



**BEFORE THE VIDYUT OMBUDSMAN
Andhra Pradesh :: Hyderabad**

:: Present ::

C. Ramakrishna

Date: 25-1-2016

Appeal No. 1 of 2015

Between

M/s. Viom Networks Ltd, 1-8-304-307/308/444, 4th Floor, Gowra Plaza, Sardar Patel Street, Begumpet, Secunderabad.

... Appellants

And

1. The AE/Operation/APEPDCL/Amalapuram
2. The AAO/ERO/K. Agraharam/Amalapuram
3. The ADE/Operation/APEPDCL/Amalapuram
4. The DE/Operation/Amalapuram

... Respondents

The above appeal filed on 15-04-2015 has come up for final hearing before the Vidyut Ombudsman on 28-12-2015 at Rajahmundry. The appellants, as well as respondents 1 to 4 above were present. Having considered the appeal, the written and oral submissions made by the appellants and the respondents, the Vidyut Ombudsman passed the following:

AWARD

2. The appeal arose out of the complaint of the appellants about retrospective levy of Rs. 12,50,395.35/- by the respondents towards low power factor surcharge

based on an audit objection. On approaching the CGRF, the Forum held the matter in favour of the respondents and hence the appeal.

3. The appellants stated in their appeal they had received a letter dated 13-11-2014 demanding payment of Rs. 12,50,395.35/- towards low power factor surcharge; that on receiving the same, they had made a representation on 29-01-2015 to no avail; that the demand for the years 2009-10 & 2010-11 was raised on them after a lapse of six years, based merely on an audit objection; that the respondents had never fixed a tri-vector meter to their service connection during the said period; that in spite of their approaching the CGRF seeking relief against the levy, the CGRF did not give them any relief; that the CGRF failed to see that there was never an inspection of their premises before the levy of the low power factor surcharge; that the respondents had, without installation of tri-vector meters cannot go about levying low power factor surcharge and the CGRF too failed to notice the same; that the respondents, including the CGRF, failed to see they do not have any major inductive load, barring the air conditioner which runs only for part of the time -- about 10 to 12 hours in a day; that for all these reasons, the surcharge ought never to have been levied on them and that even if it were to be levied, the same ought to have been levied only after taking proper measurements as provided for in the Tariff Order; and that the levy of maximum amount of 25% surcharge merely based on an audit objection, is illegal and unwarranted.

4. During the course of the hearings, the appellants filed further submissions stating, among other things, and that the demand being raised is barred by limitation mentioned in section 56(2) of the Electricity Act, 2003.

5. Notices were issued for hearing the matter. The respondent AAO filed his written submissions stating that the AG Audit team had conducted the audit for the period 2003-04 to 2010-11 and observed that non-installation of trivector meters had resulted in non-levy of low power factor surcharge; and that it is consequent to this audit that the appellants were addressed to pay the disputed low power factor surcharge. He enclosed relevant supporting material in support of his submissions. In his further submissions on 03-09-2015, he stated that the appellants had not installed capacitors as mandated in the GTCS and the Tariff Orders and therefore made themselves liable for levy of 25% surcharge; and that the billing for the consumer had been under kWh billing till July, 2011 and that kVAh billing was implemented w.e.f April, 2011.

6. The respondent DE also filed his written submissions reiterating what was stated by the AAO.

7. During the course of the hearing, the appellants and the respondents confirmed what they stated in writing. The key points that arose for consideration in this appeal are:

- a. Whether or not the consumer is liable to pay the demand for low power factor surcharge made by the respondents; and
- b. Whether or not the CGRF's order is liable to be set aside in this case.

8. Coming to the first issue, the respondents had been using the phrases "low power factor surcharge" and "capacitor surcharge" interchangeably during the course of the hearings to buttress their case that in view of the fact that the appellants had

not installed capacitors even during the years 2009 & 2010, the levy of low power factor surcharge is well within legal limits. But a reading of clause 12.1.1 (extracted below for ready reference) of the GTCS makes it clear that “capacitor surcharge” is levied when there is no capacitor installed or the capacitor installed is not working and “low power factor surcharge” is levied when power factor is not maintained at a prescribed level.

