BEFORE THE VIDYUT OMBUDSMAN
Andhra Pradesh & Telangana

:: Present ::

C. Ramakrishna

Date: 26-11-2014

Appeal No. 6 of 2014

Between

M/s. Sriman Chemicals (P) Ltd., Tungapadu (V), Miryalaguda (M), Nalgonda District

... Appellants

And

1. The ADE/Operation/Bibinagar/TSSPDCL/Nalgonda District
2. The SAO/ERO/ TSSPDCL/Nalgonda District
3. The DE/Operation/Miryalaguda/TSSPDCL/Nalgonda District
4. The SE/Operation/Nalgonda Circle/TSSPDCL/Nalgonda District

… Respondents

The above appeal filed on 02-04-2014 has come up for final hearing before the Vidyut Ombudsman on 24-11-2014 at Nalgonda. The appellants, as well as the respondents 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 appellants that they are

unnecessarily subjected to R&C penalties in spite of their being on a feeder that is subjected to load reliefs. The appellants were aggrieved further that the order issued by the CGRF is also not implemented by the respondents.

3. The appellants stated in their appeal that they approached the CGRF for waiver of R&C penalties that were levied on them; that the CGRF had given orders in their favour but that the respondents have not implemented the orders of the CGRF so far; and that therefore the respondents may be ordered to implement the orders of the CGRF. They filed lot of material in support of their contention that they cannot be subjected to R&C penalties in view of the Hon'ble Commission's orders. They filed additional submissions on 09-04-2014 stating that their service exists on a rural feeder; and that theirs being a small scale industry, the levy of FSA charges along with regular bills caused immense negative impact on their financials and resulted in their closing the unit w.e.f 30-08-2013. They prayed for intervention from this authority to see to it that the orders of the CGRF are implemented.

4. Notices were issued for hearing the matter.

5. The respondent SE filed his written submissions stating that the Hon'ble Commission had authorized imposition of penalties on HT consumers who violate power supply schedules so that better grid discipline can be maintained in view of the acute power supply shortages prevailing in the DISCOMs; that guidelines were issued by the Hon'ble Commission to follow the Restriction and Control measures (henceforth "R&C measures") as a safeguard against the possible grid disturbances caused by uncontrolled usage of power; that while framing the guidelines, the Hon'ble Commission had

taken care of the DISCOMs' and the HT Consumers' views & interests into account and issued the guidelines and amended them from time to time; that these guidelines on R&C measures and their implications were all communicated to the consumers and most of the consumers have followed them sincerely barring a few, on whom the R&C penalties prescribed by the Hon'ble Commission were levied; that in Nalgonda District, out of the 840 HT consumers, 160 consumers were levied R&C penalties and all of them barring 12 consumers paid the levied amounts; that these 12 consumers had appealed to their Head Office which referred the appeals to the R&C measures committee constituted at the Circle level; that the 3 member R&C measures committee examined all such disputed cases and gave appropriate decisions exempting some based on the nature of deviations; that a few consumers, whose appeal was rejected by the Committee included the appellants; that aggrieved with that decision, the appellants approached the CGRF and the CGRF passed orders in favour of the appellants; and that as the DISCOM thought that the orders of the CGRF are against the interests of the organization, they have not implemented the orders of the CGRF.

6. The respondent SE while thus explaining the background in which the appeal by the appellants came to be filed defended the DISCOM's action stating that the Hon'ble Commission had not issued any instructions to the effect that the R&C orders are applicable only to the consumers located on dedicated feeders as submitted by the appellants; that there are no specific guidelines defining any feeder as a rural feeder and hence the certification by the ADE, Operation, Miryalaguda and DE, Operation, Miryalaguda declaring the feeder on which the appellants' service connection is located as a rural feeder is not valid; that only those of the feeders which are found in the

