



**BEFORE THE VIDYUT OMBUDSMAN  
Andhra Pradesh & Telangana**

:: Present ::

**C. Ramakrishna**

Date: 05-01-2015

Appeal No. 157 of 2013

Between

M/s. Royal Marbles rep. by Sri. M. Naga Varaprasad, 4-13, Near Om Shanthi,  
Betamcherla, Kurnool District 518 599

**... Appellants**

**And**

1. The AAE/OP/APSPDCL/Betamcherla Rural/Kurnool Dt.
2. The ADE/OP/APSPDCL/Betamcherla Rural/Kurnool Dt.
3. The AAO/ERO/APSPDCL/Dhone/Kurnool Dt.
4. The SE/O/APSPDCL/Kurnool

**... Respondents**

The above appeal filed on 18-03-2014 has come up for final hearing before the Vidyut Ombudsman on 02-01-2015 at Kurnool. The appellants, as well as respondents 1 to 3 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 consumers about levying low power factor surcharge by the respondents. The CGRF did not consider their grievance favourably and hence the appeal.

3. The appellants stated in their appeal that they have a small scale industry in Betamcherla for which they are having LT III A service connection; that the respondents, based on an internal audit report, have levied capacitor surcharge of ₹43,385/- through a notice dated 29-11-2011 for the period April, 2008 to August, 2009; that on approaching the Hon'ble AP High Court, they were directed to pay half the disputed amount while striking down the action of the respondents as illegal; that the respondent ADE had through his notice dated 14-08-2013 raised demand for the same amount for the period April, 2008 to August, 2009; that on approaching the respondent DE in appeal, an amount of ₹41,292/- was confirmed for the period June, 2008 to February, 2009; that on approaching the CGRF, the CGRF did not give any relief; that raising a demand notice in the year 2012 for capacitor surcharge relating to the 2008-09 period, based on meter reading book records which were not even brought to the notice of the appellants is not justifiable; that capacitor surcharge has been levied only on certain factories in Betamcherla; and that therefore, the surcharge levied may be struck down and the payments made by them towards the disputed amount be adjusted in their CC bills. The appellant enclosed material in support of their submissions.

4. Notices were issued for hearing the matter. The respondent DE filed written submissions stating that during the course of internal audit in March

2010, the audit party pointed out non-levy of low power factor surcharge; that the respondent ERO added the entire surcharge in the CC bill for December, 2011 without issuing any notice to the consumer; that on the finding by the Hon'ble AP High Court that raising a demand in that fashion is incorrect, a notice was issued by the respondent ADE and surcharge for an amount of ₹41,292/- was finally confirmed; and that the CGRF also had upheld the final levy.

5. During the course of the hearings, the appellants and respondents reiterated their written submissions. The written and oral submissions along with the material filed in support thereof have been gone through. The only issue that arises for consideration in the appeal is whether or not the low power factor surcharge can be levied belatedly and if so, what is the period to which the same can be restricted to.

6. Internal audit for the period January, 2008 to February, 2010 is stated to have been conducted in the month of March, 2010. The concerned report is stated to have been communicated in the month of August, 2010. But there is no proper explanation as to why the demand for the short levy pointed out by the audit was raised only in the month of November, 2011 and not anytime earlier. The respondents should be aware that Section 56(2) of the Electricity Act, 2003 restricts the period for which back demands can be raised to no more than 2 years. A perusal of the relevant provision is required in this context:

(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:

7. A plain reading of the above provision makes it clear that no sum due from a consumer can be recovered after a period of two years from the date on which the sum became first due, unless it has been shown continuously as recoverable arrear of charges. So, having not raised any demand for the low power factor surcharge for the period April, 2008 to August, 2009 till November, 2011 the respondents have forgone the right to collect the same. The respondents ought to have raised the demand latest by September, 2011. The last month in which the LPF surcharge for the month of April, 2008 could have been demanded by the respondents is May, 2010. Similarly, the last month in which the LPF surcharge for the month of August, 2009 could have been demanded by them is September, 2011. Having not demanded the sums due within the time provided for under the Electricity Act, 2003 the respondents have lost the right to collect the same. Therefore, their notice dated 29-11-2011 demanding LPF surcharge for the period April, 2008 to August, 2009 is liable to be set aside as not enforceable. Though the respondents have been demanding LPF surcharge, their notice incorrectly mentioned it as Capacitor Surcharge. Moreover, this notice has also been struck down by the Hon'ble High Court. The Hon'ble High Court, perhaps having not been properly briefed that it is the LPF surcharge that is in dispute, held that the Capacitor Surcharge cannot be levied without there being an opportunity of being heard given to the appellants. The notice dated 14-08-2013, issued by the respondent ADE mentioning incorrectly the Capacitor Surcharge while demanding LPF surcharge, stated the period for

