



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

**:: Present:: R. DAMODAR**

Thursday, the Eighth Day of December 2016

Appeal No. 67 of 2016

Preferred against Order Dt. 29-07-2016 of CGRF In

CG.No: 287/2016 of Karimnagar Circle

Between

M/s. ATC Telecom Infrastructure Pvt.Ltd. (formerly known as Viom Networks)  
represented by Sri. B. Srinivas, Gowra Plaza, Door No.1-8-304/308/444,  
4th Floor, Sardar Patel Road, Begumpet, Secunderabad - 500 003.  
Cell No: 9030000560.

**... Appellant**

**AND**

1. The ADE/OP/Godavarikhani/TSNPDCL.
2. The DE/OP/Manthani/TSNPDCL.
3. The AAO/ERO/Godavarikhani/TSNPDCL.
4. The SAO/CO/Karimnagar/TSNPDCL.

**... Respondents**

**The above appeal filed on 02.11.2016 coming up for hearing before the Vidyut Ombudsman, Telangana State on 01.12.2016 at Hyderabad in the presence of Sri. A.R.Subba Rao on behalf of the Appellant Company and Sri. K.Venkateshwarlu - ADE/OP/Godavarikhani, Sri. S.Laxman - AAO/ERO/Godavarikhani for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;**

**AWARD**

The Appellant claims to be a provider of passive telecommunication infrastructure to Telecom Operators across the country and it has six Category II Service Connections noted infra. The Appellant stated that it has been paying the CC charges regularly through RTGS and it has received a shortfall of 25% Capacitor Charge for 6 Service Connections for a total amount of Rs 1,42,529/- on the ground that as per the Tariff Order, load from 10 KW onwards, LT trivector meter should be installed and energy

should be billed on KVAH basis. The Appellant asserted that its contracted load for the 6 services is 10KW, they maintain good power factor and therefore, the Capacitor Surcharge is not applicable. When the Appellant failed to get proper response from the Respondents, it had lodged a complaint with the CGRF.

2. Before the CGRF, the 3rd Respondent/AAO/ERO/Godavarikhani submitted a report dt.23.7.2016 to the effect that the internal audit team raised shortfall of 25% capacitor surcharge for 51 services in ERO/Godavarikhani for a total amount of Rs 7,87,699/- including for the Six service connections of the Appellant for Rs 1,47,534/-, on the ground that the billing was done on KWH basis for above 10KW services of Category II and above 20 HP services of Category III during the period from 12/2014 to 02/2015 as noted below:

| Sl.No | SC.No.     | Cat | Load         | Capacitor surcharge raised by internal audit |
|-------|------------|-----|--------------|--|
| 1     | 9101-21688 | II  | 10 KW        | 19297.00                                     |
| 2     | 9103-02484 | II  | 10 KW        | 30927.00                                     |
| 3     | 3201-03878 | II  | 10 KW        | 23839.00                                     |
| 4     | 9101-16254 | II  | 12 KW        | 33127.00                                     |
| 5     | 9101-17999 | II  | 10 KW        | 28585.00                                     |
| 6     | 9101-19876 | II  | 10 KW        | 111759.00                                    |
|       |            |     | <b>TOTAL</b> | <b>147534.00</b>                             |

3. The 3rd Respondent claimed that this amount of Rs 1,47,534/- has been included in the bill of August,2015 duly giving one month notice. He stated that except the Appellant network, the other consumers paid the shortfall amounts. He stated that the Appellant gave 2 representations one dt.29.11.2015 and another dt.16.3.2016, without any further action.

4. On the basis of the material palced on record, the CGRF observed that the services were being billed for KWH units instead of KVAh units as per the observation of the internal audit and further as per Clause 5.13.1.1 of GTCS, every LT consumer using induction motors and or welding transformers should install LT shunt capacitors as specified in Appendix VIII and failure to install and maintain capacitors invites surcharge, where LT consumers are provided with meters capable of measuring active

and reactive power as per the Tariff Order or otherwise, they are required to pay Low power factor surcharge.

5. CGRF further advised that as per Clause VII of the Tariff Order dt.27.3.2015 for FY 2015-16, every LT consumer not provided with Trivector meters, except LT I - Domestic, using induction motors and or/welding transformers shall install shunt capacitors of the rating specified by the Licensees as per General Terms and Conditions of Supply(GTCS). Suitable capacitors for the next higher step shall be installed by the consumers and failure to do so would be treated as violation of terms of supply liable for termination of contract and collection of the minimum charges for the period of agreement apart from disconnection as per GTCS. It is further observed that in case of LT consumers (except LT Domestic, LT-V, LTVI-(A), LT-VII(B)) not covered by KVAh billing, if during inspection, no capacitor is found or the one found damaged or defective or ceased to function, the consumer shall be liable to pay the capacitor surcharge at 25% of the monthly bill amount, as per the terms and conditions of supply notified by the Licensee and the Licensee shall not levy LPF surcharge. CGRF then advised the Appellant to pay the bills while confirming the supplementary bill issued by the Respondents, through the impugned orders.

6. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal alleging that the DISCOM is duty bound to install a LT Trivector meter and then bill the energy charges on KVAh basis and if it is done, the capacitor surcharge of 25% is not applicable to the Appellant. The Appellant stated that the DISCOM has the authority to claim the difference between KWH and KVAh consumption in case of billing done on KWH. The Appellant further stated that the Appellant's usage of power is major and continuous load (24 x7) and it is Electronic load (Base Transive station) which is not an inductive load and that the other partial load is Aircon (2TR - Running) and that it runs in an average 10 to 12 Hrs per day, which is an inductive load and therefore, they would install capacitor at the sites where PF is  $\leq 0.95$  and therefore, the Appellant contended that there is no need to install the capacitor.

7. The 3rd Respondent filed written submissions dt.29.11.2016 in the Appeal to the following effect:

the internal audit raised shortfall of 25% capacitor surcharge for 51 services in ERO/Godavarikhani including 6 services of the Appellant noted in Paragraph 2 supra for an amount of Rs 1,47,534/- on the ground that the

billing was done on KWH basis for 10KW and above services of Category II and above 20 HP Category III services for the period from Dec,2014 to Feb,2015.

8. The Respondents claimed that in the case of LT consumers except LT Domestic, LT-V ,LT-VI(A), LT-VII(B)) not covered by KVAH billings, if no capacitor is found during inspection or if the capacitor is found to be damaged or defective or ceased to function, such consumer is liable to pay the capacitor surcharge of 25% of the monthly bill amount as per the GTCS (terms of supply) notified by the Licensee and the Licensee shall not levy LPF surcharge and therefore, the Appellant is liable to pay the capacitor surcharge. The 3rd Respondent also filed a letter dt.19.8.2016 of the 1st Respondent who stated that the Appellant had fixed the required capacitor to their services during the month of July,2016 only and it was not fixed during the relevant period from 12/2014 to 2/2015.

9. The efforts at mediation have not succeeded, because there is no meeting point between the parties and the previous Award dt. 4.10.2016 in Appeal No.33 of 2016 has not persuaded settlement and therefore, the matter is being disposed of on merits.

10. On the basis of the material on record and the contentions, the following issues arise for disposal:

- i. Whether the Appellant is liable to pay the capacitor surcharge representing 25% of the bill amount from Dec,2014 to Feb,2015 for Rs 1,47,534/- based on part 'A', Clause VII(3) of the TO 2015-16?
- ii. Whether the Appellant is liable to pay the CC bills under KVAH units and not under KWH units?
- iii. Whether it was the Appellant or the DISCOM who is duty bound to fix the trivector meter to the service connections of the Appellant?
- iv. Whether the impugned orders are liable to be set aside?

**Heard.**

**Issues 1 to 4**

11. The Appellant company claimed that it is not liable to pay the capacitor surcharge and demanded withdrawal of the amount levied, on the following grounds:-

- a) the Appellant has maintained a good power factor, since the load is predominantly resistive one,

b) though the service is covered under the KVAh billing, the licensee did not install the LT Trivector meter, in spite of the guidelines issued by the ERC and thus KVAh billing has not been done,

c) there was neither inspection of the premises, nor any damage, defect or stoppage of functioning of the meter to the power supply was found and hence, the charges levied are not applicable to them.

12. The Respondents pleaded that during the internal audit, they found absence of capacitors for the period from Dec,2014 to Feb,2015 in the service connections of the Appellant and on advice of the internal audit team, they imposed capacitor surcharge based on sub clause VII(3) of clause 4(A) of LT Tariff of the Tariff Order 2015-16.

13. The Sub Clause VII (3) of Clause 4 of part 'A' of LT tariff of the Tariff order 2015-16 states that in case of LT consumer (except LT Domestic, LT-IV, LT VI(A), LT-VII(B)) not covered by KVAh billing, if during inspection, no capacitor is found, or the capacitors already installed are found damaged or having defect or ceased to function, such consumer shall be liable to pay the capacitor surcharge @ 25% of the monthly bill amount, as per terms and condition of supply notified by the licensee and the Licensees shall not levy Low Power Factor (LPF) surcharges. Based on this provision, the capacitor surcharge of Rs 1,47,534/- has been raised by the DISCOM.

14. It is clear that the capacitor surcharge was levied based on the audit observation that the bills were raised under KWH units instead of KVAH units.

