

BEFORE THE VIDYUT OMBUDSMAN

Present

**K.Sanjeeva Rao Naidu, Director (Law) and
Vidyut Ombudsman**

Dated: 24-02-2010

Appeal No. 25 of 2008

Between

Dr. P. Somanadha Rao,
Executive Director,
M/s. Bay Aquatics Pvt. Ltd,
17, Block "A", VUDA Complex,
Siripuram, Visakhapatnam – 530 003.

... Appellant

And

The Asst. Engineer / Opt / APEPDCL / Madhurawada / Visakhapatnam Dist
The Asst. Divisional Engineer / APEPDCL / Opt / Madhurawada
The Divisional Electrical Engineer / Opt / APEPDCL / Zone – I / Visakhapatnam
....Respondents

The appeal / representation dated 24.10. 2008 received on 27.10.2008 of the appellant has come up for final hearing before the Vidyut Ombudsman on 02.02.2010 in the presence of Dr. P. Somanadha Rao, the appellant and Sri G. Raj Kumar, DE (Operation) Zone -3, Sri S. Suresh Babu, ADE, Madhurawada, Sri. R. Ramesh, AE / Operation / Madhurawada and Sri. K. Krishna Murthy, AAO (ERO East) present for respondents and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following :

AWARD

Aggrieved by the order passed by the Forum in C.G.No.140 / 2008 of Visakhapatnam dated 22.09.2008, the appellant preferred this appeal on 27.10.2008.

2. The appellant filed his compliant before the Forum for Redressal of Consumer Grievances of APEPDCL to the effect, that he is the Managing Director of Avanti Aquamarine with a request to drop the notice of short fall amount issued by the Assistant Accounts Officer / ERO / East since the lighting load exceeded 5% contracted load.

3. The Forum advised the DE / DPE / Visakhapatnam to inspect the service and he inspected the premises on 02.09.2008 and furnished that the consumer exceeded the lighting load over the contracted load @ 5% and basing on the report, the Forum concluded, that there was excess over and above 5% of lighting load over the contracted load as per the conditions prevailing as on that date and also directed the complainant to pay the short fall amount, as intimated by the Assistant Accounts Officer.

4. Aggrieved by the said finding, the appellant preferred this appeal questioning that the finding of Forum without looking in to the realities that they are not liable to pay the short fall amount and they have not exceeded the 5% contracted load and the readings obtained by the DE are not on correct data and the said finding is liable to be set aside.

5. At the time of hearing the appeal, the appellant stressed his arguments mainly on the following points submitted in writing before this authority.

- i) The appellant has not utilized the lighting load exceeding 5% of the connected load.
- ii) The Forum has failed to look in to the observations made in C.G. No. 05 / 2008 Bala Tripura Sundari Aqua Products limited though the same is similar to the appellants, Aquamarine and in fact, both are similar industries.
- iii) So also with M/s. Bay Fry Hataries C.G. No. 82 / 2008 by the same Forum.
- iv) The AE who inspected the unit has given correct finding as 2.14%.

- v) The Forum has given finding on the report of the DE / DPE / who reported that it was 14.432%.
- vi) The finding was not based on any data.
- vii) As per the consumer it was 3.19/- as per AE it was 2.14% and as per DE / DPE it was 14.432%. No reason is assigned to throw the other two reports. The observation of the DE is on presumptions and assumptions.
- viii) Since there is inaccuracy, the benefit must be given to the consumer appellant.
- ix) The separate lighting for processing, heating load, yard lighting load etc., are not separately taken and the DE / DPE jumped in to an erroneous conclusion.
- x) Hence the appeal filed by him may be allowed by setting aside the finding of the Forum.

