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. 26 of 2011

Between
M/s. Dr.Reddy's Laboratories Ltd
P.B.No.15, Kukatpally, Hyderabad - 90

… Appellant

And

1. Senior Accounts Officer / operation circle / RR North/CPDCL/ RR Dist.
2. Superintending Engineer / operation circle/ Ranga Reddy North/ CPDCL/ RR Dist.
3. GM(Revenue)/Corporate office/CPDCL/Hyderabad
4. SE(Commercial)/ Corporate office/CPDCL/Hyderabad

….Respondents

The appeal / representation dt.25.05.2011 (received on 30.05.2011) against the CGRF order of APCPDCL (in CG No.98/2010-11/Ranga Reddy North Circle dt.30.03.2011). 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.Krishna Reddy, SAO, 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 filed a complaint before the Forum stating that:

" In the Bills issued for the months of July 2010 to October 2010 for our H.T. Service No.RRN-696, the following penalties have been levied for exceeding the contracted maximum demand.

1. *Penal Energy charges and penal charges on M.D. in terms of Clause (6) of the General conditions of H.T. Supply under Tariff Order 2010-11.*

2. *Voltage surcharge, said to have been levied as per clause 1 (B) of General conditions of H.T. Supply under Tariff Order 2010-11.*

On verification of the Bills, 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. In our case, this is not applicable.

In similar circumstances namely in case of M/s Devashree Ispat (P) Ltd., voltage surcharge levied for exceeding the CMD of 4995 KVA, the consumer challenged the levy before the Forum. The Forum rejected the plea, but the Vidyuth Ombudsman has set aside the orders of CGRF and ordered for refund the voltage surcharge levied.

In view of the above, it is requested to refund the penal charges/voltage surcharge levied."

2. The first Respondent, SAO/O/Ranga Reddy North/Secunderabad submitted his written submissions as hereunder:

"The complainant has availed supply through 33 KV common feeder with a Contracted Maximum demand of 4300KVA up to 25.10.2010. The complainant has exceeded his CMD during July, August, September and October, 2010 as detailed below:

Month	*RMD in KVA*
July, 2010 ..	*5868*
August, 2010 ..	*5880*
September, 2010 ..	*5886*
October, 2010 ..	*6030*

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 and penal demand charges can be levied on account of RMD exceeded over the higher limit of CMD i.e., 5000 KVA fixed for 33 KV Voltage consumers.

As per the instructions in the Memo.No.CGM (Comml.)/SE©/DE(RAC)/ D.No.427/08 dt.21.6.2008, the applicable voltage surcharge in addition to penal energy charges and penal demand charges can be levied.

The Complainant exceeded the contracted Demand during July, 2010 to October, 2010 without prior approval of APCPDCL. Hence, the applicable voltage surcharge was levied and collected at the approved rates by the Commission and as decided by APCPDCL."

3. On behalf of the appellant Sri K.Viswanatha Gupta and Sri I.Srinivasa Raju were examined and Sri P.Krishna Reddy, SAO, Sri V.Satyanarayana, AAO and Sri B..R.Pratap Reddy were examined by the Forum on behalf of the respondent and recorded their statements.

4. 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 felt that the relief awarded by the Ombudsmen for exceeding 3% of the CMD for a short while in a day by M/s. Devasree Ispact Private Limited, and exceeding around 40% of CMD continuously for 4 months by M/s. Dr. Reddy's Laboratories Limited are not one and the same to extend the benefit to the Complainant on similar lines. Hence the Bills issued by the Respondents to M/s. Dr. Reddy's Laboratories Limited for the months of July 2010 to October 2010 are in order and require no further directors 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 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 33kV 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%.

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

7. It is an admitted fact that the appellant is having a CMD of 4300 KVA at 33 kV common feeder. It is also an admitted fact that during July to October 2010 RMD of the appellant was 5868, 5880, 5886 and 6030 respectively exceeding from CMD 1568 to 1730 beyond the recorded kVA.

8. The contention of the respondents is that they have levied the voltage charges for maximum demand in excess of contracted demand as per clause 6 of General Conditions of HT Supply of tariff order.

9. The SE/O/Secunderabad has also submitted his written submissions before this authority claiming:

a. To levy the voltage surcharge, if the total contracted maximum demand with CPDCL and all other source (third party / captive) exceeds the specified levels of CMD in kVA at different voltage levels (on common / independent feeders)
b. The 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 level (on common / independent feeders).

He has also submitted that

"*in case of consumers who are having supply arrangements from one or more than one source, the RMD or CMD only with licensee, whichever is higher shall be the basis for levying voltage surcharge."*

It is also further contended by him that under clause 12.3.2 of GTCS the MD of an 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. Hence, the voltage surcharge levied and collected on the approved rates fixed by the Commission and it is in accordance with the direction of the 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 33kV 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 to10000 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*	*% of CMD exceeded*
07/2010	*33 KV*	*4300*	*5868*	*1568*	*36.46*
08/2010	*33 KV*	*4300*	*5880*	*1580*	*36.74*
09/2010	*33 KV*	*4300*	*5886*	*1586*	*36.88*
10/2010	*33 KV*	*4300*	*6030*	*1730*	*40.23*

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 incase 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, 6000 kVA and above. In the above said four months there is an excess 1568 to 1730 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 an 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. It is very curious to note that the SE/O/Secunderabad has mentioned in his written submissions quoting tariff order of 2011-12, though the period is within the financial year 2010-11. The note incorporated in 2011-12 is not there and that is erroneously applied the same as if he is entitled to collect the voltage surcharge.

13. 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. "

14. 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. Incase 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 but imposed 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 I am not inclined to grant interest as claimed by the appellant.

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

16. It is also surprising to note that the respondents have not even issued a notice as to whether he is continuing at the increased RMD or if he wants to continue on the CMD of 4300 kVA enabling them to change the feeder also. It is a continuous period of increase only for four months and no excess reading is recorded subsequent to the said four months period. So, the respondents are not entitled to impose voltage surcharge and the imposition of voltage surcharge is against to principles of law and against to the tariff order.

17. 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 12th December 2011

VIDYUT OMBUDSMAN