



BEFORE THE VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA

First Floor 33/11 kV Substation, Beside Hyderabad Boat Club
Lumbini Park, Hyderabad - 500 063

**PRESENT : SRI MOHAMMAD NIZAMUDDIN
VIDYUT OMBUDSMAN**

MONDAY THE EIGHTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FOUR

Appeal No. 39 of 2023-24

Between

M/s. Mancherial Cement Company (P) Ltd., H.No.8-2-120/86/1/101, Flat No.
101, Padmaja Residency, Road No.2, Banjara Hills, Hyderabad - 500 034.
Contact: 040-23310410.

AND

1. The Divisional Engineer / Operation / Mancherial - 9440811677.
2. The Senior Accounts Officer / Operation / Mancherial - 7901093932.
3. The Superintending Engineer / Operation / Mancherial - 7901093951.
4. The Chief General Manager / Commercial / Warangal - 9440811300.

.....Respondents

This appeal is coming on before me for final hearing on 06.01.2024 in the presence of Sri Deepak Chowdary, Advocate for the appellant and Sri P. Sudheer Rao, Advocate for the respondents and having stood over for consideration, this Vidyut Ombudsman passed the following:-

AWARD

This appeal is preferred aggrieved by the Award in C.G.No.977/2021 dt. 04.09.2023 passed by the Consumer Grievances Redressal Forum, Nizamabad (in short 'the Forum') of Telangana State Northern Power Distribution Company Limited (in short 'TSNPDCL') rejecting the complaint

holding that without finalising the load deration by the Hon'ble High Court, the issue of surcharge cannot be clarified etc.,

CASE OF THE APPELLANT BEFORE THE FORUM

2. The case of the appellant before the learned Forum is that the learned Forum passed an Award in C.G.No.251 of 2017 on 07.03.2018 and directed the respondents to withdraw the excess amounts including surcharges from CC bill with effect from 18.05.2015 which was not implemented. The Writ Petition filed challenging the Award in C.G.No.251 of 2017 is pending before the Hon'ble High Court. The appellant has applied for load deration from 5000 KVA to 500 KVA on 05.09.2019 and the learned Forum has passed an Award in that regard in favour of the appellant but it was not implemented. Therefore the appellant filed C.G.No.913/2021. The respondents have not furnished the details of Late Payment Charges (in short "LPC"). The rates applicable to claim Fuel Surcharge Adjustment (in short 'FSA') are not available, hence the appellant cannot pay the said FSA charges. The appellant took over the present unit from M/s. ACC Ltd., in 2006. A sum of Rs. 21,68,504/- was due by the said ACC Ltd., which is shown as arrears by the respondents. Accordingly it was prayed to give directions to the respondents for resolution of the issues.

WRITTEN SUBMISSIONS OF THE RESPONDENTS

3. In the written reply submitted by respondent No.3, before the learned Forum, it is, inter alia, submitted that they challenged the Award

passed in C.G.No.251 of 2017 vide W.P.No.19082 of 2018 which is pending before the Hon'ble High Court in respect of the deration of load etc., As regards the FSA for the 1st Quarter of 2008-09 to the 1st quarter of 2010-11, cases are pending before the Constitutional Courts. They are claiming FSA charges as per Rules. In respect of arrears of M/s. ACC Ltd., the appellant has agreed to pay the same. W.P.No.15726 of 2020 filed by the appellant before the Hon'ble High Court is also pending. The Hon'ble High Court in the said Writ Petition directed the appellant to pay Rs. 5,51,40,000/- to the respondents in monthly instalments. But the appellant has paid only Rs.51,40,000/-. As per Clause 2.37 of Regulation 3 of 2015 (in short 'the Regulation'), since the same subject matter is pending between the same parties before the Hon'ble High Court the learned Forum has no jurisdiction to adjudicate the complaint. Therefore it was prayed to reject the complaint.

