

BEFORE THE VIDYUT OMBUDSMAN

Present

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

Dated: 17 -02-2010

Appeal No. 20 of 2008

Between

Senior Divisional Engineer / Electrical,
Traction Distribution,
South Central Railway, Secunderabad

... Appellant

And

1. The General Manager / Revenue / APCPDCL / Corp. Office / Hyd
2. The Superintending Engineer / Comml / APCPDCL / Corp. Office / Hyd
3. The Senior Accounts Officer / Opn / APCPDCL / Hyd (North) Circle / Hyd
4. The Senior Accounts Officer / Opn / APCPDCL / RR (North) Circle / Sec'bad
5. The Senior Accounts Officer / Operation / APCPDCL / Nalgonda Circle / Nalgonda
Dist
6. The General Manager / Customer Service / APCPDCL / Corp. Office / Hyd

....Respondents

The appeal / representation dated 15.09.2008 received on 22.09.2008 of the appellant has come up for final hearing before the Vidyut Ombudsman on 29.01.2010. Sri R.Godara, Senior DEE/TrD/SC, Sri Bhaskar Poluri, Advocate for appellant, Sri Ramanan, OS/TRS/S.C.Railway, Secunderabad and Sri K.Hara Prasad, General Manager (Revenue), Sri V.Satya Narayana, AAO(HT), and Sri P.Jayapaul, SAO (Nalgonda) for respondents are present and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following:

AWARD

Aggrieved by the order of the Forum in CG No. 12/2008-09 of Hyderabad (North), R.R.(North) and Nalgonda Circles dated 30.08.2008, the present appeal is preferred on 15.09.2008 and received on 22.09.2008.

2. The appellant in his appeal stated that
- (i) South Central Railway have Service Connection No.HDN-465, RRN-546, NGL-294 at its Traction Sub-station at Sanathnagar, Ghatkesar and Aler respectively with APCPDCL.
 - (ii) The tariff for these service connection and for that matter the Traction tariff for the year 2001-02 was fixed by APERC vide their order No. OP 4/2001 date: 24.03.2001.
 - (iii) Against this order of APERC, SCR had filed a writ petition No.CMP No. 23674 / 2001 in CMA No. 3147/2001 on 28.08.2001 in Hon'ble High Court of AP & requested the Court that the traction tariff should be brought down to Rs.3.50 from Rs.4.60 i.e, reduction of Rs.1.10.
 - (iv) The Hon'ble High Court had passed an order on 13.12.2001 suspending APERC's order OP 4/2001 dated. 24.03.2001 and advised the appellant i.e, Railways to deposit 50% of the amounts due, costs and interest.
 - (v) Accordingly, Railways made payments to APCPDCL at a rate of Rs.4.05 (Rs.3.05 + 50% of the difference of 4.60 and 3.50), for the bills of APCPDCL from 01.01.2002 and also recovered the overpayment made by Railways from 01.04.2001 to 31.12.2001 (paid at Rs.4.60)
 - (vi) On 08.01.2004, the writ petition filed by Railways was finally dismissed by Hon'ble High court of AP and it was directed that tariffs fixed by APERC on 24.03.2001 vide their order No. OP 4/2001 @ Rs.4.60 per unit stood good.
 - (vii) Railways therefore cleared all dues of the year 2001-02 at the rate of Rs.4.60 on 31.03.2004 by paying a consolidated cheque of Rs.43,95,01,552 for all railway traction services of SCR under APTRANSCO.
 - (viii) APCPDCL in their energy bills for May 2004 have claimed the late payment charges in respect of traction sub-station at Sanathnagar, Ghatkesar and Aler for the amount paid less by railways ie., at Rs.4.05 for the period from April, 01 to April, 02.

