



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

:: Present ::

N. Basavaiah, B.Sc. B.L.

Date: 30-09-2021

Representation No.20 of 2021-22

Between

M/s. Mohan Spintex India Ltd., # 48-12-17, Near ESI Bus stop, Eluru Road, Gunadala,
Vijayawada – 520 004, Krishna District Complainant

And

1. Chief General Manager / O / Tirupati
2. Chief General Manager / R & IA / Tirupati
3. Senior Accounts Officer / Vijayawada
4. Superintending Engineer / O / Vijayawada
5. The Chief General Manager / Finance / APCPDCL / Vijayawada
6. The Chief General Manager / O & M 1 / APCPDCL / Vijayawada Zone / Vijayawada
(Respondents 5 & 6 were added as per letter of the complainant dated 09-09-2021 as they belong to the present Licensee, APCPDCL/ Vijayawada)

....Respondents

ORDER

The above representation came up for final hearing, by way of Video Conferencing, before me at the office of the Vidyut Ombudsman, Vijayawada on 20-09-2021. Sri G. Ravi Kumar, Director of the complainant, the respondents 2 to 5 and Smt. M. Padma Krishna, EE (O&M), on behalf of the 6th respondent, were present. Having considered the representation and submissions of the above parties present, the Vidyut Ombudsman passed the following:

1. Having directly filed the Writ Petition bearing No.7014 of 2021 before the Hon'ble High Court of Andhra Pradesh at Amaravati against the dismissal **order dated 31-07-2020 in C.G.NO:356/2016-17/Vijayawada Circle**, passed by the **Forum for**

Redressal of Consumer Grievances in Southern Power Distribution Company of A.P Limited, Tirupati, and having followed the conditional order dated 16th August, 2021 passed in the above writ petition, ***the complainant*** submitted this representation under section 42 (6) of the Electricity Act, 2003.

2. The relevant facts, in brief, are that the complainant, a Textile Industry (Limited Company), became a HT consumer of the APSPDCL (previous licensee) on 12-11-2014 with the service connection Number VZA-3637 for a contracted maximum demand (CMD) of 5000 KVA, with 33 KV voltage level through common feeder on 18-02-2014. It gave the licensee an application dated 31-10-2016 for sanctioning an additional contracted maximum demand of 1500 KVA and a representation dated 21-11-2016 requesting to waive voltage surcharges for a period of 5 months pending the establishment of 132 KV sub-station. Sanction was accorded by the licensee on 30-11-2016 without considering the representation dated 21-11-2016, and on 08-12-2016, an agreement was entered into by and between the complainant and the licensee, as per the above sanction order. As per the extant tariff conditions at the relevant time, the consumers with CMD upto 5000 KVA are entitled to avail power supply at the voltage of 33 KV, and the consumers with CMD of above 5000 KVA shall avail power supply at the voltage of 132 KV or 220 KV as may be decided by the Licensee. HT consumers who are getting supply at voltage different from the declared voltages and who want to continue taking supply at the same voltage will be charged as per the rates indicated under the General Conditions of HT Supply. Having received a bill for Rs.26,91,296.39 towards low voltage surcharges for the month of December, 2016, the consumer approached the licensee in that regard, but reducing some amount, the licensee asked the complainant to pay the remaining amount. Hence, the complainant filed the complaint before the Forum alleging that it presumed that the sanction was accorded without voltage surcharge for the additional contracted maximum demand and praying the Forum to waive low voltage surcharge for 5 months as per the

representation dated 21-11-2016. Thereafter, the Hon'ble Commission enhanced the limit of CMD of HT consumers seeking supply at 11 KV and 33 KV on common feeder and substituted a new clause in the place of original clause 3.2.2.1 of the GTCS with effect from 09-10-2018.

3. No evidence was adduced by both parties before the Forum. After considering the material available on record, the Forum dismissed the complaint. The complainant, without submitting representation before this authority under section 42 (6) of the Electricity Act, 2003, approached the Hon'ble High Court and filed the writ petition. As per the order of the Hon'ble High Court, this representation has been filed.

