

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 12 – 12 - 2011

Appeal No. 50 of 2011

Between

M/s.Devashree Ispat (P) Ltd
H.No.8-2-293/82, p.No.86, Prashasan Nagar
Road No.72, Jubille Hills PO: Film nagar
Hyderabad – 96.

... Appellant

And

1. Divisional Engineer / operation / Jedcherla / CPDCL / Mahaboobnagar Dist.
2. Senior Accounts Officer / operation circle / CPDCL/ Mahaboobnagar Dist.
3. GM(Revenue)/Corporate office/CPDCL/Hyderabad
4. SE(Commercial)/ Corporate office/CPDCL/Hyderabad

....Respondents

The appeal / representation dt.18.08.2011 against the CGRF order of APCPDCL (in CG No.137/2011-12/Mahaboobnagar Circle dt.18.07.2011). The same has come up for hearing before the Vidyut Ombudsman on 18-11-2011. Sri.K.Vishwanatha Gupta on behalf of appellant present and Sri P.Venkanna, DE/O/Jadcherla and Sri G.Bala Prakash, JAO/HT/Mahaboobnagar, on behalf of respondents present, heard and having stood over for consideration till this day, the Vidyut Ombudsman passed/issued the following:

AWARD

The appellant / complainant filed a complaint before the Forum stating that:

“The H.T. Service No.MBN-639 is in the name of M/s. Devashree Ispat Private Limited., with a Contracted Load of 4950 KVA under H.T. Category I. They have got two complaints in respect of the above service and hence this representation before the Forum.

COMPLAINT A:

Making arbitrary claims of shortfall in M.D. charges pertaining to previous periods without supported evidence, thus making the claims arbitrary. When referred, no clear

response is given by the Senior Accounts Officer. In fact when the situation is referred to the CMD, APCPDCL there is no response.

Without giving any details, an amount of Rs.54,000.00 was added as arrears in the bill dated 26.1.2011. It is ascertained that the amount pertaining to shortfall of M.D. charges for September 2010 and billed after lapse of 6 months that too without issuing any notice as per the procedure laid/ stipulated in terms and conditions of supply. The SAO/O/Mahaboobnagar orally told that the shortfall billed was as per the observation made by the S.E./DPE/Hyderabad on the analysis of CMRI dumps. Since the claims are not supported by any established evidence, nor is within the provisions of tariffs of terms and conditions of supply, the claims may be set aside with directions to remove the claims from arrears, with a right to the Licensee to make these claims, after establishing the procedure for such cases in the terms and conditions of supply, getting the approval from the competent authority.

PRAYER:

1. Since the claims are not supported by any established evidence, nor is within the provisions of tariffs or Terms & Conditions of Supply, the claims may be set aside with directions to remove the claims from arrears, with a right to the Licensee to make these claims, after establishing the procedure for such cases in the Terms & Conditions of supply and getting the approval from the competent authority.

2. To direct the APCPDCL to evaluate a proper procedure, as in the case of back billing claims etc., and pass instructions to strictly observe the procedure before establishing the claims.

3. To order for payment of interest were having collected and retained the amount illegally with APCPDCL under an illegal threat, suitably advising the DE. To adhere to the provisions under the Electricity Act 2003.

COMPLAINT B:

They have been making payment of electricity bills, on or within the due dates in the Bank situated at Hyderabad crediting the amounts to the account number furnished by APCPDCL Authorities. But the Senior Accounts Officer is claiming the Late Payment Charges & Interest on E.D. in respect of some payments, without indicating any reasons or giving any details. When we are deleting the claims and arranging payments, he has not been insisting for payment nor following the procedures to be followed in case of non-payments but simply including the same as arrears in subsequent bills and adding surcharge.

When the matter was brought to the knowledge of the Chief General Manager, Finance, APCPDCL and they called for the remarks from the SAO/O/Mahaboobnagar. It is understood that there is no response. As it stands, both the Officers are not responding even though months have lapsed. The only action that has been taken is that, the method of collection has been changed, indicating that the previous procedure was not in order.

PRAYER:

1. To direct the SAO and Chief General Manager (Finance) immediately examine the matter and delete the claim of late payment charges & interest on E.D. along with the surcharges.

