



VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA
First Floor 33/11 kV substation, Hyderabad Boats Club Lane
Lumbini Park, Hyderabad - 500 063

:: Present:: Smt. UDAYA GOURI

Wednesday the Twenty Second Day of January 2020

Appeal No. 28 of 2019-20

Preferred against Order dt.30.10.2019 of CGRF
in CG No.433/2019-20 of Rajendra Nagar Circle

Between

M/s. Deevya Shakti Paper Mills Private Limited, (Represented by its Director
Sri. Gaurav Agarwal), Sy No.252, Gaganpahad, Hyderabad - 501 323
Cell: 8008650909, 7036205211.

... Appellant

AND

1. The ADE/OP/Gaganpahad/TSSPDCL/RR Dist.
2. The DE/OP/Rajendra Nagar/TSSPDCL/RR Dist.
3. The SAO/OP/Rajendra Nagar Circle/TSSPDCL/ RR dist.
4. The SE/OP/Rajendra Nagar Circle/TSSPDCL/RR Dist.

... Respondents

The above appeal filed on 13.11.2019, coming up for final hearing before the Vidyut Ombudsman, Telangana State on 24.12.2019 at Hyderabad in the presence of Kum. Nishtha - on behalf of Appellant company and Sri. G. Lokeshwaraiah - SAO/OP/Rajendra Nagar and Sri. M.S.Chandra Mouli - JAO/HT/Rajendra Nagar for the Respondents and having considered the record and submissions of both parties, the Vidyut Ombudsman passed the following;

AWARD

This is an Appeal against the orders of the CGRF Rajendra Nagar circle in CG No. 433 of 2019-20 dt: 30.10.2019.

2. The Appellant contended that they have filed a complaint before the CGRF, Rajendranagar Circle for refund of Rs 79,20,000/- along with interest @ 24% P.A. which was paid by them to the TSSPDCL towards Development charges at an early

date due to oversight towards the service connection No. RJN 759 which was of HT Category standing in the name of M/s. Deevya Shakti Paper Mills Pvt. Ltd and that the learned CGRF failed to appreciate their grievance and the submissions made by them and hence rejected the said complaint, as such they filed the present Appeal.

3. The Appellant averred in his Appeal that the Appellant namely M/s. Deevya Shakti Paper Mills Pvt. Ltd. is a registered company having a HT consumer bearing HT No. RJN 759 with a Contracted Maximum Demand (CMD) of 660 KVA for supply of energy and demand from the Respondents. They stated that they filed CG No. 433 of 2019-20 with a prayer to refund Rs 79,20,000/- collected towards Development Charges @ Rs 1200/- per KVA pertaining to the period from Nov'2007 to Sep'2009 and that the Respondents have appeared before the CGRF at the time of hearing and filed their counter vide Lr.No.SE/OP/RJNR/SAO/HT/D.No.176/2019 dt: 16.09.2019 and the learned CGRF rejected their complaint on the basis of the contentions of the Respondent Nos 2 and 3 with regarding to Clause 2.37(a) of Regulation 3 of 2015 without considering the following facts raised by them, more specifically pertaining to the provisions of Regulation 3 of 2004 dt: 05.03.2004 :-

- a. The Hon'ble High Court vide Its order dt: 05.10.2010 passed in WP No.4010,4013,4328,24082 and 25597 of 2005 set aside the order of the then Hon'ble APERC regarding deletion of Clause 5 to 11 of Regulation 3 of 2004.
- b. That there was a similar plea raised by a stakeholder before the Hon'ble High Court vide WP No. 9828 of 2015 and the Hon'ble High Court pleased to pass order dt.08.04.2015 similar to the common order dt: 05.10.2010 of WP No. 4010,4013,4328, 24082 and 25597 of 2005 even though the W.A.No.872 of 2011 was pending before the Hon'ble Divisional Bench of the Hon'ble High Court.
- c. The CGRF has failed to understand the interpretation of the Clause 2.37(a) of Regulation 3 of 2015 which is saying “ whether proceeding in respect of the same matter or issue between the same complainant and the licensee are pending before the court, tribunal, arbitrator or any other authorities or a decree or final order has already been passed by any such court, tribunal. Arbitrator or authority as the case may be.”

The Appellant contended that it is pertinent to note at this juncture It is pertinent to note at this juncture that the Appellant is not a party in the above said WPs and W.A. even though the Respondent No.1 assumed on its own that this Appellant is a party in the said WPs and WA.

