



VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA

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

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

Saturday, the Twenty Second day of July 2017

Appeal No. 20 of 2017

Preferred against Order Dt.28.04.2017 of CGRF In

CG.No: 932/2016-17 of Rangareddy South Circle

Between

M/s Sugna Metals Ltd., represented by Sri. Bharat Kumar -Managing Director
#1-8-673, Azamabad, Hyderabad - 500 020. Cell : 9391033606.

... Appellant

AND

1. The DE/OP/Vikarabad/TSSPDCL/RR District.
2. The SAO/OP/RR South Circle/TSSPDCL/Hyderabad.
3. The SE/OP/RR South Circle/TSSPDCL/Hyderabad.
4. The DE/Commercial/TSSPDCL/Corporate Office/Mint Compound/Hyderabad.
5. The SE/Commercial/TSSPDCL/Corporate Office/Mint Compound/Hyderabad.
6. The GM/Revenue/TSSPDCL/Corporate Office/Mint Compound/Hyderabad.

... Respondents

The above appeal filed on 02.05.2017 coming up for final hearing before the Vidyut Ombudsman, Telangana State on 12.07.2017 at Hyderabad in the presence of Sri. Vinesh Raj - Advocate for the Appellant and Sri. S. Balachandrudu - SAO/OP/RR South Circle, Sri. M. Suryanarayana - DE/Commercial/TSSPDCL/Corporate Office/Hyd, Sri. P. Krishna Reddy - GM(Revenue), Smt. B.Sumalatha - AAO(HT), Sri. P. Madhusudhan Rao - JAO/HT/RR South for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant is a consumer of HT SC No. RRS 1247 and filed CG No.932/2016-17 complaining of non implementation of the orders dt.26.10.2015 passed in CG No. 286/2015 and also orders dt.8.2.2017 in CG No. 504/2015 of CGRF. The Appellant earlier filed a complaint in CG No. 286/2015 before the CGRF seeking

withdrawal of the demand of Voltage Surcharge. The CGRF, in the order passed on the complaint, held that the Appellant has not even crossed 9999 KVA which is also CMD while availing Open Access Demand and therefore, it is not liable to pay the Voltage Surcharge and directed the Respondents not to levy the Voltage Surcharge. When these orders were not implemented by the Respondents, the Appellant preferred a complaint in CG No. 504 of 2015 seeking implementation of the orders. CGRF made a note in the orders dt.8.2.2017 in CG No. 504/2016 in the following words:

“as the Respondents have promised during hearing that they would implement the orders of forum, the forum decides to give a chance to the Respondents, a period of 15 days to implement the orders of the forum, failing which a compensation as per Clause No. 2.56 of Regulation 3 of 2015 of TSERC dt. 3.10.2015 will be awarded.”

2. CGRF further noted that when the Licensee failed to implement the aforementioned orders, the Appellant again approached the CGRF vide CG No. 726/2015-16 in which orders were passed to the effect that “the Respondents have failed to implement the order issued by the forum in respect of CG No. 286/2015 and subsequently in CG No. 504/2015 wherein 15 days time given to implement the forum orders as per the request of the Respondents. In spite of that when the Respondents failed to implement the orders, the consumer again approached the forum by filing an application vide CG No. 727/2015-16 wherein, this forum also passed an order dt.20.05.2016 “as per Regulation 3 of 2015 dt.3.10.2015 Clause 2.56, the Respondents have directed to pay compensation of Rs 25000/- and Rs 1000/- per day thereafter till implementation of the orders such amount shall be deducted from the salaries of the Respondents i.e. SE/OP/RRS circle (R3) and SAO/OP/RR South Circle (R2) and sent to the complainant by way of Cheque.”

3. CGRF further noted that the Appellant approached the TSERC by filing a Review Petition in OP Nos. 76 and 77 of 2015 for setting aside the words “and other source” found in the note to Sub Clause 4 of Clause 6 HT Supply General Conditions at page No. 216 of the Tariff Order 2015-16 dt.27.3.2015 and this Review Petition was rejected by orders dt.25.7.2016. In view of rejection of the Review Petition by the orders of TSERC, the CGRF noted that the Respondents have not implemented the orders in the CGs.

