



VIDUYUT OMBUDSMAN FOR THE STATE OF TELANGANA

First Floor 33/11 kV substation, Hyderabad Boats Club Lane
Lumbini Park, Hyderabad - 500 063

:: Present:: **R. DAMODAR**

Wednesday, the Twenty Second day of February 2017

Appeal No. 75 of 2016

Preferred against Order Dt. 30-11-2016 of CGRF In

CG.No: 428/2016-17 of Rangareddy South Circle

Between

M/s. Binjusaria Metal Box Co.Pvt.Ltd., represented by Sri. M. Sunder Murthy -
General Manager, #102, A Block, White House, Begumpet,
Hyderabad - 500 016. Cell: 8886988842.

... Appellant

AND

1. The ADE/OP/Gaganpahad/TSSPDCL/ RR Dist.
2. The DE/OP/Rajendranagar/TSSPDCL/RR Dist.
3. The SAO/RR South Circle/TSSPDCL/Hyderabad.
4. The SE/OP/RR South Circle/TSSPDCL/Hyderabad.

... Respondents

The above appeal filed on 22.12.2016 coming up for final hearing before the Viduyut Ombudsman, Telangana State on 15.02.2017 at Hyderabad in the presence of Sri. M. Sunder Murthy - on behalf of the Appellant company and Sri. M.Srinivasulu - SAO/OP/RR South for the Respondents and having considered the record and submissions of both the parties, the Viduyut Ombudsman passed the following;

AWARD

The Appellant is a consumer with SC No. RRS 346 with 3800 KVA. The Telangana State Pollution Control Board (TSPCB) by orders dt.17.10.2015 directed the Appellant and similar industries within the prohibited zone of 10KM radius of Osman Sagar lake to close down and further directed the DISCOM to disconnect the power supply. Accordingly, the DISCOM had derated the supply from 3800 KVA to 70 KVA w.e.f. 26.11.2015. After deration, the consumption of the Appellant has not been more than 2800 units per month. The Appellant has ACD amount of Rs 1,55,75,934/- with the DISCOM based on consumption pre-deration period. In view of the deration of the load,

the consumption has been drastically reduced to around Rs 47,000/- per month. The 70 KVA load is being used for general lighting purpose and the required ACD is not more than Rs 1,00,000/- The demand of the DISCOM for ACD of Rs 26,05,059/- is not justified. Under these circumstances, the Appellant sought refund of excess Security Deposit of Rs 96,13,982/- along with interest and lodged a complaint with CGRF.

2. The representative of the Appellant requested for revising ACD demand based on derated load during the hearing. The 3rd Respondent/SAO/O/RR South claimed that ACD demand for FY 2016-17 has been made on the actual consumption of the previous year i.e from April,2015 to March,2016 and demand notice has been issued as per the Regulation 6 of 2004 of ERC. As per Clause 4, the review of ACD would be done by the Licensee once in every year based on the average consumption for the period representing 12 months and thus, the DISCOM has communicated ACD notice for Rs 26,05,059/- to the Appellant.

3. On the basis of the record and hearing, the CGRF upheld the claim of the DISCOM on review of ACD as per Regulation 6 of 2004 based on average consumption for the period representing 12 months from April to March of the previous year and that it is not possible to review the ACD demand based on the derated load, as there is no provision in the Regulation to do so and that the ACD amount cannot be reviewed in the middle of the Financial Year, which can be reviewed in the next financial year taking into consideration the previous 12 months average consumption and rejected the request of the Appellant, through the impugned orders.

4. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal stating that there is a demand from the DISCOM for additional ACD of Rs 26,05,059/-, instead of reducing the excess ACD and that the Telangana State Pollution Control Board, based on the order of the Hon'ble High Court dt.15.12.2014 and passed in WP No.3367 of 2006, TSPCB directed the DISCOM by orders dt.17.10.2015 to disconnect the power supply and as a result, the Appellant had to get the power supply derated from 3800 KVA to 70 KVA w.e.f. 26.11.2015 for general purpose lighting, water and security only and that the Regulation 6 of 2004 is not applicable to the Appellant since it is applicable only to the normal working manufacturing companies and that because of the derated power supply, the consumption is restricted to 2800 units with less than Rs 50,000/- per month CC bill since 26.12.2015 and that there is complete close down of the production and sought refund of excess ACD from the DISCOM.

5. The SE/OP/RR South Circle/R4 filed a reply dt.12.1.2017 stating that the office has reviewed the ACD of the consumer's service as per Regulation 6 of 2004 subject to the billing period of three months or two months as specified in Clause 4, that the Licensee shall review the adequacy of the amount of Security Deposit in respect of consumers generally once in every year(preferably after revision of tariff for the respective year) based on the average consumption for the period representing 12 months from April to March of the previous year and communicated the ACD notice for Rs 25,05,059/- to the Appellant.

6. The Respondent No.4/SE/O/RR South further stated that as per Clause 7 of Regulation 6 of 2004 the interest accrued to the credit of the consumer shall be adjusted annually against the amounts outstanding from the consumers to the Licensee as on 1st May of every year and the amounts becoming due from the consumers to Licensee thereafter. Based on this Clause, the DISCOM had allowed interest amounting to Rs 10,58,849/- in the CC bill of April,2016 and further, the SE stated that the Security Deposit shall be refunded only on termination of the service. He further stated that though service has been derated to 70 KVA, the consumer had not paid the 1/3rd of the ACD amount as per the interim order passed as on today.

