

BEFORE THE VIDYUT OMBUDSMAN

Present

Nagaraj Naram
Vidyut Ombudsman

Dated: 28 -10-2013

Appeal No. 69 of 2013

Between

M/s. GMR Spintex Private Ltd
Rep by Sri G.Vinod, Managing Director
D.No.4-2-198/2/10, GMR Towers, Cinema Road,
Adilabad Dist. – 504 001.

... Appellant

And

1. Divisional Engineer / Operation / APNPDCL/Adilabad
2. Senior Accounts Officer/Operation Circle /APNPDCL/Adilabad
3. Superintending Engineer / Operation / APNPDCL/ Adilabad.

....Respondents

The appeal / representation filed on 22-05-2013 of the appellant has come up for final hearing before the Vidyut Ombudsman on 09.10.2013 at Hyderabad. Sri G.Pramod Kumar, Advocate for appellant and Sri N.Devender, SAO / APNPDCL, for respondents present and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following :

AWARD

This appeal is filed against the order of CGRF of APNPDCL in CG No.337/2013 of Adilabad Circle dt.25.04.2013.

2. The appeal is filed on the following grounds
 - (i) The Complainant cotton spinning mills with 46,800/- spindle capacity and have sanctioned load of 2805 KVA MD.
 - (ii) By nature and process flow, the spinning mills are in continuous processing category and are treated as such by SDLC and CDLC to avail power during R&C since start of power crisis.
 - (iii) G.M. Distribution Industries Centre by Lr. No. C / 1414 / 2012 / Dt. 05.10.12 has affirmed that complainant is in fact a continuous processing industry.

(iv) Divisional Engineer / Operation / Adilabad by his letter dated 15.09.12 has given us the PDL and PCL limits for HT-I continuous processing industries.

(v) Unfortunately complainant was not treated as continuous processing industry and were slapped punitive penalty charges during the months of September, October and November-2012, Inspite of the fact that it had not exceeded the PDL and PCL limits given by Divisional Engineer / operation and the details are given as below.

1. September -12 bill dated. 26.09.12	Rs.
Excess PDL Charges -	4,70,250-00
2. October -12 bill dated 26.10.12.	
Excess PDL Charges -	3,20,625-00
Excess PCL Charges -	17,12,821-50
Excess Unit Charges -	25,110-00
3. November -12 bill dated 26.11.12	
Excess PDL Charges -	2,88,000-00
Excess PCL Charges -	<u>22,09,769.16</u>
Total Penal Charges -	<u>50,26,575.66</u>

(vi) When the industry is incurring huge losses due to power problems, complainant was slapped Rupees Fifty Lakhs Twenty Six Thousand Five Hundred and Seventy Five as penal charges as not treating us continuous processing industry by Adilabad energy billing division, Inspite of complainant's representation.

(vii) Complainant paid the excess penal charges under protest since there was the threat of disconnection.

(viii) Complainant now request and represent to sympathetically consider our plea and arrange to recalculate the charges considering as continuous processing industry and grant us relief to the extent of excess penal charges levied as mentioned above.

(ix) Sympathetic consideration shall help complainant to great extend during this acute financial crisis.

3. The appellant stated that it has filed complaint before the consumer grievances redressal forum APNPDCL, Warangal on 28.02.2013 stating that the appellant was constrained to pay the above amount on the threat of disconnection of power and requested the Forum to recalculate the charges considering as continuous processing industry and grant relate to the extent of excess penal charges paid by the appellant.

4. The appellant stated that the Consumer Grievance Redressal Forum of APNPDCL Warangal, in CG No.337/2013 of Adilabad Circle dated 25.04.2013 which was received by the appellant on 29.04.2013 has given an order stating that the respondent have allowed the appellant, as continuous process industry with effect from 09.10.2012 and whatever action in this case initiated by the respondents under R & C measures are unaltered by the Forum is arbitrary, illegal and unsustainable. The appellant has raised the following among other contentions.

1. As the industry was recognized as continuous industry with effect from 09.10.2012 ought not to have levied the excess PDL and excess PCL charges for the month of October and November.

2. As the industry is running April, 2010 the respondent ought not to have levied excess PDL charges for the month of September 2012 as the appellant industry has entered into Agreement under HT-I category on 30-04-2010.

3. It is relevant to mention that the APCPDCL is not charging punishable measures even though the letter was not given in time.

4. It is relevant to mention that the APERC proceedings No. APERC / sec / 14 / 2012-13 dated 07.09.2012 wherein it is clearly mentioned as to avail supply under this category that is HT-I, continuous process in industries, the consumers have to take prior approval from the respective CMD of the Discoms duly explaining their process. Further it is relevant to mention that no where it is mentioned in the proceedings issued by the APERC, that the consumers have not taken prior approval penalties, will be charged. In spite of not exceeding restrictions imposed by Hon'ble APERC.

5. It is respectfully submitted that the Hon'ble APERC issued proceedings No. APERC / Sec / 154 / 2013 dated 08.08.2013.

5. The relief provided is transparent, non-discriminative and balanced. This is not an anticipated relief for any consumer. It is not financially detrimental to DISCOMs as they do not incur any loss, if 50% of the penalty waived. Accordingly, the Commission hereby waived 50% penal charges for all consumers whom R & C measures were made application vide order dated 07.09.2012.

6. The appellant stated that by virtue of the APERC order dated 08.08.2013, it is entitled upto 50% penal charges. The appellant herein prays that the appeal may be allowed by setting aside the order in CG No.337 / 2013 of Adilabad Circle on the file of CGRF, APNPDCL, Warangal dated 25.04.2013.

