

BEFORE THE VIDYUT OMBUDSMAN

Present

**K.Sanjeeva Rao Naidu
Vidyut Ombudsman**

Dated: 02 -03-2013

Appeal No. 83 of 2012

Between

Sri. K. Dasu,
M/s. Darsith Agro Tech Ltd,
Factory Plot No. 25, Light Industrial area,
Near Agricultural Market Committee (Dalda Factory)
Adilabad – 504 001.

... Appellant

And

1. Assistant Engineer / Operation / APNPDCL/ Town / Adilabad
2. Asst. Divisional Engineer / Operation / APNPDCL / Town / Adilabad
3. Divisional Engineer / Operation / APNPDCL / Adilabad
- 4.. Senior Accounts Officer / Operation Circle / APNPDCL / Adilabad
5. Superintending Engineer / Operation / APNPDCL / Adilabad

.....Respondents

The appeal / representation filed on 24.11.2012 of the appellant has come up for final hearing before the Vidyut Ombudsman on 07.01.2013. Sri A.Gattaiah Advocate filed vakalat for the appellant and Sri N.Devender, SAO/Op/Adilabad and Sri A.Rajesham, ADE/Op/Town/Adilabad 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 against the Respondents for Redressal of his Grievances and stated as hereunder:

- I. They have already submitted their point of contention to the Superintending Engineer, Divisional Engineer, Assistant Divisional Engineer and Senior Accounts Office, but till date they did not get any reply.
 - ii. The demand raised by the department is for RMD for off season which is less than 15% of CMD. It is unimaginable to think that the main plant can run with 15% of CMD.
 - iii. The above shortfall is levied in the bill only to harass them and put mental burden on them.
 - iv. kindly look into the matter keenly and do the needful.
2. The Assistant Divisional Engineer/Operation/Town/Adilabad has submitted his written submissions as hereunder:

- i. He has verified the available records and found that the consumer of S.C. No. ADB-295 of M/s. Darshit Agro Tech, Spinning Mill Road of Adilabad-Town and that the consumer concluded an agreement with the NPDCL clearly mentioning as below :-

Off Seasonal Period	Seasonal Period
May to October of every year	November to April of every year.

- ii. But as per the records available the service was recorded RMD during the off seasonal period as follows against the CMD 430 KVA.

Month	CMD Load	RMD	Consumption
05/11	430 KVA	7.50	2265
06/11		10.50	2790
07/11		10.50	2445
08/11		9.00	2708
09/11		19.50	2753
10/11		49.50	2108

- iii. In view of all the above, the service was recorded RMD as above is during the off seasonal period the same was recorded by the then Assistant Divisional Engineer.
- iv. Further, the actual fact i.e., the supply to the main plant by

the consumer is utilized or not is not available in the records. But, the RMD recorded and available.

3. The Senior Accounts Officer/Operation Circle/Adilabad has submitted his written submissions as hereunder:

- i. The off season period of the above service was May to October. The Recorded Maximum Demand and Consumption furnished by Assistant Divisional Engineer/Operation/Town/Adilabad is as below :-

Month	CMD Load	RMD	Consumption
05/11	430 KVA	7.50	2265
06/11		10.50	2790
07/11		10.50	2445
08/11		9.00	2708
09/11		19.50	2753
10/11		49.50	2108

- ii. As per Conditions No. viii of Schedule of Retail Supply Tariff and Terms and Conditions for the Year 2011-12, "Any consumer who after declaring the period of season consumes power for his main plant during the off season period, shall not be entitled to this concession during that year".
- iii. The above recorded maximum demand and consumption clearly confirms that the main plant is functioned during the off season period.
- iv. Hence Assistant Divisional Engineer/Operation/Town/Adilabad was requested vide this Office Memo. No. SE/OP/ADB/SAO/JAO(HT)/D. No. 1605/11, Date : 14.12.2011 to submit a detailed report to take a decision on allowing seasonal benefit to the consumer.
- v. Further the matter was reminded vide this Office Memo No. SE/OP/ ADB/SAO/JAO (HT)/D. No. 218/11/Dt. 01.02.12. But Assistant Divisional Engineer/Operation/Town/Adilabad failed to submit the detailed report.
- vi. Hence a 15 days notice was issued to the consumer vide this Office Lr. No. 444/11, Dt. 03.03.2012 and requested to pay the shortfall amount of Rs. 6,13,434/- (By revising the C.C. bills for the months 05/11 to 10/11 with normal tariff).

- vii. Further it was informed that in case of any objections regarding disallowing of seasonal benefit, the same may raise to the Superintending Engineer/Operation/ Adilabad (Through Assistant Divisional Engineer/Operation/Town/Adilabad within 15 days from the date of receipt of the notice).
- viii. But the consumer failed to pay the shortfall amount and no objections were received through Assistant Divisional Engineer/ Operation/Town/Adilabad. Hence the shortfall amount was included in C.C. bill for the month of 04/2012.