7. The 4th Respondent/SE/O/RR South filed a copy of letter dt.31.1.2017 addressed to CGM(Commercial) wherein, the demand made to the Appellant for deposit of the Additional Consumption Deposit of Rs 25,05,059/- and about Clause 7 of regulation 6 of 2004 permitting payment of interest to be adjusted annually against the amounts outstanding from consumer to the Licensee as on 1st May of every year and about allowing of payment of interest to the Appellant in April,2016 CC bill seeking further action in the matter is mentioned.

8. Mediation is not successful in view of the respective stand of the parties and therefore, the matter is being disposed of on merits.

9. On the basis of the material on record and rival contentions, the following issues arise for disposal:

1. Whether the Appellant is entitled to refund of excess ACD amount, leaving the ACD amount for 70 KVA with the DISCOM?
2. Whether the closure of the industry by the orders of TSPCB is a circumstance entitling the Appellant for refund of the balance ACD?
3. Whether the impugned orders are liable to be set aside?

Arguments heard.

Issues 1 to 3

10. The facts are not in dispute. Originally, the Appellant has contracted load of 3800 KVA with the Licensee and the load was derated to 70 KVA w.e.f. 26.11.2015. The Appellant company seized operation by virtue of direction from the State Pollution Control Board which by orders dt.17.10.2015 directed closing all industries of similar nature within the prohibited zone of 10 KM radius of Osman Sagar lake and further directed the DISCOM to disconnect the power supply. The ACD of the Appellant with DISCOM was Rs 1,55,75,034/-. The State Pollution Control Board was complying with the directions of the Hon'ble High Court in WP No. 3367 of 2006. From these facts, it is quite clear that the Appellant industry was closed down not on its own, but on the direction of TSPCB. The Appellant filed a representation dt.23.1.2017 in the Appeal stating that it has no plans to revive production activities in the near future, after it was closed in November,2015. Presently the Appellant has power supply of 70 KVA after deration. Further, in the event of any decision to restart the industry, the Appellant undertook to arrange the necessary ACD payment as prescribed depending on the power requirement.

11. The DISCOM is relying on Regulation 6 of 2004 in its application to the present case regarding review of ACD amount and claiming that they have taken average consumption for the period representing 12 months from April to March of the previous year and then demanding the requisite ACD amount. The Regulation 6 prescribes, as per Clause 4(2), as follows:

“The HT consumers shall at all times maintain with the Licensee an amount equivalent to consumption charges (i.e. demand charges and energy charges etc. as applicable) of two months as security during the period the Agreement for supply of energy to such HT consumers is in force.”

This Clause prescribed two months consumption charges as security (ACD).

12. The DISCOM is also relying on Clause 6(1) of the Regulation 6 of 2004 which provides for review of adequacy of the amount of Security Deposit generally once in every year, preferably after the revision of Tariff based on the average consumption for the period representing 12 months from April to March of the previous year in support of the claim that there is no permission to review the ACD in the middle.

13. The DISCOM has reviewed the ACD amount based on 12 months consumption from April to March of the previous year and arrived at the demand for ACD. In this process, the present situation where TSPCB mandated closure of the Appellant industry and directed the DISCOM to disconnect the power supply, is not contemplated. When there is mandate from Statutory Authorities to close down, the contracted power was no longer required by the Appellant and it was derated to 70 KVA for lighting purpose etc. It is totally unjustified on the part of the DISCOM to retain huge ACD amount on the ground that previous consumption demands retention of ACD amount. There is no likelihood of restarting the industry in the near future, as per the representation made on behalf of the Appellant. The ACD amount is only a Security Deposit kept for two months consumption. It is no longer required in view of the facts of the present case, except for the consumption relating to 70 KVA. The present situation being faced by the Appellant is not contemplated in the Regulation 6 of 2004. The Appellant is therefore found entitled to refund of the balance ACD amount, except the amount required for consumption of 70 KVA. The CGRF has not considered the difficulty being faced by the Appellant while deciding the complaint. It is totally unfair to direct refund only after next review of the ACD amount, when there is no likelihood of starting the industry contrary to the direction of the TSPCB. The Issues are answered accordingly.

14. In the result, the Appeal is allowed directing:

1. Refund of the ACD amount to the Appellant, after retaining the required ACD amount for consumption of 70 KVA, with interest, as prescribed in the Regulation 6 of 2004.
2. The Closure of the Industry by the orders of TSPCB is a circumstance entitling the Appellant for refund of the balance ACD form the DISCOM.
3. The impugned orders are set aside.

15. The licensee shall comply with and implement this order within 15 days for the date of receipt of this order under clause 3.38 of the Regulation 3 of 2015 of TSERC.

Typed by CCO, Corrected, Signed and pronounced by me on 22nd day of February, 2017.

Sd/-

VIDYUT OMBUDSMAN

1. M/s. Binjusaria Metal Box Co.Pvt.Ltd., represented by Sri. M. Sunder Murthy - General Manager, #102, A Block, White House, Begumpet, Hyderabad - 500 016. Cell: 8886988842.

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Copy to:

6. The CGRF, TSSPDCL, Greater Hyderabad Area, Vengal Rao Nagar, Erragadda, Hyderabad.

7. The Secretary, TSERC, Singareni Bhavan, Red Hills, Lakdikapool, Hyderabad.