That the Hon'ble Forum-II could not interpret properly the clause 2.37(a) of Regulation 3 of 2015 while rejecting the complaint, However, it is submitted that the Writ Appeal No. 872 of 2011 dt.31.10.2011 is between Transmission Corporation of A.P.Limited, Petitioner and M/s. G.S. Oil, Radha Iron Works and Garg Steel and Jairaj Ispat respectively, hence, the Appellant company is no where concerned to the above stated Writ Petitions and Writ Appeal hence, this Appellant should not have been considered by the Hon'ble CGRF as a party in the said WP and WA as prescribed in Clause 2.37(a) before rejecting the complaint. Hence, the said rejection of the CGRF is illegal.

In view of the above said facts, the Appellant pray to allow the present appeal directing the Respondents:-

- a. To set aside the order dt.31.10.2019 passed in CG No. 433/2019-20/Rajendra Nagar Circle by the CGRF.
- b. To refund Rs 79,20,000/- with interest @ 24% P.A. as prescribed in Clause 4.7.3 of Regulation 5 of 2004 dt.17.03.2004 w.e.f. Date of payment to date of refund and
- c. Any other order or orders as deemed fit and proper by the Hon'ble Vidyut Ombudsman under the circumstances of the case and in the interest of justice and fair play.

4. Reply of the Respondents

The Appellant is the HT consumer M/s. Deevya Shakti Paper Mills Pvt. Ltd. bearing SC No. RJN759 released on 17.02.2009 under Category IA phased manner with CMD of 2000 KVA initially on 17.02.2009 and 3010 KVA in 2nd phase on 03/04/2009 making total of 5010 KVA further consumer applied for additional load of 1590 KVA (990KVA+600 KVA) making total load of 6600 KVA accordingly consumer has paid the development charges as per Tariff Order and as per Clause 5.3.3.1 of GTCS.

That, by a common order dt.05.10.2010 the Commission deleted clauses 5 to 11 of Regulation 3 of 2004 permanently with effect from the date of the said regulation come into force. The Hon'ble High Court has passed its order in WP Nos.4010,4013,4328,24082 and 25597 of 2005 on 05.10.2010 declared that the said order is non-est in the eye of the law and directed the Commission to make a fresh regulation under Section 46 of the Act.

In accordance with the directions of the Hon'ble High Court various consumers approached the Hon'ble High Court and filed Writ Petitioners for refund of security deposit, inturn DISCOM is also filed Writ Appeals against each and every Writ Petitioner which was still pending in Hon'ble Court of Telangana. This Office is unable to take any action in the present case until final orders will be issued by Hon'ble High Court of Telangana in this subject.

Therefore, in view of the above submission it is requested to arrange to dismiss the grievance of the consumer, as the case is pending at the Hon'ble High Court of Telangana, or pass such other suitable orders in this matter.

5. Rejoinder of the Appellant.

In reply to para No.1

That the Respondent No.4 categorically admitted that the Appellant has paid Development Charges for CMD of 6600 KVA. Please note that the Appellant has paid @ Rs 1200/- per KVA for 6600 KVA.

In reply to para No.2

That the Respondent No.4 categorically admitted that the Hon'ble High Court retained the Clause 5 to 11 of Regulation 3 of 2004.

That the original Regulation 3 of 2004 dt. 05.03.2004 did not empower the Respondents to collect any Development Charges @ Rs 1200/- per KVA. Hence, the collection of Development Charges for 6600 KVA @ 1200/- per KVA is not correct, illegal and liable to be refunded.

In respect of Clause 5 to 11 of Regulation 3 of 2004. The Hon'ble High Court retained the said clauses in the Regulation vide its order dt. 05.10.2010 in WP No.4010 of 2005 and batch. Again vide its order dt.18.04.2015 in WP No. 9828 of 2015.

It is pertinent to note at this juncture that W.A.No. 872 of 2011 is pending since 24.12.2010 before Hon'ble Divisional Bench of Hon'ble High Court of Telangana. Even though subsequently the Hon'ble Single Judge of Hon'ble High Court has passed the order on 18.04.2015 in WP No. 9828 of 2015 mentioning that "the present Writ Petition is also allowed in terms of the ratio laid down by the Single Judge of this Court in the said common order dt.05.10.2010 of WP No. 4010 of 2005 and batch."

Since the Hon'ble Single Judge of Hon'ble High Court passed the order on 18.04.2015 even though the W.A.No.872 of 2011 was pending before Hon'ble Division Bench of Hon'ble High Court as on 18.04.2015, this Hon'ble Authority also have the jurisdiction to proceed with the present appeal and pass the award based on the merits of the Appeal.

