



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**

FRIDAY THE SIXTEENTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY FOUR

Appeal No. 50 of 2023-24

Between

M/s. Kakatiya Cement Sugar and Industries Limited, H.No.1-10-140/1,
Peruvancha Village, Kalluru Mandal, Khammam District - 507 209, represented
by Sri P. Veeraiah, Managing Director. Cell: 7981774280.

.....Appellant

AND

1. The Assistant Divisional Engineer/Operation/Penuballi - 8331034987.
2. The Divisional Engineer/Operation/Sathupally - 9440811297.
3. The Senior Accounts Officer/Circle Office/Khammam - 9440811567.
4. The Superintending Engineer/Operation/Khammam - 9440811505.

..... Respondents

This appeal is coming on before me for final hearing on this day in the presence of Miss. Achala Siri, Advocate for the appellant and Sri N.Satish- ADE/Commercial, Sri M. Yadagiri- ADE/OP/Penuballi, Sri L.Ramulu - DE/OP/Sathupally, Sri G. Sridhar - SAO/C.O/Khammam and Sri A. Surrender - SE/OP/Khammam 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 - Warangal (in short 'the Forum') of Telangana State Northern Power Distribution Company Limited (in short

'TSNPDCL') in C.G.No.272/2023-24/Khammam Circle dt.17.10.2023.

CASE OF THE APPELLANT BEFORE THE FORUM

2. The respondents have released power supply to the appellant which is a Public Limited Company vide USC No. KMM1180 under Category HT-VII at Peruvancha Village, Kallur Mandal, Khammam District. Initially the appellant entered into a Power Purchase and Captive Wheeling Agreement (in short "PPA" and "CWA") on 19.02.2002 with the Transmission Corporation of A.P. Ltd., The PPA was renewed on 14.10.2004. The PPA was valid and was in force until 11.04.2022. After expiry of PPA the appellant-sugar factory sought for a new HT Connection and permanent supply of 500 KVA. The TS TRANSCO had accorded approval for extension of supply of Contracted Maximum Demand (in short "CMD") of 500 KVA on 13.04.2022 for which the appellant paid Rs.5,90,000/- as required. The agreement was executed on 13.04.2022 in favour of the TS NPDCL for supply of power for a minimum period of one year. On 10.05.2022 approval for supply of power was accorded on temporary basis under HT Category. But on 11.05.2022 load approval was accorded and technical sanction was given under temporary HT Category-VII arbitrarily. The respondents have levied a sum of Rs.83,29,200/- for temporary connection. The period of temporary power supply under Category-VII expired on 13.11.2022. Prior to the expiry, the appellant once again sought for release of 1500 KVA at 132 KV of power under HT Category - I(A) (Seasonal Industry). The TS TRANSCO vide its letter dt.23.11.2022 accorded approval for a CMD

of 1500 KVA subject to payment of development charges for the balance 1000 KVA. Pursuant of such deposit of amount the TS TRANSCO vide its letter dt.26.11.2022 had directed the Chief General Manager (Commercial) TS NPDCL to release CMD of 1500 KVA under Category-I to the appellant. Despite that, such power was not released. In spite of addressing several letters there was no response from the respondents. Hence it was prayed to direct the respondents to release permanent supply of power under HT Category-I(A) (Seasonal Industry) with CMD of 1500 KVA at 132 KV voltage level with inter-connection to the appellant at Penubally substation.

WRITTEN SUBMISSION OF THE RESPONDENTS BEFORE THE FORUM

3. In the written reply filed by respondent No.4, it is, inter-alia, submitted that the appellant has not paid an amount of Rs.5,00,120/- towards Security Deposit and application charges. The other payments made by the appellant were admitted for release of power supply. It was further submitted that owing to non-payment of pending dues of Rs.66,74,77,281/- the permanent power supply was not released to the appellant. Therefore unless the appellant clears the said dues no permanent power supply will be given to the appellant.

AWARD OF THE FORUM

4. After considering the material on record, the learned Forum has held that the release of power supply to the appellant with a Contracted Load

of 500 KVA at 132 KV voltage level under HT Category-VII (temporary supply) is in order. The prayer of the appellant for release of permanent power supply with a CMD of 1500 KVA from the existing interconnection system at 132/33 KV substation Penubally at Peruvancha Village was rejected on the ground of not clearing the pending arrears by the appellant.

