

VIDYUT OMBUDSMAN
O/o: ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad – 500 004

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated 08 – 12 - 2011

Appeal No. 71 of 2011

Between
M/s. ACE Tyres Ltd
Flat No.507, Saisadan Apts,
Balkampet, SR Nagar, Hyderabad.

... Appellant

And

1. Divisional Engineer /Operation / Kukatpally/CPDCL/
2. Superintending Engineer / operation circle/ Ranga Reddy North/ CPDCL/ Secunderabad
3. Senior Accounts Officer / operation circle / RR North/CPDCL/Secunderbad
4. GM(Revenue)/Corporate office/CPDCL/Hyderabad
5. SE(Commercial)/ Corporate office/CPDCL/Hyderabad

....Respondents

The appeal / representation dt.08.10.2011 (received on 10.10.2011) against the CGRF order of APCPDCL (in CG No.145/2011-12/Ranga Reddy North Circle dt.22.07.2011). The same has come up for hearing before the Vidyut Ombudsman on 18-11-2011. Sri.K.Vishwanatha Gupta and Sri B.Rambabu on behalf of appellant present and Sri P.Krishna Reddy, SAO, Sri V.Satyanarayana, AAO and Sri K.Dilip Kumar, SE (Comml) behalf of respondents present, heard and having stood over for consideration till this day, the Vidyut Ombudsman passed/issued the following:

AWARD

The Complainant, M/s.Ace Tyres Ltd., Hyderabad approached the Forum vide letter dated 8.6.2011 claiming that he is having H.T. Service No.RRN 999 under Category I with a CMD of 1249 KVA in the name of M/s.Ace Tyres Ltd. In the Bills issued for December, 2010, January & February 2011, they have been charged Voltage surcharge in addition to the Penal M.D. and Penal Energy charges. The SE/O/Rangareddy North has stated that they have charged voltage surcharge as per

the provisions under Clause (I) (B) of General conditions of H.T. Supply, for the Recorded M.D. exceeding the voltage level of 11 KV, for these 3 months. But the provision in the Clause I (B) is for exceeding of Contracted Maximum Demand in voltage level and not for Recorded M.D. exceeding voltage level and hence this clause is not applicable to the present case.

It has made clear in the Memo.No.CGM(Comml)/SE©/DE(RAC)/427 dated 21.6.2008 by APCPDCL that “No voltage surcharge is levied at present if the Recorded M.D. is more than (exceeds) the total CMD limits in KVA fixed at different voltage levels (on common / independent feeders)” By the time of this order, the Clause I (B) was available in Tariffs, but the clause was not operated for cases of RMD exceeding the voltage level stipulated as made clear by APCPDCL.

From the above, it is clear that this clause was not applicable to the cases of RMD exceeding the voltage level. In the order of APCPDCL dated 21.6.2008, orders are issued separately for application of this clause to Recorded Demand exceeding the voltage level, but the same was not proposed and approved by the competent authority i.e, the APERC, under Clause 62 of the Electricity At 2003, and got it included in the tariff orders and hence these orders are not tenable in Law.

In result, the claim of voltage surcharge made and collected for Recorded M.; D. exceeding voltage limit is illegal and untenable in Law and hence requires to be set aside.

In the light of the above circumstances, it is requested that the Licensee, APCPDCL, may be ordered to refund the excess amount collected under the name of voltage surcharge along with bank interest, by adjustment in the immediate future bills of the above service.

2. The third Respondent, SAO/O/Ranga Reddy North/Secunderabad submitted to the Forum vide his letter No. 398 dt.2.7.2011 wherein he stated as follows:

“The Complainant availed supply through 11 KV common feeder with a CMD of 1249 KVA. The Complainant exceeded the CMD from December 2010 to February 2011 as follows:

<i>Month</i>	<i>Voltage</i>	<i>CMD</i>	<i>RMD</i>	<i>Over and above CMD</i>	<i>Above 1500 CMD</i>	<i>% of excess RMD over the CMD</i>
<i>Dec-2010</i>	<i>11 KV</i>	<i>1249</i>	<i>1559.48</i>	<i>310.48</i>	<i>59.48</i>	
<i>Jan-2011</i>	<i>11 KV</i>	<i>1249</i>	<i>1520.55</i>	<i>271.55</i>	<i>20.55</i>	
<i>Feb-2011</i>	<i>11 KV</i>	<i>1249</i>	<i>1522.88</i>	<i>273.80</i>	<i>22.88</i>	

Further the voltage surcharge was levied for the period from December 2010 to February 2011 on account of RMD exceeded over the higher limit of CMD in KVA prescribed for 11 KV voltage consumers as per Tariff Order(i.e., RMD is more than 1500 KVA at 11 KV common feeder).