That even if we assume that the Clause 5 to 11 of Regulation 3 of 2004 are deleted in W.A. order even though the remaining part of the said Regulation will not empower the Respondents to claim Development Charges of Rs 1200/- per KVA.

In reply to Paras 3 to 4:

That the Hon'ble Supreme Court has passed the order dt: 05.05.1998 between Indian Bank (Petitioner) Vs. Maharashtra State Cooperative Marketing Federation Ltd. (Respondents) which is based on Section 10 of Civil Procedure Code (CPC) 1908. The relevant portion of finding of Hon'ble Supreme Court is extracted here under for consideration of this Hon'ble Authority:-

"The provision of Section 10 is in the nature of a rule of procedure and does not affect the jurisdiction of the court to entertain and deal with the later suit nor does it create any substantive right in the matters. It is not a bar to the institution of a suit. The course of action which the court has to follow according to Section 10 is not to proceed with the "trial" of the suit but does not mean that it cannot deal with subsequent suit any more or for any other purpose.

This provision contained in Section 10 is applicable to all category of cases."

In view of the above, Appellant pray to this Hon'ble Authority to allow the Appeal as prayed for.

6. Arguments filed by the Appellant

The present appeal is filed in respect of claim of Development Charges of Rs 79,20,000/- for CMD of 6600 KVA during the period from Nov'2007 to Sep'2009. The Hon'ble High Court vide its order dt.05.10.2010 in WP No. 4010,4013,4328,24082 and 25597 of 205 set aside the claim of Development Charges.

Aggrieved by the said order the Respondents filed W.A.No.872 of 2011 before the Hon'ble Divisional Bench of Hon'ble High Court which is still pending.

Meanwhile, even when the W.A.No.872 of 2011 was pending as on 08.04.2015, the Hon'ble Single Judge of Hon'ble High Court in similar case vide its order dt: 08.04.2015 of WP No. 9828 of 2015 passed the order in line with its earlier order dt. 05.10.2010 and allowed the WP No. 9828 of 2015.

The Hon'ble Supreme Court in its order dt: 05.05.1998 given its finding on Section 10 of CPC which is as follows:-

“The provision of Section 10 is in the nature of a rule of procedure and does not affect the jurisdiction of the court to entertain and deal with the later suit nor does it create any substantive right in the matters. It is not a bar to the institution of a suit. The course of action which the court has to follow according to Section 10 is not to proceed with the “trial” of the suit but does not mean that it cannot deal with subsequent suit any more or for any other purpose.

This provision contained in Section 10 is applicable to all category of cases.”

Section 11 of CPC is extracted hereunder:-

No Court shall try any suit or issue in which the matter directly or substantially in issue has been directly or substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised and has been heard and finally decided by such court.”

The interpretation and applicability will be as follows:-

The doctrine of Res Judicata has been defined in Section 11 of the Civil Procedure Code. The doctrine of the Rs Judicata means the matter is already judged. It means that no Court will have the power to try any fresh suit or issues which has been already settled in the former suit between the same parties.

In the present Appeal the Appellant is not a party in Writ Petition or not a party In Writ Appeal. Hence, the doctrine of Res Judicata does not not apply in the present Appeal.

Arguments heard.

7. In the face of the above contentions of the Appellant and the Respondents the following issues are framed:-

Issues

1. Whether the Development Charges paid by the Appellant of Rs 79,20,000/- for the period from Nov'2007 to Sep'2009 is entitled for refund ? and
2. To what relief?

Issue No.1

8. A perusal of the evidence on the record shows that The Appellant M/s. Deevya Shakthi paper Mills Pvt Ltd. filed this appeal for refund of Development charges paid over the period from 2007 to 2009 for the total CMD of 6600 KVA for an amount of Rs 79,20,000/- with interest @ 24% per annum. The CMD of 6600 KVA was released intermittently with initial CMD of 2000 KVA, subsequently were released additional loads of 3010 KVA and 1590 KVA making total CMD of 6600 KVA, the Respondents charged Rs 79,20,000/-towards Development Charges @ Rs 1200/- per KVA. The CGRF disposed the Appeal of the Appellant based on the Clause 2.37(a) of Regulation 3 of 2015 stating that the appeal is not maintainable in view of the Writ Appeal No. 872 of 2011 on the same subject is still pending before the Hon'ble High Court.