12. Other Irregularities

12.1 Failure to install capacitors by LT consumers

12.1.1 Capacitor Surcharge

Failure to install / maintain capacitors by consumers in accordance with the provisions under clause 5.13.1 will be treated as a violation of the GTCS and attracts levy of capacitor surcharge at the rates specified by the Commission in the tariff orders issued from time to time or otherwise.

Where any LT consumer is provided with meters capable of measuring active power and reactive power under any directions of the Commission contained in the tariff order or otherwise, such consumers shall be required to pay low power factor surcharge as per the surcharge rates applicable for HT consumers for the power factor obtained during the month subject to the ceiling of the level of the capacitor surcharge as specified for LT consumers.

9. All the HT consumers are supposed to maintain the prescribed power factor of 0.95. This is as per the Tariff Order conditions -- Item 5 in General conditions of HT supply.

(5) SURCHARGE FOR LOW POWER FACTOR

The power factor for the month shall be the ratio of Kilo-Watt hours to the Kilo-Volt-Ampere Hours supplied to the consumer during the month. The power factor shall be calculated upto two decimal places. The power factor of the consumer's installation shall not be less than 0.95. If the power factor falls below 0.95 during any month, the consumer shall pay a surcharge as detailed below:

Sl. No	Power Factor Range	Surcharge
1	Below 0.95 & upto 0.90	0.5% of energy charges on actual energy consumed in that month for every 0.01 fall in Power Factor from 0.95
2	Below 0.90 & upto 0.85	1% of energy charges on actual energy consumed in that month for every 0.01 fall in Power Factor from 0.90
3	Below 0.85 & upto 0.80	1.5% of energy charges on actual energy consumed in that month for every 0.01 fall in Power Factor from 0.85
4	Below 0.80 & upto 0.75	2% of energy charges on actual energy consumed in that month for every 0.01 fall in Power Factor from 0.80
5	Below 0.75	3% of energy charges on actual energy consumed in that month for every 0.01 fall in Power Factor from 0.75

The surcharge for low power factor will be effective from 1st April 2009. The necessary amendments to General Terms and Conditions of Supply shall be carried out with regard to surcharge for low power factor.

Should the power factor drop below 0.75 and so remain for a period of 2 consecutive months it must be brought up to 0.95 within a period of 6 months by methods approved by the Licensee failing which, without prejudice to the right of the Licensee to collect surcharge and without prejudice to such other rights as having accrued to the Licensee or any other right of the Licensee, the supply to the consumer may be discontinued.

10. The metering provided for all the HT consumers is capable of measuring the active and reactive components and hence a low power factor surcharge is levied in accordance with the Tariff Order conditions. If the HT consumer doesn't maintain the power factor at 0.95, the consumer is liable to pay low power factor surcharge. This is automatic and the DISCOM can levy this charge along with the regular bill for the month. If the power factor is below 0.75 and remains so continuously for a period of two months, the consumer is mandated to bring up the power factor to a level above 0.75 within six months. If he doesn't do so, the DISCOM can, in addition to collecting the low power factor surcharge, disconnect the service connection. One more point that needs to be observed here is that there is no ceiling limit for the levy of this low power factor surcharge in case of HT consumers i.e., when the power factor is below 0.75, 3% of energy charges on actual energy consumed in that month for every 0.01 fall in Power Factor from 0.75, shall be levied. Theoretically this levy can go beyond 25%

of the energy charges for the month.