GROUND OF THE APPEAL

5. Aggrieved by the Award passed by the learned Forum, the present appeal is preferred, contending among other things, that the impugned Award is wholly arbitrary, bad in law, based on erroneous observations and considerations and is passed in sheer violation of the principles of natural justice as the learned Forum has failed to give any opportunity of hearing the appellant as mandated under Clause 2.47 of Regulation 3 of 2015 of the Hon'ble Telangana State Electricity Regulatory Commission (in short "the Regulation"); that the sugar manufacturing industry of the appellant with auxiliary consumption at the power plant to it comes under HT Category-I(A) and that the appellant is not due to pay any dues of power supply but the alleged dues pertain to other services of wheeling and unknown arrears. It is accordingly prayed to set aside the impugned Award of the learned Forum and to direct the respondents to release permanent power supply with a Contracted Maximum Demand of 1500 KVA at 132 KV voltage level with inter-connection etc., in Category - IA (Seasonal Industry) to the appellant.

WRITTEN SUBMISSION OF THE RESPONDENTS

6. In the written reply filed by respondent No.4, it is, inter-alia, submitted that due to non-payment of pending dues of Rs.66,74,77,281/-, the permanent power supply to the appellant could not be released. They are extending the power supply with CMD of 500 KVA under HT Category on temporary basis only.

REJOINDER

7. In the rejoinder filed by the appellant, it is, inter-alia, submitted that the appellant was constrained to seek power supply on temporary basis on account of non-release of permanent supply of power by the respondents despite the sanction received from TS TRANSCO vide letter dt.26.11.2022. The appellant filed O.P.No.36 of 2023 before the Hon'ble Telangana State Electricity Regulatory Commission (in short 'the Commission') in respect of claim of Rs.66,74,77,281/-. The appellant is ready to pay Rs.5,00,120/- towards Security Deposit and that the respondents are duty bound to release the power supply to the appellant under Sec.43 of the Electricity Act (in short 'the Act') and other relevant provisions.

WRITTEN SUBMISSION OF THE RESPONDENTS

8. In the written reply dt.15.2.2024, respondent No.4 has submitted that after adjustment from power bills dues of the appellant, an amount of

Rs.12.14 crore is still due towards grid support charges from the appellant.

ARGUMENTS

9. The learned Advocate for the appellant has submitted written arguments, contending among other things, that the learned Forum has not provided any opportunity of hearing to the appellant before passing the impugned Award; that under Sec.43 of the Act the respondents are duty bound to give power supply to the appellant within one month after receipt of application; that the claims of TS SPDCL have no bearing on TS NPDCL, especially for permanent power supply and that the appellant is entitled for permanent supply of power under HT Category-I(A) (Seasonal Industry) with CMD of 1500 KVA. It is accordingly prayed to direct the respondents to release the permanent power supply to the appellant under the said Category.

10. On the other hand, it is argued on behalf of the respondents that the Hon'ble Supreme Court by its judgement dt.29.11.2019 in Civil Appeal No. 8969 of 2003 (Grid Support Charges Batch Matters) held that the Hon'ble Electricity Regulatory Commission is vested with the power to determine the grid support charges; that in view of the judgement of the Hon'ble Supreme Court, vide letter dt.07.01.2021, a (15) day notice was issued to the appellant for payment of Grid Support Charges for the period from 12.04.2002 to 31.03.2008 for an amount of Rs.20.73 crores including interest and that the appellant has filed O.P.No.35 of 2023 before the Hon'ble Commission to

declare the above said amount as barred by limitation and to set aside the notice. It is accordingly prayed to reject the appeal.

POINTS

11. The points that arise for consideration are:-

i) Whether the appellant is entitled for release of permanent supply of power under HT Category-I(A) (Seasonal Industry) with a CMD of 1500 KVA as prayed for?

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

iii) To what relief?

POINT No. (i) and (ii)

ADMITTED FACTS

12. It is an admitted fact that the subject Service Connection was released to the appellant vide USC No.KMM1180 under Category-HT-VII (Temporary Supply). After expiry of PPA the appellant has submitted an application on 07.04.2022 for power supply of CMD of 500 KVA, HT Category-I at 132 KV voltage level. Later, on 10/11/2022 it requested for CMD of 1500 KVA under seasonal Category-HT I(A). The payments made by the appellant as instructed by the TS TRANSCO are as under:-

1.	Rs.5,90,000/-	As per the letter of the Chief Engineer (Commercial and RAC TS TRANSCO vide letter dt.13.04.2022) towards Development Charges.
2.	Rs.83,29,554/-	Paid ON 12/05/2022 towards temporary connection charges for a period of six months
3.	Rs.11,80,000/-	Towards Development Charges for balance 1000 KVA
4.	Rs,45,31,726/-	Bay and Line maintenance charges

These payments were not disputed by the respondents. On 13.04.2022 TS TRANSCO has accorded approval for extension of supply for a CMD of 500 KVA to the appellant and requested the Chief General Manager (Commercial) TSNPDCL to release supply of CMD of 500 KVA under HT Category-I. The TS TRANSCO has accorded approval for extension of supply for a CMD of 1500 KVA to the appellant on 23.11.2022. It is not disputed that respondent No.4 has also issued no dues certificate on 25.11.2022.

