



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

:: Present ::

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

Date: 18-12-2020

Appeal No.21 of 2020-21

Between

Sri V.R.Raguraman, C/o M/s Chekfab Alkalies Ltd. (Formerly known as TEAMEC Chlorates Limited), Plots : 558 & 559, APIIC Growth Centre, Guntlapalli, Maddipadu, ONGOLE - 523211

... Appellant

And

CGM/R&IA/APSPDCL/Tirupati

....Respondents

ORDER

The above appeal- representation came up for final hearing, by way of Video Conferencing, before me at the office of the Vidyut Ombudsman, Vijayawada on 7-12-2020. Smt. G.Jyoti Eswar, the advocate for the appellant, and the respondent were present. Having considered the appeal-representation and submissions of the above persons present, the Vidyut Ombudsman passed the following:

1. This appeal-representation has been preferred by the appellant-complainant against the order **dated.25-09-2020 in C.G.No.157/2019-20/Ongole**

Circle, passed by the Forum for Redressal of Consumer Grievances in Southern Power Distribution Company of A.P Limited, Tirupati, whereby and where under the above Forum dismissed the complaint dated.27.03.2019 filed for the reliefs for waiver and refund of demand charges of Rs.139.84 lakh collected by the APSPDCL, licensee, during the period of power supply disconnection from 11-07-2018 to 30-11-2018, for waiver and refund of late payment / penalty charges of Rs. 29.94 lakh levied between May, 2018-October, 2018 and for directions to the above licensee to expedite the credit note for Rs. 406.41 lakh due against the captive consumption of power directly from M/s SBQ steels Limited for three months commencing from August,2017 to Ocotober,2017 and to refund of the amount with interest.

2. The relevant facts are that there was an open access agreement between the APSPDCL, a licensee, and M/s SBQ Steels Limited (Open Access generator), that the appellant complainant, a registered company, is an HT 1(B) consumer of the APSPDCL with a contract demand of 8000 KVA and as a scheduled consumer, entered into a power purchase agreement with the above Open Access generator mentioning the cost of units to be consumed as fixed in the agreement for the period from 15.04.2017 to 31.03.2018, that the APSPCDCL raised monthly bills for its supply and also, for the supply of the OA generator, as per the tariff fixed by the Hon'ble APERC and used to issue credit notes for the difference amount between the tariff and the agreed rate per unit to the consumer cum scheduled consumer after receiving the finalized energy account of a billing month from the SLDC in respect of Open Access Generators and Scheduled Consumers etc., that the SLDC finalized the monthly energy accounts in this case belatedly on 25.01.2018, 16.03.2018 and 20.6.2018 for the months of August, September and

October,2017,respectively, after the OA Generator got a notice issued to the Licensee in the month of January,2018 to the effect that it filed an insolvency petition before the National Company Law Tribunal on 23.01.2018, that the licensee stopped issuing the credit notes to the consumer in this case and that the licensee disconnected the power supply to the complainant in the month of July,2018, and the complainant suspended its plant operation from October,2018. Therefore, the complaint was filed on 27.03.2019 for the above reliefs besides a rejoinder thereafter.

3. The gist of the case of the complainant is that the terms of the agreement between the consumer and the licensee are alone relevant, and the licensee has no legal right to appropriate the money belonging to the scheduled consumer on the basis of the custody of money because of the Insolvency petition filed by the OA generator as a debtor against his creditors including the licensee in this case and that as more than the amount belonging to it has been in the custody of the licensee, disconnection of power supply by the licensee is not legal and correct.

4. The case of the licensee is that it did not give credit notes to the scheduled consumer as per the approved orders of the CMD of the licensee besides the pendency of the case before the liquidator, that as the consumer is liable to pay minimum charges for 4 months after disconnection, cc bills for Rs.139.84 lakh were issued, that the service was reconnected on 04.02.2019,that there is no provision in the GTCS for waiver and refund of late payment penalty charges of Rs.29.84 lakh levied from May,2018 to Oct,2018 and that this dispute is to be referred to the SLDC, and the Forum has no jurisdiction.

5. No evidence was adduced on behalf of both parties. After considering the material available on record, the Forum dismissed the complaint accepting the plea of the licensee as to the jurisdiction stated supra. Not satisfied with the above order, the complainant preferred this representation.

6. The counsel for the appellant, after submitting the facts of this case, has also, submitted that the role of SLDC is only for determination of the amount bifurcating the units of consumption, and no issue is pending with SLDC as it is admitted that the licensee received the final energy settlement and that therefore, this authority has every right to decide the issue on merits to avoid further delay and may allow the appeal. She relied upon two decisions in support of her above arguments. She further submitted that the licensee cannot take the shelter of third party disputes and keep the credit notes pending apart from collecting huge amounts towards minimum charges and penalty charges. She also submitted written arguments with the above submissions.

7. The second respondent submitted as per his response and supported the order of the Forum. He also submitted written submissions stating that the licensee decided not to adjust any amount to the consumer as the claim was already submitted to the liquidator, and the liquidator finally intimated duly adjusting the amount relating to the adjustment of the Open Access settlement, that the APSPDCL was bifurcated into APSPDCL and APCPDCL with effect from 1.4.2020, and this service comes under the jurisdiction of APCPDCL and that therefore, he prayed to summon the concerned CGM of APCPDCL.

8. The following point is framed for consideration as the Forum dismissed the complaint on the sole ground that it has no jurisdiction to settle this type of

complaints.

Whether the finding of the Forum accepting the plea of the respondent that the Forum has no jurisdiction on disputes pertaining to open access settlement claims is not correct?

