

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 25 -06-2011

Appeal No. 5 of 2011

Between
Sri B.R.Ch.V.Narayana
Syndicate Bank,
Ramachandrapet,
Eluru, W.G.Dist.

... Appellant

And

1. Asst Engineer/Operation/ North/Eluru
2. Asst Divisional Engineer/Operation/ Town/Eluru
3. Asst. Accounts Officer/ERO/ Town/Eluru
4. Divisional Engineer/Operation/ Eluru

....Respondents

The appeal / representation dt.1402.2011 (received on 24.02.2011) of the appellant has come up for hearing before the Vidyut Ombudsman on 08.04.2011 at Visakhapatnam, Sri B.R,Ch.V.Narayana, appellant present, Sri D.Raja Babu, ADE/Town/Eluru, Sri B.V.Krishna Raja, AE/O/North/Eluru, Sri M.Suryanarayana Murthy, JAO/ERO/Town/Eluru for respondents present and on 11.05.2011 at Visakhapatnam appellant being present and respondents being absent and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following :

AWARD

The appellant filed a complaint before the Forum stating that the capacitor surcharge is levied to his SC No.43469 Cat-II Eluru without giving any prior notice and requested the Forum for redressal of his grievance.

2. The respondent No.2 filed his written submissions as hereunder:

"The Sc.No.43649/Cat-II, North Eluru was inspected by Sri P. Radha Krishna, Asst. Divisional Engineer/DPE-II/Eluru on 15-09-10. At the time of inspection it is noticed that the power factor falls below 0.95 from 09/2009 onwards and no capacitors are installed.

At the time of inspection it is noticed that power factor falls below 0.95 due to no Defective derated from 09/2009 onwards. Any LT consumer is provided with meter capable of measuring active power and reactive power under any direction of the APERC contained in the tariff order or other wise. Such consumer shall be maintained /install capacitor's with adequate capacity. The power factor of the consumer installation shall not be less than 0.95 if failed, in accordance with provisions under clause 5.13.1, 12.1.1 shall be treated as a violation of the GTCS & attracts levy, & capacitor surcharge at the rates specified in the commission in the tariff order.

The above-mentioned factors indicate prima-facie that you are guilty of not replacing/ rectifying/ correcting the capacitor installed in you premises. Hence, the capacitor surcharge shall be levied on you as per the provisions under clause 12.1.1 of the GTCS and as per the provisions under clause 12.1.2 of the GTCS, that retrospective levy if any of surcharge shall not extend to beyond one year prior to the date of inspection i.e. from the consumption month of 09/09.

The consumer is not having the capacitors as per the report of ADE/DPE-II/Eluru. Hence, no need to issue 30 days notice as per 12.1.1 failure to install/maintain capacitors by consumer in accordance with the provisions under clause 5.13.1 will be treated as violation of GTCS and attracts levy of capacitor surcharges.

The Sc.No.43649, Cat-II, is having contracted load 20 KW with LT TVR meter. As per the tariff order for all Cat-II services with contracted loads 10 KW and above, capacitor surcharge has to be levied as applicable to HT consumers vide reference 3rd cited above. It is also to submit that the consumer is not maintained power factor 0.95 and levied capacitor surcharge after the inspection of ADE/DPE-II/ Eluru."

3. After hearing both sides and after considering the material placed before the Forum, the Forum observed that

- *"The Complainant Consumer is liable to pay the capacitor surcharge for the retrospective period as mentioned in the impugned notice issued by the 2nd respondent vide D.No.551/10 , dt.25/09/10 as per clause 12.1.1 of GTCS.*
- *Superintending Engineer/Operation/Eluru is directed that the suitable disciplinary action shall be initiated against the concerned respondents duly conducting an enquiry towards the cases of non implementing the GTCS and*

tariff order for not having capacitors to Cat-II services with more than 10 KW load in entire Circle and also ceased functioning of already fixed capacitors.