AWARD OF THE FORUM

4. After considering the material on record and after hearing both sides, the learned Forum has rejected the complaint but directed the respondents to clarify the surcharges after finalising the orders of the Hon'ble High Court.

5. Aggrieved by the Award passed by the learned Forum, this appeal is preferred, contending among other things, that Clause 2.37 of Regulation is not applicable. The claim of arrears of the previous owner is

barred by limitation. The Hon'ble High Court has not passed any interim order in W.P.No.19082 of 2018 staying the order of the learned Forum in C.G.No.251 of 2017 in respect of effecting date of deration of Contracted Maximum Demand (in short "CMD") from 8600 KVA to 6500 KVA. The learned Forum has not given an opportunity of personal hearing to the appellant before passing the impugned Award. Therefore it is prayed to set aside the impugned Award and to remand the matter to the learned Forum for fresh consideration in accordance with law.

WRITTEN SUBMISSION OF THE RESPONDENTS

6. In the written reply filed by the respondents before this Authority, they have reiterated the reply filed by respondent No.3 before the learned Forum. They also mentioned the list of Writ Petitions pending before the Hon'ble High Court between the parties. It is accordingly prayed to dismiss the appeal in terms of Clause 2.37 of the Regulation.

7. Initially this appeal was preferred, arraying more respondents than arrayed before the learned Forum. Subsequently the appeal fair copy is filed restricting respondents who were arrayed as the respondents before the learned Forum.

ARGUMENTS

8. The learned Advocate for the appellant has submitted written arguments, contending among other things, that the appellant has requested

for deration of CMD from 8600 KVA to 6500 KVA on 27.12.2014 and respondent No.2 called up the appellant to clear the outstanding dues for effecting such deration; that the appellant filed C.G.No.251 of 2017 before the learned Forum which was decided partly in favour of the appellant; that the appellant filed the Appeal No.30 of 2019 before this Authority to consider the effective date of deration of CMD from 27.01.2015 instead of 18.05.2015; that the said Appeal was closed on 11.07.2018 by this Authority in view of pendency of the Writ Petition before the Hon'ble High Court; that thereafter the appellant challenged the Award of this Authority in the above said Appeal in W.P.No.20879 of 2021; that the appellant challenged the demand notice dt.02.09.2020 issued by respondent No.4 vide W.P.No.15726 of 2020 before the Hon'ble High Court; that the appellant filed C.G.No.913 of 2021 seeking deration of CMD from 5000 KVA to 500 KVA; that the learned Forum directed the respondents on 15.09.2022 to effect the deration from 05.09.2019; that the respondents have challenged the said Award in W.P.No. 97 of 2023 and accordingly it is prayed to allow the appeal.

9. The learned counsel for the respondents has filed written submissions, contending among other things, that several writ petitions are pending before the Hon'ble High Court between the same parties and with the same subject matter and as such it is prayed to reject the appeal under Clause 2.37 of the Regulation.

POINTS

10. The points that arise for consideration are:-

i) Whether the subject matter involved and the parties in C.G.No.977/2021 and also in the Writ Petitions pending before the Hon'ble High Court are one and the same?

ii) Whether the Award of the learned Forum is liable to be set aside? and

iii) To what relief?

POINT Nos. (i) and (ii)

ADMITTED FACTS

11. It is an admitted fact that the respondents have released Service Connection No. MCL-008 (previously ADB-028) which is in the name of appellant at present. It is also an admitted fact that seven Writ Petitions are pending before the Hon'ble High Court.

SETTLEMENT BY MUTUAL AGREEMENT

12. Both the parties have appeared before this Authority on different dates. 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

13. The present appeal was filed on 09.11.2023. This appeal is being disposed of within the period of (60) days as required.

CRUX OF THE MATTER

14. In the complaint before the learned Forum in C.G.No.977 of 2021 the appellant has referred C.G.No.251 of 2017 and also C.G.No.913 of 2021. The claim of the respondents is that the relief sought by the appellant in C.G.No.977 of 2021 and also in both C.G.Nos. 251 of 2017 and 913 of 2021 is one and the same. The learned Forum in the impugned Award has referred the Writ Petitions pending before the Hon'ble High Court and basing on Clause 2.37 of the Regulation did not pass any order granting any major relief claimed in the said complaint. Under these circumstances, it is necessary to refer the relief claimed in C.G.No.251 of 2017. The appellant filed the said C.G.No.251 of 2017 for effecting the date of deration of the load from 8600 KVA to 6500 KVA. Like-wise the appellant also filed C.G.No.913 of 2021 also claiming deration of load from 5000 KVA to 500 KVA and also claiming compensation. It is significant to note that the appellant filed C.G.No. 977 of 2021 before the learned Forum and referred to the Awards passed by the learned Forum in C.G.No.251 of 2017 and C.G.No.913 of 2021. This means the appellant is reiterating in C.G.No.977 of 2021 in respect of the relief claimed in C.G.No.251 of 2017 and also C.G.No.913 of 2021.

15. The award passed in C.G.No.251 of 2017 has generated two Writ Petitions. They are mentioned as under:-

C.G.No.251 of 2017	W.P.No.
<p>Relief claimed: Declare the effective date of load deration from 8600 KVA to 6500 KVA from the billing month of January instead of February 2017.</p>	<p>1) <u>W.P.No.19082 of 2018</u> Aggrieved by the Award passed in C.G.No.251 of 2017, the respondents have preferred this Writ Petition before the Hon'ble High Court which is pending.</p>
<p>Relief granted: Effective date of deration was ordered from 18.05.2015.</p>	<p>2) <u>W.P.No.20879 of 2021</u> The appellat preferred Appeal No. 30 of 2019 before this Authority aggrieved by the effective date of deration from 18.05.2015 instead of 27.01.2015. That appeal was closed by this Authority on 11.07.2018. Aggrieved by this Order the appellat preferred W.P.No.20879 of 2021 before the Hon'ble High Court, which is pending</p>

16. The Award passed in C.G.No.913 of 2021 has generated two Writ Petitions. They are mentioned as under:-

C.G.No.913 of 2021	W.P.No.
<p>Relief claimed: Effecting load deration from 5000 KVA to 500 KVA and also claiming compensation of Rs.77.35 Cr.</p> <p>Relief granted: Deration was ordered but from 05.09.2019.</p> <p>Relief refused: Compensation was not granted.</p>	<p>1) <u>W.P.No.97 of 2023</u></p> <p>Aggrieved by the Award passed in C.G.No.913 of 2021, effecting deration the respondents have preferred this Writ Petition before the Hon'ble High Court which is pending.</p>
	<p>2) <u>W.P.No.17791 of 2023</u></p> <p>The appellant preferred Appeal No. 32 of 2022 before this Authority aggrieved by the refusal to grant compensation.</p> <p>That appeal was rejected by this Authority on 01.03.2023. Aggrieved by this Award the appellant preferred W.P.No.17791 of 2023 before the Hon'ble High Court, which is pending.</p>

In the above (4) Writ Petitions the appellant is either the petitioner or the respondent. Like-wise the respondents herein are also either the petitioners or the respondents in the Writ Petitions before the Hon'ble High Court. The major dispute in the Writ Petitions is between the appellant and the Licensee-respondents is also in respect of deration, apart from other reliefs.

At this stage it is necessary to refer to Clause 2.37 of the Regulation which is under:-

“The Forum may reject the grievance at any stage under the following circumstances:

- a) Where proceedings in respect of the same matter or issue between the same Complainant and the Licensee are pending before any court, tribunal, arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority as the case may be;”

xxxxx

The above said Clause provides that where any dispute is pending before any tribunal or Court etc., between the same parties in respect of the same matter the Forum cannot adjudicate the dispute.

CONCEPT OF CLAUSE 2.37 OF THE REGULATION

17. Normally, the same dispute cannot be adjudicated by different forums or adjudicating authorities. Further the matters before the learned Forum and also this Authority are to be disposed of in a summary manner. In the instant case, when admittedly both parties claim about pendency of Writ Petitions before the Hon’ble High Court, it is not desirable to venture to adjudicate the matters before the Forum or before this Authority. At the cost of repetition, the dispute between the parties herein is substantially the same before the Hon’ble High Court in the Writ Petitions.

18. Apart from the above four Writ Petitions, since more Writ Petitions are also pending before the Hon'ble High Court. They are as under:-

W.P.No.26312 of 2022

19. This Writ Petition was filed by the Licensee-respondents herein against the District Collector and Magistrate and others including the appellant herein seeking direction to respondent Nos. 1 and 2 therein to issue notice of attachment of properties in Sy.No.54/1 and other lands of the appellant.

W.P.No.34580 of 2022

20. This Writ Petition was filed by the appellant herein against the State of Telangana and others including the Licensee-respondents for declaration of proceedings vide RC No.776 of 2021 dt.19.08.2022 issued by the Tahsildar cum Joint Sub-Registrar, Mancheri Mandal and District (respondent No.3 therein) published in Mancheri District Gazette as illegal and arbitrary etc.

W.P.No.15726 of 2020

21. The appellant herein and another have also filed W.P.No.15726 of 2020 against the Licensee-respondents challenging the notice dt.02.09.2020 issued by respondent No.3 herein and also other reliefs in respect of the subject Service Connection.

22. The relief claimed in the present appeal and in C.G.No.977 of 2021, C.G.No.913 of 2021 and also in C.G.No.251 of 2017 is substantially one and

the same in respect of deration of load. The parties are also the same. Therefore the learned Forum is correct in applying Clause 2.37 of the Regulation.

23. Though it was argued on behalf of the appellant that no opportunity was given to the appellant to represent its case before the learned Forum, para No. 4 of the Award in C.G.No.977/2021 shows that opportunity was also given to the appellant. Therefore the said argument cannot be accepted.

24. The learned Counsel of the appellant has relied upon the Revenue Recovery Act, Clauses in the General Terms and Conditions of Supply and also the judgements of the Hon'ble Supreme Court reported in **A.P. Power Coordination Committee v. Lanco Kondapalli Power Ltd.,**¹, **B.K.Educational Services Private Limited v. Parag Gupta and Associates**² **State of Kerala v. V.R.Kalyanikutty** ³ and also a judgement of a Division Bench of the Hon'ble High Court of Bombay at Nagpur Bench reported in **V.A.S.Centre v.State of MAH**⁴. These Judgements and other law relied on by the appellant are helpful to it only when the appeal is decided on merits. Therefore this material is not helpful to the appellant. Therefore I hold, that the subject matter involved and the parties in C.G.No.977/2021 and also in the

¹ (2016) 3 SCC 468

² (2019) 11 SCC 633

³ (1999) 3 SCC 657

⁴ 2007(4) Mh.L.J 249

Writ Petitions pending before the Hon'ble High Court are one and the same and the Award of the learned Forum is not liable to be set aside.

POINT No. (iii)

25. In view of the finding on point Nos. (i) and (ii), the appeal is liable to be rejected.

RESULT

26. In the result, the appeal is rejected, confirming the Award passed by the learned Forum.

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 the 8th day of January 2024.

**Sd/-
Vidyut Ombudsman**

1. M/s. Mancherial Cement Company (P) Ltd., H.No.8-2-120/86/1/101, Flat No. 101, Padmaja Residency, Road No.2, Banjara Hills, Hyderabad - 500 034. Contact: 040-23310410.
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5. The Chief General Manager / Commercial / Warangal - 9440811300.

Copy to

6. The Chairperson, Consumer Grievances Redressal Forum of TSNPDCL-
 , H.No.2-5-58, Head post office, Nakkalagutta, Hanamkonda,
 Warangal-506001

