



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

: Present :

Vinnakota Venkata Prasad,
Former District & Sessions Judge,
Vidyut Ombudsman, AP.

The 11th day of March, 2024.

Appeal/Representation No.34 of 2009

Between

M/s. APEX TMT Steel Castings (India) Pvt. Ltd. Rep by its Managing Director,
Industrial Development Area, H.H.5, Narasinga Rao Peta village, Anakapalle.

----- **Representationist**

And

1. The Assistant Engineer/ Operation/ APEPDCL/Anakapalle.
2. The Assistant Divisional Engineer/ Operation/ APEPDCL/ Anakapalle.
- 3.The Divisional Electrical Engineer/Operation, APEPDCL, Anakapalle.
4. The Senior Accounts Officer, Operation, APEPDCL, Visakhapatnam

---- **Respondents.**

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This representation / appeal having come up for final hearing before me on 11.03.2024, in the presence of the Authorized agent of the Representationist and this representationist having filed memo not pressing this appeal, and the respondent No.1 who is also authorized by way of Memos by the 2nd respondent and 4th respondent and the 3rd respondent having remained absent, stood over for consideration, and the Vidyut Ombudsman delivers the following:

ORDER

1. Having been remanded by the orders of the Hon'ble High Court of AP dated 13.09.2023, this Appeal No.34 of 2009 has come up before me. In fact, the Appeal No.34 of 2009 was preferred before the Vidyut Ombudsman by the Representationist having been aggrieved by the order dated 03.07.2009 rendered by the Forum for Redressal of Grievances of the Consumers in Eastern Power

Distribution Company of A.P Limited, Visakhapatnam in C.G.No.20/2009-10, the complainant therein directed this appeal questioning the UCM charges.

2. This is not out of place to mention that under the Electricity Act Section 42 (6), a representation was only contemplated, but such representation was used to be filed as an appeal against the order of the Forum during yester years. But, under Regulation No.3 of 2016, it was crystalized that only a representation lies against the order of the Forum as is contemplated under Clause 19.2 of the said Regulation.

3. On receipt of the order of the Hon'ble High Court, on 11.01.2024, it is noticed that the said bundle in Appeal No.34 of 2009 was not available with this office, a letter was addressed to the Secretary, Hon'ble APERC, since the then Director (Law), APERC was also acting as Vidyut Ombudsman and this office was shifted to Vijayawada only in the year 2019.

4. On 03.02.2024, a whatsapp message was received to the personal mobile of Vidyut Ombudsman stating that the bundles of Vidyut Ombudsman were all taken to Vijayawada. Consequently, the Vidyut Ombudsman himself searched the boxes and finally found 2009 files but the file relating to Appeal No.34/2009 was missing. As the said file relating to Appeal No.34/2009, was missing, the only option was reconstruction of file.

5. Therefore, Appeal 34/2009 on the file of Vidyut Ombudsman was restored to file on 03.02.2024 as directed by the Hon'ble High Court in W.P.No.13808 of 2010 in its order dated 13.09.2023, and as such issued notices to the petitioner in W.P., who could be the representationist before the Vidyut Ombudsman and to the Respondents 3 to 6 arrayed in the Writ Petition as respondents by Regd. Post calling upon them for their appearance either personally or through agent or advocate as is permissible under clause 21.8 of Regulation No.3 of 2016, through Video Conference (virtual hearing) at 11 AM on 15.02.2024 and also for submission of copy of representation and other documents if any filed already and also the copy of counters if any filed by the Respondents and the copies of documents if any already filed, copy of CGRF order and copy of VO's Order for reconstruction of record in Appeal No.34/2009, and both sides are directed to submit copies of those documents viz., Representation/appeal, counters and other documents and CGRF order and VO's Order by post or courier so as to reach before 15.02.2024 to which date this matter was posted for appearance and hearing.

6. On 15.02.2024, there was no representation for the Representationist. Despite service of notice by RP under acknowledgment, the representationist did not make

any representation. It appears the representationist did not attempt to get the link for virtual hearing from this office or respondents.