pre-declared list of rural feeders are considered rural feeders; that an explanation was called for from the ADE and DE concerned for declaring only a few feeders as rural feeders to favour some consumers; that the Forum had not examined the issue in detail and ought to have asked for the list of rural feeders before deciding that the service of the appellants is on a rural feeder for being eligible for exemption from R&C penalties; that it is only those of the feeders which supply electricity to agriculture for 7 hours per day that are treated as rural feeders; that the feeder on which the appellants are located is an industrial feeder, as can be seen from its very name which is -- V.K. Palem Industrial Feeder; that while all the 11 kV agricultural feeders are supplied only 7 hours supply throughout the month, the industrial feeders supply power for more than 20 hours daily; that the industrial feeders are also subjected to load reliefs in emergency situations to maintain grid discipline; that it should be noted that all the feeders on which the 840 HT services of the Circle are located are subjected to emergency load reliefs and if the interpretation as taken by the CGRF is to be treated as correct, then no HT service can be imposed R&C penalty; that in the entire State, no HT consumer has disputed the R&C measures except the appellants; that the R&C bill disputes do not come under the jurisdiction of the CGRF; that such issues can be brought by the consumer to the notice of the Hon'ble Commission as based on the consumers' representations, the Hon'ble Commission had revised the R&C guidelines from time to time; that the appellants are misinterpreting the Hon'ble Commission's guidelines only to evade payment of R&C penalties; and that hence the appeal of the appellants deserves to be turned down.

7. During the course of the hearings, the respondent SE while arguing strongly against the decision of the CGRF, has also filed written submissions

on 21-11-2014 stating that the 11 kV feeder from which the appellants are availing power is an industrial feeder and have mislead the CGRF into believing that the feeder is an agricultural feeder on which many unscheduled power cuts exist; that the recommendations of the DE, Operation, Miryalaguda to the effect that the 33 kV Madgulapally feeder is subjected to load reliefs regularly and that the feeder from which the appellants are being supplied should be treated as rural feeder are not accepted because the feeder is not a listed rural feeder and the ADE, Operation, Miryalaguda has also certified the feeder as an industrial feeder; that the 33 kV Madgulapally feeder is given load reliefs by TRANSCO and not by the DISCOM and therefore the Commission's directive dated 22-01-2013 is not applicable as the said directive mentioned about load reliefs by DISCOMs; that the Hon'ble Commission had given exemption only where scheduled load reliefs are given and not in case of emergency load reliefs; and that no subordinate officers of the DISCOM can certify a feeder as rural feeder and even if it is done, such a thing is not correct. The respondent SE went on to submit about the conditions of the HT agreement entered into between the DISCOM and the appellants to point out that the appellants have agreed to abide by the General Terms and Conditions of Service of the DISCOM undisputedly, to pay all charges and surcharges that are levied from time to time, and afforded the DISCOM a unilateral right to vary from time to time, the tariffs, the scale of the general and miscellaneous charges and the general terms and conditions of service. The SE contends that in view of this, the appellants cannot go back now on the R&C penalties levied on them. The SE finally submitted that the load reliefs imposed on the appellants and others are not scheduled load reliefs but are only emergency load reliefs to meet the exigencies arising out of the sudden tripping of generating stations and

pleaded that the charges and penalties levied are not levied with a profit motive. He pleaded that the appeal of the appellants be dismissed.

8. During the course of the hearing, the appellants and the respondents confirmed what they stated in writing and have also buttressed their submissions by elaborate arguments and explanations. The appellants are an HT I Category consumer with 425 kV of contracted demand taking supply at 11 kV level. They are being fed from the 11 kV V.K. Palem Industrial feeder that is subjected to load reliefs. The bone of contention between the appellants and the respondents is about the levy of R&C penalties. The appellants contend that in view of the instructions issued by the Hon'ble Commission, vide their proceeding dated 22-01-2013, they cannot be subjected to demand restrictions and that any levy of R&C penalties by imposing demand restrictions on them is violative of the instructions of the Hon'ble Commission.

9. The key points that arose for consideration in this appeal are:

a. Whether or not the R&C penalties levied on the appellants are liable to be set aside; and

b. Whether or not the CGRF's order is liable to be set aside in this case.