11. LT consumers that have installed induction motors and welding transformers are mandated, by Clause 5.13.1 of the GTCS, to install capacitors. This is to ensure that proper power factor is maintained. All LT consumers are not provided with metering that is capable of measuring the active and reactive components. As no low power factor surcharge can be computed for such consumers, the provision for levying capacitor surcharge was perhaps introduced. But where the metering of such LT consumers is capable of measuring the active and reactive components -- i.e., trivector metering -- power factor can be computed easily and low power factor surcharge levied where the power factor is found to be below the mandated levels. But this low power factor surcharge, in respect of LT II and LT III(A) consumers cannot go beyond 25% by virtue of para (5) of Part 'D' of the Tariff Order for the relevant year. Where the metering is not trivector metering, such consumers can only be levied the capacitor surcharge -- if they are mandated to install capacitors and have not installed such capacitors. Relevant provisions of Part 'D' of the Tariff Order for 2009-10 are extracted below for ready reference:

- (4) In the case of consumers not covered by Low Power Factor (LPF) surcharge as per note VII and VIII under LT category III(A), note LT category III(B) and note 4 under LT Category-II, if during inspection, no capacitor is found, or the capacitors already installed are found to be damaged or having defect or ceased to function, such consumer shall be liable to pay surcharge @ 25% of the monthly bill amount, as per the terms and conditions of supply notified by the licensee.
- (5) The LT Category II and LT category III(A) consumers who are provided with metering capable of measuring active and reactive power under the orders of the Commission, shall be required to pay **low power factor surcharge** as per the rates applicable for HT consumers for the power factor obtaining during the month subject to the ceiling of the level of capacitor surcharge mentioned in item 4 herein.

12. Where LT consumers, like the present appellants, are not installed trivector metering, then the only thing that can be levied on them is capacitor surcharge -- if they are having induction motors or welding transformers. The Tariff Order mandated that trivector metering shall be provided for all such consumers who are having loads of 10 kW and above. The relevant provisions -- Notes under LT II in Part 'B' LT Tariffs are extracted below for ready reference:

Notes:

1. For Loads less than 3 kW single phase supply only will be given.
2. For loads 10 kW and above, a LT trivector meter shall be provided.
3. In respect of the complexes having connected load of more than 56 KW/75 HP released under specific orders of Licensee for Single Point Bulk supply, where such complex is under the control of a specified organisation/ agency taking responsibility to pay monthly current consumption bills regularly and abide by the Terms and Conditions of supply as per agreement, the billing shall be done at the highest slab tariff rate under this category. The energy shall be measured on HT side of the Distribution Transformer feeding the Load. In cases where energy is measured on LT side of the transformer, 3% of the recorded energy during the month shall be added to arrive at the consumption on High Tension side of the transformer.
4. The consumers provided with metering capable of measuring active and reactive power as per the provision 2 above shall be required to pay LPF surcharge as applicable for HT consumers for the low power factor during billing month subject to ceiling of the level of capacitor surcharge specified for LT consumers under Part-D herein.

13. In spite of this requirement, the respondents had not installed trivector meter for the appellants in question. This is a failure on the part of the respondents. As they have not done so, the audit pointed out the mistake and found out the notional loss by taking the capacitor surcharge ceiling of 25%. This does not mean that the audit wanted the respondents to make good the loss by now levying and collecting the capacitor / low power factor surcharge or that the audit can authorize such a levy. No audit can do so. Its business is to only point out the mistake committed and that is what was done by the audit in the present case. It was the respondents, who in spite of being required to install trivector metering, had not installed the same in the premises of the appellants. It is because of this that the DISCOM lost the opportunity

of computing the low power factor surcharge, as provided for in para (4) of the note extracted above, and collecting it. They cannot make this good by now resorting to an illegal levy. Hence, the first issue is answered in favour of the appellants. The respondents cannot levy low power factor surcharge without installing the trivector meter in the premises of the consumer.