- (ix) The surcharge was not paid by railways and was disputed vide their letters No. C/E.19/TRD/5/P dated 11.03.04, 29.10.04, 11.02.05, 25.08.06, 03.11.06, 28.11.06, and 26.06.07 to SE/OP/NLG, Chief General Manager, Managing Director etc.,
- (x) In one of the correspondences CGM/Comml, vide letter No. CGM/Comml/DE (C)/ADE/F.FIT/D.No.1581/06 dated 22.11.06 has advised railways that the case is being dealt as per clause 32.2.1(a) of GTCS which is not correct as this clause does not deal with the reference of court cases.
- (xi) In one of the correspondences SE/OP/Ranga reddy vide letter No. SE/OP/RRC (North)/SAO/HT/DNo.331 dated 23.06.07 has advised the railways that the order of court was wrongly interpreted, while courts directives are clear to pay 50% of the dues.
- (xii) Till date, this late payment surcharge amounting to Rs.2,30,81,564/- approx. is appearing in the bills of these service connections and railways are disallowing the payments every time.
- (xiii) The case was many times represented to the APCPDCL authorities by railways latest being vide letter no. CE/E.29/TRD/05/2007-08 dt.18.03.2008 in which a personal hearing was also sought which had not given any response.

3. It is also the contention of the appellant that there are no dues from railways on account of payment or delayed payments, APCPDCL should not mention and create a tense situation in dealings with Railways which is a regular one and one of the major and prompt customer of APCPDCL. The Forum has arbitrarily stated that the action of CPDCL in levying surcharge on said to be belated payment is right as per General Terms & Conditions of Supply, because they continued to claim their bills at Rs.4.60ps per unit despite the interim order of the court in CMP No.23674/01 in CMA No. 3147/01. If that be the case, then APCPDCL should have shown the arrears due to them from the very next bill and should not have waited till final judgment of the court. The Forum has also failed to appreciate the judgment of the Hon'ble Supreme Court and the finding that there are no latches on the part of CPDCL is biased and it is not a belated

payment charges and surcharge cannot be levied on the remaining 50% and impugned order is liable to be set aside by ordering that the claim made by the APCPDCL in collecting surcharges is illegal and the impugned order is liable to be set aside.

4. Before the Forum, the licensees have submitted written submissions projecting mainly the following grounds:

(i) the complainant / appellant has 3 nos. HT railway traction services which are exclusively under HT Cat-V as per tariff order approved by APERC. The SCR is liable to pay the tariff at Rs.4.60ps / kWh as per tariff order FY 2001-02 that questioning the same aspect, the appellant has filed CMA No. 3147/2001 and the Hon'ble High Court in CMP No. 23674/2001 ordered the Railways "to deposit 50% of the amount due, costs and interest." Interim suspension for rest. In pursuance of the direction, the appellant deposited 50% of the amount due, costs and interest. The SCR made payments at Rs.4.05per kWh as against Rs.4.60 per kWh by interpreting court orders for the period from 01.04.2001 to 31.03.2002. Finally, the Hon'ble High Court dismissed the writ petition filed by SCR in favour of APTRANSCO / DISCOMS. Consequent, to the disposal of the court case, the SCR was requested to pay Rs.48.08crs towards current consumption charges arrears plus surcharge for delay period in respect of all HT Railway Traction services. But, SCR paid Rs.43.95crs on 01.04.2004. The APCPDCL has levied surcharge for the delay in payment as per the tariff conditions approved by APERC and the current consumption charges and arrears paid on 01.04.2004 with an abnormal delay by SCR. The details are as follows:

a. Traction Aler	HT S.C.No.NLG 294	Rs.84,65,902/-
b. Traction Ghakesar	HT S.C.No.RRN 546	Rs.91,39,346/-
C. Traction Sanathnagar	HT S.C.No.HDN 465	Rs.32,62,323/-

Hence, the SCR is liable to pay the surcharge for delay in payment of current consumption charges arrears from 01.04.2001 to 31.03.2002.