4. Before the CGRF, the Respondents opposed the complaint seeking implementation of the orders in the CGs contending that the orders in CG no. 286/2015 may be contrary to the Tariff Orders FY 2015-16 approved by the ERC and therefore, the 3rd Respondent/SE/O/RR South sought clarification from his corporate office TSSPDCL. CGRF also observed that the claim of the Respondents that the Appellant had consumed the power exceeding the CMD and power drawn from other sources, thereby becoming liable to pay the Voltage Surcharge with the following data:

Month	Voltage	CMD	RMD	Other Source	CMD and other source	> between 4 & 6
1	2	3	4	5	6=3+5	7
Jun-15	33 KV	9999	9672	6	10005	10005
Jul-15	33 KV	9999	9708	36	10035	10035

The Respondents claimed that in view of the result in column no. 7 of the above table, it is clear that the Appellant had violated the voltage level and therefore, liable for the voltage surcharge for the months of June and July,2015.

5. The Respondents through the 2nd Respondent claimed before the CGRF that the Orders in CG No. 286/2015 cannot be sustained as they are contrary to the Tariff Order 2015-16 approved by the TSERC and the Orders in the Review Petition of the TSERC passed in OP Nos. 76 and 77 of 2015 dt.25.7.2016. The CGRF, based on the rival claims, reasoned that the Orders passed by the CGRF in CG No. 286/2015 dt.26.10.2015 are contrary to the Tariff Order FY 2015-16 and the Review Petition filed in the OPs was rejected by the TSERC and therefore, the Orders passed by the CGRF were not being implemented. It is further observed that the Appellant, instead of approaching the Hon'ble High Court against the Orders passed by TSERC dt.25.07.2016 in the Review Petition in O.P.Nos.76 and 77 of 2015 and knowing very well that the orders passed by the forum in CG No.286/2015 have been deemed to be suspended, has intentionally approached the CGRF seeking implementation of the orders and hence the petition dt.10.01.2017 has been rejected. There is a dissenting note by the independent member lamenting on non implementation of the orders of CGRF in CG Nos. 286 and 504, CG Nos. 726 and 727 of 2016 filed for awarding compensation opining that the Respondents have to implement the orders, through the impugned orders.

6. The Appellant's complaint has been registered as CG No. 932/2016-17 of RR South Circle seeking implementation of the orders in CG No.s 286/2015 and 504/2015 and the CGRF, while observing that in view of the Orders of TSERC in the Review Petition, the Orders passed by CGRF in CG No. 286/2015 are not enforceable and are contrary to the Tariff Orders FY 2015-16, justified the non implementation of the Orders in CG No. 286/2015 opining that the Appellant ought to have approached the Hon'ble High Court against the orders of the ERC dt.25.7.2016 in the Review Petition in OP Nos. 76 and 77 of 2016 through the impugned orders, with independent member dissenting.

7. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal stating that the Respondent No.3/SE/OP/TSSPDCL/RRC issued a demand notice for Rs 79,08,587/- towards Voltage Surcharge and another for Rs 12,02,105/- towards the late payment surcharge from 1.2.2016 to 30.11.2016 with a threat of disconnection in case of nonpayment. The Appellant claimed that the orders dt.26.10.2015 passed by the CGRF in CG No. 286/2015 have to be implemented and the rejection of the Review Petition No. 2 of 2016 in OP Nos. 76 and 77 of 2015 dt.25.07.2016 has no effect over the existing footnote of the Sub Clause 4 of Clause 6 HT Supply General Conditions of the Tariff Orders 2015-16 regarding the Voltage Surcharge after rejection of the Review Petition and therefore, sought rejection of the claim of R3 raised in the letter dt.29.4.2017 in CG No. 932 of 2017 (present CG) and the remainder of R3 through letter dt.29.4.2017 SE/O/RRC(S)/SAO/HT/D.No.41 of 2017 and sought award of compensation of Rs 25,000/- as on due date of compliance(3.12.2015) and Rs 1,000/- per day from 4.12.2015 till implementation.

