



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

:: Present ::

C. Ramakrishna

Date: 30-10-2015

Appeal No. 5 of 2015

Between

M/s. Agro Co-Operative Corporation, 10-1-13/2, Mittal Chambers, Asilmetta,
Visakhapatnam

... Appellants

And

1. The DE/Operation/APEPDCL/Nidanamdhodi/Gavarapalem/Anakapalli/
Visakhapatnam District
2. The SAO/Operation/APEPDCL/Opp: Green Park Hotel/Visakhapatnam
3. The SE/Operation/APEPDCL/Opp: Green Park Hotel/Visakhapatnam

... Respondents

The above appeal filed on 22-05-2015 has come up for final hearing before the Vidut Ombudsman on 12-10-2015 at Visakhapatnam. The appellants, as well as respondents 1 to 2 above were present. Having considered the appeal, the written and oral submissions made by the appellants and the respondents, the Vidut Ombudsman passed the following:

AWARD

2. The appeal arose out of the complaint of the consumer about excessive billing for the months of October and November, 2014. They were not happy with the order issued by the CGRF and hence the appeal.

3. The appellants stated in their appeal that they are availing power with a contracted demand of 150 kVA through a dedicated 11 kV feeder for their Crude Palm Oil production facility; that power supply for them was disconnected on 11-10-2014 due to Hudhud Cyclone and was restored only on 12-11-2014; that because of this, they got power supply for 19 days in the billing cycle for October, 2014 and 10 days in the billing cycle for November, 2014; that they are in receipt of power bills for both the months together on 26-11-2014; that they noticed that the DISCOM had levied minimum demand charges for 120 kVA which is equivalent to 80% of 150 kVA for both the months; that on finding that the DISCOM had thus incorrectly levied the demand charges, they raised the issue with the DISCOM and finding that the DISCOM had not responded, they calculated their liability as Rs. 12,713.76 for the two months in question and had accordingly paid the same; that under threat of disconnection, they had paid an amount of Rs. 57,909/- demanded by the respondents; that on approaching the CGRF, the CGRF too had gone by the respondents' version that they are liable to pay the demand charges little caring for the fact that it was the DISCOM that had not supplied them the power for the full months of October and November, 2014; that by the very nature of their industry -- the palm oil fruit has to be processed within 72 hours of it being plucked to prevent it from becoming rotten -- they had suffered heavy losses due to the non-supply of power by the DISCOM during the months of October and November, 2014; and that therefore their appeal should be considered favourably and the demand charges levied on them for the months of October and November, 2014 should be revised downward taking the realities into account. The appellants enclosed adequate material in support of their contention.

4. Notices were issued for hearing the matter. The respondent SAO had stated in the written submission filed on behalf of all the respondents by her that the

appellants, an HT I A consumer, were released power supply on 03-10-2007 with a contracted demand of 150 kVA; that due to the disruption caused by Hudhud Cyclone, provisional demand of Rs. 86,508/- being 2/3rd amount of September, 2014 bill was raised on the consumer in accordance with the instructions from their higher authorities; that in accordance with the Government of Andhra Pradesh instructions, the monthly minimum demand charges were waived for the month of October, 2014; and that the monthly minimum demand charges were not waived for the month of November, 2014 as there was no waiver for them and were levied in accordance with the GTCS.

5. 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 minimum demand charges are leviable by the DISCOM even when it has not been in a position to supply power to the consumer; and
- b. Whether or not the CGRF's order is liable to be set aside in this case.

6. Coming to the first issue, it is very well known that due to the havoc wreaked by Hudhud Cyclone on 12th of October, 2014 the DISCOM could not supply power to the consumers. In the instant case, power was not supplied till 11-11-2014 to the appellants i.e., exactly for a month. It is this non-supply of power which prevented the consumer appellants from availing the contracted demand. Keeping the difficulties faced by people in general and industries like the appellants in particular, the Government of Andhra Pradesh directed the DISCOM, through G.O. Ms. No. 134

dated: 18-11-2014, not to levy minimum charges for the month of October, 2014 on the industrial units located in the three districts of Visakhapatnam, Vizianagaram and Srikakulam. While finally raising the bill for the month of October, 2014 the respondents did keep the Government's order in view and admittedly desisted from raising demand for the minimum charges. But, for the month of November, 2014 they finalised the bill without waiving the minimum charges for the reason that the Government's order did not specifically authorize them to waive the same for the month of November. The two issues that need to be examined in this context are:

- a. Whether the Government's order was specifying a calendar month or a billing month; and
- b. If it was specifying a calendar month, whether or not the same relief that is given by the said Government's order can be extended to the further period of non-supply by the DISCOM.

