



BEFORE THE VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA

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

**PRESENT : SRI MOHAMMAD NIZAMUDDIN
VIDYUT OMBUDSMAN**

WEDNESDAY THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO

Appeal No. 27 of 2021-22

Between

M/s. Arkid Ready Mix, Sy.No.6/E, Vattinagulapally, Gandipet, Ranga Reddy District. - 500 075, represented by Sri Harshavardhan Gaddam, Cell: 8008922799, 7036205211.**Appellant**

AND

1. The Assistant Divisional Engineer / Operation / Ibrahimbagh / TSSPDCL / Ranga Reddy District.
2. The Divisional Engineer / Operation / Ibrahimbagh / TSSPDCL / Ranga Reddy District.
3. The Senior Accounts Officer / Operation / Cyber City Circle / TSSPDCL / Ranga Reddy District.
4. The Superintending Engineer / Operation / Cyber City Circle / TSSPDCL / Ranga Reddy District. **Respondents**

This appeal is coming on before me for final hearing on 24.08.2022 in the presence of Kumari Nishtha, authorised representative of the appellant and Sri Balachandrudu - SAO/Cybercity circle, representing the respondents and having stood over for consideration till this day, this Vidyut Ombudsman passed the following:-

AWARD

This appeal is preferred aggrieved by the Award passed by the Consumer Grievances Redressal Forum - Greater Hyderabad Area,

Hyderabad - 45 (in short 'the Forum') of Telangana State Southern Power Distribution Company Limited (in short 'TSSPDCL') in C.G.No. 41/2021-22/Cyber City Circle dt. 22.09.2021.

CASE OF THE APPELLANT BEFORE THE FORUM

2. The case of the appellant is that the appellant industry was released H.T. Service Connection No. CBC 3192 by the respondents with Contracted Maximum Demand (in short 'CMD') of 200 KVA. It started production in November 2019. The appellant was constrained to stop its activity due to objection of the Pollution Control Board (in short 'the Board') with effect from December 2019. The respondents did not serve the Current Consumption (CC) charges bill for November 2019. In April 2021, the appellant, on verification, found that the appellant was due to pay arrears of Rs. 17,66,298/- as in February 2021. But there was no power supply at that time. In spite of making representation, the respondents have not solved the grievance of the appellant. Therefore it is prayed to declare the claim of Rs. 16,63,786/- from December 2020 to February 2021 as illegal and to set aside the same and to direct the respondents to adjust Rs. 1,02,512/- pertaining to November 2019 from Security Deposit of Rs. 2,00,000/-.

CASE OF THE RESPONDENTS BEFORE THE FORUM

3. In the written submissions filed by the respondent No.4, it is, inter-alia, stated that the H.T. Service of the appellant was released on 03.10.2019 for CMD of 200 KVA under HT Category-II. The service was disconnected due to non-payment of C.C. Charges. The service has been terminated w.e.f. 07.10.2020. The net amount payable by the appellant is Rs.12,75,627/-

AWARD OF THE FORUM

4. The learned Forum has rejected the complaint on the ground that the claim of respondents vide letters dt.12.06.2020 and 14.07.2021 is within the period of limitation and hence the appellant is liable to pay an amount of Rs.12,75,627/- to the respondents duly adjusting the interest on Security Deposit of Rs. 2,00,000/-

5. Aggrieved by the Award passed by the Forum, the present appeal is preferred, contending among other things, that the learned Forum has rejected the complaint without applying its legal mind properly on the facts on record and without properly considering the provisions of the Act.