7. The respondent No-2 in his written submissions stated as follows:

- (i) It is stated that the 09 / 2012 and 10 / 2012 bills were issued under non-continuous process industry. As per the guidelines of APERC, to avail supply under continuous process industry, the consumer has to take prior approval from the respective CMD of the DISCOMS duly explaining their process. But the consumer of the above service has obtained permission from corporate office, Warangal, to avail power supply under continuous process industry w.e.f 09-10-2012. Hence, the service was billed under non-continuous process industry for the months 09/2012 & 10/2012.
- (ii) Divisional Engineer, operations, Adilabad has issued notice to the above consumer vide his letter no. 370 / 12, dated 15.09.2012 duly mentioning the PDL and PCL limits of continuous process industry, instead of non-continuous process industry. Hence, the consumer represented this office to revise the bills of 09 / 2012 to 11 / 2012 under continuous process industry. As the permission was accorded under continuous process industry w.e.f 09-10-2012, the CC bill for the month of 09 / 2012 was not revised under continuous process industry.

- (iii) The CC bill for the month of 09/2012 was revised under non-continuous process industry, as per the instructions received from corporate office, Warangal and an amount of Rs.3,01,524 excess billed amount was withdrawn vide this office J.E. No.11 of 12/2012.
- (iv) The CC bill for the month of 10 / 2012 was revised under continuous process industry (w.e.f 09-10-2012), as per the instructions received from corporate office, Warangal and an amount of Rs.3,56,700 excess billed amount was withdrawn vide this office J.E. No.12 of 12 / 2012.

7. The matter was taken up for hearing after perusing the record and coming to the conclusion that the matter cannot be settled through the conciliation process. Notice was issued to the parties to take up the matter for hearing on 09.10.2013. On the date of hearing the counsel complainant as well as the officers concerned have appeared and made their respective submissions.

8. The counsel as well as the representatives have vehemently put forth their case by reiterating the submissions made in the written appeal and reply. Now the point that comes for consideration is whether the petitioner is entitled to any relief and if so to what extent.

9. The grievance of the appellant is primarily the levy of penalties by the DISCOM pursuant to the imposition of R and C measures and non adherence thereof. Before advertng to the fact in dispute, it may be appropriate to notice context in which the R and C measures were imposed by Andhra Pradesh Electricity Regulatory Commission.

10. In view of the power shortage, the DISCOMs including the management of the respondents who are involved in the supply of power to the consumers in the state of Andhra Pradesh have approached APERC seeking permission to impose restrictions on the power supply. The Commission has taken note of the energy deficit in the state have approved the Restriction and Control measures by an order dated.07.09.2012. The said order was amended by the Commission from time to time and the restrictions were relaxed as per the request of the respective DISCOMS and applications routed through them as per the availability of the

energy apart from the directions of the Hon'ble High Court. The levy of penalty liability is occasioned only in the case of violation of the conditions mentioned in the directions issued. It is appropriate to state that the penalty has been imposed with a view to implement the restrictions in letter and spirit. Unless such penalty clause is there the purport of the restrictions will be of no use and imposition of such penalty clause is valid and is permissible as per the settled law of the Hon'ble Supreme Court.

11. Keeping the above position in the background, this authority proceeded to decide the appeal. The short grievance of the appellant is that it has not been given the benefit of continuous process industry though it was accepted by the DISCOM, while billing the consumer and also levy of penalty for alleged exceeding of the quantities fixed under R and c measures. It has also been stated that the payment has already made in respect of the amount levied by the DISCOM. It was also urged before this authority that subsequently, the Commission has waived the penalty by limiting its levy to 50% of the original condition passed by the Commission while imposing the R&C measures.

12. On behalf of the DISCOM, it has been contended that due notice has been given to the appellant which was acknowledged by the representative of the appellant. The said notice informed the consumer about the imposition of R & C measures and also indicated the permitted quantities of consumption during peak & off-peak hours. This letter is dated 15.09.2012. On the other hand, the appellant placed before this authority the approval given by the DISCOM on 09.10.2012 treating it as continuous process industry, upon representation made by it on 07.10.2012.

13. From the record, it is clear that the appellant had knowledge of the imposition of R&C measures and also the requirement of seeking permission of the concerned DISCOM to treat it as continuous process industry. According to the record, the R & C measures were imposed on 07.09.2012 and further elaborated on 14.09.2012 by the Commission in its respective proceedings. That being the case, the appellant was not diligent in proceeding to secure its status of exemption as a continuous process industry, in the context of R&C measures.

14. Since, the amount is already paid and the dispute is with regard to billing months of 09/12, 10/12 & 11/12, it may be appropriate to give benefit of R & C measures from 09.10.2012 on which date the R & C measures were modified in favour of the appellant by treating it as continuous process industry by the DISCOM. Therefore, the DISCOM is required to make calculations of the amounts payable by the appellant for the months of 10/12 & 11/12 treating it as continuous process industry.

15. Further, the Regulatory Commission has already modified the quantum of penalties imposed by it earlier and gave relief of 50% by order dated 08.08.2013. This benefit is also required to be factored in arriving at the amount due towards penalties which are already paid by the appellant.

16. In view of the observations above, the respondents are directed to recalculate the amounts due from the appellant duly taking into consideration the benefit of 50% of the penalties already paid and adjust any excess amount paid in the future bills as expeditiously as possible.

17. With these observations, the appeal is disposed of. The order shall be given effect to as immediately as possible at any rate starting from the next billing month itself.

This order is corrected and signed on this day of 28th October 2013

Sd/-

VIDYUT OMBUDSMAN