- *A compliance report shall be submitted to Forum within 15 days after attending the above direction.”*

4. Aggrieved by the said order, the appellant preferred this appeal questioning the same mainly LT consumers using induction motors and or welding transformers shall install LT shunt capacitors as specified in Annexure -VIII and that supply to new LT consumers with induction motors and welding transformers in connected load shall not be released unless LT shunt capacitors of the appropriate rating specified in Annexure – VIII are installed and that there is no provision for installing LT shunt capacitors for the earlier motor of 20KW levying LPF surcharge by the respondent authorities for the period from 9/09 to 9/10. It is evident that the capacitors though not required for Cat-II service were installed at instance of the authorities and the statutory provisions envisaged under clause 12.1.2 of GTCS specifically provides 30 days notice in the form of Annexure –VIII(A) where capacitors are found damaged or defective for rectification / replacement and the officer inspecting the service and satisfy the same and if the consumer fails to comply, the respondents may levy surcharge and that is not in his case and the appeal preferred by him is to be allowed by setting aside the impugned order.

5. Now, the point for consideration is, “whether the impugned order of the Forum dt.13.01.2011 is liable to be set aside? If so, on what grounds?”

6. It is clear from the record that as per the conditions applicable to the premises of the appellant i.e LT Cat-II with effect from 2009-10 onwards for loads 10KW and above, LT TriVector Meter shall be provided. The service has been inspected on 15.09.2010 and found guilty of operating at low power factor and no capacitors are installed, penalty was imposed on the consumer for preceding 12 months consumption from the date of inspection. There is no material before this authority to show that the appellant is using Trivector meter. In the notice given to the Branch Manager, the ADE has simply mentioned about the guidelines issued by APERC

with regard to LT meter capable of measuring active power and reactive power under any direction. But he did not mention in the same letter that the meter attached to the premises is well within the definition of reactive power as envisaged in the GTCS 5.13.1 and 12.3.1. The tariff order is changed in the FY 2009-10 decreasing the load factor to 10KW and the LT Tricvector meter shall be provided to these loads and above the said load. Though the appellant was using 20KW the clauses provide the method of installing capacitors incase of taking shunt capacitors above the 10KW load. But he did not specify the method and the process as to how the capacitors have to be fixed to the premises using more than 10KW. It ought to have mentioned that the shunt capacitors having more than 10KW after the Tariff order 2009-10, as to how and in what manner the capacitor surcharges have to be installed.

7. When there was earlier practice of using LT Trivector meter and when the same was restricted to 10KW in 2009-10 a provision has to be incorporated in the GTCS or at least a notice is to be given in person that it is more than 10KW instead of imposing LPF surcharge. The representation made by the appellant that it is not for him to know about the same but it is for the respondents to inform the same as to how it is to be obtained. So far as the new service connections are concerned, there is no problem, as the service connections cannot be given without installing the capacitors and the tri vector metes, etc.

8. When the documents filed before this authority are not clear about the existence of tri vector meter, the matter was reopened and summoned the respondents to appear before the authority to clarify about the said aspects. Though the appellant attended on 11.05.2011 but the respondents did not attend before the authority to clarify the said aspect, this shows the callous attitude on the part of the respondents towards a quasi-judicial authority constituted under the Electricity Act, 2003. It is necessary to take suitable action by CMD against the said erring officials.

9. It is clear from clause 5.13.13 which reads as follows:

“In respect of installations with induction motor and/or welding transformers the Company may refuse to provide supply to new consumers if capacitors of required rating are not installed or disconnect the supply with prior notice to the existing consumers, if the capacitors installed are defective and/or cease to function, apart from levy of surcharge as indicated in clause 12.1.1.”

This shows that new supply cannot be given to a fresh consumer if capacitors are not installed. In case of existing consumers if capacitors are not installed the supply has to be disconnected. If the capacitors installed are defective and or cease to function levy of surcharge can be made under clause 12.1.1. This clause is silent on the imposition of surcharge on the existing consumers. The only method to be adopted is to disconnect the supply by giving prior notice and nothing else. The Forum has failed to observe the same.

10. In the light of the above said discussion, I am of the opinion that the procedure adopted by the respondents in imposing the penalty is not sustainable and the same is liable to set aside. The impugned order dated 13.01.2011 is hereby set aside. They can take steps by insisting the appellant to provide suitable capacitors, trivector meter, etc in accordance with the said tariff order. No order as to costs.

This order is corrected and signed on this day of 25th June 2011

VIDYUT OMBUDSMAN