7. The said Government order used the words "for the month of October," in the relevant paragraph directing the DISCOM not to levy the minimum charges. From a plain reading of the Government's order, it is clear that it is for the calendar month. This is more so when the order did not speak / take cognizance of the billing month. But the DISCOM follows a billing month. In the appellant's case, the bill for the month of October, 2014 charges the consumer for the supply made to him during the period 22-09-2014 to 22-10-2014. In the instant case, because of the occurrence of Hudhud Cyclone on 12-10-2014, power was not supplied to the consumer for 10 days from 12-10-2014 to 22-10-2014 in the billing month of October, 2014 and for 19 days in the billing month of November, 2014. Therefore, waiver of minimum charges only in one month i.e., for the billing month of October and not for the billing month of

November, 2014 is resulting in an anomalous situation wherein the consumer is deprived of the benefit of waiver of minimum charges in a billing month in spite of having more number of non-supply days.

8. In tackling this anomalous situation, this authority is guided by the philosophy followed by the Hon'ble Commission and the view held by the Hon'ble Supreme Court of India in *M/s. Northern India Iron & Steel Co vs. State of Haryana and Another* on 10-11-1975 (1976 AIR 1100). The Hon'ble Commission, while authorizing the imposition of restriction and control measures, had clearly stated that demand charges shall be levied on pro-rata basis. What this meant was that if a consumer is supplied power for only 18 days in a month, then demand charges shall be levied only for the 18 days and not for the full 30 days of the month. That philosophy followed by the Hon'ble Commission in so ordering is equitable. As the demand of the consumer for the non-supply days is not met, the DISCOMs cannot levy and collect demand charges for the days of non-supply. In the present case also, the same principle holds good. Because of a natural calamity, the DISCOM was not able to supply / meet the demand of the consumer. Hence, it cannot levy minimum demand charges on the consumer, as it did not supply / meet the demand of the consumer, in spite of the consumer being ready to avail the supply / demand. So, while not supplying / meeting the demand on one hand, demanding minimum demand charges on the other is dealing a double whammy to the consumer. That will not stand to reason.

9. In coming to this conclusion, this authority is also guided by the observations made by the Hon'ble Supreme Court in *M/s. Northern India Iron & Steel Co vs. State of Haryana and Another*. While ordering that a proportionate reduction in the monthly demand charges be made, the Hon'ble Supreme Court observed that it is the inability

of the Board to supply, a factor which is beyond the control of the consumer, that had prevented the consumer from consuming the minimum demand. Hence, the Court ordered that minimum demand charges in such a case shall be proportionately reduced. The Hon'ble Commission also had followed the same philosophy while authorizing the levy of proportionate demand charges during the R&C period. Therefore, this authority has no hesitation in holding that the same logic applies to the present case also.

10. In view of the foregoing discussion, the first point is held in the favour of the appellant and the DISCOM is liable to revise the bill for the month of November, 2014 accordingly.

11. Coming to the issue of CGRF's order, this authority finds that it is bereft of merit inasmuch as it did not consider the ground realities properly and did not undertake an examination of the issue in the right perspective. Therefore, it is liable to be set aside.

12. Therefore, it is hereby ordered that:

- the order issued by the CGRF is set aside as it is bereft of merit;
- the respondents shall revise the bill for the month of November, 2014 duly taking into account the non-supply of power for a period of 19 days from 23-10-2014 to 11-11-2014 (both days inclusive) i.e., the DISCOM shall not charge demand charges for this period of 19 days; and
- the respondents shall revise the bill within 15 days from the date of receipt of this order and report compliance thereof within 15 days from thereafter.

13. This order is corrected and signed on this 30th day of October, 2015.

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

VIDYUT OMBUDSMAN

To

1. M/s. Agro Co-Operative Corporation, 10-1-13/2, Mittal Chambers,
Asilmetta, Visakhapatnam - 530 003
2. The Divisional Engineer, Operation, APEPDCL, Nidanamdhodi,
Gavarapalem, Anakapalli, Visakhapatnam District - 531 001
3. The Senior Accounts Officer, Operation, APEPDCL, Vidyut Sakha Building,
Opp: Green Park Hotel, Visakhapatnam - 530 002
4. The Superintending Engineer, Operation, APEPDCL, Vidyut Sakha
Building, Opp: Green Park Hotel, Visakhapatnam - 530 002.

Copy to:

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