4. Further, the Assistant Divisional Engineer/Operation/Town/Adilabad has submitted report in continuation to his earlier report as hereunder:

- i. He has inspected the premises of HT service S.C. No. ADB-295 of M/s. Darshith Agro Tech Spinning Mill, Rampur Road in Adilabad North Section of Operation, Sub-Division, Town, Adilabad on 12.10.12 and found that the following load particulars of main plant and lighting load connected to the service is as follows :-

Recorded Consumption As Per the Records					Present Status of the Service	
Month	CMD in KVA	RMD in KVA	Consumption		Connected Load	
			Main Plant	Lighting	Main Plant in KVA	Lighting in KW
05/11	430	7.50	2265	572	410	9.45
06/11		10.50	2790	635		
07/11		10.50	2445	311		
08/11		9.00	2708	1035		
09/11		19.50	2753	663		
10/11		49.50	2108	554		

- ii. Further it is to submit that at present the load particulars of the main plant of service are available but not utilizing by the consumer due to off season of industry.
- iii. But in the same time the lighting load available at present on the service is utilizing by the consumer during the period of off season also.
- iv. In this connection, a detailed report was submitted to the Superintending Engineer/Operation/Adilabad by the then Assistant Divisional Engineer/Operation/Town/Adilabad to allow the off season benefit to the consumer vide reference 4th cited Lr. No.

ADE/ OP / T / ADB/D. No. 399/12/Dt. 30.06.12, is here with submitting for further information please.

5. After hearing both sides and after considering the material placed before the Forum, the Forum passed the impugned order as hereunder:

I. The complainant is advised to pay the shortfall levied by the respondent in connection with consumed power for his main plant during the off season period declared From May 2011 to October 2011.

ii. The respondents are directed to collect the shortfall amount as per the Tariff Order 2011-2012 during the off season period. Ignore if already paid by the complainant in connection with above subject.

6. Aggrieved by the said order, the appellant preferred this appeal questioning the same by projecting the following grounds:

- i. The appellant / complainant has explained that the respondent no.5 has gone into wrong conclusion that the appellant has consumed power for its main plant during the off season period from 5/11 to 10/11 and denied the concession.
- ii. The alleged recording of the RMD from 5/11 to 10/11 of SE/O/Adilabad dt.03.03.2012 is not even commensurate to 30% of CMD ie., 430 KVA for which they are entitled during off season period.
- iii. The RMD as shown in the said communication was consumed only for the purpose of carrying out necessary repairs and maintenance of the equipment and the unit cannot run on the said RMD.
- iv. The appellant/complainant has explained that the RMD was recorded during the off seasonal period by the then Asst. Divisional Engineer only. The appellant has therefore, explained that during the off season the appellant has only carried out repairs to the equipment and maintenance and nothing.
- v. The alleged conclusion of the respondents that the main plant functioned during the off season period is erroneous and incorrect.

The appellant has further explained that during the off season period, the appellant/complainant was entitled to consume 30% of CMD out of 430 KVA CMD. However, the maximum RMD recorded was 49.50 KVA which maybe because of some fault in capacitors or misconnections as it is evident that the consumption of power is only 2108 units, where as when our main plant is operational our consumption is 88290 units.

- vi. The said 30% of CMD and as such the conclusion of the respondents that the appellant during the off season period run the unit and as such liable to pay the shortfall amount is not only erroneous but causing material prejudice to the rights of the appellant.
- vii. The appellant has explained that the ADE/Op/T/Adilabad vide his communication dated 30.06.2012 under Lr.No.ADE/O/T/Adilabad d.No.399/2012 himself has recommended the ADE/O/APNPDCL/Adilabad Town to allow off season benefit to the appellant for the year 2011-12.
- viii. During off season period only repair & maintenance carried out and the main plant cannot be put for use as their main line of production is ginning and pressing which can be used during seasonal period only.

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

8. The learned advocate for the appellant submitted his written arguments projecting the following grounds:

- (i) The Forum has simply looked into the RMD recorded and arrived at a conclusion that the main plant was utilized, though there was no record to that effect.
- (ii) The Forum has failed to look into the letter addressed by ADE dated 12.10.2012 in which it is clearly mentioned that the load particulars

of the main plant of the service are available but not utilised by the appellant due to off-season of the industry. But at the same time, the lighting load available at present on the service is utilized by the appellant during the period of off-season.

- (iii) The Forum has failed to apply its mind to the letter addressed by the respondent no.2 and the said letter indicates that there is no evidence of functioning of the main plant.
- (iv) The Forum has failed to appreciate the letter addressed by the respondent no.4 dated 02.01.2013 demanding the appellant to pay the shortfall amount of Rs.6,13,434/- and it is otherwise admitted by the respondent no.4 that the shortfall raised by him is without any report since no detailed report is filed by the ADE/O/Adilabad.
- (v) The Forum has failed to look into the objections raised by the appellant and the respondent no.4 has erroneously stated that no objection was received from the appellant.
- (vi) The Forum has failed to observe the real facts while raising shortfall amounts without any proper field reports and without looking into the objections raised by the appellant.
- (vii) The respondents have withdrawn the case against M/s. Sindhu Ginning & Pressing Factory, Adilabad and Sri Ram Industries, Adilabad on the shortfall levied basing on the A.G.Audit but withdrawn basing on the ADE's report.
- (viii) Though the appellant is standing on the same line, they have issued a shortfall notice and it is nothing but a clear cut harassment on the appellant.
- (ix) The department officials of Adilabad have over acted in order to harass the consumers or to extract more revenue for the department, which is not as per tariff spirit.
- (x) In the light of the above said facts, the impugned order is liable to be set aside.