15. **Appellant claimed as follows:**

a) A LT Trivector meter shall be provided for the load of 10 KW & above under cat-II, and energy charges shall be billed on KVAh. The DISCOM did not provide the LT trivector Meter to the service connection in question.

b) The Respondents have the authority to claim only the difference between KWH and KVAh consumptions in the present case.

c) The audit team pointed out the mistake of notional loss, based on the proposed capacitor surcharge.

d) No inspections were conducted.

e) Against GTCS clause 5.13.1, the Appellant argued that their usage is major and continuous load (24x7) and is electronic load (BASE Transive station) which is not an inductive load and that the other partial load is Aircon(2TR running)

and it runs in an average 10 to 20 Hrs per day, which is an inductive load. The Appellant would install the capacitor at the sites where PF is  $\leq 0.95$ . The Respondents did not say anything about the power factor in this particular case.

16. The KVAh billing started from the Tariff Order of FY 2011-12, which was introduced to reduce the Reactive power drawal from the system which is undesirable, for better system of management, to improve the system efficiencies and reducing the losses, if Unity power factor is achieved.

Further, while implementing the KVAh billing, the ERC had given certain directions in the Tariff Order 2011-12, under **NOTES in clause 4**. It is reproduced here under:

“ Energy charges shall be billed on KVAh wherever LT Trivector meters are provided by Licensee/Consumers. In the absence of LT Trivector Meters, energy charges shall be billed on KWH basis”

The above clause referring to billing the energy charges on KWH basis in the absence of LT Trivector Meters has also been mandated in the Tariff Orders of 2013-14. The subsequent Tariff Orders mandated KWH based billing only for the loads below 10 KW and directed to provide LT tri-Vector meters for the loads 10 KW and above and energy charges billing on KVAh basis.

17. The Sub Clause VII of Clause 4 of part ‘A’ of Tariff Order 2015-16 reads as follows:

**POWER FACTOR APPARATUS AND CAPACITOR SURCHARGE FOR LT:-**

**Clause 1:-**

“Every LT consumer not provided with tri-vector meters, except LT-I domestic, using induction motors and/or welding transformers shall install shunt capacitors of the rating specified by the Licensee in the general terms and conditions of supply (GTCS) approved by the commission from time to time. In case the rated capacity of the induction motor or welding transformers falls in between the steps of the stipulated ratings, the capacitors suitable for the next higher step shall be installed by the consumer.”

This above clause mandates that those consumers having Induction Motors and Welding machines, have to provide shunt Capacitors of the specified ratings. This requirement is specifically to the consumers having loads that causes voltage dip /

fluctuation. Under this clause, failure to comply with the above requirement enables the licensee to disconnect the power supply as mandated under clause 2.

18. The Appellant, while referring to the usage of power supply, has stated that the load to a major extent consists of continuous load (24x7) and is electronic load (BASE Transive station) which is not an inductive load and that the other partial load is aircon(2TR running) running in an average 10 to 20 Hrs per day which is an inductive load so will install capacitor at the sites where PF is  $\leq 0.95$  and that its PF has been above 0.95.

19. In the present case, the loads of the appellant are constant in nature and continuous and thereby, the chances of voltage fluctuation is nil and therefore, the service in question does not fall under this category. Hence this clause VII(1) does not apply to the Appellant's case.

20. The Sub Clause VII(3) of Clause 4 of part 'A' of the Tariff Order 2015-16 states that In the case of LT consumer (except LT domestic, LT-IV, LT VI (A), LT-VII(B)) not covered by KVAh billing, if during inspection, no capacitor is found, or the capacitor already installed is found damaged or having defect or ceased to function, such consumer shall be liable to pay capacitor surcharge@ 25% of the monthly bill amount , as per the terms and conditions of supply notified by the licensee and then the Licensees shall not levy LPF surcharge. In this case, a notice under Appendix VIII(B), a mandatory notice to capacitor surcharge, has not been issued giving 30 days time for arranging capacitor if not available.

21. The Sub Clause VII(3) of Clause 4 of part 'A' of the Tariff Order 2015-16 mentioned above does not speak about the loads of the consumers. The reference to the consumers made is of only those who are not covered by KVAh billing & LT Consumers (Except LT Domestic, IV ,VIA,VII(B) and then the inspection of the service is stated to be mandatory which the Appellant argued that there were no inspections carried out as specified in the above clause. The Respondents merely stated about internal audit inspection.

22. As per the terms and conditions, under subclause (j) capacitors surcharge, LT consumer (except LT I domestic) having connected loads mentioned in table below shall pay capacitor surcharge (as per rules in vogue) at the rate of 25% of the billed amount, if capacitors are found defective in the following categories.

| category           | Connected load |
|--------------------|----------------|
| LT II & LT VII (A) | <10 KW         |
| LT III & LT VI (B) | < 20 HP        |

It is clear that there is contradiction on levy of 25% capacitor charge on those consumers having contracted load of 10 KW compared with clause 3 above.