The Appellant claimed that the Writ Appeal No. 872 of 2011 dt.31.10.2011 is between Transmission Corporation if A.P.Limited, Petitioner and M/s. G.S. Oil, Radha Iron Works and Garg Steel and Jairaj Ispat respectively, hence, the Appellant company is no where concerned to the above stated Writ

Petitions and Writ Appeal, that Hon'ble High Court given directions in WP No. 9828 of 2015 filed by some other stakeholder M/s. Kedia Ispat Limited, seeking collection of development charges as illegal arbitrary, irrational and contrary to Sections 43 and 46 of Electricity Act'2003, wherein the Hon'ble High Court allowed the Writ Petition in terms of the ratio laid down by the learned single Judge of this Court in the said Common Order dt.05.10.2010 in WP No. 4010 of 2005 and batch. The Appellant claimed that the Hon'ble High Court given directions even though the W.A.No. 872 of 2011 was pending before the Hon'ble Divisional Bench of the Hon'ble High Court. Taking que of the above, the Appellant pleaded that disqualification of his appeal in view of pending case in W.A.No. 872 of 2011 is not reasonable and the Clause 2.37(a) of Regulation 3 of 2015 is not applicable to the present case since they are not party in the said W.Ps and W.A.

9. A perusal of the dispute shows that the Appellant opposed the levy of Development charges on the Contracted Maximum Demand of 6600 KVA. Section 43 of the Electricity Act 2003, vested the State Commission with the power to authorise the distribution licensee to recover the expenses reasonably incurred in providing any electrical line or electrical plant used for the purpose of giving supply to a person. The Hon'ble Commission notified Regulation No. 3 of 2004 dt.05.03.2004 - *Licensees duty for supply of electricity on request and recovery of expenses for providing of electric line or electrical plant* based on the Section 43 of the Electricity Act,.

Subsequently in R.P.Nos. 1 to 4 of 2005 filed by the Distribution Licensees, the Commission deleted Clauses 5 to 11 of the said Regulation 3 of 2004 permanently w.e.f. the date of the said Regulation came into force. Against the above, some of the stakeholders filed Writ Petitions in the Hon'ble High Court. Subsequently, in the common order dt.05.10.2010, the Hon'ble High Court passed the orders in WP Nos. 4010, 4013, 4328, 24082 and 25597 of 2005 reproduced hereunder :-

“Further, the Distribution Companies were directed to file all relevant data with the Commission within 60 days of the issue of the order, till a separate regulation under section 46 of the Act is made. Since the clauses in question are not notified as required under Section 181 and were not placed before the Legislature of the State for its approval, the deletion shall be treated as non est in the eye of law. Therefore applying such a law

and making demands for payment of notional development charges for new connections and for additional loads is arbitrary and illegal.”

However, the Transmission Corporation of A.P. Ltd. and Erstwhile APNPDCL filed Writ Appeal against the above given orders in the WP No. 4010 of 2005 and the Batch, vide W.A.No.872/2011, which is still pending in the Hon’ble High Court of Telangana. In view of the said writ appeal pending, the CGRF disposed the present appeal of the Appellant stating that it is not maintainable under Clause 2.37 (a) of Regulation 3 of 2015.

Following the directions given by the Hon’ble High Court in WP No. 4010 of 2005 and the Batch, the Hon’ble Commission notified Regulation 4 of 2013 duly repealing the Regulation No. 3 of 2004. The relevant extract of the introduction of Regulation 4 of 2013 is extracted here under:-

“ In this regard the Commission notified Regulation No. 3 of 2004. However by a common order dt.24.08.2005, in R.P.No.1 to 4 of 2005 filed by the Distribution Licensees, the Commission deleted clauses 5 to 11 of the said Regulation No. 3 of 2004 permanently w.e.f. the date of said Regulation came into force. The Hon’ble High Court passed its order in WP No. 4010,4013,4328,24082 and 25597 on 05.10.2010 declared that the said order is non-est in the eye of law and directed the Commission to make a fresh regulation under Section 46 of the Act.

In accordance with the direction of the Hon’ble High Court a comprehensive draft Regulation was made duly repealing the Regulation No. 3 of 2004. The draft Regulation was hosted in the Commission’s website seeking comments/suggestions from interested persons and all stakeholders. Public hearing was conducted on 17.06.2013. Considering all comments/suggestions. The Commission issues the following Regulation:

In exercise of the powers conferred by Clause (t) of Sub Section (2) of Section (1) of Section 43 and Subsection (1) of Section 181 read with section 46 of the Electricity Act’2003 (36 of 2003) and all powers, enabling It in that behalf, the Andhra Pradesh Electricity Regulatory Commission hereby makes the following Regulation, namely:-”.....