9.Point: The Regulation Nos. 2/2005 and 2/2006 do not contain any words to infer that the role of SLDC is only for determination of the amount bifurcating the units of consumption and that after determining the above role by the SLDC, complaints without being referred to the SLDC, can be filed before the Forum or that this authority can entertain appeal representations against those orders of the Forum. The two decisions relied upon by the advocate for the appellant are not much helpful to her. In the first cited decision rendered by the Hon'ble Allahabad High Court in Writ-C No.1361/2014 between Executive Engineer, Electricity Urban Distribution Division, Bamrauli, Allahabad (V) The Electricity Ombudsman and 2 others, it is held that the order of the Forum as well as Ombudsman are statutory, since both are statutory bodies, and that if a statutory remedy is provided, in absence of any provision, such statutory bodies cannot deny or refuse to decide a dispute raised before them, validly, by referring to arbitration clause under the agreement. So, it is to be seen if the above decision is applicable to this case. In my view, the above decision is not applicable as the Forum or this authority as per the Clauses No. 21 of the APERC (Terms and conditions of Open Access) Regulation,2005 (Regulation No.2 of 2005) coupled with the Clause No.13 of the APERC (INTERIM BALANCING AND SETTLEMENT CODE) Regulation,2006 (Regulation No.2 of 2006), can refuse to decide the dispute in this case.

The above stated two clauses run as follows:

Regulation No2 of 2005 :

" 21. Dispute Resolution All disputes and complaint shall be referred to the Nodal Agency for resolution:

Provided that when the Nodal Agency is itself a party to the dispute, the dispute shall be referred for resolution to the Forum for Redressal of Consumer grievances set up under Regulation No.1 of 2004:

Provided further that in case of wheeling of power from the captive generating plants, any disputes regarding the availability of transmission facility shall be adjudicated upon by the commission".

Regulation No.2/2006:

"13 DISPUTE RESOLUTION

All disputes and complaints shall be referred to the SLDC for resolution, which shall not decide a matter without first affording an opportunity to the concerned parties to represent their respective points of view. The decisions of the SLDC shall be binding on all parties."

The words above "All disputes and complaints" are to be noted with great significance. The above Regulation No.2/2006 was notified by the Hon'ble APERC in pursuance of the clause 19.4 of the APERC (Terms and Conditions of Open Access) Regulation,2005 (Regulation No. 2 of 2005). From the above two clauses, we can understand that the disputes and complaints pertaining to the above Regulations are to be referred to the State Load Dispatch Center (SLDC). The above clause No.21 further says that the dispute is to be referred to the Forum only when the Nodal Agency (SLDC in this case) is itself a party and that the decisions of the SLDC shall be binding on all parties. I have to take the above provisions into consideration as they touch the jurisdictional aspect (Inherent

Jurisdiction). Since there is a specific provision touching the aspect of 'Dispute Resolution' in the main Regulation itself and since an authority resolving the dispute is named in the Regulation itself, I am of the view that the said provision must be complied with and that the aggrieved person must approach that authority. That is not done in this case. The provisions in the Regulation No.2 of 2006 dealing with the dispute resolution are to be followed and the complainant has to approach that dispute resolving authority first and exhaust its remedy available to it in the above Regulation No.2006. In view of the above provision of law incorporated in the above clause, I am of the view that the Forum ought to have referred the complaint to the SLDC ,without deciding it on merits, and that the SLDC has to decide the matter and render a decision in this case. The Jurisdiction of the Forum will be as per the first proviso of the clause 21 of APERC Regulation No.2/2005. So, I am of the view that the finding of the Forum touching this point is correct, but its order dismissing the complaint is not correct and legal and that the complaint is to be referred to the SLDC (State Load Dispatch Center) for resolution. The Order dated.22.08.2017 in the second cited decision passed by the Hon'ble High Court of Karnataka (KALABURAGI Bench) in Dalmia Cement Venture Limited (V) State of Karnakata in W.P.No.104140/2013, deals with a case claiming the refund of the amount towards excess stamp duty paid inadvertently. The gist of the above decision is that more than what is payable under the statute has been collected from the tax payer, the tax payer automatically gets a right to get back the whole amount. Any view on the above decision, at this stage, is premature. The remaining submissions of both sides need no consideration at this stage in this appeal representation. This point is thus answered.

10. In the result, I allow the appeal representation, set aside the order of the Forum and directed the Forum to refer the complaint to the SLDC (State Load Dispatch Center) for resolution as per the provisions of the Clause 13 of the APERC(Interim Balancing And Settlement Code) Regulation No.2 of 2006. It is needless to mention that the SLDC has to decide the complaint and take an independent decision in this case as per the above clause without being influenced by the order of the Forum. This appeal -representation is, thus, disposed of. No costs.

11 A copy of this order is made available at

www.vidyutombudsman.ap.gov.in

This order is corrected and signed on 18th December, 2020.

S/d. N.Basavaiah
VIDYUT OMBUDSMAN

To

1. Sri V.R.Raguraman, C/o M/s Chekfab Alkalies Ltd. (Formerly known as TEAMEC Chlorates Limited), Plots : 558 & 559, APIIC Growth Centre, Guntlapalli, Maddipadu, ONGOLE - 523211
2. CGM/R&IA/APSPDCL/Tirupati

Copy To:

1. The Chairman, C.G.R.F., APSPDCL, 19/13/65/A, Srinivasapuram, Near 132 kV substation, Tirchanoor Road, Tirupati- 517 503.
2. The Secretary, APERC, 11-4-660, 4th Floor, Singareni Bhavan, Red Hills, Hyderabad - 500 004 .