7. Respondent No.2 was present on Video Conference. R4 Sr. Accounts Officer was present on Video Conference by voice only. He could not operate video as reported. Respondent Nos. 1 and 4 were absent. Service or otherwise of notices on R1 and 4 was not yet known. Respondents No.2 and 4 requested to grant sometime to trace the record called for. Since the representationist/appellant did not turn up on Video Conference, it was found desirable to issue fresh notice to the Representationist by Registered Post for his presence at VO's office Vijayawada. R2 reported that R3 was engaged in a meeting and that R3 asked him to represent him. R2 also reports that R1 mobile was found to be out of coverage and promises to ensure their presence by the next date.

8. Therefore, fresh notice was issued to the Representationist by Registered post with ack-due to be present before VO office at Vijayawada and produce copies of record as required in the earlier notice. Respondents were also directed to be present before VO office at Vijayawada with record called for and the matter was posted to 24.02.2024.

9. On 17.02.2024, a letter was addressed by mail and RP to the Chairperson, CGRF, APEPDCL, Visakhapatnam to transmit the copies of documents available in CG No.20/2009-10 for reconstruction of record in Appeal No.34/2009. On 07.03.2024, by mail, reply was received from the CGRF, APEPDCL, Visakhapatnam stating that records prior to the year 2012 were not available in their Forum consequent to the shifting of their Forum from Siripuram to Corporate Office, APEPDCL in the year, 2012.

10. On 24.02.2024 the AAO/HT Billing/APEPDCL/CO/Visakhapatnam was present on behalf of the R4 Sr. Accounts Officer. The authorisation issued to him by R4 was also filed. Representationist was absent. No representation. Other respondents were also absent.

11. The AAO who appeared for the 4th Respondent as directed in the notice issued to the parties to submit copies of documents available with them for reconstruction of record in Appeal No.34/2009, the xerox copies of following documents were filed for reconstruction of record. They are (1) Xerox copy of case details (2) Xerox copy of order in W.P.No.13808/2010 dt.13.9.2023 (3) Xerox copy of Proceedings No.SE/O/VSP/DEE/CAEE/C1/164810/D.No.899/20 dt.13.7.20 (4) Xerox copy of counter of Respondents in W.P.No.13808/2010 dt.02.11.2010 (5) Xerox copy of Notice to R6 dt.18.6.2010 in W.P.No.13808/2010 (6) Xerox copy of petition and its

accompanying affidavit in W.P.No.13808/2010 along with its accompanying list of events dt.9.6.10, 8.6.10 and 14.6.2010 (7) Xerox copy of order dt.3.7.2009 in C.G.No.20/2009-10 (8) Xerox copy of office note from SAO/OC (9) Xerox copy of Notice in Appeal No.34/2009 from VO (10) Xerox copy of letter from Representationist dt.6.5.2009 to DE, APEPDCL, Anakapalli, (11) Xerox copy of letter from the Representationist dt.4.5.2009 to the DE, APEPDCL, Anakapalle (12) Xerox copy of letter from CGM to the Representationist dt.26.3.2009 (13) Xerox copy of letter dt.25.3.2009 from SAO to the Representationist (14) Xerox copy of letter dt.15.10.2008 from SE Operation Circle, Visakhapatnam to the Representationist (15) Xerox copy of some postal address (16) Xerox copy of HT agreement dt.21.04.2008 (17) Xerox copy of remarks for parawise in WP No.13808/2010 (18) Xerox copy of Remarks for Parawise in W.P.No.13808/2010 (19) Xerox copy of letter dt.26.10.10 from DEE to Advocate (Standing Legal Adviser).

12. These documents do not comprise the copy of representation in the Appeal No.34 of 2009 for its reconstruction.

13. There was no representation for the Representationist or R2 and R3. The representationist was served with the 1st notice but he did not respond. When the matter was passed over, R1 AE was present. He also produced authorisation from R2 to appear on his behalf. R3 was absent. No representation for R3. R1 produced a letter said to have been given to them by the Representationist stating that they were not pressing the Appeal No.34/2009. As the representationist was not present and as R3 was also absent, fresh Notice was issued to the Representationist and also intimating the letter of withdrawal in his name filed by the 1st Respondent, for his/its presence and production of documents and also notice to R3 for his appearance and production of documents, by way of Registered Post to Representationist & R3. The same were received by them as is evident from the postal acknowledgements.