6. The respondents represented by Sri. G. Raj Kumamr, DE (Op) Zone-3, Sri. S. Suresh Babu, ADE / Madhurawada and Sri. R. Ramesh AE (Op), Madhurawada and Sri. K. Krishna Murthy, AAO (ERO East) present at the time of hearing and the DE (Op) submitted that the Forum has arrived at a right conclusion basing on the report of ADE (DPE) who has taken exactly the lighting load and other lighting load used for processing. The appellant has shown the data including the lighting load in to the industrial load as it is used for manufacturing process and reduced the very lighting load as it is less than 5% and the AE who inspected earlier also jumped in to the same conclusion and the appeal preferred by the appellant is liable to be dismissed.

7. Now the point for consideration is, whether the impugned order of the Forum dated 22.09.2008 is liable to be set aside ? If so on what grounds ?

8. It is clear from the finding of the Forum that they have advised the DE (DPE) to inspect the premises and the he inspected the same on 02.09.2008 and furnished the particulars as here under.

The consumer may exceeded the lighting load over the connected load @5% as detailed below.

$$= \frac{\text{Total lighting load} \times 100}{\text{Contracted load}}$$

$$= \frac{5.835 \times 100}{40.27564}$$

$$= 14.432\%$$

9. Hence, he is liable to pay the amount as per the short fall notice issued by the Assistant Accounts Officer / ERO / East / Visakhapatnam.

10. The Forum has simply accepted the report of DE / DPE and passed the impugned order.

11. It is curious to note that the appellant herein filed two orders of the Forum pertaining to Sri. K.Madhusudana Reddy in C.G. No. 82 / 2008 and another order of M/s. Bala Tripura Sundari Aqua Products Pvt. Ltd in CG No. 5 / 2008 for comparative study as the above said aqua products are similar to his project. But the Forum has simply rejected with one sentence that the “complainant cannot compare with his aqua culture with that of others” and simply stated that his case is different. How they are different and dissimilar are not explained by the Forum, though a duty is cast upon the authority to assign reasons for their conclusion, as to how they are not relevant for the case of the appellant.

12. In this case, the Assistant Engineer / Operation has issued a report on 06.08.2008 by holding that the lighting load was 2.14% and the lighting load when compared to the total load of the premises was less than 5% or 10% of the limit as prescribed by the tariff order. Again the Divisional Engineer / DPE submitted a report and arrived at a conclusion that it was 14.432% and it had exceeded the connected load of 5%. There is lot of difference in between two reports. Furthermore, the complainant has also assessed the lighting load and arrived to the conclusion that it is 3.19% which is less than 5%. Thus there are three reports contradicting one to the other. The location of the lights is not

mentioned. It is nowhere mentioned that the lights used for glowing, whether it is for 24 hours, even for that larval rearing also the lighting is not necessary for 24 hours and it can be only for 12 hours. Furthermore, it may be essential for hatcheries through out the day and night but not for aquaculture, which is in open area. These aspects are not discussed anywhere either by the Forum or by the respective engineers, about the basis for their conclusions. Had they been assigned the reasons, it would have disclosed about the disparity aspects in their conclusions. These aspects are lost sight of by the Forum. Unless these aspects are thoroughly verified and discussed point wise each and every bulb wise, it is not possible to arrive at a just decision. In fact, the order is cryptic. No reasons are assigned for conclusion. When it is an order passed by Quasi-Judicial authority, it should contain the plausible reasons. The AE has also inspected in pursuance of the orders of the Forum. Again ordered for inspection by the DE. What are the circumstances forced the Forum to inspect the S.C. No. 82 / 127 / 12 / 09 of category III of Madhurawada by two officials, who have given different conclusions. The forum has not examined the Engineers to explain about the disparity. In the absence of the same, it has to conclude that the observation made by the forum is not on correct lines.

13. In the light of the above said discussion I am of the considered opinion that the matter has to be remitted back to the Forum for fresh conclusion by giving clarity on the above said aspects.

14. In the result, the appeal is allowed and the impugned order is set aside and the matter is remitted back to the Forum to restore the same to its original number and dispose of the matter on merits by giving opportunity to both sides and also by answering the above said aspects pointed out by this authority. No order as to costs.

This order is corrected and signed on this day of 24th February, 2010

VIDYUT OMBUDSMAN