



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

:: Present ::

C. Ramakrishna

Date: 23-04-2016

Appeal No. 29 of 2015

Between

M/s. DRA Industries, Unit-II, Athivaram, Naidupet-Post Office, Ozili, Nellore-District

... Appellants

And

1. The ADE/Operation/APSPDCL/Naidupet/Nellore District
2. The CGM/R & IA/APSPDCL/Tirupati
3. The CGM/Operation/APSPDCL/Tirupati
4. The DE/Operation/APSPDCL/Naidupet/Nellore District
5. The SAO/ERO/APSPDCL/Vidyut Bhavan/A.K. Nagar Post/Nellore
6. The SE/Operation/APSPDCL/Vidyut Bhavan/A.K. Nagar Post/Nellore

... Respondents

The above appeal filed on 16-12-2015 has come up for hearing before the Vidyut Ombudsman on 11-04-2016 at Tirupati. The appellants, as well as respondents 1 to 6 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:

ORDER

2. The appeal arose out of the complaint of the consumer about billing relating to the supply during R&C period. The appellants were not happy with the disposal of the

case by the CGRF and hence the appeal.

3. The appellants stated in their appeal that the respondent SE had through his letter dated 23-07-2014 raised demand towards their service connection bearing number 522 referring to some journal entries, the details of which have never been supplied to them nor were they explained; that the dispute about R&C penalties started with the raising of a demand for Rs. 6,68,71,375/- and that due to disconnection of the supply for non-payment they had to approach the Hon'ble High Court in WP 33336 of 2013 and the Court had passed interim orders on 20-11-2013 ordering payment of Rs. 2 crores and that they had paid the same; that their request for withdrawing an amount of Rs. 1,43,96,363/- consequent to this Court ruling is still pending; that while their claim for withdrawing the amount of Rs. 1,43,96,363/- is still pending, the respondents had raised a demand for Rs. 1,04,08,042/- towards arrears; that due to the threats of disconnection being faced by them, they had approached the Hon'ble High Court in WP 27395 of 2014 and that this WP which was carried out till a WA in 1363 of 2014 had attained finality with the Hon'ble Court directing respondents to settle the dispute within 6 weeks from 06-11-2014; that as the matter has still not been settled in spite of the Court's orders, they had to approach the CGRF/Vidyut Ombudsman route and come up before this authority in appeal; that they had been availing 10,000 kVA at 33 kV level through their service connection bearing number NLR 522; that the R&C measures imposed w.e.f 12-09-2012 had resulted in the billing system being thrown out of gear; that the procedures adopted by the DISCOM in accounting for the payments made by the consumers is resulting in the piling up of arrears incorrectly as the payments made by the consumers against particular claims are not being accounted for against those claims, but are being accounted in accordance with the priority indicated in the Andhra Pradesh Electricity Regulatory

Commission (Electricity Supply code) Regulation 2004; that till the introduction of R&C penalties, they were very prompt in paying their dues and were seen as healthy consumers in the eyes of the Licensee; that the system of automatically charging interest / surcharge by way of debiting their account without even the claim being properly served is resulting in a situation of the interest / surcharges not being reversed in case of a future reversal / withdrawal of the claim itself; and that this is what had resulted in their being burdened with undue interest / surcharge on account of the R&C penalties. The appellants enclosed lot of material which they felt supports their appeal.

4. Even before going into the merits proper, it was brought to the notice of this authority that there are a number of cases pending before the Hon'ble High Court and that the present issue being agitated by the appellants is the subject matter in quite a few of those cases. Therefore, it is necessary that the present status of these various cases needs to be looked into as there are about 20 cases in all that were filed by them in the High Court alone in the years 2013 to 2015. These cases deserve a brief glance to get a bird's eye view of the degeneration of the relationship between the appellants and the DISCOM.

5. The very first case filed by the appellants i.e., WP 33336 of 2013 is still pending finalization in the Hon'ble High Court. The appellants had contended the R&C billing demand of Rs. 6,68,71,375/- for the period September, 2012 to August, 2013 in this writ petition. The appellants admitted that the respondents had revised this demand down to Rs. 5,04,14,485/- but had contested an amount of Rs. 1,43,96,363/- that was attributed to levy of interest on penal and other charges. On being directed in the interim order dated 20-11-2013 to pay an amount of Rs. 2 crores, the appellant had

paid the amount but the case is still pending finalization. The point to be noted is that this WP relates to the R&C demands relating to two of the appellants' services i.e., NLR 427 & NLR 522. Rs. 40 lakhs of the Rs. 2 crores ordered to be paid by the appellants had been adjusted against NLR 427 while the remaining Rs. 1.6 crores had been adjusted against NLR 522. But most of the present contested demand of Rs. 1,04,08,842/- relates to NLR 522 for the same period of time that is under dispute in WP 33336. In view of this, as the matter is still pending before the Hon'ble High Court in WP 33336 of 2013, this authority considers the representation as liable for rejection at this stage.

6. WP 27395 of 2014 was filed questioning the raising of a demand of Rs. 1,04,08,842/- towards arrears. The Hon'ble Court had disposed of this case directing the 3rd respondent therein i.e., the SAO to dispose of the petitioner's representation dated 06-08-2014 pending before him within 2 weeks from the date of receipt of a copy of the Court's order and also directed the appellants to pay 25% of the disputed amount. But the appellants had gone in appeal in WA 1363 of 2014 against this order and got relief on the 25% payment clause. On receipt of the Hon'ble High Court's order on 18-10-2014, the DISCOM had finally disposed of the matter as per the Court's directions on 10-07-2015.