4. It is submitted on behalf of the complainant that there was no voltage surcharge on the original contracted maximum demand of 5000 KVA prior to the additional contracted maximum demand was sought for, that after the additional contracted maximum demand of 1500 KVA was sanctioned, the licensee levied voltage surcharge on the entire contracted maximum demand of 6500 KVA including the initial contracted maximum demand of 5000 KVA, that as per the relevant tariff order coupled with the original clause 3.2.2.1 of the GTCS-2006, HT consumers with CMD upto 5000 KVA capacity on 33 KV supply voltage need not pay low voltage charges, that as per the substituted clause 3.2.2.1 of the GTCS-2006 with effect from 09-10-2018, HT consumers with CMD upto 10000 KVA on 33 KV need not pay low voltage charges from 09-10-2018 onwards, that the licensee gave the complainant a demand notice claiming Rs.18,52,11,910/- as low voltage charges with interest from December, 2016 to February, 2021, that the complainant is liable to pay low voltage charges only on the additional contracted maximum demand of 1500 KVA for the period from December, 2016 to 08-10-2018 and already paid the licensee Rs.1.5 crore in that regard under protest in installments and that therefore, the complainant need not pay any amount towards voltage surcharge to the licensee. It is submitted by the 4th respondent that the amendment dated 09-10-2018 to the GTCS is not applicable to the existing customers

and has no retrospective effect and that the complainant was paying low voltage charge even prior to December, 2016. It is submitted by the 5th respondent that the relevant Tariff Order does not convey the meaning as submitted on behalf of the complainant regarding payment of voltage surcharge proportionately for 1500 KVA and that the words 'subject to technical feasibility' are used in the substituted clause 3.2.2.1 of the GTCS, and there was no technical feasibility in this case. The above respondents supported the order of the Forum. It is submitted on behalf of the complainant, in its reply, that because the substitution of the clause was made following the representation of the existing customers, it can be inferred that the amendment was for the benefit of existing customers and that if really, there was no technical feasibility, additional demand of 1500 KVA would not have been released. Both sides submitted written submissions narrating the facts of this case plus the above oral submissions made by them. Xerox copies of printed supply agreement have been produced by both sides. The column provided for 'Maximum Contract Demand' in the supply agreement is kept blank in the document produced on behalf of the complainant, while 6500 KVA as CMD is mentioned in the document produced on behalf of the respondents. Both parties did not make any submission on the above aspect.

5. The following point is framed for consideration:

Can this representation be upheld?

6.Point : The prayer in the complaint filed before the Forum is to waive low voltage surcharge for 5 months pending the establishment 132 KV sub-station, as per the representation dated 21-11-2016, as it (complainant) presumed that the sanction was accorded without voltage surcharge for the additional contracted maximum demand of 1500 KVA. Now, the above relief is not sought for and is given up. The relief now sought for is completely changed. It has two grievances. According to it, it is not liable to pay voltage surcharge on the CMD of 5000 KVA to the licensee for the period from 08-12-2016 to 08-10-2018 and on the CMD of 6500 KVA from 09-10-2018 to

09-02-2021, as per the original and substituted clause 3.2.2.1 of the GTCS-2006, respectively. Since the Forum considered the above two aspects, I am also considering the above aspects. To settle this case, we have to look into the original and the substituted clause 3.2.2.1, along with the relevant clause 2.2.11, explaining the meaning of contracted maximum demand, of the GTCS-2006, besides the relevant Tariff Order. The clause 2.2.11 says "contract demand" or "contracted maximum demand means the maximum demand the consumer intends to put on the system, as described in clause 2.2.35 and is specified in the supply agreement between the parties. The original clause 3.2.2.1 of the GTCS-2006 prior to 09-10-2018 runs as follows:

3.2.2.1 HT consumers intending to avail supply on common feeders:

For **total Contracted Demand** with the Company and all other sources like APGPCL, Mini Hydel, Wind Power, MPPs, Co-Generating Plants etc:

Contracted Demand	Voltage level
Upto 1500 kVA	11 kV
1501 kVA to 5000 kVA	33 kV
Above 5000 kVA	132 kV or 220 kV as may be decided by the Company

The following clause had been substituted (new) in the place of the above original clause 3.2.2.1 of the GTCS-2006 with effect from 09-10-2018, and it runs as follows:

“3.2.2.1: HT consumers intending to avail supply on common feeders:

For total Contracted Demand with the Company and all other sources

Sl.No.	Capacity	Supply Voltage
1	Upto 1500 kVA	At 11 kV
2	1501 to 2500 kVA	At 11 kV subject to technical feasibility or at 33 kV
3	2501 kVA to 5000 kVA	At 33 kV
4	<u>5001 to 10000 kVA</u>	<u>At 33 kV subject to technical feasibility or at 132 kV[#]</u>
5	Above 10000 kVA	At 132 kV [#] or above, as may be decided by the Company

Note:

- i) While extending power supply at 33 kV for smaller demands, proper CT ratio has to be selected.
- ii) The DISCOMs will extend the above power supply capacities subject to technical feasibility.
- iii) The Licensee shall ensure adequate conductor capacity and if augmentation of conductor capacity is required, the necessary augmentation charges may be collected from the consumer.
- iv) The Licensee shall ensure voltage regulation within the specified limits.
- v) (#) Power supply at 132 kV and above shall be through an independent (Dedicated) feeder or through Loop in Loop out (LILO) arrangement as decided by APTRANSCO.

The relevant paragraph of the Tariff Order FY 2016-17, FY 2017-18, FY 2018-19, is as follows:

6.2 Voltage Surcharge

H.T. consumers who are now getting supply at voltage different from the declared voltages and who want to continue taking supply at the same voltage will be charged as per the rates indicated below:

Sl.No	Contracted Demand with Licensee (kVA)	Voltage at which supply should be availed (in kV)	Voltage at which consumer is availing supply (in kV)	Rates % extra over the normal rates	
				Demand Charges	Energy Charges
<u>(A) For HT consumers availing supply through common feeders</u>					
<u>1.</u>	<u>1501 to 5000</u>	<u>33</u>	<u>11</u>	<u>12%</u>	<u>10%</u>
<u>2.</u>	<u>Above 5000</u>	<u>132 or 220</u>	<u>33 or below</u>	<u>12%</u>	<u>10%</u>
<u>(B) For HT Consumers availing supply through independent feeders</u>					
1	3001 to 10000	33	11	12%	10%
Note:					
i) In case of consumers who are having supply arrangements from more than one source, CMD with the Licensee or RMD, whichever is higher shall be the basis for levying voltage surcharge.					
ii) The Voltage Surcharge is applicable to only existing services and DISCOMs shall not release new services with Voltage Surcharge.					

7. The words "total Contracted Demand" used in the above clauses 3.2.2.1 of the GTCS are to be noted with great significance. What is the total Contracted Demand is alone

relevant to determine the voltage level or supply voltage. The phrase '**total Contracted Demand**' gives an indication that the original contracted demand and the additional contracted demand are to be clubbed for the purpose of voltage level. There are no specific words in the above clause or tariff orders to indicate that additional contracted demand, excluding the original contracted maximum demand, is alone to be taken into consideration for the purpose of voltage level or of supply voltage or that voltage surcharge can be levied only on the additional contracted demand excluding the original contracted maximum demand. The consumer may seek reduction or addition of contract maximum demand, but the relevant consideration in any case is the **total Contracted Demand** to decide the voltage level or supply voltage, and it is 6500 KVA in this case. 6500 KVA is specified as "contract demand" or "contracted maximum demand" in the supply agreement dated 08-12-2016. There are no words in that supply agreement to indicate that only additional contracted demand of 1500 KVA is to be taken into consideration for the purpose of "contract demand" or "contracted maximum demand". From the relevant previous clause of the GTCS coupled with the above relevant Tariff Order stated supra, we can say that the complainant is getting supply at voltage (33 KV) different from the declared voltage (132 KV or 220 KV). In this case, there is no change of supply voltage from 33 KV even after the additional contracted demand of 1500 KVA was sanctioned to the complainant. Considering the total contract demand or contract maximum demand and the voltage level 33 KV instead of 132 KV or 220 KV for the CMD of 6500 KVA in this case, I am unable to accept the case of the complainant that it is liable to pay voltage surcharge only on the additional demand of 1500 KVA and is not liable to pay voltage surcharge on the entire 6500 KVA as it did not pay voltage surcharge on 5000 KVA prior to taking the additional demand. The complainant did not seek reduction of contracted maximum demand even though 5 months period, as per its request, is over long back. It is not the case of the complainant that it is availing supply through an independent feeder. Hence, I am of the opinion that

there is no merit in the first aspect (grievance) of the complainant that it is not liable to pay voltage surcharge for the period from 08-12-2016 to 08-10-2018 on 5000 KVA and that the complainant is liable to pay voltage surcharge on the total contracted maximum demand for the period from 08-12-2016 to 08-10-2018.

