & conditions.
 - ix. It is therefore prayed that the impugned order is liable to be set aside.
7. In the additional grounds filed on 18.12.2012, the following grounds are stated by the appellant:
- i. The CGRF/APNPDCL/Warangal disposed their representation without granting personal hearing.
 - ii. During the aforesaid off season period, the consumption power is below the contracted maximum demand as against the said consumption the NPDCL has billed 30% maximum.
 - iii. In respect of HT Sc.No.ADB-150 of M/s. Sindhu Ginning and Processing Factory, Adilabad and HT Sc.No.ADB-175 of M/s. Sri Ram Industries, Adilabad where shortfall levied by the A.G.Audit on this contention of recording maximum demand during the off seasonal period has been withdrawn on the plea of supply utilized for repairing of the factory, by dropping the levy of AG Audit. In respect of HT Sc.No.ADB-275 of M/s. Sri Sai Baba Factory, Adilabad where shortfall levied for the same reason by the SE/Op Circle / Adilabad also has been withdrawn on the same plea.

- iv. On the same ground the shortfall levied on their service also deserves for withdrawal.
 - v. During the off season period they carry out repairing, overhauling, replacement of machinery, welding works etc., and for the said purpose they consumed power but not for running the main plant.
8. Now, the point for consideration is, "Whether the impugned order is liable to be set aside? If so, on what grounds?"
9. The learned advocate for the appellant submitted his written arguments projecting the following grounds:
- (i) The Forum has simply looked into the RMD recorded and arrived at a conclusion that the main plant was utilized, though there was no record to that effect.
 - (ii) The Forum has failed to look into the letter addressed by ADE dated 12.10.2012 in which it is clearly mentioned that the load particulars of the main plant of the service are available but not utilised by the appellant due to off-season of the industry. But at the same time, the lighting load available at present on the service is utilized by the appellant during the period of off-season.
 - (iii) The Forum has failed to apply its mind to the letter addressed by the respondent no.2 and the said letter indicates that there is no evidence of functioning of the main plant.
 - (iv) The Forum has failed to appreciate the letter addressed by the respondent no.4 dated 02.01.2013 demanding the appellant to pay the shortfall amount of Rs.4,80,804/- and it is otherwise admitted by the respondent no.4 that the shortfall raised by him is without any report since no detailed report is filed by the ADE/O/Adilabad.
 - (v) The Forum has failed to look into the objections raised by the appellant and the respondent no.4 has erroneously stated that no objection was received from the appellant.

- (vi) The Forum has failed to observe the real facts while raising shortfall amounts without any proper field reports and without looking into the objections raised by the appellant.
- (vii) The respondents have withdrawn the case against M/s. Sindhu Ginning & Pressing Factory, Adilabad and Sri Ram Industries, Adilabad on the shortfall levied basing on the A.G.Audit but withdrawn basing on the ADE's report.
- (viii) Though the appellant is standing on the same line, they have issued a shortfall notice and it is nothing but a clear cut harassment on the appellant.
- (ix) The department officials of Adilabad have over acted in order to harass the consumers or to extract more revenue for the department, which is not as per tariff spirit.
- (x) In the light of the above said facts, the impugned order is liable to be set aside.

10. The respondents have submitted their written submissions narrating the following grounds:

- (i) The industry of the appellant is seasonal industry.
- (ii) The service was recorded RMD during off-seasonal period as against CMD 525 KVA.

Month	CMD in KVA	RMD in KVA	Main plant Consumption	Lighting load consumption
07/11	525 KVA	76.00	4440	743
08/11		76.00	3120	723
09/11		20.00	4080	865
10/11		120.00	4480	1279

- (iii) As per the RMD recorded during off-season period, notice was issued to consumer but the consumer approached Consumer Grievance Redressal Forum.