10. All the material that is filed and brought for perusal during the hearings is gone through during the course of hearings. It is not in dispute that the appellants are supplied power from the 11 kV V.K. Palem Industrial feeder. The said feeder emanates from 33/11 kV V.K. Palem Substation. This V.K. Palem Substation in turn is supplied from 33 kV Madgulapally feeder

emanating from the 220 kV/132 kV/33 kV Miryalaguda Substation. The said 33 kV Madgulapally feeder is a mixed feeder on which the V.K. Palem 33/11 kV Substation exists along with two other Substations at Shettiplaem and Buggabaigudem. This 33 kV feeder is subjected to regular load reliefs. The contention of the respondents is that the load reliefs on this feeder are not within their hands and are controlled by TRANSCO. They contend that because of this, the instructions dated 22-01-2013 of the Hon'ble Commission are not attracted in their case. The said clause about which both the appellants and the respondents strongly contend is extracted below:

3). In case of feeders which are subjected to Load Relief (LR) by DISCOMs, the following Restriction and Control (R&C) measures shall be applicable:

HT -I, LT-III A and LT-III B:

100 % Contracted Demand is permitted throughout the month and shall limit energy consumption to the level of Permitted Consumption Limit (PCL) mentioned below:

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Permitted Demand Limits (PDL):

PDL for both peak and off peak = 100% Contracted Maximum Demand

Permitted Consumption Limit (PCL)

PCL during a month = CMD x #LF% x 1(PF) x No. of off peak hours in a month (600 hrs).

 # The LF shall be as mentioned in the order dated 01-11-2012 based on the supply voltage.

11. From a reading of the above clause,it becomes clear that the Hon'ble

Commission had done away with demand restrictions on those of the HT, LT III (A) and LT III (B) consumers that were located on the feeders which are subjected to load reliefs. It does not mean that they are not subjected to any R&C measures. Such consumers are subjected to energy consumption restrictions through the prescription of separate permitted consumption consumption limits as mentioned therein. The main bone of contention between the consumer and the respondents is regarding the interpretation of the phrase "Load Relief (LR) by DISCOMs." The respondents have stressed on this heavily during their arguments and said that they have not imposed any scheduled load reliefs on the feeder in question and that any load reliefs experienced by the appellants are consequent to the load reliefs imposed by TRANSCO or those that are termed 'emergency load reliefs' that are taken with a view to maintain grid frequency to ensure that no tripping of the generating stations occurs. While the respondents may be semantically correct in taking the view that they have not imposed the load reliefs, because imposing load reliefs on the feeders emanating from 132 kV Substations are not within their hands but are done by TRANSCO, the point to be noted is that the consumers do not have any separate and distinct relationship with TRANSCO. In so far as supply to them of electricity is concerned, the consumers have a relationship only with the DISCOM. The consumers are insulated from the actions of the generating stations and TRANSCO. The consumers have a relationship only with the DISCOMs and no one else, in regard to supply of electricity. If one feeder supplying electricity is facing load reliefs, ensuring power supply to the consumers through an alternate route is the responsibility of the DISCOM and it cannot escape that responsibility. When it is not able to supply in that fashion, relying on semantics to say that it is not the DISCOM which has imposed load reliefs on

the feeder is not tenable. Further, the respondents also have strongly argued that it is only scheduled load reliefs that can bring in some relief to the consumers from the levy of R&C penalties. This is also not correct. The wording used by the Hon'ble Commission is only about 'load reliefs'. The Hon'ble Commission had never stated and differentiated between 'scheduled' load reliefs and 'emergency' load reliefs. No material was brought to the notice of this authority which suggests even remotely that the Hon'ble Commission had indeed made such a distinction. Therefore, the argument of the respondents to the effect that they have not imposed any load reliefs on the 11 kV V.K. Palem Industrial feeder on which the appellants exist is not tenable. As submitted by the appellants and as cross checked by this authority during the course of the hearings from the original record produced by the respondents, it is clear that the feeder was subjected to load reliefs. Therefore, the appellants cannot be subjected to any demand restrictions during the applicable period i.e., 22-01-2013 onwards.