As per the instructions issued in Memo.No.427 dt.21.6.2008, the applicable voltage surcharge in addition to penal energy charges and penal demand charges was levied in the c.c. bills for the above months on account of RMD exceeded over the maximum permissible limit of CMD in KVA (i.e., 1500 KVA) fixed for 11 KV voltage consumers as per tariff orders and clause No.3.2.2.1 of General Terms and Conditions of Supply.

The following procedure has been adopted and implemented uniformly in regard to levy of voltage surcharge among HT consumers as per instructions issued in Memo.No.427 dt.21.6.2008.

- a. To levy the voltage surcharge, if the total Contracted Maximum Demand with CPDCL (Licensee) and all other source (third party/captive) exceeds the specified Levels of CMD in KVA at different voltage levels (on common/independent feeders).*
- b. To levy the voltage surcharge, if the recorded maximum demand is more than (i.e.exceeds) the total contracted maximum demand limits in KVA fixed at different Voltage levels (on common/independent feeders).*

As per clause No.12.3.2 of GTCS, if at any time the Maximum Demand of HT consumer exceeds his Contracted Demand without prior approval of the company, the consumer shall be liable to compensate the company for all damages

occasioned to its equipment or machinery if any, by reason of this default and shall also be liable to pay the charges payable by him on account of such increase in demand or load and penalty, as prescribed by the Commission from time to time, without prejudice to this right the company to disconnect the supply.

In view of the above said facts, the said complainant has exceeded his Contracted Demand from December 2010 to February 2011 without prior approval of APCPDCL. Hence the applicable voltage surcharge was levied and collected at the approved rates by the Commission.”

3. The fifth Respondent, SE/Commercial/Hyderabad submitted his written submissions as hereunder:

“As per the tariff order for the financial year 2010-11, Annexure D “General Conditions of HT Supply (1) B”, the voltage surcharge charges were raised. Hence, the withdrawal of levied voltage surcharge for the year 2010-11 does not arise.”

4. On behalf of the appellant Sri K.Viswanatha Gupta was examined and on behalf of the respondent Sri P.Krishna Reddy, SAO, Sri V.Satyanarayana, AAO and Sri K.Dilip Kumar, SE (Comml) were examined by the Forum and recorded their statements.

5. After hearing both sides and after considering the material placed before the Forum, the Forum passed the impugned order as here under:

“In view of the above, this Forum after careful and detailed examination of the fact and figures put forth by the Complainant and the Respondents before it felt that the Bills issued by the Respondents to M/s. Ace Tyres Ltd., for the months of December 2010, January 2011 and February 2011 consumption are in order and require no further directions by this Forums in the matter.

The complaint is disposed off accordingly.”

6. Aggrieved by the said order, the appellant preferred this appeal questioning the same that the respondents have levied voltage surcharge, penal charges on MD recorded in excess of CMD and penal energy charges for exceeding the CMD as per clause 6 of General conditions of HT supply under Tariff order 2010-11 in vogue. Voltage surcharge for exceeding the RMD beyond the voltage level prescribed for

11kV as per clause 1(B) of the General conditions of HT supply under Tariff order 2009-10 in vogue. The provisions in respect of penal charges on RMD over and above the CMD and penal energy charges have been covered by the valid orders of APERC and the voltage surcharge clause as provided in tariff was only for exceeding of CMD and not RMD with reference to CMD, and hence prima facie this clause was not applicable. The CPDCL is not competent to modify tariff provisions and the said modification is not approved by APERC and therefore orders passed by the Forum are not tenable. The award given by the Vidyut Ombudsman in respect of Devashree Ispat (P) Ltd is strictly applicable to the facts of the case. The appeal is to be allowed by setting aside the impugned order. The appellant is entitled to refund of already collected voltage surcharge together with interest for the period for which the amount was retained ie., the period from the date of payment up to the date of adjustment at the bank rate of 14%.

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

8. It is an admitted fact that the appellant is having a CMD of 1249 KVA at 11kV common feeder. It is also an admitted fact that during December 2010, January 2011 and February 2011 RMD of the appellant was 1559.48, 1520.55 and 1522.88 respectively exceeding 310.48, 271.55 and 273.80 beyond the recorded CMD.