2. To direct the APCPDCL, to cause instructions to all SAOs to furnish details for claims of penalties, without which, the claim will be invalid.”

2. The second Respondent, S.A.O/O/Mahaboobnagar submitted his written submissions as hereunder:

COMPLAINT A:

The complainant, M/s. Devashree Ispat Private Limited, H.T. S.C.No.MBN-639 is availing supply from 13.6.2005 which is under H.T. Category I (A). The bill for the month of January 2011 issued to the consumer duly adding Rs.54,000 towards shortfall M.D. for September 2010 as observed by the SE/DPE/Hyderabad based on the MRI dumps analysis and communicated vide Lr.No.1161/10 dt.13.12.2010.

Further, the SE/DPE has stated that during the month of September 2010 all the existing H.T. services meters were enabled with MD auto reset by MRT Wing to enable to record the MD automatically and to reset at 00.00 hours on 22nd of every month.

The MRI dumps analysis revealed the following:

MD as per auto reset	4656 KVA on 22.9.2010 at 00.00 hours
MD as per the manual reset	4448 KVA on 22.9.2010 at 11.40 hours
MD billed for September 2010	4440 KVA
MD Short billed for September 2010	216 KVA

Hence, the shortfall MD charges Rs.54,000 proposed for billing.

In view of the above short fall in MD charges for the month of September 2010 were included in the month of January 2010 bill. This was communicated to the consumer vide this office letter No.106/11 dt.16.3.2011. Hence, the complaint of the consumer stating that no details have been given for raising the demand is not correct. As a matter of fact, satisfied with the reasons for shortfall, the complainant made the payment on 11.5.2011 i.e., after lapse of more than 3 months period.

COMPLAINT B

With regard to the second complaint of the consumer, the bills for the months of March 2010, September 2010 and February 2011 were issued duly levying additional charges Rs. 20,513/- for delay in preceding months bills. These charges were levied for the belated payment of c.c. bills as verified from the Bank statement of APCPDCL.

A clarification was issued to the complainant vide this office letter No.128/10 dt.19.4.2010 with regard to levying of additional charges in March 2010 and requested him to arrange payment immediately. It was also requested to the Complainant to submit the certificate from the Bank authorities in token of payment of February 2010 bill on 12.3.2010, to examine the issue.

The complainant instead of producing the certificate from the bank authorities unilaterally deducted the additional charges Rs.20,513/- levied in March 2010. Hence, the

unpaid amount is being reflected as arrears in the c.c. bills of the complainant. Though there is payment facility through RTGS, the consumer is not interested in availing the same.”

3. The third Respondent, SE/DPE/Hyderabad submitted his written submissions as hereunder:

“The Meter MRI dumps of HT S.C.No.MBN-639 of M/s. Devashree Ispat Private Limited, Mahaboobnagar were analyzed and observed that there was short billing of MD and the SE/O/Mahaboobnagar was requested vide Lr.No.1161 dt.13.12.2010d to add the MD Shortfall due to the following:

<i>MD as per auto reset</i>	<i>4656 KVA on 22.9.2010 at 00.00 hours</i>
<i>MD as per the manual reset</i>	<i>4448 KVA on 22.9.2010 at 11.40 hours</i>
<i>MD billed for September 2010</i>	<i>4440 KVA</i>
<i>MD Short billed for September 2010</i>	<i>216 KVA</i>

Hence, shortfall MD of 208 KVA was proposed for billing.”

4. On behalf of the appellant Sri K.Viswanatha Gupta and Sri B.R.Jaisurya were examined and Sri J.Yadaiah, SE/DPE, Sri P.Venkanna, DE/O/Jadcherla and Sri C.Sai Prasad, SAO were examined by the Forum on behalf of the respondent 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:

“Complaint: A

As far as the shortfall of MD charges is concerned, the Respondents are directed to not to levy the surcharge/interest for late payment of such amount. If the surcharge/interest is already paid by the Complainant, the same may be refunded by adjustment against the bill on hand.

Complaint: B

The Surcharge/interest levied against the delay resulted due to handing over of the cheques by the Complainant directly to the banker, the action of the Respondents is found to be in order.

The complaint is disposed off accordingly.”

