

BEFORE THE VIDYUT OMBUDSMAN

Present

**K.Sanjeeva Rao Naidu
Vidyut Ombudsman**

Dated: 11 -02-2011

Appeal No. 1 of 2011

Between

Sri P.Rajesham
S/o.P.Shankaram
M/s. Mallikarjuna Rice Mill, H.No. 1-42/13, Plot No.13,
Pravelli Enclave, Miyapur
Hyderabad.

... Appellant

And

1. Asst Divisional Engineer/Operation/Godavarikhani
2. Asst. Accounts Officer/ERO/ Godavarikhani
3. Divisional Engineer/Operation/ Peddapally

....Respondents

The appeal / representation filed on 18.01.2011 of the appellant has come up for final hearing before the Vidyut Ombudsman on 03.02.2011 at Hyderabad in the presence of Sri P.Rajesham appellant present and Sri M.Prabhakar Rao, ADE/O/Godavarikhani, Sri B.Eswar Prasad, DE/O/Manthini and Sri V.Srinivas, AAO/ERO/Godavarikhani for respondents present 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 on 22.11.2010 to the effect that he is having SCNo.691 at Godavarikhani. In the complaint, he has narrated the following grounds:

- (i) In the earlier instance, the department has imposed LPF surcharge plus penalty on the above said service connection and disconnected the service. He filed a complaint before the CGRF on 06.02.2006.
- (ii) The Forum issued orders in CG No.52 giving instructions to pay the 50% of pending arrears against his service. Basing on the orders he preferred an appeal 12/2006 to the Vidyut Ombudsman and the Vidyut Ombudsman passed an order to waive the LPF surcharge + capacitor surcharge + penalty.
- (iii) After considering his appeal and thereafter two months, the machinery was spoiled and the industry could not be survived till to date.
- (iv) He requested the department to waive the minimum charges for the period not running the industry, without taking into consideration of the earlier benefit given by the department.

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

“(i) the service was disconnected in 11/2003 for non payment of arrears of Rs. 61,573/- then the consumer had applied and got sanctioned III installments for the amount of Rs. 80,234/- (C.C. charges 61,573/- + ACD Rs. 18,751/-) as indicated below :-

I Installment - 30,324 = 00 (Paid on 08.12.2003)

II Installment - 25,000 = 00

III Installment - 25,000 = 00

Total : 80,324 = 00

(ii) an amount of Rs. 29,379/- was paid by way of cheque towards 2nd installment along with current consumption bill of 01/2004 (Rs. 25000 = 00 + 4329 = 00).

(iii) but the same cheque was dishonored by the bank and simultaneously the service was again disconnected in the month of 03/2004 at that time, the service was having an arrears of Rs. 74,289/- which includes the current consumption charges bill for the month of 02/2004 for Rs. 24,114/- and dishonored cheque demand of 2nd installment and current consumption bill of 01/2004 for Rs. 29,329/- and etc, the service was bill stopped in 08/2004.

(iv) then the consumer had applied for revival of his service under sick industry in 03/2006 and the NPDCL had also accorded approval vide Memo. No. CMD/NPDCL/CGM/P&RAC/F. Industries/D. No. 1306/06/Dt. 11.03.06.