14. On line copy of order in Appeal No.34/2009 has been downloaded.

15. For presence at VO office, Vijayawada and production of documents for reconstruction of appeal the matter was posted to 11.03.2024.

16. On this the 11th day of March, 2024, a letter from the representationist's Managing Director Sri. R. Rajanikanth, wherein one R.S. Naidu, the Chief Accountant of the representationist was authorised to appear on its behalf was filed by the said authorised representative before this Vidyut Ombudsman under this office inward No.653 dated 11.03.2024. It is also contained therein that the representationist was not pressing the appeal. Another letter addressed to the Vidyut Ombudsman

wherein the representationist did not press the said Appeal No.34 of 2009 is also filed on this day under inward No.656. Along with it, a colour xerox copy of a notarized affidavit of the said Sri R. Rajanikanth was also filed which discloses that the representationist has undertaken not to press the W.P.No.13808/2010 before the Hon'ble High Court. In fact, no such W.P., is pending before the Hon'ble High Court since it was already allowed by remanding this Appeal No.34 of 2009 by its order dated 13.09.2023.

17. In fact, the Hon'ble High Court have been pleased to direct this Vidyut Ombudsman to adjudicate on the grounds raised by the Representationist/Appellant with regard to the reckoning period, after verifying records and by giving an opportunity of personal hearing to the petitioner/this Appellant and to pass a reasoned order in terms of agreement and in accordance with law.

18. Therefore, I am obligated to make an order on merits though the representationist filed memo stating that they were not pressing this appeal and the same is recorded. All the document copies filed by respondents on 24.02.2024 was ordered to be part and parcel of this appeal.

19. Now the point for consideration is whether the notice dated 15.10.2009 issued by the Superintending Engineer to the representationist was served on the representationist on 08.12.2009 as pleaded by the representationist earlier and what is the crucial date contemplated in the agreement between the parties and also under clause No.5.9.2.1 of GTCS and if so to what relief?

POINT:

20. Pathetically, neither the record in this appeal in this office or the record in the office of the CGRF could not be traced. Further, either of the parties did not produce the grounds of appeal/representation. The representationist did not produce the copy of the agreement. But the Respondents produced the copy of the agreement to examine the same.

21. The representative of the representationist who is present submits that they are not interested in proceeding with the appeal and hence they do not press this appeal. 1st Respondent who is appearing for the Respondent Nos.2 and 4 also endorsed no objection to dismiss the appeal. Under the letter/memo the representationist under inward No.656 filed on this day stated since the service No.VSP 715 was disconnected and supply was dismantled, the representationist/appellant was not having any interest to proceed with case in Appeal No. 34 of 2009 filed by them and remanded by the Hon'ble High Court. The memos/letters are recorded.

22. Yet, there remains the direction to examine the rule position and make an order in detail. Clause 5.9.2 of General Terms and Supply is the relevant clause which deals with Commencement of Supply'.

23. Clause 5.9.2.1 is the most appropriate clause falling for consideration to deal with aspect and a reading of the same which clinches the issue. As such it shall be incorporated hereunder.

"The Company shall, after the consumer has completed all the pre-requisite formalities in respect of execution of Agreement and security deposit, etc., make arrangements to supply electricity in the manner prescribed and issue a notice to the consumer indicating that it is ready to provide supply within the time period specified in the APERC (Licensees' duty for supply of electricity on request) Regulation, 2004 (No.3 of 2004) read with Section 43 of the Act. Such supply should be availed by the applicant within a period of three months from the date of issue of the notice. Every consumer shall pay to the Company from the Date of Commencement of Supply of energy or from the date of expiry of three months' notice whichever is earlier, Maximum Demand charges, energy charges, surcharges, Meter rents and other charges, as provided in the Tariff Order and the GTCS. In case the consumer fails to avail supply within the three months' notice period, he shall have to pay monthly minimum charges and/or the fixed charges as specified in the Tariff Order in force, as the case may be, from the date of expiry of the period of the above said notice".