12. It is felt appropriate that some other contentions that are raised by both the sides on this issue need to be dealt with. One of the contentions is about the nomenclature of the 11 kV feeder on which the appellants' service exists. The discussion before the CGRF has unnecessarily veered toward it being a 'rural' feeder. The respondent SE attacked the 'rural' feeder nomenclature by taking strong objection to the certificate issued by the ADE, Operation, Miryalaguda and stated that such nomenclature is not valid. But, a perusal of the certificate in question issued by the ADE shows no such wording as 'rural' feeder. Instead, it just confirms that load reliefs being implemented on the 33 kV Madgulapally feeder will impact the 33/11 kV V.K. Palem industrial feeder. The letter of the DE dated 27-11-2013, which is also

under attack by the SE in this regard does not talk of the feeder being 'rural' at all. This is a nomenclature that has come about, perhaps unwittingly, in the discussion by the CGRF. The issue here is not whether the said feeder is a 'rural', 'agricultural' or 'industrial' feeder. The issue is whether or not the feeder is subjected to load reliefs -- **NOT** whether they are scheduled or emergency in nature. (Emphasis supplied) The Hon'ble Commission has clearly stated that those of the consumers who are located on such feeders which are subjected to load reliefs, shall not be imposed any demand restrictions. In this case, it is undisputed that there were load reliefs -- quite heavily and frequently --on the 11 kV feeder from which the appellants were being supplied power. Therefore, demand restrictions cannot be applied in this case and any levy of R&C penalties consequent to imposing demand restrictions is violative of the Hon'ble Commission's orders. Neither the DISCOM's headquarters, nor any R&C monitoring committee at the Circle level can undo what the Hon'ble Commission had ordained.

13. The respondent SE's further contention that the interpretation of the CGRF, if taken into account, will result in a situation wherein they would not be in a position to impose any R&C penalty on any of the 840 HT services in the circle also is devoid of merits. The SE contends that all the 840 HT services of the Circle were subjected to emergency load reliefs. Emergency load reliefs that are taken to set something right in an emergency situation do not alter the basic nature of the supply. But if such 'emergency load reliefs' are quite frequent and extend frequently over long periods, then they cannot be called 'emergency load reliefs' at all. Such a situation should be aptly called a load relief situation. If all the feeders supplying HT supply to all the HT services in the Circle were subjected to such load reliefs, then nothing

prevents the operation of the directions issued by the Hon'ble Commission. Neither the Commission nor this authority would be bothered even if a single HT service is not subjected to R&C penalty in such a situation. R&C penalties were envisaged basically to bring in discipline among the consumers; they are not to be treated as a source of revenue to the DISCOM.

14. The respondent SE further contended that R&C billing disputes do not come under the jurisdiction of the CGRF. This is not at all correct. A dispute about R&C bills and penalties is a billing dispute per se. Therefore, the CGRF has the jurisdiction to decide on such matters. It's in the Hon'ble Commission's domain to give orders on various aspects that fall within its regulatory power. As long as an order issued by the Hon'ble Commission is not quasi-judicial in nature, clarifications can be sought by anybody on such orders from the Hon'ble Commission itself. But construing that such orders are not amenable for interpretation by the CGRF is preposterous. As long as no clarification contradicting the interpretation given by the CGRF emerges from the Hon'ble Commission, the CGRF's interpretation stands unless otherwise it is struck down by this authority in an appeal. Expecting the appellants in this case to necessarily seek a clarification from the Hon'ble Commission is not correct. As long as the consumers have the facility of approaching the CGRF or this authority, they are free to approach them and the DISCOM as well as the consumer are bound by the interpretation given by the CGRF and / or this authority. The consumers cannot be denied the opportunity of availing the remedy they have by approaching the CGRF.

15. The respondent SE further argued that as the CGRF's order is against the interest of the organization they have not implemented the orders of the

CGRF. This is also quite an alarming stance on the part of the respondent SE and the DISCOM. The orders of the CGRF are to be implemented by the DISCOM. Non-implementation of the orders of the CGRF makes the DISCOM and its officials liable for action under section 142 of the Electricity Act, as an order issued by the CGRF becomes an order issued under the Act. This sort of adventurism on the part of the DISCOM needs to be curbed. The DISCOM has no business to sit in judgment over an order issued by the CGRF. If at all, it is unhappy with the decision of the CGRF, nothing prevents the DISCOM from exhausting all the other legal remedies that are otherwise available to it. Non-implementation of the CGRF's orders is **NOT** one of them. (Emphasis supplied.)