- (v) *basing on the approval, the sick industry benefit was allowed by withdrawing the minimum charges and surcharge from 04/2004 to 12/2005 for Rs. 82,323/- in 04/2006 and reconnected in 02/2006.*
- (vi) *further the consumer had approached the Consumer Grievances Redressal Forum/NPDCL/Warangal on 06.02.2006 on levy of low power factor surcharge and the Consumer Grievances Redressal Forum had decided to collect the low power factor surcharge @ 25 % per month of bill amount to a tune of Rs. 35,716.39 only and also ordered that if the consumer had paid any low power factor surcharge earlier, the same may be deducted vide C.G. No. 52/2006 of Karimnagar Circle, Dated. 18.05.2006.*
- (vii) *in compliance to the Consumer Grievances Redressal Forum orders an amount of low power factor surcharges and surcharges of Rs. 42,089/- was withdrawn in the month of 06/2006.*
- (viii) *again the consumer approached the Vidyut Ombudsman, Hyderabad on 22.06.2006 vide V.O. Appeal No. 12/2006 the Vidyut Ombudsman, Hyderabad has awarded on the appeal that the "The low power factor surcharge levied during the period from December, 2002 to February 2004 shall be withdrawn as it is not leviable" vide Lr. No. VO/Appeal No. 12/2006-1/Dt. 01.09.06.*
- (ix) *in compliance of the orders an amount of low power factor levied along with surcharge of Rs. 46,035/- withdrawn in the month of 09/2006.*
- (x) *further the consumer had again approached the Consumer Grievances Redressal Forum/NPDCL/Warangal on 01.03.2007 vide C.G. No. 146/2007 of Karimnagar Circle for the capacitor surcharge. In the C.G. No. 146/2007, Dated.09.04.2007 the Consumer Grievances Redressal Forum ordered to withdraw the capacitor surcharge for 02/2002 and additional charges thereon.*
- (xi) *in compliance of the orders an amount of Rs. 12,954/- was withdrawn in 04/2007. After that the service was again disconnected for non payment of the arrears of Rs. 28,733/- to the end of 04/2007 and bill stopped in 06/2007.*
- (xii) *the consumer had again applied for revival of sick industry in 11/2007 but the same was disallowed vide Memo. No. CGM/P&RAC/ NPDCL / WGL/RAC/F. Industries/D. No. 754/07/Dt. 17.01.2008 on the plea that the consumer had availed the benefit under sick industry vide Memo.No.CMD/NPDCL/CGM/P&RAC/RAC/ F.Industries/D. No. 1306/06/Dt. 11.03.2006 and also consumed 7680 units from 03/2006 to 04/2007.*
- (xiii) *again the consumer applied for revival of sick industry vide his application dated. 26.08.10 and the same was submitted to the Superintending Engineer/Operation/Karimnagar vide T.O. Lr. AAO/ ERO/GDK/JAO/NS/D. No.*

388/10/Dt. 25.09.10, but the same was not considered as the unit had already availed sick industry benefits and also consumed 10596 units during 02/2006 to 04/2007 vide Memo. No. SE/OP/KNR/AO (Rev)/JAO (CRS)/D. No. 586/10/Dt. 16.11.10.

(xiv) *therefore it is to submit that the consumer had already availed and allowed the sick industry benefit in the month of 04/2006 as per the Memo. No. CMD/NPDCL/CGM/P&RAC/RAC/F. Industries/D. No. 1306 / 06/Dt. 11.03.06 by withdrawing the monthly minimum along with surcharge to a tune of Rs. 82,323/- for the period from 04/2004 to 12/2005 and he is repeatedly applying for the same benefit. Hence the complaint may be disallowed please."*

3. The CGM /Operation/Commercial & IPC / NPDCL/ Warangal filed his written submissions as hereunder:

- "(i) M/s. Mallikarjuna Rice Mill, S.C. No. 691, Cat-III (A), Gouthaminagar, Godavarikhani, Karimnagar Circle was extended sick industry benefits vide this office Memo. No. CMD/NPDCL/CGM/P&RAC/F. Industries/D. No. 1306/06/Dt. 11.03.2006, as per the consumer representation dated. 11.03.2006.*
- (ii) since the service was under long UDC.*
- (iii) the sick industry benefits were extended to the consumer as he was due on account of C.C. Charges, ACD and low power factor charges, but not on account of low power factor arrears.*
- (iv) further, the consumer has again represented this office to get benefit under sick industry vide his letter dated. 07.11.07.*
- (v) the application was rejected vide this office Memo. No. CMD/ NPDCL / CGM/P&RAC/RAC/F. Industries/D. No. 754/07/Dt. 17.01.2008 duly stating that the above service was already received under sick industrial benefits and it cannot be considered second time."*

4. After hearing both sides and after considering the material placed before the Forum, the Forum held as hereunder:

- "(a) the case is not entertainable*
- (b) the case is not under the purview of Forum*
- (c) the respondents are directed to act accordingly."*

5. Aggrieved by the said order, the appellant preferred this appeal questioning the same, that they issued sick industry benefit in the earlier occasion and removed the monthly minimum charges and when he has applied for the same for the sick industry benefit, they refused on the ground that the benefit was already given to him on the earlier occasion, though there is no provision either in the Act or in the Tariff

order or in the Regulation and finally requested this authority to allow the appeal by setting aside the impugned order.

6. Now, the point for consideration is, “whether the impugned order dt.10.01.2011 is liable to be set aside? If so, on what grounds?”

7. The appellant, who appeared before this authority has submitted that the department is harassing him on one way or the other and that he has paid more money and the order passed by the Forum is liable to be set aside with a direction to give benefit to his industry.