7. On the said disposal on 10-07-2015, the appellants again represented to the respondent SE on 27-07-2015. The SE disposed of that representation also on 19-08-2015 vide his Lr. No. SE / O/ NLR / SAO/ JAO/ HT/ U 1/ D.No. 1176 /14. Questioning this disposal and the consequent demand for Rs. 1,04,08,842/-, the appellants filed WP 28293/2015 on 01-09-2015. The case was disposed of on 04-09-2015 directing that the CGRF shall decide the matter within three months.

8. The CGRF disposed of the matter on 10-12-2015. On such disposal, instead of following the legally laid down path of approaching this authority to have the issue decided on merits, the appellants adopted a two pronged approach and filed WP 40272/2015 on 10-12-2015 questioning the demand of Rs. 1,04,08,842/- and Rs. 24,98,122/- interest thereon. This case is still pending before the Hon'ble High Court and the Hon'ble Court had directed on 11-12-2015 that there shall be no coercive steps to collect the disputed amount till the disposal of the writ petition. Contesting the disposal of the case by the CGRF, on the very same demand, the appellant approached this authority in appeal on 16-12-2015. Thus it is seen that the appellant is not approaching this authority with clean hands. Once they have approached the Hon'ble High Court in WP 28293/2015 and the CGRF had disposed of the matter in accordance with the directions of the Hon'ble High Court, had they followed the legally laid down path of approaching this authority challenging the CGRF's orders, the issue could have been decided on merits and facts at this stage. But by approaching the Hon'ble High Court again in WP 40272/2015 on 10-12-2015, and obtaining an interim direction that there shall be no coercive steps to collect the disputed amount till the disposal of the WP by the Hon'ble High Court, they have effectively obtained a stay on the outcome of the proceedings before this authority. As such they should await the orders of the Hon'ble Court and be guided accordingly. Approaching this authority who can never decide a matter that is pending consideration before the Hon'ble High Court serves no purpose and hence this authority refuses to look into the merits of the appeal at this stage.

9. Thus it is noticed that the appellants had filed four Writ Petitions on the same demand before the Hon'ble High Court from 2013 to 2015. While two of these Writ

Petitions were disposed of by the Hon'ble High Court, two are still pending. In view of this pendency, the present appeal is liable for rejection at this stage without going into the merits.

10. In addition to these cases, the appellants have filed about 16 other writ petitions on various aspects like accounting for undrawn units while availing open access supply, non payment of arrears relating to their other disconnected service NLR 427, FSA charges, waiver of "No Dues Certificate" requirement for availing supply through Open Access and Additional Consumption Deposit. Barring perhaps the dispute about "No Dues Certificate" requirement for availing Open Access supply, all the cases relate to billing disputes, which can be solved at the CGRF / Ombudsman level. Instead of availing this statutorily laid down route, the appellants preferred to invoke the Writ Jurisdiction of the High Court all the time.

11. It is on seeing this record of the appellants that this authority is not convinced by the letter dated 02-04-2016 filed before this authority seeking adjudication of the appeal on merits.

12. Clause 19.3 (a) of the Andhra Pradesh Electricity Regulatory Commission Consumer Grievance Redressal Forum, Vidyut Ombudsman and Consumer Assistance Regulation, 2016 (extracted below) lays down that in cases where proceedings in respect of the same matter are pending before any court, this authority may reject the representation at any stage.

19.3 The Vidyut Ombudsman may reject the representation at any stage under the following circumstances:

- a) in cases where proceedings in respect of the same matter and between the same Complainant and the Licensee are pending before any court, tribunal, arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority;

When the Hon'ble High Court itself is seized of the matter, no purpose will be served by this authority adjudicating the issue, as any order given by this authority will be subject to the outcome of the cases pending before the Hon'ble High Court. Therefore, this authority sees no merit in adjudicating the appeal at this stage.

13. Hence the appeal is dismissed as not maintainable.

14. This order is corrected and signed on this 23rd day of April, 2016.

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

VIDYUT OMBUDSMAN

To

1. M/s. DRA Industries, Unit-II, Athivaram, Naidupet Post Office, Ozili,
Nellore District.
2. The Assistant Divisional Engineer, Operation, APSPDCL, Naidupet, Nellore
District - 524 126
3. The Chief General Manager, R & IA, APSPDCL, Corporate Office, Tirupati
4. The Chief General Manager, Operation, APSPDCL, Corporate Office,
Tirupati
5. The Divisional Engineer, Operation, APSPDCL, Naidupet, Nellore District

- 524 126

6. The Senior Accounts Office, ERO, APSPDCL, Vidyut Bhavan, A.K. Nagar Post, Opp. Rajarajeswari Temple, Nellore - 524 004
7. The Superintending Engineer, Operation, APSPDCL, Vidyut Bhavan, A.K. Nagar Post, Opp. Rajarajeswari Temple, Nellore - 524 004

Copy to:

8. The Chairman, C.G.R.F., APSPDCL, 19/13/65/A, Sreenivasapuram, Near 132 kV Substation, Tiruchanoor Road, Tirupati - 517 503
9. The Secretary, APERC, 11-4-660, 4th Floor, Singareni Bhavan, Red Hills, Hyderabad - 500 004