8. The 3rd respondent/SE/O/RR South submitted a reply dt.15.5.2017 specifically stating to the effect as follows :

“ the orders issued by the Hon'ble CGRF are might be contrary to the Tariff Orders FY 2015-16 which approved by the ERC hence this office requires clarification from the corporate office, TSSPDCL to implement the said order. The orders of the CGRF submitted to the CGM/Commercial/TSSPDCL for considering the Orders and sought necessary clarifications.”

The 3rd Respondent referred to the table (in para 4 infra) and contended that the Contracted Maximum Demand of 9999 KVA plus purchase of Open Source 6 KVA came to 10005 KVA, which exceeded 9999 KVA in the month of June,2015 and 9999 KVA + purchase from other source 36 KVA totalled 10035 KVA exceeding CMD 9999 KVA and therefore, the Appellant has violated the voltage level and it is liable for surcharge. (It is to be noted that the RMD for the month of June,2015 was 9672 KVA and for the month of July,2015 the RMD was 9708 KVA, which are even below the CMD of 9999 KVA).

9. The 3rd Respondent further stated that since the Appellant had approached the TSERC by way of filing the Review Petition in OP Nos. 76 and 77 of 2015 seeking suspension of the note on the clause of Voltage Surcharge based on Tariff Order FY 2015-16, the orders of CGRF have not been taken into consideration, until review orders are passed by the TSERC, which ultimately rejected the review petition. The 3rd Respondent opined that the Orders of the CGRF “might not have followed the Tariff Orders approved by the ERC and therefore, cannot be sustained” and a notice demanding payment of voltage surcharge was issued to the Appellant. Aggrieved by the notice, the Appellant preferred the present CG No. 932/2016-17. The 3rd Respondent ultimately claimed that the orders passed in CG No. 286/2015 are not enforceable, which are contrary to the Tariff Orders FY 2015-16 and therefore, those orders were not implemented. He further claimed that the Appellant, instead of approaching the Hon’ble High Court against the orders dt.25.7.2016 in OP Nos. 76 and 77 of 2015, has preferred the present complaint. He further claimed that CGRF itself has declared the orders in CGs. 286,504,725 and 726 of 2015 are deemed to be suspended through the impugned orders and thus, he sought rejection of the present appeal.

10. The Appellant filed a rejoinder to the letter of the 3rd Respondent dt.17.5.2017 stating that the orders of the TSERC dt.25.7.2016 rejecting Review Petition in OP Nos. 76 and 77 of 2015 have brought in no change in the Clause of the Voltage Surcharge in the Tariff Order 2015-16. The Appellant is relying on award dt.6.6.2016 in Appeal No. 24 of 2015 in the case of M/s. Salasar Iron and Steel Pvt Ltd. and Award dt.02.01.2017 in Appeal No. 72/2016 in the case of M/s. Anand Ispat Udyog Ltd. which set aside the claim of the DISCOM on Voltage Surcharge and claimed that unless the orders of the CGRF in the said Appeals are set aside, they have to be implemented and that the CGRF does not have any jurisdiction to issue any revised orders.

11. The Appellant filed WP No. 7334 of 2016 before the Hon'ble High Court seeking a direction to the Respondents 1 to 4(DISCOM) to implement the orders of the 5th Respondent Vidyut Ombudsman in Appeal No. 154 of 2013 dt. 27.10.2014, orders of CGRF/6th respondent in CG No. 286/2015 dt.26.10.2015, CG No. 323 of 2015 dt.18.1.2016 and CG No. 648/2015-16 dt.23.2.2016. The writ petition is pending.

Arguments heard.

12. In view of the nature of the rival claims and typical stand of the Respondents, the efforts at mediation failed to succeed and therefore, the matter is being disposed of on merits.