(ii) At the time of hearing, made by the Forum, the Sr.Divisional Engineer was examined on behalf of the appellant and categorically narrated the same facts mentioned in the complaint as well as in appeal grounds. On behalf

of the respondents, Sri K.Purushotham, General Manager (Revenue), APCPDCL was examined and categorically narrated about the defence taken by them and further stated that as per the GTCS and tariff definitions, the APCPDCL is entitled to levy and collect surcharge for the delay in payment of current consumption bills and other sums due. Further, the Hon'ble High Court have also delivered judgments in various Writ Petitions for payment of surcharge against the amounts held up in terms of court directions.

(iii) The contention of the appellant is that if the APCPDCL feel that there was any deficiency in payment in January 2002 to March 2002, they should have levied surcharge at that time only but not after disposal of the main CMA.

5. After hearing both sides and after considering the material placed before the Forum, it was of the opinion that the action of APCPDCL authorities in levying surcharge or belated payment of CC bills by the SCR in respect of 3 HT service connections i.e, HDN-465, RRRN-546 and NGL-294 and its Traction Substations at Sanathnagar, Ghatkesar and Aler is valid as per the GTCS and does not warrant interference by the Forum and disposed the complaint accordingly.

6. Against that order, the present appeal is coming for hearing.

7. The Learned Advocate for the appellant argued that the very finalisation of tariff fixed by the APERC is questioned and the matter is pending before the Hon'ble High Court and Hon'ble High Court granted stay of operation of Tariff Order on a condition of depositing 50% of amount and is only the act of the Court and that the dismissal of CMA does not give any right to levy surcharge. The appellant is ready to pay the amount and there is no question of delay in paying the amount and that there is no question of surcharge and the Forum has failed to appreciate the said aspect and the appeal preferred by the appellant is to be allowed by setting aside the impugned order. It is also further argued that the respondents are not precluded from issuing notices demanding the payment since the stay is granted only to half of the amount but not the waiver of demand notices.

8. The General Manager (Revenue) along with other two officers have appeared at the time of hearing and submitted that by virtue of the stay granted by the Hon'ble High Court, they have not issued any notices and when the stay is vacated by disposing of main appeal itself, there is an abnormal delay in paying amount as per the Tariff Order, they are entitled to collect surcharge and the Forum has rightly considered the said aspects and there are no grounds to set aside the same.

9. Now, the point for consideration is, whether the impugned order passed by the Forum rejecting the request made by the appellant to waive surcharge is liable to set aside? If so, on what grounds?

10. It is clear that by the date of interim order 13.12.2001 of the Hon'ble High Court no CC bills were due against all the 3 Traction sub-stations. Moreover, the appellant has deducted an amount of Rs.13,88,48,262/- (being 50% of enhanced tariff i.e Rs.4.60 paise minus Rs.3.50 paise = Rs.1.10paise /2 = Rs0.55ps) @ Rs.6,94,24,131/- in the CC bills for the month of January 2002 and February 2002 stating that excess amount was paid by them to APCPDCL towards CC charges from 01.04.2001 to 31.12.2001. This has been made by the appellant intentionally, though it is not the intention of the Hon'ble High Court at the time of passing the interim order. There is no specific direction to pay Rs.3.50 by the appellant during the period of stay granted by the Hon'ble High Court. The APSEB in exercise of its powers conferred under section 49 of the Electricity (Supply) Act, 1948 had notified the Terms and Conditions for Supply of electrical energy and the GTCS are applicable on the date of dismissal of CMA filed by the appellant challenging the revision of tariff for Railway Traction Sub-stations under HT Cat-V.

11. The enhanced tariff is Rs.4.60ps per unit as against Rs.3.50ps per unit i.e, an increase of Rs.1.10ps per unit. The appellant has paid CC bills from 01.04.2001 to 31.12.2001 at Rs.4.60ps per unit but after the interim order the appellant has deducted an amount of Rs.13,88,48,262/- calculating the tariff at Rs.4.05ps per unit from 01.04.2001 to 31.12.2001 on the ground that CC bills are paid for the above period at Rs.4.60ps per unit.