8. Whereas, the respondents are represented by Sri M.Prabhakar Rao, ADE/O/Godavarikhani, Sri B.Eswar Prasad, DE/O/Manthini and Sri V.Srinivas, AAO/ERO/Godavarikhani and submitted that the benefit is not given on the orders of the SE/Op/Karimnagar dt.06.11.2010. In the said order, it is mentioned that

“1. The consumer has represented for revival of industrial unit during the month of 03/2006 which was disconnected in 3/2004 of non-payment of CC charges. The Chief General Manager Projects & RAC has accorded approval for revival vide reference 3rd cited above.

2. The consumer had availed sick industry benefits as per the report submitted by AAO/ERO/Godavarikhani vide reference 1st cited above.

3. The consumer applied for sick industry benefits for the second time in the month of November 2007. But the proposal was not considered vide reference 2nd cited above as the unit had already availed sick industry benefits. Further, the unit has consumed 10596 units during the period 2/06 to 4/07.

As such, the proposal cannot be considered for revival under sick industry. Hence, the AAO/ERO/Godavarikhani is requested to communicate the matter to consumer in appropriate manner.”

9. The Forum has observed that basing on the orders of the Vidyut Ombudsman, the department has waived all the charges against him with effect from 04/2004 to 2/2005 duly permitting to avail the sick industry benefit to him. The benefit accorded to him for this period is due to the wrong imposition of LPF by the department. Actually his industry was sick industry after 2/2006 only. The appellant

has requested for allowing him to avail sick industry benefit after 02/2006 only without consideration of the 1st time benefit given to his industry.

10. As per the memo No.CMD/NPDCL/CGM/P&RAC/RAC/F.Industries / D.No.1306/06 dt.11.03.2006 approval of the sick industry benefit is given to the appellant by withdrawing minimum charges and surcharges from 04/2004 to 12/2005 for Rs.82,323/- in 04/2006 and reconnected in the month of 02/2006. The appellant contends that due to the mistake of the department only LPF surcharge was levied without any mistake on his part. Due to the mistake of the respondents he has not paid CC bills regularly and accumulated the amounts for which the department has disconnected his service connection during 11/2003 and basing on the order of the Vidyut Ombudsman the service was restored in February 2006. Again his service was disconnected in 04/2007 due to non-payment of bills by him for the said period as his industry really require the benefit of sick industry and requested the Forum to give an opportunity to him not taking into consideration of the earlier benefit given under sick industry by the department for which he is not at all responsible.

11. In the appeal No. 12/2006, the then Vidyut Ombudsman ordered the respondents to withdraw LPF surcharge levied from December 2002 to February 2004 and serve a supplemental bill for the balance amount payable after revising the bills for the period as indicated. In this order, nothing is suggested in the form of sick industry benefit, but the department has voluntarily treated and allowed benefit as sick industry benefit and now refused. On that this appellant has approached for the same benefit for the second time and the same was not given to him by the department as well as the Forum.

12. When there is no direction from this authority and when the appellant is entitled for the benefit of sick industry, how the benefit is given by the department voluntarily is not explained before this authority. Even otherwise, when a sick industry benefit is given once to the industry, there is no rule or Regulation that the same cannot be given for the second time. It is not there in the Tariff order or in any

order or Regulation except mentioning that the sick industry benefit can be availed by the party if it is declared as a sick industry. How many times, he is entitled is not borne out by any of the provisions or any Regulations. Moreover, under what Regulation the benefit is not given to him for 2nd time is not mentioned in the order of the SE dt.16.11.2010 or in the order of the Forum. The Forum has gone to the extreme end by holding that the petition is not entertainable. No reason is assigned as to how it is not entertainable. Hence, the same is liable to be set aside. In the absence of any rule or Regulation the benefit should be given to the consumer than the department. The Tariff Order specifies the availment of sick industry benefit, but it is silent, as to how many times the same can be availed and in what period or spells of period for the entire period of running the industry. No other Regulation or rule is placed before this authority under what provision they have refused the benefit. **At this juncture, it is necessary and expedient to give a direction to the Tariff wing to take a decision on this issue as to whether sick industry benefit can be given to any industry either once for the entire period of running or, twice or thrice, etc., specifically in the forthcoming Tariff order.**

13. In the result, the impugned order passed by the Forum is not on sound lines and the order passed by the SE/Op/Karimnagar dt.16.11.2010 is also not on sound lines and the appeal preferred by the appellant is to be allowed by setting aside the order passed by the Forum.

14. The respondents are directed to give service connection to the appellant forthwith by giving sick industry benefits to his industry. The respondents are directed to comply this order within 15 days from the date of receipt of this order. No order as to costs.

This order is corrected and signed on this day of 11th February 2011

VIDYUT OMBUDSMAN