13. On the basis of the material on record, the following issues arise for determination:

1. Whether the Appellant is liable to pay the Voltage Surcharge imposed by the Respondents amounting to Rs 79,08,587/- for the months of June and July,2015 along with Rs 12,02,105/- representing Surcharge from 1.2.2016 to 30.11.2016?
2. Whether the Respondents are entitled to claim that they are not liable to pay compensation to the Appellant for non implementation of the orders dt.26.10.2015 in CG No. 286/2015 by the CGRF?
3. Whether the impugned orders claiming that the Orders dt.26.10.2015 in CG No. 286/2015 and Orders dt.8.2.2017 in CG No. 504/2015 are deemed to be suspended in view of the orders dt.25.7.2016 in the Review Petition in OP Nos. 76 and 77 of 2015 of TSERC and therefore, those orders are non implementable?
4. Whether the impugned orders are liable to be set aside?

Issue No.1

14. The Appellant earlier filed a complaint in CG No. 286/2015 before the CGRF and secured an order to the effect that the Appellant has not even crossed RMD of 9999 KVA which is also CMD, while availing the Open Access demand and therefore, it is not liable to pay the Voltage Surcharge.

15. The 3rd Respondent/SE/O/RR South Circle claimed that the Appellant is liable to pay the Voltage Surcharge in view of the excess consumption of power over CMD and power drawn from other sources with the following claim by way of a table:

Month	Voltage	CMD	RMD	Other Source	CMD and other source	> between 4 & 6
1	2	3	4	5	6=3+5	7
June-15	33 KV	9999	9672	6	10005	10005
July-15	33 KV	9999	9708	36	10035	10035

16. The 3rd Respondent has cleverly mixed the Contracted Maximum Demand with power from other sources and not the power actually drawn i.e Recorded Maximum Demand (RMD). The RMD (Recorded Maximum Demand) for the month of June,2015 is 9672 KVA and for the month of July,2015 it is 9708 KVA as shown in the table which was drawn and not as calculated by the 3rd Respondent in a twisted manner. There is absolutely no excess drawal of power than the Contracted Demand from all sources including from the DISCOM drawn by the Appellant.

17. The Appellant has relied on not only about the aggregate power drawn as not affecting the CMD but also on the ground that the provision of the Voltage Surcharge is not applicable to it. A perusal of the relevant provisions/clause is necessary to understand the issue clearly.

The enabling power to impose voltage surcharge for the Licensee is Clause 6(4) HT Supply General Conditions ; Tariff Order 2015-16 which is reproduced here for clarity:

“The H.T.Consumers who are now getting supply at voltage different from the declared voltage and who want to continue taking supply at the same voltage will be charged as per the rates indicated below”:

S.No	Contracted demand with licence and other sources	Voltage at which supply should be availed (in KV)	Voltage at which consumer is availing supply (in KV)	Rates % extra over	
				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 to 10000	33	11	12%	10%
2	Above 10000 KVA	132 or 220	66 or below	12%	10%
Note: The FSA will be extra as applicable.					

Note:- In case of consumers who are having supply arrangements from one or more than one sources, the RMD or CMD with the licensee and other sources, whichever is higher, shall be the basis for levying voltage surcharge.

18. The Appellant contended that the Respondents have imposed the voltage surcharge misinterpreting the relevant Clause, even though there is no ground attracting imposition of the voltage surcharge. The Appellant further claimed that with 9999 KVA of CMD, the power was drawn at 33 KVA and as per Clause 6(4) of Tariff Order 2015-16, if the Appellant whose CMD is 9999 KVA draws power at 11KV instead of 33 KV, only then the voltage surcharge is attracted and not in the present case. On the other hand, the Respondents claimed that as per the note in the Clause 6(4) in the Tariff Order 2015-16, if the RMD goes beyond 10000 KVA drawn at 33 KV level under an independent feeder, the voltage surcharge is attracted, because the designated voltage for above 10000 KVA is 132 KV or 220 KV as per the Clause.