5. Aggrieved by the said order, the appellant preferred this appeal questioning the same that the levy of shortfall in MD charges of Rs.54,000/- and late payment charges, interest on E.D and surcharges amounting to Rs.20,864/-retained as arrears are set aside with liberty to issue show cause notices and pass orders after considering the application if any given by the consumer and a direction may be issued to evaluate a procedure for claiming MD and get the same included in the Terms & conditions of supply and that the amounts were remitted in the SBH Gunfoundry, as per the instructions contained in the letter dated 31.08.2005 of SE/O/MBNR duly enclosing a copy of the order. The Forum ignored the order of SE and surcharge / interest levied against the delay resulted due to handing over of the cheques directly to the banker, the action of the respondents is in order and the appeal is to be allowed by setting aside the impugned order.

7. Now, the point for consideration is, “whether the impugned order is to be modified. If so, in what manner?”

8. The appellant represented by Sri K.Viswanath Gupta, submitted that the shortfall and MD charges are paid but they have imposed charges on delayed payment when there is no fault on their part even without giving any notice. He has also relied upon a decision rendered by the Hon’ble High Court in W.P.No.15293/2009. In this it was held that

“In the view of this Court, it is not necessary for this court to pronounce upon the correctness or otherwise of the method followed by the respondents, because admittedly no prior notice was issued to the petitioner calling upon it to explain against the proposed levy. As the impugned order results in adverse civil consequences to the petitioner, it is incumbent upon the respondents to issue notice before seeking recovery of the above mentioned two disputed amounts. On this short ground, the impugned levy of the above two amounts is set aside. Liberty is given to the respondents to issue a show cause notice and pass an appropriate order after considering the explanation, if any submitted by the petitioner.”

Imposition of interest in handing over cheques is unsustainable and the same is liable to be set aside.

9. Whereas, the respondent is represented by Sri P.Venkanna, DE/O/Jadcherla and Sri G.Bala Prakash, JAO/HT/Mahaboobnagar and submitted that the impugned

order passed by the Forum is in accordance with the procedure and the same has to be confirmed in toto by dismissing the appeal filed by the appellant.

10. It is an admitted fact that the manual reset was done and recorded as RMD 4448 reached on 22.09.2010 at 08.00 hrs. The Auto reset was on 22.09.2010 00.00hrs and the RMD was 4656 reached on 10.09.2010at 08.45hrs. So, there is a variation even in the manual reset and auto reset. The apt reading is auto reset but the manual reset taken by the concerned official has ignored the procedure and declared RMD 4448. He has to be dealt with suitable action for the lapse on his part. Further, the RMD is 4656 and when the same is exceeded only they are liable to bill the charges for the said excess but the same has to be made only by giving a notice to the parties concerned relying on the above said analogy expressed by the Hon'ble High Court.

11. So far as the collection of delayed payment in handing over cheques is concerned, it is against to the principles of law and natural justice. The date of handing over cheque has to be taken as the date of payment. When the appellant has stated that letter is received from SAO to hand over cheques as per the direction and they have been paying as per the said direction. In this letter a clear cut procedure is contemplated by the CPDCL specifying the mode of payment and handing over cheques and the impugned order passed by the Forum on this claim is hereby set aside with a direction to the CPDCL to evolve a method and mode of payment of the bills, since it is not adhering to the very instructions given in the said letter. The date of payment of cheque has to be treated as the date of payment unless and until it is dishonoured is the general principle. If this mode of payment through cheque is not acceptable to the respondents, they would have issued a notice suggesting the mode of payment. Imposition of delayed interest without giving any notice is against to the principles of natural justice and the same is liable to be set aside.

12. In the result, the appeal is disposed with the following directions:

- (a) As far as the shortfall of MD charges is concerned, the Respondents are directed to not to levy the surcharge/interest for late payment of such

amount. If the surcharge/interest is already paid by the Complainant, the same may be refunded by adjustment against the bill on hand. When once it is adopting the method of imposition it has to issue a notice for the said imposition of the said charges.

- (b) to evolve a method on the mode of payment of the bills, by giving circulars to all the consumers who are paying the amounts through cheques. No order as to costs.

This order is corrected and signed on this day of 12th December 2011

VIDYUT OMBUDSMAN