14. There are some of the other contentions raised by the appellant that deserve a look. One of them is that the demand raised by the DISCOM is very belated -- almost six years after the event. The demand for low power factor surcharge was raised by the respondents through their letter dated 13-11-2014 for the first time. The demand pertains to the years 2009-10 & 2010-11. This is clearly in violation of section 56(2) of the Electricity Act, 2003.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity:

The low power factor surcharge -- if leviable in the first place -- became due right in the years 2009 & 2010. The demand raised by them in respect of these years in November, 2014 is clearly beyond the period of two years mentioned in the Act. Therefore, the demand, besides being not legal, is barred by limitation too. As for the contention of the appellants that the respondents had not fixed a trivector meter in the first place, the respondents did not have any defence. The appellants also said that they don't have any inductive load and that therefore they cannot be subjected to any capacitor surcharge and / or low power factor surcharge. To the extent that this submission relates to the years 2009 & 2010, nothing much need be examined on

this count because of the fact that the respondents had not conducted any inspection in the years 2009 & 2010 to either confirm or deny the veracity of the submission. The respondent DE in his submission on 03-09-2015 stated that the appellants have not installed capacitors even now and that therefore the levy of low power factor surcharge / capacitor surcharge for the financial years 2009 & 2010 is valid. This authority is not moved by this submission. It is beyond doubt that the appellants have not installed capacitors in their premises. For not installing capacitors, the respondents can always make an inspection and if they find any inductive load in the premises of the consumer, they can always require the consumer to install capacitors of adequate rating. If the consumer, on such a demand being made does not install the capacitors within the time provided for, the respondents then can go ahead and levy capacitor surcharge. But to say that in view of the consumer not having installed capacitors, the DISCOM is well within its powers to levy and collect low power factor surcharge, without ever installing trivector meters, is not correct and goes against the provisions of the GTCS and the Tariff Orders. However, it is made clear to the respondents that even now they can make an inspection of the consumer's premises and see whether or not there is any inductive load. If they find any inductive load in the premises, they are free to demand that the consumer keep capacitors of adequate capacity to maintain proper power factor -- to ensure the safety and stability of the grid. If on such a demand being made, if the consumer doesn't install capacitors, they are free to levy the capacitor surcharge as provided for in the GTCS.

15. Coming to the second issue -- whether or not the CGRF's order is liable to be set aside, it is seen that the CGRF had not interpreted the provisions of the Tariff Order and the GTCS correctly. Its finding that the consumer is liable to pay the contested charges is without any basis. Hence the order of the CGRF is liable to be set

aside.

16. Therefore, it is hereby ordered that the appeal is allowed and the order of the CGRF is set aside as it is bereft of merit.

17. It is made clear that it is for the DISCOM to determine as to whose lethargy caused this notional loss and to initiate necessary measures to make good the same from those responsible.

18. This order is corrected and signed on this 25th day of January, 2016.

19. A digitally signed copy of this order is made available at www.vidyutombudsman.ap.gov.in.

VIDYUT OMBUDSMAN

To

1. M/s. Viom Networks Ltd, 1-8-304-307/308/444, 4th Floor, Gowra Plaza, Sardar Patel Street, Begumpet, Secunderabad.
2. The Assistant Engineer, Operation, Amalapuram-Town, APEPDCL, Near Edarapalli Bridge, Amalapuram, East Godavari District - 533 201
3. The Assistant Accounts Officer, ERO, APEPDCL, K. Agraharam, Amalapuram, East Godavari District - 533 201
4. The Assistant Divisional Engineer, Operation, APEPDCL, Near Edarapalli

Bridge, Amalapuram, East Godavari District - 533 201

5. The Divisional Engineer, Operation, Near Edarapalli Bridge, Amalapuram,
East Godavari District - 533 201

Copy to:

6. The Chairman, C.G.R.F, APEPDCL, P&T Colony, Seethammadhara, Near
Gurudwara Junction, Visakhapatnam - 530 013
7. The Secretary, APERC, 11-4-660, 4th Floor, Singareni Bhavan, Red Hills,
Hyderabad - 500 004