19. From the Clause 6(4) above, there are three prerequisites for application of Part B of the Table in Clause 6(4) for imposing the voltage surcharge on the consumers availing supply through an independent feeder and they are:

- i. The contracted demand with licensee and other sources (in KVA) should have been between 2500 KVA to 10000KVA at voltage level 33KV
- ii. Voltage at which the supply should be availed is at 33KV level.
- iii. The Voltage at which the consumer is availing supply should have been 11KV and the consumer should be insisting on availing supply at 11KV only,

and only then, 12% demand charges and 10% energy charges representing the voltage surcharge are leviable and not otherwise.

20. The maintenance of the voltage level is of utmost importance for the Distribution Company to maintain grid discipline. When the power is supplied in higher voltages, the transmission losses are lesser. Hence, when a utility supplies power at a designated voltage, and the consumers avail supply at a lower level continuously than the specified voltage level, there would be transmission losses and to compensate this type of losses, the voltage surcharge is levied. The utility suffers higher transmission losses, if it has to supply power at a lower voltage level than the specified voltage level shown in the Clause 6(4) HT Supply General Conditions, Tariff Order 2015-16. This is the purpose behind levy of voltage surcharge.

21. In the present case:-

- a .The specified voltage for CMD below 10000KVA under independent feeder is at 33 KV level. The appellant is availing supply at 33KV and there is no deviation,
- b. The appellant is not getting supply continuously at different (lower) voltage from the declared voltage which is 33KV,
- c. There is no insistence in drawing supply at different (lower) voltage

22. The voltage surcharge imposed on the Appellant in the present case, as discussed supra, is not mandated by Para 6(4) H.T. Supply General Conditions of the Tariff Order 2015-16. It is practically not possible to shift from drawing power supply at 33 KV level to 132 KV level, at a particular instant immediately when a small portion of the demand in KVA (excess KVA) is drawn, in a particular integration of time duration and day in a month. This impossibility is ignored by the DISCOM when the claim was made for the voltage surcharge in this case, making huge demand over the appellant. The respondents prepared energy bills in this case levying voltage surcharge, without having the authority to do so, based on misinterpretation of the criteria prescribed in para 6(4) of the table H.T. Supply General Conditions of the Tariff Order 2015-16 and thus, it is clear that levy of voltage surcharge is not sustainable in the present case.

23. The imposition of voltage surcharge on the Appellant service can not be sustained on any ground. The CGRF, on the ground that the Review Petition filed by the Appellant was rejected upholding the note appended to Clause 6(4) of HT Supply General Conditions of the Tariff Order 2015-16, upheld imposition of the Voltage

Surcharge, without examining the criteria in the para 6(4) of the HT Supply General Conditions of the Tariff Order 2015-16 for application of the Voltage Surcharge.

24. The 2nd Respondent contended that the Orders in CG No.286/2015 of the CGRF cannot be sustained as they are contrary to the Tariff Order 2015-16 approved by the TSERC and the orders dt.25.07.2016 of the TSERC in the Review Petition in OP Nos. 76 and 77 of 2015.

25. In the Review Petition, the question of the note under the table of the Voltage Surcharge came into consideration and the Appellant sought suspension of the words “and other sources “ appearing in the note of Clause 6(4) of HT Supply General Conditions at page 216 of the Tariff Order FY 2015-16 dt. 27.3.2015. There were rival contentions on this particular note. The TSERC ultimately was not convinced about the need for interference in the note portion of the Clause and rejected the review petition. The contention of the Respondents is that because the TSERC has not interfered with the prayer of the Appellant for suspension of the words “ and other source”, the Appellant has no legs to stand in the present matter and the orders rendered in CG No. 286/2015 holding that the Appellant has not crossed the CMD while availing power from the DISCOM as well as the open source and therefore, not liable for the Voltage Surcharge etc, is contrary to the Tariff Order FY 2015-16. There is absolutely no merit in the contention of the Respondents, because as already stated, the Appellant has not exceeded even the CMD limit while availing the Open Source power also and there is absolutely no pressures on the grid and no violation of the Voltage level to attract the Voltage Surcharge.