The relevant provisions towards Development Charges introduced in the Regulation 4 of 2013 under Clause 8 is reproduced here under:-

Clause 8: Specific provision for development charges:-

1. The Distribution Licensee shall collect development charges subject to the provisions of the Act and this regulation and subject to such directions, orders or guidelines, the Commission may issue from time to time. The Distribution Licensee is authorised to recover from an applicant, requiring supply of electricity, expenses on normative basis towards part of upstream network cost that the Distribution Licensee has already incurred or to be incurrent in extending power supply to the applicant.

2. The development charges on normative basis are arrived using shallow approach limiting the network cost to the next immediate higher voltage level. The Distribution Licensee shall levy development charges on per kVA/kW basis as per the schedule (Annexure-I) enclosed.

The referred Annexure-I of the regulation 4 of 2013, wherein schedule of development charges based on the category of the service is mentioned which is reproduced here under:-

July 29, 2013] ANDHRA PRADESH GAZETTE EXTRAORDINARY 7

Annexure-I
Schedule of Development Charges

| Tariff Category | Category of Service | Proposed Development Charges |
|-----------------|-----------------------------------|--|
| HT | HT Services | 11 kV - Rs.1,200/- per kVA or part thereof, of the Contracted Demand 33 kV - Rs.1,200/- per kVA or part thereof, of the Contracted Demand Above 33 kV - Rs 1,000/- per kVA or part thereof, of the Contracted Demand |
| LT-I | Domestic Services | |
| | i) Upto 500 watts Contracted load | Rs.600/- |
| | ii) 501 watts to 1000 watts | Rs.1,200/- per Service |
| | iii) Above 1000 watts | Rs.1,200/- + Rs.1,200/- per kW or part thereof of Contracted Load |
| LT-II | Non-Domestic/Commercial Services | |
| | i) Upto 250 watts Contracted Load | Rs.300/- |
| | ii) 251 watts to 500 watts | Rs.600/- |
| | iii) 500 to 1000 watts | Rs.1,200/- |
| | iv) Above 1000 watts | Rs.1,200/- + Rs.1,200/- per kW or part thereof of Contracted Load |
| | All other LT categories | Rs.1,200/- per kW or part thereof of Contracted Load |

(BY ORDER OF THE COMMISSION)

Hyderabad,
19-07-2013.

M.D.MANO HAR RAJU,
Commission Secretary.

Hence, it is clear that following the directions issued by the Hon'ble High Court passed in its order in WP No. 4010,4013,4328,24082 and 25597 on 05.10.2010, the Commission made fresh regulation under Section 46 of the Act. The Hon'ble Commission issued the above given Regulation No.4 of 2013 and notified the rates of Development Charges. The directions in the WP No. 9828 of 2015 is allowed in terms of the orders given in WP No. 4010 of 2005 and batch. Honouring the orders in WP No. 4010 of 2005 and batch, the Commission given clear mandate as per Annexure - I of Regulation 4 of 2013 and Clause 8(1) and 8(2) to collect the Development Charges for new services and additional loads under different category of services for HT services and LT services. Thereby the claim of the Appellant to withdraw the development charges paid for the total CMD of 6600 KVA for an amount of Rs 79,20,000/- is not tenable, this is subject to the outcome of the WA No. 872/2011 in the Hon'ble High Court. Hence decides this issue against the Appellant.

Issue No.2

10. In the result the Appeal is dismissed subject to the outcome of the Writ Appeal No.872/2011 by the Hon'ble High Court.

TYPED BY Office Executive cum Computer Operator, Corrected, Signed and Pronounced by me on this, the 22nd day of January'2020.

Vidyut Ombudsman

1. M/s. Deevya Shakti Paper Mills Private Limited, (Represented by its Director Sri. Gaurav Agarwal), Sy No.252, Gaganpahad, Hyderabad - 501 323. Cell: 8008650909, 7036205211
2. The ADE/OP/Gaganpahad/TSSPDCL/RR Dist.
3. The DE/OP/Rajendra Nagar/TSSPDCL/RR Dist.
4. The SAO/OP/Rajendra Nagar Circle/TSSPDCL/ RR dist.
5. The SE/OP/Rajendra Nagar Circle/TSSPDCL/RR Dist.

Copy to :

6. The Chairperson, CGRF - GHA, TSSPDCL, Vengal Rao Nagar, Erragadda, Hyderabad.
7. The Secretary, TSERC, 5th Floor Singareni Bhavan, Red Hills, Lakdikapul, Hyd.