

BEFORE THE VIDYUT OMBUDSMAN

Present

**K.Sanjeeva Rao Naidu
Vidyut Ombudsman**

Dated: 09 -12-2011

Appeal No. 45 of 2011

Between

M/s.Binjusaria Ispat (P) Ltd
C-1, Govt. Industrial Estate
Chendulal Baradhari, Hyderabad.
Rep by its Director

... Appellant

And

1. Divisional Engineer / operation / CPDCL / Jedcharla / Mahaboobnagar Dist
2. Superintending Engineer / operation circle / CPDCL / Mahaboobnagar / Mahaboobnagar Dist.
3. Senior Accounts Officer/ operation circle / CPDCL / Mahaboobnagar / Mahaboobnagar Dist.

....Respondents

The appeal / representation filed by the appellant dt. 14.07.2011 (received on 16.07.2011) has come up for hearings before the Vidyut Ombudsman on 15.11.2011 and 21.11.2011 at Hyderabad. Sri. T.Kiran, advocate for the appellant present and Sri P.Venkanna DE/O/Jadcherla, Sri G.Bala prakash, JAO/HT/Mahaboobnagar for the 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 stating that:

In the bill for March 2011, the recorded Maximum Demand of the Complainant was 10176 KVA. Thus, the complainant has exceeded its C.M.D. by 186 KVA. As per the General Terms and Conditions of H.T. supply contained in the Tariff Order, if the consumer exceeds the contracted demand by 20%, such excess demand is to billed at twice normal rate. Therefore, instead of billing the excess demand at twice the normal rate, the respondents resorted for levy of voltage surcharge treating the minimum level of voltage to be drawn as 132 KV

It is observed that the voltage surcharge provided in the Tariff was only for exceeding CMD and not for recording maximum demand in excess of CMD. It was applicable to the consumers who are availing supplies at different voltages than the prescribed voltage and who want to continue to avail supply at the same different voltage. As there is excess reading for one month, only penal charges have to be collected on the excess M.D. recorded, but voltage surcharge cannot levied at all.

The Complainant represented to relate the voltage surcharge in the above-mentioned bill. The 2nd Respondents replied the Complainant vide their letter No.133/11 dt.6.4.2011 that the levy of voltage surcharge is in order inasmuch as the complainant has exceeded the contracted maximum demand by 186 KVA thereby crossing 10,000 KVA maximum demand level.

As submitted above, voltage surcharge cannot levied because, there is excess MD recorded for one month. In similar case, on appeal to the Vidyuth Ombudsman by Mis Devashree Ispat (P) Limited vide appeal No.34/2010 dt.22.10.2010, it was ordered that the voltage surcharge cannot be levied by the APCPDCL. The issue decided therein squarely covers the case on hand. The complainant has paid the bill by excluding the voltage surcharge amount. However, the complainant apprehends that the respondents may resort to illegal disconnection of complainant's power supply.

It is prayed that this Forum may be pleased to direct the respondents to revise the March 2011 consumption month bill by deleting the voltage surcharge levied therein and pass such other order or orders as this Forum may deem fit and proper in the circumstances of the case.

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

"The complainant has availed supply through 33 KV dedicated feeder with a Contracted Maximum demand of 9990 KVA. The complainant has exceeded his CMD during March 2011 consumption by 186 KVA.

As per clause No.3.2.2.1 of General Terms and conditions of supply and Tariff Orders, the applicable voltage surcharge and penal energy charges & penal demand charges can be levied if the consumer exceeds CMD over and above the limit set under the specified voltage. In the present case, the CMD of the Complainant is 9990 KVA and the Consumer availed the supply at 33 KV level through independent feeder. The maximum MD that the consumer can drawn under independent feeder at 33 KV level is 10000 KV and the recorded MD in the present case is 10176 KVA

As per clause No.3.2.2.2 of GTCs, the specified voltages of H.T. Consumers availing supply through independent feeder are as follows.

<u>CMD</u>	<u>Voltage Level</u>
1. Upto 2500 KVA	.. 11 KV
2. 2501 to 10000 KVA	.. 33 KV
3. Above 10000 KVA	.. 132 KV

As the RMD of the complainant was 10176, the complainant exceeded the maximum level of MD under specified voltage level of 10000 KVA

In view of the above, the bill issued for the month of 03/2011 consumption by levying voltage surcharge is in order.