26. While the contentions of the Respondents remained as they are, there is absolutely no ground to hold that the Appellant is liable to pay the Voltage Surcharge. The Respondents, without any justifiable cause, are denying the right of the consumer to be treated fairly and based on terms of the Tariff Orders. It is quite clear that the Appellant has not violated the supply conditions and the terms of the Tariff Orders and therefore, not liable to pay the Voltage Surcharge imposed by the Respondents illegally for the months of June and July,2015. The issue is answered in favour of Appellant and against Respondents.

Issues 2 and 3

27. The Respondents claimed that the orders in the Review Petition in OP Nos. 76 and 77 of 2015 Orders dt.25.7.2016 of the TSERC nullified the orders of the CGRF in

CG No. 286/2015. As discussed supra on Issue No.1, the order in the Review Petition has nothing to do with the decision about Applicability of the voltage surcharge to the Appellant for the months of June and July,2015. The stand taken by the Respondents is totally unjustified, unreasonable and against the terms of the Tariff Orders and therefore, the Respondents are liable to the Appellant to pay compensation for non implementation of the orders dt.26.10.2015 in CG No. 286/2015 of the CGRF under Clauses 2.54 to 2.56 of Regulation 3 of 2015.

28. The Respondents contended that a Writ Petition No.7334/2016 has been filed by the Appellant seeking implementation of orders dt.27.10.2014 in Appeal No. 154/2013 on the file of the Vidyut Ombudsman, orders dt.26.10.2015 in CG No.286/2015 of CGRF, Orders dt.18.06.2016 in CG No. 323/2015, CG No. 648/2015-16 dt.23.2.2016 and the Respondents filed counter affidavit in the Writ Petition and thus, they are justifying their inaction in implementing the orders. Pending the Writ Petition, the Appellant preferred the present Appeal against orders dt.28.4.2017 in CG No.932/2016-17. Since the Writ Petition is filed for implementation of the orders in CG No.286/2015 etc., the present Appeal would therefore become vulnerable from being termed as not maintainable. If no orders are passed relating to the present impugned orders, these orders would stand, which in effect would direct the earlier orders which are subject matter of the Writ Petition, be not implemented. To avoid this risk which may cause extreme prejudice to the Appellant, the questions in controversy are being briefly answered, without touching the matters affecting issues in the Writ Petition. The issues 2 and 3 are answered accordingly.

Issue No.4

29. In view of the findings on issues 1 to 3, the advice given by the CGRF to the Appellant that it should have preferred Writ Petition is found to be unnecessary. Further, the finding of the TSERC in the Review Petition is quite separate from the present Appeal i.e. whether the Clause of the Voltage Surcharge is applicable for the months of June, and July, 2015 in the present case, which is found to have been upheld through the impugned orders, which are found to be totally devoid of merits, not legal and liable to be set aside. The issue No. 4 is answered accordingly.

30. The Appeal is thus allowed as follows:

a. The Appellant is found not liable to pay the Voltage Surcharge for the months of June and July,2015.

b. The Orders of the TSERC in the Review Petition in OP Nos. 76 and 77 of 2015 dt.25.7.2016 have not nullified the Orders dt.26.10.2015 of the CGRF in CG No. 286/15.

c. The Appellant is entitled to and the Respondents are liable to pay compensation for non implementation of the orders dt.26.10.2015 in CG No. 286/2015 as per Clause 2.54 to 2.56 of the Regulation 3 of 2015.

d. The impugned orders are set aside.

31. 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 July, 2017

Sd/-

VIDYUT OMBUDSMAN

1. M/s Sugna Metals Ltd., represented by Sri. Bharat Kumar -Managing Director #1-8-673, Azamabad, Hyderabad - 500 020. Cell : 9391033606.
2. The DE/OP/Vikarabad/TSSPDCL/RR District.
3. The SAO/OP/RR South Circle/TSSPDCL/Hyderabad.
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7. The GM/Revenue/TSSPDCL/Corporate Office/Mint Compound/Hyderabad.

Copy to:

8. The Chairperson, CGRF, Greater Hyderabad Area, TSSPDCL,GTS Colony, Vengal Rao Nagar,Erragadda, Hyderabad.
9. The Secretary, TSERC,5th Floor, Singareni Bhavan, Red Hills, Lakdikapool, Hyderabad.