GROUND OF THE APPEAL

6. In the grounds of appeal, it is, inter-alia, submitted that as per Clause 6 of H.T. agreement dt.13.06.2019 entered into between the parties, the period of agreement for one year is from 13.06.2019 to 12.06.2020. As per

Clause 5.9.4.3 of GTCS, if the consumer fails to regularise its account within three months from the date of disconnection, the H.T. agreement shall be terminated by giving one month notice after completion of three months period. The amount of Rs. 8,53,859/- excess claim is not deducted. No power was supplied and C.C. charges bills were issued from December 2019 to 14.07.2021. Under Section 56(2) of the Act no sum is recoverable unless it is shown as arrears in the C.C. charges bill. In the present case since respondent No.1 did not raise any bill from December 2019 onwards, the respondents are not entitled to claim the impugned claim. Therefore it is prayed to set aside the impugned Award, to declare the claim of Rs. 16.63,786/- as illegal and consequently to set aside the same and also to direct the respondents to adjust Rs.1,02,512/- pertaining to November 2019 from Security Deposit of Rs. 2,00,000/- plus interest therein and return the balance amount.

WRITTEN SUBMISSION OF RESPONDENT No.4

7. In the written submission of respondent No.4, before this Authority, it is stated that after termination of agreement w.e.f. 07.10.2020, the appellant is liable to pay Rs.12,75,627/-. The demand for Rs.8,53,859.50 was withdrawn. The Security Deposit was adjusted. It is accordingly prayed to dismiss the appeal.

8. Heard both sides.

POINTS

9. The points that arise for consideration are:-

- i) Whether the claim of Rs.16,63,786/- is liable to be set aside and the respondents are liable to adjust Rs.1,02,512/- including the Security Deposit, as prayed for?
- ii) Whether the impugned Award is liable to be set aside? and
- iii) To what relief?

SETTLEMENT BY MUTUAL AGREEMENT

10. Both the parties have appeared before this Authority on 24.08.2022. Efforts were made to reach a settlement between the parties through the process of conciliation and mediation. However, no settlement could be reached. The hearing, therefore, continued to provide reasonable opportunity to both the parties to put-forth their case and they were heard.

REASONS FOR DELAY IN DISPOSING OF THE APPEAL

11. Since I took charge as Vidyut Ombudsman on 01.07.2022 and since there was no regular Vidyut Ombudsman earlier, the appeal was not disposed of within the prescribed period.

POINT No. (i) to (iv)

ADMITTED FACTS

12. The appellant has entered into an agreement with the Licensee-respondents on 13.06.2019, in respect of Service Connection No. CBC3192 with CMD of 200 KVA. The power supply was released on 03.10.2019. The appellant constrained to stop the activity of the unit due to the objection raised by the Board. The respondents have disconnected the Service Connection of the appellant. The agreement was terminated.

13. As per the records, the appellant availed supply of energy for only one month i.e., November 2019. The supply was disconnected in view of the objection raised by the Board and the dues were pending. Clause (5) of the agreement dt.13.06.2019 between the parties goes to show that from the date of supply of energy to the appellant, the agreement comes into effect. Like-wise as per Clause (10) of the said agreement even if there is no supply of energy, the appellant is bound to pay the minimum charges. That apart as per Clause (6) of the agreement, the appellant agreed to avail supply of electricity for a period of one year. The record shows that the HT agreement was terminated on 07.10.2020. The minimum HT agreement period is one year as per the GTCS Clause 5.9.4.3 i.e. from 03.10.2019 to 02.10.2020. The Clause 5.9.4.3 of GTCS envisages the Licensee to levy the monthly minimum charges for one year upto 02.10.2020, even though there is no power supply for such period. The amount raised after 02.10.2020

(completion of one year of the agreement) is liable to be withdrawn, thereby an amount of Rs 8,53,860/- is liable to be deducted from the final bill. The amount payable now is as under :-

1. CC dues up to May 21 cc bill	:Rs 21,15,269.00
2. Demand to be withdrawn from 10/2020 to 05/2021 CC bills after termination	: Rs (-) 8,53,859.50
3. Available Security Deposit	: Rs (-) 2,00,000.00
4. Surcharge amount on total arrears from 08.10.20 to 30.06.2021	: Rs (+) 1,49,245.49
5. Demand to be raised as per final readings	: <u>Rs (+) 64,972.00</u>
6. Balance amount after adjustment of CC (1-2-3+4+5)	: <u>Rs. 12,75,627.00</u>