SETTLEMENT BY MUTUAL AGREEMENT

13. Both the parties have appeared before this Authority. 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

14. The present appeal was filed on 27.12.2023. This appeal is being disposed of within the period of (60) days as required.

CRUX OF THE MATTER

PRINCIPLES OF NATURAL JUSTICE

15. The literal meaning of natural justice is that parties to the litigation should be given a fair chance to present their case. Initially the principles of natural justice used to be applied to Courts of law alone but later on from the Judicial sphere it extended to the Tribunals exercising quasi-judicial functions and then to the statutory authorities and the administrative authorities who have upon them, the responsibilities of determining civil rights or obligations of the people. Thus the opportunity to provide hearing before making any decision is considered to be a basic requirement for the adjudicating authority. It ensures hearing or consideration of a matter by unbiased and impartial authority.

16. The learned Advocate for the appellant has argued that no opportunity was given by the learned Forum to the appellant to put forth its case and passed the impugned Award. At this stage it is necessary to refer to Clause 2.47 of the Regulation 3 of 2015 which reads as under:-

“The Forum shall be guided by the principles of natural justice strictly, and subject to the other provisions of this Regulation. The Forum shall have the powers to regulate its own procedure.”

A perusal of the entire impugned Award it is crystal clear that no opportunity was given to the appellant to put-forth its case before the learned Forum. Thus

it is manifest that the principles of natural justice were not followed by the learned Forum in spite of specific Clause 2.47 referred to above. On this ground itself the Award of the learned Forum is liable to be set aside.

FINDING OF THE LEARNED FORUM

17. The learned Forum has passed the Award as under:-

Having examination of the petition in detail and the statement of facts of the respondents, considering all the facts and circumstances in detail, all the documents of both sides to the following conclusion and decision thereof:

i. The Service Connection No. HT KMM-180 was released with a contracted load of 500 KVA at 132 KV voltage level under HT Category-VII(temporary supply) by the respondents is in order.

ii. The request of the complainant for release of power supply with CMD of 1500 KVA from the existing interconnection system at 132/33 KV substation Penuballi at Peruvancha Village, Khammam District without clearing the pending arrears is not tenable.

iii. With the above order, the C.G.No.272/2023-24 is hereby closed.

The above Award of the learned Forum shows that it confirmed the release of HT Category-VII Temporary Supply with contracted load of 500 KVA at 132 KVA voltage level. Admittedly the appellant has to pay more electricity Tariff bills if the power supply is under HT Category-VII. The appellant was forced to opt for this Category.

18. As regards the permanent power supply with a CMD of 1500 KVA from the existing inter-connection system at 132/33 KV, the learned Forum has held that it is not tenable unless the appellant clear the pending arrears.

WHAT ARE THE PENDING ARREARS

19. The learned Forum has linked the release of permanent power supply to the pending arrears. Now the point is what are the said pending arrears. In the Award at many places the amount of Rs.66,74,77,281/- is mentioned. Apart from that, respondent No.4 in his written reply filed before this Authority has also mentioned that the reason for not releasing the permanent power supply to the appellant is non-payment of arrears of Rs.66,74,77,281/- by the appellant. Now it is to be seen as to whether such demand is tenable. Admittedly the above said amount pertains to the cement factory of the sister-concern of the appellant at Dandupally Village in Suryapet District. Admittedly, the Hon'ble Commission vide its Order dt.19.12.2023 in I.A.No.10 of 2023 in O.P.No. 36 of 2023 has directed the respondents therein not to take any coercive steps in respect of the said due amount. This clearly indicates that neither the respondent which is TS SPDCL in the said O.P. nor the respondents herein can make any claim in respect of the said amount as long as the said interim order is in force. At the cost of repetition even in the written reply filed respondent No.4 before this Authority, he referred to the said amount of Rs.66,74,77,281/- only. Today respondent No.4 filed another written reply again claiming the said amount of Rs.66,74,77,281/- apart from some other amount. When once the respondents in O.P.No.36 of 2023 themselves were restrained from taking any coercive steps, the respondents herein are not supposed to link the said amount in releasing the power supply on permanent

basis to the appellant. In other words when a party is restrained from doing a particular act, such party is not supposed to do the said act indirectly.

