



BEFORE THE VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA

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

**PRESENT : SRI MOHAMMAD NIZAMUDDIN
VIDYUT OMBUDSMAN**

THURSDAY THE FOURTH DAY OF MAY
TWO THOUSAND AND TWENTY THREE

Appeal No. 45 of 2022-23

Between

M/s.Granules India Ltd., Sy.Nos.160/A,161/E,0162 & 172/A, Gagillapur
Village,Dundigal-Gandimaisamma Mandal, Medchal-Malkajgiri District -
500 043, represented by Sri Ashish Mukherjee, Cell: 9866144166.

.....Appellant

AND

1. The Assistant Divisional Engineer/OP/Shapur Nagar/TSSPDCL/Hyderabad.
2. The Divisional Engineer/OP/Jeedimetla/TSSPDCL/Hyderabad.
3. The Senior Accounts Officer/OP/Medchal Circle/TSSPDCL/Hyderabad.
4. The Superintending Engineer/OP/Medchal Circle/TSSPDCL/Hyderabad.

..... Respondents

This appeal is coming on before me for final hearing on 21.04.2023 in the presence of K.Vishwanatha Gupta, authorised representative of the appellant and Sri G. Madhusudhan Reddy - SAO/OP/Medchal 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 / Order passed by the Consumer Grievances Redressal Forum - II, Greater Hyderabad Area, Hyderabad - 45 (in short 'the Forum') of Telangana State Southern Power Distribution Company Limited (in short 'TSSPDCL') vide

Lr.No.Chairperson / CGRF-II/ Complaint Return-22-23/ TSSPDCL / D.No.890 /2022 dt.02.02.2023, returning the complaint.

CASE OF THE APPELLANT BEFORE THE FORUM

2. The case of the appellant is that it filed a complaint before the Forum in C.G.No.26/2019-20/Medchal Circle and it was disposed of as not maintainable in view of Clause 2.37(a) of Regulation 3 of 2015 of Hon'ble Telangana State Electricity Regulatory Commission (in short 'the Regulation').

3. O.P.No.10 of 2017 was disposed of on 17.07.2018 by the Hon'ble Telangana State Electricity Regulatory Commission. It appears thereafter the Licensee-Petitioner therein filed a Review Petition in I.A.(SR) No.7 of 2020 in R.P.(SR) No.134 of 2018 in O.P.No.10 of 2017 and it was dismissed by the Hon'ble TSERC. As on the date of Award on 17.06.2019 in C.G.No. 26 of 2019-20 no matter was pending with the Hon'ble TSERC. Subsequently, a Review Petition was filed before the Hon'ble TSERC. That petition was returned on the ground that it was presented beyond the period of limitation. Thus the Review Petition was not pending before the TSERC as on the date of rejection of the complaint in C.G.No.26 of 2019 on 17.06.2019.

4. Since the Review Petition was dismissed, the Order of the Commission dt.17.07.2018 stands good. The respondents have not implemented the said order. The pendency of Writ Petition before the Hon'ble High Court is not an obstacle for deciding the present appeal. The method of

discriminatory billing so far done in the present case is to be set aside with instruction to revise the billing deducting solar units from the recorded units of peak intervals (since the DISCOM has already adopted procedure of deducting in respect of incentive Time of Day (in short 'TOD') from May 2017 onwards. Therefore it was requested to implement the order and to adjust the excess amount of Rs.1,12,45,891/- with interest @ 24% p.a. collected up to October 2021 and to stop the discriminatory billing from November 2021. It is also prayed that if the respondents do not refund the amount by adjustment, the appellant may be authorised that the principal and interest @ 24% p.a. in the future bills and pay the balance amount.

AWARD OF THE FORUM

5. The learned Forum has returned the complaint on the ground that the Forum has no jurisdiction to review its own order.

6. Aggrieved by the Award/Order passed by the Forum, the present appeal is preferred, contending among other things, that the rejection of the complaint by the learned Forum is not correct. The appellant is deprived of redressal of its grievance for no fault of the appellant.

WRITTEN SUBMISSION OF RESPONDENTS

7. In the written reply submitted by respondent No.4, it is stated that HT Service MCL 1044 was released in the name of the appellant under H.T.Category-I on 29.03.2003. O.P.No. 10 of 2017 was filed by M/s. Arhyama

Solar Power Pvt.Ltd., Yousufguda,Hyderabad to implement the provisions of Regulation 2 of 2006 as amended from time to time and not to levy TOD charges. That petition was allowed on 17.07.2018 with specific directions. The Licensee filed a Review Petition before the Hon'ble Commission and it was dismissed on 25.01.2021 on the ground that it is barred by limitation. Thereafter W.P.No.6504 of 2021 was filed by the Licensee to suspend the orders in O.P.No.10 of 2017.

8. The H.T.tariffs are applicable for supply of electricity to H.T.Consumers having loads with a contracted demand of 70 KVA and above or having a contracted load exceeding 56 KW/75 HP excluding LT-III Categories. Rupee 1.00/kVah TOD tariff is leviable on energy consumption during the period from 06.00 PM to 10.00 PM in addition to normal energy charges at respective voltages. The consumers who are purchasing power through Open Access from private power generators are eligible for exemption of TOD charges in proportion to the open access units. The solar power is generated during sunlight hours between 10.00 AM and 04.00 PM. Therefore the consumers who are purchasing power through Open Access from the said generators cannot claim for reduction of TOD charges. TOD tariff is mainly intended to reduce overall peak demand in the system and also to ensure Grid discipline. The Hon'ble High Court in W.P.No. 6504 of 2021 passed interim suspension of the order passed by the Hon'ble Commission in O.P.No. 10 of 2017. Therefore till the disposal of W.P.No. 6504 of 2021 the

open access billing settlement is being done by the Licensee with the existing methodology of billing.

ARGUMENTS

9. Heard both sides.

POINTS

10. The points that arise for consideration are:-

- i) Whether the appellant is entitled for refund of the amount with interest of 24% p.a. claimed by it?
- ii) Whether the appeal is maintainable in view of Clause 3.19 (c) and (d) of the Regulation?
- iii) Whether the Review Petition is barred by limitation?
- iv) Whether the Award/Order passed by the learned Forum is liable to be set aside? and?
- v) To what relief?

POINT No. (i) to (iv)

ADMITTED FACTS

11. It is an admitted fact that the respondents have released HT Service MCL 1044 to the appellant on 29.03.2003. It is also an admitted fact that the Hon'ble High Court granted interim suspension in W.P.No.6504 of 2021, touching the same subject.

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 complaint was filed on 27.03.2023. This appeal is being disposed of within the period of (60) days as required.

CRUX OF THE MATTER

14. The present appeal is filed by the appellant M/s. Granules India Ltd., represented by Sri K. Vishwanath Gupta alleging that there is discriminatory billing in the procedure of deducting/not deducting solar units from the recorded units against peak and non peak intervals since May 2017. The appellant, as already stated, has a HT Service Connection bearing service No. MCL 1044, availing Open Access facility by way of solar power from the generator Medak Solar Peak Projects Ltd., from 01.05.2017.

15. The monthly settlements of the bills taking account of solar power consumed units and consumption availed from the DISCOM shall be done as per the procedure laid down in the Regulations - Interim Balancing and Settlement Code for Open Access transactions Regulation No. 2 of 2006 and its subsequent amendments. The relevant Clause of the Regulation is reproduced here-under:-

The Clause 8.3 of Regulation No. 2 of 2006 is as follows:-

“The scheduled energy of a scheduled consumer from an OA generator for each time-block shall be deducted from the recorded energy (in the inter-se order of such generators, as and if intimated by the consumer, in case the consumer is availing of energy from more than one Generator) as a first charge. The balance energy shall be deemed to have been supplied by the DISCOM and shall have to be paid for as per the terms of the supply agreement with the DISCOM and shall have to be paid for as per the terms of the supply agreement with the DISCOM; provided that where there is a deviation between the scheduled capacity and actual capacity being injected at an entry point in a time block, the shortfall, if any, in the capacity allocated to the scheduled consumer shall be deemed to have been drawn by the scheduled consumer from the DISCOM and the energy corresponding to such shortfall as all be paid for by the party which has contracted for the Open Access capacity with the Licensee to the DISCOM under which the Scheduled consumer would normally fall.”

The Clause 10.5 of Regulation 2 of 2006 is as follows:-

“ In case of wind and mini-hydel OA generators the actual generation during the month shall be deemed as scheduled energy. For the purpose of settlement in respect of scheduled /OA consumer availing supply from these OA generators, the actual generation during the month will be apportioned for each time block of the month and deviations reckoned accordingly.”

The Clause 10.5 was amended subsequently which is reproduced here-under:-

“In case of wind, mini-hydel, **Solar** OA generators the actual generation during the month shall be deemed as scheduled energy. For the purpose of settlement in respect of scheduled /OA consumer availing supply from these OA generators, the actual generation during the month will be apportioned for each time block of the month and deviations reckoned accordingly.”

The above given Clause envisages the Licensee the framework towards billing the Open Access consumer availing through Solar power energy along-with the supply from the Licensee.

16. In the similar subject, the Hon'ble TSERC in O.P.No. 10 of 2017 dt.17.07.2018 has given the following directions:-

23. In the result, the petition is disposed-of with the following directions:-

(a) The Respondent shall not levy TOD charges to the extent of energy supplied by OA generator in the specified time blocks on the basis of settlement statement determined in accordance with the Regulation No. 2 of 2006 during TOD timings and correct the billing as per the provisions of the Regulation No.2 of 2006 (as amended).

(b).The petitioner being a generator is specifically not entitled to refund of TOD charges levied by DISCOM as it is the consumer who is entitled for refund.

(c). The DISCOM is duty bound to offer incentive to the consumer relating to energy consumed during non-peak hours as per the terms of Tariff Orders.

(d). The bills generated during the relevant period shall be reconciled by the DISCOM with the consumer. Parties to bear their own costs.

The Licensee notwithstanding the above orders preferred an appeal before the Hon'ble High Court in W.P.No.6504 of 2021, which is pending and interim suspension was granted by the Hon'ble High Court.

17. The appellant preferred the complaint before the learned Forum in C.G.No.26 of 2019-20/Medchal Circle which was disposed rejecting the appeal as not maintainable since a Review Petition was pending before the Hon'ble TSERC against the orders passed in O.P.No.10 of 2017 dt.17.07.2018.

Though the appellant had an option to appeal before this Authority within (45) days from the date of receipt of the Award of the learned Forum with (15) more days extension, the appellant kept silent till filing a Review Petition against the CGRF order No.26 of 2019-20/Medchal Circle dt.17.06.2019, after almost three and half years. The factors in the case on hand show that the appellant filed a Review Petition and not complaint before the Forum on which the impugned order was passed.

18. Though there is no provision to apply the Civil Procedure Code (in short 'the CPC') in the present proceedings or in the proceedings before the learned Forum, it can surely be held that there is no prohibition to apply CPC, in a Review Petition. The relevant provisions of CPC to file Review Petition are Sec.114 and Order 47 CPC. Further Article 124 of Limitation Act prescribes '30 days' limitation to file Review Petition. Admittedly the Award was passed in C.G.No.26 of 2019-2020 on 17.09.2019 and the Review Petition was filed on 23.12.2022. Thus the Review Petition was filed beyond the period of limitation. Further the subject matter is pending before the Hon'ble High Court in W.P.No. 6504 of 2021. The other grounds urged by the appellant are not relevant. Further the Award in Appeal No. 130 of 2013 dt.07.11.2014 is not applicable in the present case, firstly because it was passed by the equal Authority which is not binding on this Authority and also on the ground that it is not directly on the point. Accordingly, I hold that the appellant is not entitled for refund of the amount with interest of 24% p.a. as claimed by it and the appeal is not

maintainable in view of Clause 3.19 (c) and (d) of the Regulation and the Review Petition filed before the learned Forum is barred by limitation and also the Award passed by the learned Forum is not liable to be set aside, though on different grounds.

POINT No. (iv)

19. In view of the findings on point Nos. (i) to (iii), the appeal is liable to be rejected.

RESULT

20. In the result, the appeal is rejected, without costs 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 this the 4th day of May 2023.

Sd/-

Vidyut Ombudsman

1. M/s.Granules India Ltd., Sy.Nos.160/A,161/E,0162 & 172/A, Gagillapur Village,Dundigal-Gandimaisamma Mandal, Medchal-Malkajgiri District - 500 043.
2. The Assistant Divisional Engineer OP/Shapur Nagar / TSSPDCL / Hyderabad.
3. The Divisional Engineer/OP/Jeedimetla/TSSPDCL/Hyderabad.

4. The Senior Accounts Officer/OP/Medchal Circle/TSSPDCL/Hyderabad.
5. The Superintending Engineer/OP/Medchal Circle/TSSPDCL/Hyderabad.

Copy to

6. The Chairperson, Consumer Grievances Redressal Forum of TSSPDCL- Greater Hyderabad Area, Door No.8-3-167/E/1, Central Power Training Institute (CPTI) Premises, TSSPDCL, GTS Colony, Vengal Rao Nagar, Erragadda, Hyderabad - 45.