9. The contention of the respondents that they have levied the additional charges for maximum demand in excess of contracted demand as per clause 6 of General Conditions of HT Supply of tariff order. The respondents have levied voltage surcharge on the ground that the appellant has exceeded the above voltages in excess to the CMD on the ground that 11kV common feeder would cause hazardous situation in the system. It is also clear from the record that the voltage surcharge is levied under clause 1B of General Conditions of HT supply of tariff order which reads as follows:

B. VOLTAGE SURCHARGE

H.T. consumers who are now getting supply at voltage different from the declared voltages and who want to continue taking supply at the same voltage will be charged as per the rates indicated below:

Sl.No	Contracted Demand with Licensee and other sources (in kVA)	Voltage at which Supply should be availed (in kV)	Voltage at which consumer is availing supply (in kV)	Rates % extra over the normal rates	
				Demand Charges	Energy Charges
(A) For HT Consumers availing supply through common feeders					
1	1501 to 5000	33	11	12%	10%
2	Above 5000	132 or 220	66 or Below	12%	10%
(B) For HT Consumers availing supply through independent feeders					
1	2501 to 10000 kVA	33	11	12%	10%
2	Above 10000 kVA	132 or 220	66 or Below	12%	10%
Note: The FSA will be extra as applicable					

The above table shows as to how the charges have to be made when RMD exceeded CMD. Whereas the recorded MD of the appellant in this case for the above said three months is shown as hereunder:

Month	Voltage	CMD	RMD	Over and above CMD	Above 1500 CMD	% of excess RMD over the CMD
Dec-2010	11 KV	1249	1559.48	310.48	59.48	
Jan-2011	11 KV	1249	1520.55	271.55	20.55	
Feb-2011	11 KV	1249	1522.88	273.80	22.88	

10. The main and foremost contention raised by the appellant is that the clause on which the respondents imposed voltage surcharge is not applicable to his case, and the same is liable to be set aside.

11. If clause 1B of HT supply tariff order is examined closely, it shows that the HT consumers who are now getting supply at voltage different from the declared voltage and *who wants* to continue taking supply at the same will be charged as per the rates indicated in the table mentioned there under. It does not speak in case of excess at one time or two times than the CMD, surcharge has to be levied. Whereas it deals with the cases when the declared voltage is exceeded and when he wants to continue the supply at the same voltage, he will be charged under the above said clause. In this case, no application is filed by the appellant herein, to continue the supply at the same voltage i.e., 1559 kVA and above. In the above said three months there is an excess 271 to 310 kVA than the CMD. There was no excess either before or after the said claim of three months made by the respondents. When there is excess kVA than the declared CMD, the respondents are entitled to collect

additional charges as per the tariff conditions or as per GTCS but not by imposing voltage surcharge as defined in 1B of General conditions of HT supply of tariff order.

12. In addition to that the Forum has simply relied upon clause 12.3.2 of GTCS approved by the APERC in support of their contention to the effect that they are entitled to levy voltage surcharge. The said clause reads as follows:

“12.3.2

If at any time the Maximum Demand of an HT consumer exceeds his Contracted Demand or LT consumer exceeds the Contracted Load without prior approval of the Company, the consumer shall be liable to compensate the Company for all damages occasioned to its equipment or machinery if any, by reason of this default, and shall also be liable to pay the charges payable by him on account of such increase in demand or load and penalty, as prescribed by the Commission from time to time, without prejudice to this right the Company may also cause the supply to consumer to be disconnected. “

13. It is no where claimed that exceeding of the limit caused damage / hazardous situation occurred to the equipment of the company or its machinery, if any, by reason of the excess RMD. In case of any damage caused, no doubt the appellant has to reimburse the same. The above said clause does not enure the right of the company to collect charges not specified on account of such excess in demand / load. It also provides a right to impose penalty as prescribed by the Commission from time to time, but it does not speak about the collection of voltage surcharge under this clause. Infact no wording is there in the said clause about collection of 'voltage surcharge'. The respondents are at liberty to proceed with in accordance with the GTCS but not by using their own words though they are not there in the tariff order or in the GTCS . Hence, they are not entitled to impose voltage surcharge. As the said word is silent in the GTCS and the said provision is not applicable to the appellant as he is not willing to continue the same as defined in the above said tariff order, it cannot be imposed. If it is a case of frequent increase in the voltage than contracted load and if the same is observed by the authorities, they can impose any penalty by invoking the provisions of S.126 of EA 2003 for unauthorised use of electricity by making a provisional assessment and also coercive steps either in the form of disconnection or regularisation by obtaining application from consumer. If the consumer refuses to take excess load, in spite of the frequent increase in the

demand, the authorities are at liberty to invoke relevant provisions of the Act to initiate proceedings against the consumer. In this case, there is no such event either before or after the above said three months period, the department is at liberty to collect charges payable for the excess usage than the contracted demand and other additional charges for maximum demand in excess of the contracted demand as laid down in rule 6 of General conditions of HT supply but not in the form of voltage surcharge as the case of the appellant does not come within the definition of voltage surcharge. Hence, this authority is setting aside the voltage surcharge. At the same time this authority is not inclined to grant interest as claimed by the appellant.

14. The amount collected by way of voltage surcharge is liable to be refunded by adjusting the same in the immediate future bills.

15. In the result, the appeal is allowed to the extent of setting aside the imposition of voltage surcharge alone. The same shall be adjusted in the immediate future bills. No order as to costs.

This order is corrected and signed on this day of 8th December 2011

VIDYUT OMBUDSMAN