- (iv) The consumer also paid the shortfall amount of Rs.4,80,804/- under protest.
- (v) It is also stated that the very table submitted above clearly indicates the using of the main plant and that itself is the indication that the main plant is put into operation and the appellant is not entitled to the benefit and the appeal preferred by the appellant is liable to be dismissed.

11. It is an admitted fact that Sc.No.ADB-239 M/s. Jagadish Cotton Industries is a seasonal industry and it declared off-season period from July 2011 to October 2011. The SAO/Op/Adilabad has analysed basing on the RMD and consumption recorded during off-season period and arrived at a conclusion that the appellant has used the main plant during off-season period.

12. The Forum has observed that the appellant has stated that they consumed power to the main plant as they can use up to 30% of CMD during the off-season period is in correct. They have stated that they are entitled to use 30% of the same for the off-season period. This itself shows that the very observation made by the Forum that they have admitted using of the 30% even for running main plant is incorrect and this is a wrong interpretation made by the Forum.

13. It is clear from the reply to the SE that they are attending the works of repairing the plant and the machinery during off-season and that they have also utilized the lighting. When there is a possibility of attending the repairs of machinery to put the machinery in good working condition to operate in the seasonal period, naturally there may be some use of power for attending the same, but that itself is not a ground to conclude that the main plant is used though the minimum power utilized is 23%. It is impossible to run the main plant with 23% and there is no recorded evidence to show that the respondents have run the main plant during the off-season period. It is also not possible to run the machinery without any raw material. This aspect is also been lost sight of by the Forum.

14. It is an admitted fact that “any consumer as per Retail Supply Tariff order who consumes power for his main plant during the off-season period shall not be entitled to the concession during that period.” This fact has to be looked into whether the main plant, as pointed out by the respondents is put to use or not. But the Forum has simply looked into the reports and arrived at a conclusion that the appellant has consumed power for his main plant during off-season period by violating the declared seasonal period declared by the appellant and as per condition no. viii of Schedule of Retail Supply Tariff 2011-12 and rejected the case of the complainant.

15. The very letter dt.12.10.2012 addressed by the ADE/O/Adilabad clearly indicates that the load particulars of the main plant and the service are available but not utilized by the consumer due to off-season of the industry. Whereas, the letter dt.30.08.2012 addressed by the ADE/O/Adilabad clearly indicates that the supply to the main plant by the consumer is utilizing or not is not available in the records but the RMD recorded and available is placed.

16. In any one of the letters addressed by the inspecting staff they have not mentioned that the main plant is run during off-season period by entertaining ginning operations. It is also clear that if ginning operations are entertained by putting the main plant into operation, it definitely crosses the 30% power permitted to be used during off-season period.

17. Furthermore, the inspecting staff never stated that the power is used for running the main plant. The meager recording (23%) is far below 30% of CMD and cannot be concluded in the absence of recorded evidence that the main plant is put to use. Moreover, the recorded evidence placed by the respondents is in favour of the appellant. The finding given by the Forum is against to the principles of law and the very Tariff order. Though the appellant is entitled to utilize upto 30% but the appellant has utilized only 23%, which is far below the minimum, but he has paid the minimum charges of 30% as per the Tariff order, which reads as follows:

DEMAND CHARGES & ENERGY CHARGES		
Voltage of Supply	Demand Charges Rs/kVA / month of Billing Demand#	Energy Charges Paise/kVAh
132kV and above	250	410
33kV	250	430
11kV	250	480
#Based on the Recorded Maximum Demand or 30% of the Contracted Demand whichever is higher		

18. The above said discussion clearly indicates that the Forum has erroneously concluded basing on the report of the Senior Accounts Officer and arrived at a conclusion that the main plant is put to run during off-season period and the very order passed by the Forum is not on correct lines and the same is liable to be set aside.

19. In the result, the appeal is allowed. The amount collected from the appellant shall be adjusted in the future bills payable by the appellant.

This order is corrected and signed on this day of 2nd March, 2013

Sd/-
VIDYUT OMBUDSMAN