16. The respondent SE's contention that the 33/11 kV Madgulapally feeder is given load reliefs by TRANSCO and not by the DISCOM and hence, the operation of the Hon'ble Commission's directives dated 22-01-2013 cannot be attracted in this case also is not correct. The appellant entered into an agreement with the DISCOM and TRANSCO or GENCO have not come into picture anywhere in this. As long as the feeder from which the appellants are supplied power is subjected to load reliefs -- by whosoever it may be -- the operation of the Hon'ble Commission's directives dated 22-01-2013 are attracted.

17. The respondent SE also contended that in view of the clauses in the HT agreement that is signed between the consumer and the DISCOM, the appellants cannot now go back on the charges that are levied also is not tenable. No agreement can be one sided and no agreement can deprive a party to the agreement from approaching the appropriate legal authority

seeking remedies. As the appellants felt that they were subjected to undue and harsh penalties, they approached the CGRF and by doing so, they have not contravened any of the clauses of the HT agreement that they appended their signature to.

18. The respondent SE's submission that no subordinate officer can certify a feeder as 'rural' feeder or some other feeder, is well taken. It is not for them to declare so. In any case, his subordinates have not done so in the present case. What they stated was that the feeder in question has been subjected to load reliefs and nothing more. What they stated is corroborated by facts and hence no adverse inference can be drawn from their behaviour.

19. The appellant's harping on the feeder being a rural feeder also is irrelevant. The only issue is whether or the feeder has been subjected to load reliefs. It is undisputed that it is subjected to load reliefs. That's all that is relevant to decide that the consumer appellants cannot be subjected to demand restrictions during the relevant period when the directions of the Hon'ble Commission have come into being.

20. In view of all the foregoing discussion, this authority cannot agree with the respondent SE's averment that the appellants are misinterpreting the Hon'ble Commission's guidelines to evade payment of R&C penalties. Therefore, the first question is answered in favour of the appellants.

21. Coming to the issue about CGRF's order, this authority finds that the CGRF had given a very reasonable order and by correctly interpreting the intention of the Hon'ble Commission. The use of and discussion about 'rural

feeder' appears quite unwitting, to say the least. Therefore, this authority upholds the order issued by the CGRF.

22. Therefore, it is hereby ordered that:

- the appellants cannot be subjected to demand restrictions during the period commencing from 22-01-2013 and ending on 31-07-2013;
- the appellants are however subject to energy consumption restrictions during the above period in accordance with the Hon'ble Commission's directives;
- the respondents shall recalculate and revise the R&C penalties in accordance with the Hon'ble Commission's directives issued vide their Proceedings dated: 22-01-2013; and
- the respondents shall do so within 15 days from the date of receipt of this order and submit their compliance report within 15 days from thereafter.

23. This order is corrected and signed on this 26th day of November**, 2014**.

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

VIDYUT OMBUDSMAN

To

1. M/s. Sriman Chemicals (P) Ltd., Tungapadu (V), Miryalaguda (M), Nalgonda District - 508 207

2. The Assistant Divisional Engineer, Operation, Bibinagar, TSSPDCL, Nalgonda District - 508 126
3. The Senior Accounts Officer, Operation, TSSPDCL, Nalgonda Circle, Beside APSRTC Busstand, Nalgonda District - 508 001
4. The Divisional Engineer, Operation, Miryalaguda, TSSPDCL, Nalgonda District - 508 207
5. The Superintending Engineer, Operation, TSSPDCL, Nalgonda Circle, Beside APSRTC Busstand, Nalgonda District - 508 001

Copy to:

6. The Chairman, C.G.R.F -1, Rural, TSSPDCL, H. No.8-3-167/E/1, CPTI Premises, GTS Colony, Vengalaraonagar Colony, Erragadda, Hyderabad - 500 045.
7. The Secretary, TSERC, 11-4-660, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad - 500 004.