The complainant unilaterally, on their own calculations has deducted an amount of Rs.18,60,915.00 and paid the balance of Rs.1,83,67,222.00 without prior approval from APCPDCL..”

3. The respondent No.4 submitted his written submissions as hereunder:

“In the present case , the voltage surcharge charges were levied as per the Tariff order for the financial year 2010-11, Annexure-D “General Conditions of H.T. Supply (I) B”,. Hence, the question of withdrawal of levy of voltage surcharge for the year 2010-11 does not arise.”

4. The complainant was examined by the Forum and also examined respondents 1 to 3 and recorded their statements. After hearing both sides, and after considering the material placed before the Forum, the Forum passed the following order:

“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 relief awarded by the Ombudsmen in respect of M/s. Devasree Ispat Private Limited for exceeding the CMD cannot be extended to M/s. Binjusaria Ispat Private Limited, as the facts of these two cases are different. Hence, the Bills issued by the Respondents to M/s. Binju Saria Ispat Pvt. Ltd for the month of March 2011 consumption is in order and require no further directions by this Forums in the matter.

The complaint is disposed off accordingly.”

5. Aggrieved by the said order, the appellant preferred this appeal questioning the same that he has exceeded 186 kVA than the CMD of 9990KVA. As per GTCS of HT supply 2010-11,if the consumer exceeds the contracted demand by 20%, such excess demand is to billed at twice the normal rate. Therefore, instead of billing the

excess demand at twice the normal rate, the respondents resorted for levy of voltage surcharge treating the minimum level of voltage to be drawn as 132 KV. The 2nd Respondent replied the Complainant vide their letter No.133/11 dt.6.4.2011 that the levy of voltage surcharge is in order inasmuch as the complainant has exceeded the contracted maximum demand by 186 KVA. The voltage surcharge cannot be levied because there is excess MD recorded for one month. In similar case, on appeal to the Vidyuth Ombudsman by Mis Devashree Ispat (P) Limited vide appeal No.34/2010 dt.22.10.2010, it was ordered that the voltage surcharge cannot be levied by the APCPDCL. The issue decided therein squarely covers the case on hand.

6. Now, the point for consideration is, whether the impugned order is liable to be set aside, if so, on what grounds?

7. The counsel for the appellant represented by Sri T.Kiran, submitted that the department has failed to consider the judgment of the vidyut ombudsman in Appeal No. 34/2010 and it is only in one instance, the CMD exceeded and it cannot be put under 132 kV and therefore the appeal is to be allowed by setting aside the impugned order.

8. The respondents are represented by Sri P.Venkanna DE/O/Jadcherla, Sri G.Bala prakash, JAO/HT/Mahaboobnagar submitted that the Forum passed the order in accordance with the procedure and the specified voltages of HT consumers upto 10000kVA the voltage level is 33 kV and beyond 10000kVA is 132 kV and the RMD recorded was 10176 kVA and there was an excess of 176 kVA and the same is rightly put under 132 kV and also imposed surcharge and decision in Appeal No.34/2010 is not applicable to the facts of this case and the appeal preferred by the appellant is liable to be dismissed.

9. When the record is verified, it is found that the appellant herein filed a writ petition against the orders of the Forum in W.P.No.13758 of 2011 with a prayer to

direct the respondents 1 to 3 not to disconnect the appellant's power supply for non-payment of voltage surcharge of Rs.18,60,915/-for the consumption bill for March 2011 dated 26.03.2011 pending disposal of the writ petition.

10. The relief now sought by the appellant before this authority and the Hon'ble High Court in the above writ petition is one and the same. When the matter is being taken cognizance by the Hon'ble High Court, it is not proper on the part of this authority to deliver judgment and there is a possibility of delivering conflicting decisions by the respective authorities. The finding of the Hon'ble High Court is also binding on this authority, but not vice versa being the highest court of the State.

11. Therefore, it is not proper for this authority to dispose of the appeal, except with a direction to represent his case after disposal of the above said writ petition, if a direction is given to this authority to entertain the appeal. No order as to costs.

This order is corrected and signed on this day of 9th December 2011

VIDYUT OMBUDSMAN