12. The learned counsel for the appellant vehemently argued that there are no valid grounds to levy any surcharge as the payments were withheld by virtue of court orders as the very tariff was not questioned and dismissal of CMA was not in any way confirm the delay as alleged by the respondents. He has also relied upon the following ruling reported in

- (i) 1996 (1) SCC 597 – Kerala State Electricity Board vs MRF Ltd and
- (ii) 1997 (5) SCC 772 – Kanoria Chemicals and Industries Ltd vs U.P.State Electricity Board.

13. On the other hand, Sri K.Hara Prasad, General Manager (Revenue), APCPDCL relied upon a judgment of Division Bench of Hon'ble High Court in W.P.No.9081/91, 13458/93 and W.P.No. 234/94. As per the rival contentions of both the parties, the short question to be decided is, whether the respondents can levy the surcharge on the amount unpaid due to the interim orders of the court?

14. All the above said decisions have un-equivocally held that the amount withheld or unpaid by virtue of the courts interim order of operation of stay or injunction order, as the case may be has to be treated, as delayed payment. Here, in this case there is a specific clause in 32.1(a) which reads as follows:

32.1(a) – Bills shall be paid by the high tension consumers within 15 days and by low tension consumers within 14 days from the date of the bill failing which the consumer shall be liable to pay an additional charges at the rates prescribed by the Board from time to time and notified in the tariff notifications of the Board. “In the case of consumers covered by card system of billing the payment shall be made in the manner specified in the tariff applicable to such consumers.”

15. In the ruling reported in 1996 (1) SCC 597 their lordships granted interest as there is no specific clause for payment of interest or surcharge on the ground that the Board has suffered financial loss due to the erroneous decision of Hon'ble High Court. In the aforesaid circumstances

“it will be lawful, conforming to equity and well-established principle of restitution for the Board to claim interest at 18% on the unpaid portion of the bill drawn on the basis of revised tariffs.”

Whereas, in the ruling reported in 1997 (5) SCC 780, the Apex court categorically held

“that rate of late payment surcharge provided at clause 7(b) is not penal in nature but having regard to particular facts and circumstances of the case and having regard to the fact that petitioners could possibly have understood the decision “Adoni ginning” as relieving them of this obligation to pay interest late payment surcharge for the period of stay reduced the rate of late payment surcharge payable under clause 7(b) to 18%.”

It is further interpreted in ruling relied upon by the respondents in the batch of writ petitions. In this it was held that

*“In a matter like this, the Court cannot act like a benevolent despot. Any relief that may be granted to a party by the Court should have the constitutional and statutory backing and it cannot be de hors the same. The Court granting the relief should find a basis in law which form an edifice to grant the relief. The power vested in this Court under Art.226 cannot be exercised to override any express provision like the one contained in condition Nos. 32.2.1 and 34. Further, this Court in exercise of the power under Art.226 cannot exercise the kind of power conferred upon the Supreme Court under Art.142 of the Constitution. In **E.S.P. Rajaram and Others v. Union of India**, a Constitution Bench of the Supreme Court held that though the exercise of the power under Art.142 to do complete justice is left completely to the discretion of the highest Court of the country and its order or decree is made binding on all the Courts or Tribunals throughout the territory of India, that power is not to be exercised to override any express provision of law.”*

The above said case law clearly discloses that the respondents have got right to collect surcharge and the same cannot be altered or modified by any other courts other than Apex court which can exercise its powers under Article 142 of the Constitution. This authority is not competent to pass any order contrary to provisions of law or regulations.

16. In the light of the above said circumstances, I am of the opinion that this authority has no power to set aside or to modify the impugned order passed by the Forum. The appeal is devoid of merits and is liable to be dismissed.

17. In the result, the appeal is dismissed, no order as to costs.

This order is corrected and signed on this day of 17th February 2010.

VIDYUT OMBUDSMAN