20. If really the appellant is due any amount, there are several legal options to the respondents to proceed. More-over, the record shows that the appellant has also filed OP No.35 of 2023 before the Hon'ble Commission in respect of other disputed amount between the parties. In view of these factors the learned Forum is not correct to link the due amount and release of permanent power supply.

21. The learned Advocate for the appellant has relied upon the judgement of the Hon'ble Supreme Court reported in UNITECH LIMITED & ORS. v. TELANGANA STATE INDUSTRIAL INFRASTRUCTURE CORPORATION (TSIIC) & OTHERS ¹ and also the judgement of the Hon'ble Supreme Court reported in LIC v. CONSUMER EDUCATION & RESEARCH CENTRE ² for the proposition that the respondents being instrumentalities of the State are obliged to operate in a fair and transparent manner within the mandate of Article 14 of the Constitution of India. Basing on these judgements her argument is that the respondents have been deliberately delaying the release of permanent power supply to the appellant and due to release of power supply under Category VII, the appellant is put to hardship in payment of huge tariff. Having regard to the facts and circumstances of the present

¹ (2021) 16 SCC-35

² (1995) 5 SCC-482

case, I hold that there is sufficient force in the argument of the learned Advocate. Thus these judgements are helpful to the appellant.

22. The learned Advocate for the appellant has relied upon the judgement of the Hon'ble High Court of Punjab and Haryana at Chandigarh reported in OM PRAKASH v. BALKAR SINGH & ORS³ for the proposition that electricity is a basic human right and an integral part of right to life as enshrined under Article 21 of the Constitution of India. This judgement also makes it quite clear that there cannot be any delay of denial to the supply of power to the consumers. This judgement is also useful to the appellant.

23. The learned Advocate for the appellant has relied upon the judgement of the Hon'ble Supreme Court reported in K.C.NINAN v. KERALA STATE ELECTRICITY BOARD & ORS.⁴ for the proposition that under Sec.43 of the Act a duty is cast on the DISCOMs to supply electricity, based on the application filed. Relying on this judgement it is argued on behalf of the appellant that the respondents cannot be allowed to operate at their whims and fancies placing onerous and un-reasonable conditions and must respect the statutory stipulations with respect to the supply of electricity to the appellant. There is sufficient force in the argument of the learned Advocate for the appellant. Thus this judgement is also helpful to the appellant.

³ 2022 SCC Online P&H 3733

⁴ 2023 SCC-Online SC -663

24. The learned Advocate for the appellant has relied upon the Judgements of the Hon'ble Supreme Court reported in CHITTOORI SUBBANNA v. KUDAPPA SUBBANNA & Ors.⁵ and GREATER MOHALI AREA DEVELOPMENT AUTHORITY v. MANJU ⁶ for the proposition that the parties to the litigation cannot be permitted to take up the new grounds in haphazard manner. The learned Advocate for the appellant has also relied upon the judgement of the Hon'ble High Court of Bombay reported in JIGAR VIKAMSEY v. BOMBAY STOCK EXCHANGE LTD.,⁷ more or less, for a similar proposition. Basing on these judgements, the learned Advocate for the appellant has argued that the respondents have never raised any contention pertaining to Gird Support Charges except taking such plea in the reply dt.02.01.2024 before this Authority and also before the learned Forum. There is sufficient force in the arguments of the learned Advocate and the respondents are not supposed to take such pleas at a later stage. Therefore these judgements are also helpful to the appellant.

25. The learned Advocate for the appellant has also relied upon the judgement of the Hon'ble Supreme Court reported in STATE OF KERALA v. V.R.KALLIYANIKUTTI⁸ for the proposition that the respondents cannot recover the dues which are barred by limitation. More or less for a similar proposition the learned Advocate for the appellant has also finally relied upon the

⁵ (1965) 2 SCR - 661

⁶ (2010) 4 scc-157

⁷ 2009 SSC online Bom -131

⁸ (1999) SSC-657

judgement of the Hon'ble Supreme Court reported in A.P.POWER COORDINATION COMMITTEE v. LANCO KONDAPALLY POWER LTD.,⁹ As regards the disputed amount O.P.No. 35 of 2023 is pending before the Hon'ble Commission. So at this stage it cannot be concluded as to whether the alleged dues are barred by limitation or not.

ENTITLEMENT OF THE APPELLANT TO PERMANENT POWER SUPPLY UNDER HT CATEGORY IA (SEASONAL INDUSTRY)

26. Now it is to be seen as to whether the appellant is entitled to permanent power supply under HT Category IA (Seasonal Industry) as claimed by it.