23. As per Clause 2(1) of Sub Clause 3 of LT Tariff part 'A' of Tariff Order 2015-16 the category wise specific conditions of LT tariff, under sub clause 2(1) of the Tariff Order 2015-16 specifies ( cat-II) for loads 10KW and above, a LT trivector meter shall be provided and energy charges shall be billed on KVAh. This Clause indicates the responsibility of providing the LT trivector meter for KVAh billing. The **Consumer Rights Statement of the ERC, (Clause 10)** mandates the Licensee to provide the Standard meter and responsibility towards periodical inspection by the Licensee and replacement / repair whenever the meter is found defective within the time limit prescribed in the complaint handling procedure document.

24. There is contradiction whether 10 KW load services have to be penalised for capacitor surcharge of 25% of monthly bill? The clause(j) of the Tariff order 2015-16 specifies the penalty to the consumer for less than 10 KW and Clause VII(3) which enforces the penalty, does not specify with reference to the load of the consumer. Here the appellant service falls under the condition "not covered by KVAh billing". The clause 3(2) mandates provision of LT trivector meter & billing of the service with KVAh billing for consumer having load 10 KW & above.

25. From the letter dt.19.8.2016 of the 1st Respondent/ADE/OP/Godavarikhani it is seen that the Appellant had fixed the required capacitor to their services during the month of July,2016 but they were not fixed during the relevant period from 12/2014 to 2/2015. The responsibility of replacing the old with KVAH reading meter is on the Licensee and the equal responsibility of fixing the rated capacitor and maintaining good PF lies on the Appellant (as per clause 7(3) of Part "A" of Tariff Order 2015-16).

26. The Respondents have not fixed Trivector meter to the Service Connection of the Appellant prior to the date of KVAh billing and have not conducted statutory inspection as mentioned in Sub Clause VII(3) of Part 'A'. Before adding to CC bills, no notice was given to the Appellant as mandated in Appendix VIII(B), which is a breach of



mandate. Merely because the Auditor report says so, without any authority either under GTCS, Tariff Order or any Regulation, the Respondents cannot levy the Capacitor Surcharge. As indicated in the foregoing paras, there is no clear cut direction for imposition of Capacitor Surcharge in the circumstances presented in the Appeal. The benefit of discrepancy should go to the Appellant. Now the DISCOM has been collecting charges on KVAh units. The Appellant is found not liable to pay the Capacitor Surcharge so long as the DISCOM fails to fix the Trivector meter for charging KVAh units. The Appellants service contracted load is 10 KW and hence it is not liable to pay the capacitor surcharge as per Sub Clause (j) of Terms and Conditions, which mandates capacitor surcharge under category LT II and LT VII(A) for loads below 10 KWs. Issues i to iii are answered accordingly in favour of the Appellant.

**Issue iv.**

27. In view of the findings on Issues i to iii, the impugned orders are set aside. The issue is answered accordingly.

28. In the result, the following directions shall issue:

- i. The demand for the Capacitor Surcharge from Dec/2014 to Feb/2015 for Rs 1,47,534/- is set aside as unauthorised.
- ii. The DISCOM is duty bound to fix Trivector Meter to the Appellant's Service Connection to charge KVAh units.
- iii. In case of non maintenance of the power factor, the remedies available to the DISCOM can be resorted to.
- iv. The amount collected as the Capacitor Surcharge shall be adjusted in the future CC bills.
- v. The impugned orders are set aside.

29. This award shall be implemented within 15 days of its receipt at the risk of penalties as indicated in Clauses 3.38, 3.39 and 3.42 of the Regulation No. 3/2015 of TSERC.

TYPED BY CCO, Corrected, Signed and Pronounced by me on this the 8th day of December, 2016.

**Sd/-**

**VIDYUT OMBUDSMAN**

1. M/s ATC Telecom Infrastructure Pvt.Ltd. (formerly known as Viom Networks)  
represented by Sri. B. Srinivas, Gowra Plaza, Door No.1-8-304/308/444,  
4th Floor, Sardar Patel Road, Begumpet, Secunderabad - 500 003.  
Cell No: 9030000560.
2. The ADE/OP/Godavarikhani/TSNPDCL.
3. The DE/OP/Manthani/TSNPDCL.
4. The AAO/ERO/Godavarikhani/TSNPDCL.
5. The SAO/CO/Karimnagar/TSNPDCL.

**Copy to:**

6. The Chairperson, CGRF, TSNPDCL, Nakkalagutta, Hanamkonda, Warangal.
7. The Secretary, TSERC, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad.