

BEFORE THE VIDYUT OMBUDSMAN

Present

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

Dated: 20-02-2010

Appeal No. 34 of 2009

Between

M/s. APEX TMT Steel Castings (India) Pvt. Ltd
Industrial Development Area, N.H. 5,
Narasinga Rao Peta Vill, anakapalle – 531 021.

... Appellant

And

The Asst. Engineer / Opt / APEPDCL / Anakapalli
The Asst. Divisional Engineer / APEPDCL / Opt / Anakapalli
The Divisional Electrical Engineer / Opt / APEPDCL / Anakapalli
The Senior Accounts Officer / Opt / APEPDCL /Visakhapatnam

....Respondents

The appeal / representation dated 31.07.2009 received on 03.08.2009 of the appellant has come up for final hearing before the Vidyut Ombudsman on 01.02.2010 in the presence of Sri R.Rajnikant for the appellant, Ms.Kusuma Sree, advocate filed vakalat for appellant and Sri H.Gopala Rao, SAO, Sri S.Janardhan, DE /O/Anakapalli and Sri G.Prasad, ADE (Commercial), Circle office 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.20/2009-10 of Visakhapatnam dist dated 03.07.2009, the appellant preferred this appeal on 03.08.2009.

2. The case of the appellant is that the UCM charges demanded by the licensee is not correct, since the notice dated 15.10.2008 was served on them on 08.12.2008 and requested refund of UCM charges already paid by them.

3. The SE/O/Visakhapatnam has submitted his reply stating that

- (i) the appellant has applied for extension of supply for a CMD of 450 kVA. He was also advised to complete the work from his side. The department informed that the work from APEPDCL side was completed and requested to complete the work from the consumer side within 3 months duly fulfilling the departmental procedures, otherwise necessary UCM charges will be levied as per the tariff order in force.
- (ii) Receipt of the notice was acknowledged by the consumer. After receipt of the said notice no representation or completion report is received from the appellant till 12.03.2009. On 12.03.2009, the consumer approached and submitted the CEIG approval for release of supply and consumer was requested to pay UCM charges.
- (iii) When ADE / Operation / Anakapalli was asked to submit his report for release of supply, he reported that work was not completed till 26.03.2009. Ultimately, the said work was completed on 26.03.2009 with the assistance of staff of APEPDCL and supply was released on 28.03.2009 by the ADE / HT meters / Visakhapatnam.
- (iv) After paying the UCM charges, the ADE/O/Anakapalli inspected and informed the consumer for completion of work and on completion of work on 26.06.2009, supply was released. The delay was caused due to non-completion of work by the appellant, delay in submission of CEIG approval and right of way were the appellant problems and there was no delay in part of APEPDCL.

4. After considering the rival contentions of both sides, the evidence adduced by the parties including oral evidence, the Forum observed that contention of the

appellant for revision of UCM charges collected by the licensee from the appellant is not agreed since no HT service will be released by the licensee unless authorization from CEIG is received. The temporary authorization was received on 12.03.2009. Hence, the appellant should not expect release of service prior to that date. The appellant / complainant is directed to pay dues immediately. The respondents shall also collect dues, if any, pending from the consumer duly following the procedures and practices and disposed of the petition accordingly.

5. Aggrieved by the order, the present appeal is preferred questioning the same that the Forum is erred in holding that there is a delay on the part of the appellant ignoring the fact of receipt of notice on 08.12.2008 and the appeal preferred by him is to be allowed by setting aside the impugned order.

6. Now, the point for consideration is, “whether the impugned order, dated 03.07.2009, is liable to be set aside? If so, on what grounds?”

7. Though the appellant has submitted written arguments through his counsel but he represented before the Forum personally and submitted that he received a notice on 08.12.2008 and the period of 3 months is to be reckoned from the date of receipt of notice by consumer onwards and delay was on the part of the department and that they began collecting charges illegally when there was no delay on his part and same has to be refunded either by paying the same or by adjusting the same in the future bills and the impugned order is liable to be set aside.

8. In the written arguments submitted by the appellant through his counsel, it is clearly mentioned that the appellant should avail supply within 3 months from the date of receipt of the letter and if appellant fails to avail supply within the said period, he has to pay the monthly minimum charges or fixed charges as per the tariff order from the date of expiry of notice as per clause 5.9.2.1 of GTCS. The

appellant has requested the department to allow 6 months time for taking the supply by addressing a letter dated 27.12.2008.

It is also further argued that the appellant has got time till 08.03.2009 when it is reckoned from the date of receipt of the letter on 08.12.2008. Again, another notice was served for payment of Rs.1,32,555/- for the delay from 22.02.2009 to 22.03.2009 and the said amount was paid under protest. Hence, the above said amounts are liable to be refunded. The Forum has failed to appreciate his contention and the appeal preferred by the appellant is to be allowed by setting aside the impugned order.

9. The Senior Accounts Officer, Sri H.Gopala Rao and Sri S.Janardhan, DE/O/Anakapalli have clearly stated that questioning of supply prior to report of CEIG is not possible and the very delay in obtaining the report of CEIG is sufficient to show that there is abnormal delay in completing the work. The appellant has mentioned that the period has to be reckoned from the date of receipt of the notice, but the clause 5.9.2.1 of GTCS says that the supply should have availed within a period of 3 months from the date of issue of notice. The clause 5.9.2.1 reads as follows:

"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."

10. The very clause on which he wants to harp upon is against to his own contention. Mere issual of notice is sufficient to discharge the duties of official of APEDPCL. If it is mentioned that if the clause says receipt of the notice, then there may be some force in the contention of the appellant but the very clause is against his contention.

11. Even otherwise, it is apparent from the reports that the work cannot be completed till 26.03.2009 and it was completed with the assistance of staff of APEPDCL and the supply was released on 28.03.2009 by the ADE /HT meters/Visakhapatnam. Furthermore, the appellant has not obtained the CEIG approval for release of supply till 12.03.2009. So obtaining the supply prior to 12.03.2009 does not arise. This itself shows that he is not ready even by that date. The clarification from CEIG dated 09.03.2009 was submitted to the Department on 12.03.2009 and it was only temporary, for trial run, valid up to 08.04.2009. So the question of loss of production due to the delay on the part of the licensee does not arise.

12. The above said circumstances would clearly indicate that the appellant / complainant is not ready to avail supply prior to 12.03.2009. The reasons assigned by the respondents are apt and they are in accordance with the GTCS and I do not find any error in the impugned order and the appeal preferred by the appellant is liable to be dismissed.

13. In the result, the appeal is dismissed.

This order is corrected and signed on this day of 20th February 2010

VIDYUT OMBUDSMAN