27. The record goes to show that initially the appellant has applied for release of power at the existing inter-connection with a CMD of 500 KVA at 132/11 KV voltage level in Penubally Sub-Station in April 2022. Subsequently in November 2022 the appellant had applied for release of power at the existing inter-connection system, with a CMD of 1500 KVA at 132/11 KV Voltage level in Penubally Sub-station under HT Category-IA. At this stage it is necessary to refer to Retail Tariff Order for the financial year 2023-24 which is as under:-

I) Retail Supply Tariff Order for the Financial Year:2023-24

10.16.16 Seasonal Industries coming under HT-I(A)

“2.10 Where a consumer avails supply of energy for manufacture of sugar or ice or salt, decorticating, ginning and pressing, cotton seed oil mills, seed processing, fruit processing, tobacco

⁹ (2016) 3 SCC-468

processing and re-drying and for such other industries or processes as may be approved by the Commission from time to time principally during certain seasons or limited periods in the tariff year and the main plant is regularly closed down during certain months, such consumer shall be charged for the months during which the plant is shutdown (which period shall be referred to as the off-season period)”

HT-II: Others Applicability:

2.11 This tariff is applicable to:

- a. All HT Consumers other than those covered under HT Categories I and III to IX.
- b. Consumers who undertake Non Domestic activity,
- c. Consumers who undertake Commercial activity,
- d. Consumers who avail supply of energy for lighting, fans, heating, air conditioning and power appliances in Commercial or Non- Domestic premises. For example, shops, business houses, offices, public buildings, hospitals, hostels, hotels, choultries, restaurants, clubs, theatres, cinema halls, timber depots, photo studios, printing presses, all servicing & repairing centres (other than that of TSRTC), bus depots (other than that of TSRTC), laundries, dry cleaning units. Gas/oil storage/transfer stations, warehouses, godowns (other than cold storage godowns), storage units or of similar nature and
- e. Educational institutions run by individuals, Non-Government Organizations or Private Trusts and their student hostels are also classified under this category.

HT-II: Others:

- a) The billing demand shall be the maximum demand recorded during the month or 80% of the contracted demand, whichever is higher.
- b) Energy charges will be billed on the basis of actual energy consumption or 25KVAh per KVA of billing demand, whoever is higher.
- c) The power plants availing power for start-up power shall pay demand charges at the rate of 50% of the rate approved for this category.**

From the above clause HT II others(c), it is clearly mentioned the power plants availing power for start-up power will cover under Cat HT II which is rightly explained in the Award of the learned Forum at para XIX(a). Therefore it is HT Category-II which is the correct one. Clause 10.16.16 of the Tariff Order relied on by the appellant is not applicable in the present case as the appellant applied for power supply for auxiliary consumption of sugar and solar based power plant which was clearly mentioned by the appellant in the application applied under TS-ipass initially. Therefore I hold that the appellant is not entitled for release of permanent supply of power under HT Category-I(A) of 1500 KVA and the appellant is entitled for release of permanent power supply under HT Category-II with a CMD of 1500 KVA and the Award of the learned Forum is liable to be set aside. These points are accordingly decided partly in favour of the appellant and against the respondents.

POINT No. (iii)

28. In view of the findings on point Nos. (i) and (ii), the appeal is liable to be allowed to the extent indicated above.

29. From the material on record it appears that there is some dispute between the parties herein in respect of the injected power (export) earlier. In order to avoid any further dispute it is necessary to direct the appellant to give an undertaking that it shall not claim injected power w.e.f. 01.03.2024.

RESULT

30. In the result, the appeal is allowed by setting aside the impugned Award of the learned Forum. The respondents are directed to release permanent power supply with a CMD of 1500 KVA under HT Category-II w.e.f.01.03.2024 to the appellant on payment of necessary charges as required and also with a condition of giving an undertaking by the appellant not to claim the injected power w.e.f. 01.03.2024. The amount already paid shall be adjusted. Compliance shall be filed on or before 15.03.2024.

CMPs are closed.

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 16th day of February 2023.

Sd/-

Vidyut Ombudsman

1. M/s. Kakatiya Cement Sugar and Industries Limited, H.No.1-10-140/1, Peruvancha Village, Kalluru Mandal, Khammam District - 507 209, represented by Sri P. Veeraiah, Managing Director. Cell: 7981774280.
2. The Assistant Divisional Engineer/Operation/Penubally - 8331034987.
3. The Divisional Engineer/Operation/Sathupally - 9440811297.

4. The Senior Accounts Officer/Circle Office/Khammam - 9440811567.

5. The Superintending Engineer/Operation/Khammam - 9440811505.

Copy to

6. The Chairperson, Consumer Grievances Redressal Forum- Rural,
Nakkalagutta, Hanamkonda, Warangal.