9. The respondents have submitted their written submissions narrating the following grounds:

- (i) The industry of the appellant is seasonal industry.
- (ii) The service was recorded RMD during off-seasonal period as against CMD 430 KVA.

Month	CMD in KVA	RMD in KVA	Main plant Consumption	Lighting load consumption
05/11	430 KVA	7.50	2265	572
06/11		10.50	2790	635
07/11		10.50	2445	311
08/11		9.00	2708	1035
09/11		19.50	2753	663
10/11		49.50	2108	554

- (iii) As per the RMD recorded during off-season period, notice was issued to consumer but the consumer approached Consumer Grievance Redressal Forum.
- (iv) The consumer also paid the shortfall amount of Rs.6,13,434/- under protest.
- (v) It is also stated that the very table submitted above clearly indicates the using of the main plant and that itself is the indication that the main plant is put into operation and the appellant is not entitled to the benefit and the appeal preferred by the appellant is liable to be dismissed.

10. It is an admitted fact that Sc.No.ADB-295 M/s. Darshith Agro Tech is a seasonal industry and it declared off-season period from May 2011 to October 2011. The SAO/Op/Adilabad has analysed basing on the RMD and consumption recorded during off-season period and arrived at a conclusion that the appellant has used the main plant during off-season period.

11. The Forum has observed that the appellant has stated that they consumed power to the main plant as they can use up to 30% of CMD during the off-season period is in correct. They have stated that they are entitled to use

30% of the same for the off-season period. This itself shows that the very observation made by the Forum that they have admitted using of the 30% even for running main plant is incorrect and this is a wrong interpretation made by the Forum.

12. It is clear from the reply to the SE that they are attending the works of repairing the plant and the machinery during off-season and that they have also utilized the lighting. When there is a possibility of attending the repairs of machinery to put the machinery in good working condition to operate in the seasonal period, naturally there may be some use of power for attending the same, but that itself is not a ground to conclude that the main plant is used though the minimum power utilized is 49.5kVA. It is impossible to run the main plant with 49.5kVA and there is no recorded evidence to show that the respondents have run the main plant during the off-season period. It is also not possible to run the machinery without any raw material. This aspect is also been lost sight of by the Forum.

13. It is an admitted fact that "any consumer as per Retail Supply Tariff order who consumes power for his main plant during the off-season period shall not be entitled to the concession during that period." This fact has to be looked into whether the main plant, as pointed out by the respondents is put to use or not. But the Forum has simply looked into the reports and arrived at a conclusion that the appellant has consumed power for his main plant during off-season period by violating the declared seasonal period declared by the appellant and as per condition no. viii of Schedule of Retail Supply Tariff 2011-12 and rejected the case of the complainant.

14. The very letter dt.12.10.2012 addressed by the ADE/O/Adilabad clearly indicates that the load particulars of the main plant and the service are available but not utilized by the consumer due to off-season of the industry. Whereas, the letter dt.30.08.2012 addressed by the ADE/O/Adilabad clearly indicates that the supply to the main plant by the consumer is utilizing or not is not available in the records but the RMD recorded and available is placed.

15. In any one of the letters addressed by the inspecting staff they have not mentioned that the main plant is run during off-season period by entertaining ginning operations. It is also clear that if ginning operations are entertained by putting the main plant into operation, it definitely crosses the 30% power permitted to be used during off-season period.

16. Furthermore, the inspecting staff never stated that the power is used for running the main plant. The meager recording (49.5kVA) is far below 30% of CMD and cannot be concluded in the absence of recorded evidence that the main plant is put to use. Moreover, the recorded evidence placed by the respondents is in favour of the appellant. The finding given by the Forum is against to the principles of law and the very Tariff order. Though the appellant is entitled to utilize upto 30% but the appellant has utilized only 49.5kVA, which is far below the minimum, but he has paid the minimum charges of 30% as per the Tariff order, which reads as follows:

DEMAND CHARGES & ENERGY CHARGES		
Voltage of Supply	Demand Charges Rs/kVA / month of Billing Demand#	Energy Charges Paise/kVAh
132kV and above	250	410
33kV	250	430
11kV	250	480
#Based on the Recorded Maximum Demand or 30% of the Contracted Demand whichever is higher		

17. The above said discussion clearly indicates that the Forum has erroneously concluded basing on the report of the Senior Accounts Officer and arrived at a conclusion that the main plant is put to run during off-season period and the very order passed by the Forum is not on correct lines and the same is liable to be set aside.

18. In the result, the appeal is allowed. The amount collected from the appellant shall be adjusted in the future bills payable by the appellant.

This order is corrected and signed on this day of 2nd March, 2013

Sd/-

VIDYUT OMBUDSMAN