24. Though, the record is not available and though the representationist did not make any contention before this Vidyut Ombudsman after remand and though the representationist did not even file the copy of representation, it is evident from the earlier order of this Vidyut Ombudsman and also from the order of the Hon'ble High Court in the Writ Petition, it was contended by the Representationist that the commencement of three months incorporated under the said clause 5.9.2.1 of the GTCS (General Terms and Conditions of Supply), from the date of receipt of the notice i.e., 08.12.2008. In fact, their contention appears that they insisted on the Respondents to date the notice as 08.12.2008 on which date the same was tendered but not 15.10.2008. But, there is no record produced by the representationist to show that their contention that the notice dated 15.10.2008 was tendered and served on them on 08.12.2008. The burden lies on the representationist to establish the same but the representationist failed to establish the same.

25. The clause No.6 under the agreement is as follows:

"I/We shall be taking electrical energy from the APEPDCL, from under the conditions of this contract within Three months, from the date of issue of intimation in writing to me/us by the officer of APEPDCL.....".

26. No doubt, the agreement reveals that the three months period shall be reckoned from the date of issue of notice to the consumer which means that the time shall be reckoned from the date of service of notice on the consumer but not from the date of notice.

27. In fact, the APEPDCL also did not intend that the three months' time stipulated shall be counted from the date mentioned in their notice. The notice dated 15.10.2008 from the Superintending Engineer to the Representationist itself demonstrates from its 3rd para **that from the date of receipt of the said notice, the consumer should have to pay the charges referred therein. Thus, there can be no dispute with the fact that what is laid down in the said Clause No.5.9.2.1 and what was agreed between the parties is that the time should be calculated from date of service of notice on the consumer but not from the date of notice.**

28. However, it is not shown by the representationist that the said notice dated 15.10.2008 was served on 08.12.2008 and thereby the representationist failed to establish its/his case.

29. Further, the representationist did not press this Appeal stating that they are not interested to prosecute this matter and sought for dismissal of the same.

30. Yet this Vidyut Ombudsman is ordained by the orders of the Hon'ble High Court to dispose of this Appeal/representation on merits, I am obligated to make this order on merits in accordance with the material available on record.

31. Viewed in any angle, this appeal/representation entails in dismissal.

32. This point is accordingly answered.

RESULT:

33. In the result this Appeal/ Representation is dismissed, but in the circumstances without costs.

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

This order is typed, corrected, signed and pronounced by me on this the 11th day of March, 2024

**Sd/- Vinnakota Venkata Prasad
VIDYUT OMBUDSMAN-AP**

Documents marked on behalf of the Representationist and the Respondents

NIL

**Sd/- Vinnakota Venkata Prasad
VIDYUT OMBUDSMAN-AP**

Copy to

1. M/s. APEX TMT Steel Castings (India) Pvt. Ltd. Rep by its Managing Director, Industrial Development Area, H.H.5, Narasinga Rao Peta village, Anakapalle. (served in person to the authorised agent who is present and represented the Appellant) and also by mail. ----- Appellant/ **Representationist**

2. The Assistant Engineer/ Operation/ APEPDCL/Anakapalle. (personally since present)

3. The Assistant Divisional Engineer/ Operation/ APEPDCL/ Anakapalle. (By RPAD)

4. The Divisional Electrical Engineer/Operation, APEPDCL, Anakapalle. (By RPAD)

5. The Senior Accounts Officer, Operation, APEPDCL, Visakhapatnam (By RPAD)

---- **Respondents**

Copy to

6. The Chairperson, CGRF, APEPDCL, P&T Colony, Seethammadhara, Near Gurudwara Junction, Visakhapatnam. (By mail and Post)

Copy submitted to

7. The Secretary, Hon'ble APERC, 11-4-660, 4th Floor, Singareni Bhavan, Red Hills, Hyderabad. (By mail and Post)

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