8. Now, I am inclined to look into the second aspect touching the liability or otherwise, of the complainant as to payment of voltage surcharge from 09-10-2018 to February, 2021. There is no dispute that the clause 3.2.2.1 of the GTCS-2006 was substituted with effect from 09-10-2018, and that as per that clause, Voltage at which supply should be availed for the Contracted Demand with Licensee from 5001 KVA to 10000 KVA is 33 kV. But the prepositional phrase "subject to technical feasibility" is there as suffix to 33 kV. Apart from it, as "Note: ii) beneath the above clause, the words **'The DISCOMs will extend the above power supply capacities subject to technical feasibility'**" are there and are to be noted with great significance. It does not contain any specific words to indicate that the above clause cannot be invoked by the existing customers or that it is applicable to only new customers. It gives an indication that the above benefit can be extended to new customers besides the existing consumers with contracted maximum demand between 5001 KVA and 10000 KVA. Only thing to be seen is whether there has been technical feasibility or not. If there has been technical feasibility, the benefit can be extended to any customer. But, I am unable to accept the submission of the complainant as the above clause does not contain any specific words to indicate that there is an obligation on the part of the licensee to extend the above benefit to all its customers voluntarily and automatically without any specific request from customers. That customer must move the licensee seeking the above benefit is also not there under the above clause. But, in my view, it is for the consumer to move the licensee invoking the above clause because consumer will get the benefit under the above clause. It is not the case of the complainant that it requested the complainant to extend the above benefit to it subsequent to substituting the above clause in the GTCS-2006 and that the

licensee refused to extend the above benefit to it though there was technical feasibility. It is for the complainant to show that it has grievance within the meaning given under the clause 2.7 of the APERC Regulation No.3/2016 and that this authority can redress its grievance. That is lacking here. That there was technical feasibility or not, in this case from 09-10-2018 to February, 2021 is the main consideration and is purely question of fact, and as such, It is too difficult to determine the second aspect on the basis of only submissions of both sides without any pleadings and evidence on the above aspect. Therefore, I am of the view that the complainant failed to place necessary material to hold that there was technical feasibility from 09-10-2018 to February, 2021. Hence, I am helpless to redress the grievance of the complainant with respect to payment of voltage surcharge on the total contract demand for the above period basing on the substituted clause 3.2.2.1 of the GTCS. For the above reasons, I am of the opinion that the representation cannot be upheld and is liable to be dismissed. This point is, thus, answered.

9. In the result, I dismiss the representation. There is no order as to costs.

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

This order is corrected and signed on this the 30th day of September, 2021

Sd/- N. Basavaiah

VIDYUT OMBUDSMAN, AP

To

1. M/s. Mohan Spintex India Ltd., # 48-12-17, Near ESI Bus stop, Eluru Road, Gunadala, Vijayawada – 520 004, Krishna District
2. Chief General Manager/O/Tirupati
3. Chief General Manager/R & IA/Tirupati
4. Senior Accounts Officer/Vijayawada
5. Superintending Engineer/O/Vijayawada
6. The Chief General Manager/Finance/APCPDCL/Vijayawada
7. The Chief General Manager/O & M1/APCPDCL/Vijayawada Zone/Vijayawada

Copy To:

- 8.** The Chairperson, C.G.R.F., APSPDCL, 19-13-65-A, Srinivasapuram, Near 132 kV Sub-station, Tirchanoor Road, Tirupati- 517 503.
- 9.** The Chairperson, C.G.R.F., APCPDCL, 4th Floor, New Building, District Stores, Gunadala, Vijayawada – 520 004
- 10.** The Secretary, APERC, 11-4-660, 4th Floor, Singareni Bhavan, Red Hills, Hyderabad- 500 004.