which it is being demanded as April, 2008 to August, 2009. The revision order of the respondent DE also while mentioning it as Capacitor Surcharge, has demanded LPF surcharge for the period June, 2008 to February, 2009. For the reasons discussed supra, the last month in which the demand for LPF surcharge for the month of February, 2009 can be demanded is March, 2011. Raising a demand on 31-10-2013 (by the DE) is therefore not legally sustainable in view of Section 56(2) of the Electricity Act. Even if the proceedings of the DE were to be treated as a continuation of the notice dated 29-11-2011, the time limit before which the respondents could raise the demand has long expired. Therefore, the demand ultimately raised based on the orders of the respondent DE is liable to be set aside.

8. The CGRF appears to have given its order cursorily. It ought to have delved deeper into the issue. The Forum also had failed to notice that the issue in question is LPF surcharge and not capacitor surcharge. Capacitor Surcharge can be levied only on finding that no capacitors are installed where they ought to be and / or that the installed capacitors are not working properly. Such a finding can be given only on a physical inspection of the premises of the consumer and not otherwise. In contrast, the present case is one of the meter reading books containing the kWh and kVAh readings and the resultant low power factor surcharge that could have been levied escaping the notice of the DISCOM while raising the bills for the relevant months / period. Such a major differentiation as this, ought not to have escaped the attention of the CGRF while disposing of the case. While demand for Capacitor Surcharge can be raised only consequent to a physical inspection of the premises of the consumer, low power factor surcharge can be demanded by just looking at the meter reading details when they contain kWh and kVAh

readings. Overlooking the applicability of Section 56(2) of the Electricity Act, 2003 while dealing with the legality of demands is a major flaw. Therefore, the order of the CGRF is liable to be set aside.

9. Therefore, it is hereby ordered that:

- a. the order of the CGRF is set aside;
- b. the demand of ₹41,292/- raised on account of low power factor surcharge, wrongly mentioning it as Capacitor Surcharge, for the period June, 2008 to February, 2009 is set aside as it is beyond the period during which such a demand can be raised; and
- c. the respondents shall nullify this demand and adjust the amounts collected on this count from the appellants in their future CC bills within 15 days from the date of receipt of this order and submit a compliance report within 15 days from thereafter.

10. This order is corrected and signed on this 5<sup>th</sup> day of January, 2015.

11. A digitally signed copy of this order is made available at [www.vidyutombudsman.ap.gov.in](http://www.vidyutombudsman.ap.gov.in).

**VIDYUT OMBUDSMAN**

**To**

1. M/s. Royal Marbles, represented by Sri. M. Naga Varaprasad, 4-13, Near

Om Shanthi, Betamcherla, Kurnool Dt. 518 599

2. The Additional Asst. Engineer, Operation, Betamcherla Rural, APSPDCL, Kurnool Dt.
3. The Asst. Divisional Engineer, Operation, Betamcherla, APSPDCL, Kurnool Dt.
4. The Asst. Accounts Officer / ERO, Dhone, APSPDCL, Kurnool Dt.
5. The Divisional Engineer, Operation, Dhone, APSPDCL, Kurnool Dt.
6. The Superintending Engineer, Operation, APSPDCL, Kurnool

**Copy to:**

7. The Chairman, C.G.R.F., APSPDCL, Behind Sreenivasa Kalyana Mandapam, Kesavayanagunta, Tirupati - 517 501.
8. The Secretary, APERC, 11-4-660, 4th Floor, Singareni Bhavan, Red Hills, Hyderabad - 500 004