14. The learned authorised representative of the appellant has argued that the amount due cannot be recovered from the appellant-consumer pending beyond two years unless it was shown as arrears of charges as required under Section 56(2) of the Act. At this stage it is necessary to refer to Section 56(2) of the Act which is as under:-

“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

There is no dispute about the provision Section 56(2) of the Act. In the present appeal due to the order issued by the Board, the appellant-industry stopped its activity within two months of its commencement. Therefore in view of the

agreement between the parties herein the appellant is liable to pay the one year minimum charges etc. The appellant has not paid any amount since the release of supply. The claim is not hit by Section 56(2) of the Act since the due date for recovery of the amount is within (2) years.

15. The learned authorised representative of the appellant has relied upon the judgement of the Hon'ble Supreme Court in ASST. ENGINEER (DI), AJMER VIDYUT VITRAN NIGAM LTD., and ANR v. RAHAMATHULLAH KHAN alias RAHANJULLA (Civil Appeal No. 1672 of 2020 dt.18.02.2020). The Hon'ble Supreme Court in the said case was dealing with the question as to the period of limitation to recover the electricity charges and the Hon'ble Supreme Court has held that the said period would commence from the date on which the electricity charges became "first due" under Sub-section (2) of Section 56 of the Act. There is no dispute about the said proposition. But that principle is not applicable in the instant case inasmuch as soon after its commencement of the activity of the appellant, due to intervention of the Board the activity of the appellant was stopped and the next process of disconnection of power and termination of Service Connection supply etc., went on. Hence the said judgement has no application in this case.

16. The learned authorised representative of the appellant has also relied upon the judgement of the Hon'ble Supreme Court reported in RAYMOND LIMITED v. MADHYA PRADESH ELECTRICITY BOARD¹ wherein it is held in Para No. 10 as under :-

“ The minimum guarantee, thus, appears to be not in terms of any fixed or stipulated amount but in terms of merely the energy to be consumed. The right, therefore, of the Board to demand the minimum guaranteed charges, by the very terms of the language in the contract as well as the one used in the tariff notification is made enforceable depending upon a corresponding duty, impliedly undertaken to supply electrical energy at least to that extent, and not otherwise.”

The Hon'ble Supreme Court in the said judgement was dealing with a case where the electricity Board is entitled to demand charges from a consumer provided it supplied the electrical energy to that extent. There is no dispute above the said proposition. But in the present case that question does not arise. Owing to the order of the Board, the appellant industry stopped functioning. As per the terms of the agreement the Licensee (respondents) claimed the minimum charges. Therefore, this judgement is not useful to the appellant.

17. The learned Forum has considered the material on record properly and came to the correct conclusion and rejected the complaint. Accordingly, I hold that the claim of Rs. 16,63,768/- is not liable to be set aside and the respondents are not liable to adjust Rs.1,02,512/- including the Security Deposit as prayed for. The impugned Award is not liable to be set aside.

¹ LAWS (SC) - 2000-11-99

These points are accordingly decided against the appellant and in favour of the respondents.

POINT No. (iii)

18. In view of the findings on point No. (i) and (ii), the Award of the Forum is not liable to be set aside.

RESULT

19. In the result, the appeal is rejected without costs. The appellant is liable to pay Rs.12,75,627/-.

A copy of this Award is made available at <https://vidyutombudsman-tserc.gov.in>.

Typed to my dictation by Office Executive-cum-Computer Operator, corrected and pronounced by me on this the 14th day of September 2022.

Sd/-

Vidyut Ombudsman

1. M/s. Arkid Ready Mix, Sy.No.6/E, Vattinagulapally, Gandipet, Ranga Reddy District. - 500 075, represented by Sri Harshavardhan Gaddam, Cell: 8008922799, 7036205211.
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5. The Superintending Engineer / Operation / Cyber City Circle / TSSPDCL / Ranga Reddy District.

Copy to

6. The Chairperson, Consumer Grievances Redressal Forum- GHA,Erragadda, Hyderabad.

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