



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**

Wednesday, the First Day of February 2017

Appeal No. 68 of 2016

Preferred against Order Dt. 17-09-2016 of CGRF In

CG.No: 237/2016-17 of RR South Circle

Between

M/s Sugna Metals Limited, Represented by Sri. Bharat Kumar, Managing Director
1-8-673, Azamabad, Hyderabad - 500020. Cell :93910 33606.

... Appellant

And

1. The DE/OP/Vikarabad/TSSPDCL/RR DIST.
2. The SAO/OP/RR South Circle/TSSPDCL/Hyderabad.
3. The SE/OP/ RR South Circle/TSSPDCL/Hyderabad.

... Respondents

The above appeal filed on 03.11.2016 coming up for final hearing before the Vidyut Ombudsman, Telangana State on 15.12.2016 at Hyderabad in the presence of Sri. Ravi - on behalf of the Appellant and Sri. M. Srinivasulu - SAO/OP/RR South Circle for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant is a HT consumer with SC No. RRS -1247 with CMD of 9499 KVA. The Appellant claimed that the Respondents issued a notice dt.1.6.2015 for payment of ACD for the year 2015-16 for an amount of Rs 2,27,43,912/- as follows:

- i. The revision for adequacy of consumption deposit for the year 2015-16 was made based on the consumption for the period representing 12 months from April,2004 to March,2015.

ii. The average consumption charges valued for two months work out to Rs 6,49,51,139.68 as against an amount of Rs 4,22,07,219/- available towards consumption deposit.

iii. It was requested to pay the balance of Rs 2,27,43,920.68 towards ACD within 30 days from the date of notice i.e on or before 30.6.2015.

2. The Appellant preferred WP No. 21582 of 2015 challenging the demand made by the Respondents for additional ACD amount arrived at during review of 2015-16. The Hon'ble High Court in the WP directed as per orders dt.26.8.2015 as follows:

“In view of the above, the Respondents are directed to install prepaid meters to all the HT consumers, who require supply through a prepaid meter within a period of six months from the date of receipt of a copy of this order. Till such time, the petitioners shall pay half of the additional consumption deposit amount demanded by the Respondents which shall be refunded to the petitioners as soon as the pre paid meters are installed.”

3. Based on the orders of the Hon'ble High Court in the Writ Petition, the Appellant paid 50% of the ACD amount of Rs 1,13,73,960/- on 30.09.2015.

4. The Respondents thereafter preferred Writ Appeal No. 933 of 2015 against the orders in WP No. 21582 of 2015 and by common orders dt.19.5.2016 the Division Bench of the Hon'ble High Court disposed of the Writ Appeal as follows:

“ Both points are answered against the petitioners and in favour of the licensees. Orders of the learned single judge, directing the distribution licensee to provide prepaid meters in six months and permitting the petitioners to deposit only half of the amount demanded are not sustainable. the common order made in group of writ petitions, under appeal is set aside. As a consequence, the demand of petitioners to waive additional security deposit has no merit and contrary to statutory prescription. Accordingly, the writ appeals filed by HT consumers/Petitioners are dismissed. Order accordingly.”

5. Based on the orders of the Hon'ble High Court in the Writ Appeal, the Respondents sent a notice to the Appellant on 23.6.2015 for payment of balance 50% of the amount of ACD for Rs 1,13,73,960.68 along with surcharge amount of Rs 1,70,549.42 per month from October,2015 to April,2016 making a total amount of Rs 1,23,93,256.52.

6. The Appellant claimed before the CGRF that during the period from August,2015 to 19.5.2016 the balance 50% of ACD amount of Rs 1,13,69,960/- was not due for payment as per the Hon'ble High Court order dt. 26.8.2015 in WP No.37713/2014 and therefore, the Appellant contended that the claim for Rs 10,23,295.84 towards surcharge from October,2015 to April,2016 at Rs 1,70,549.42 per month is in violation of the orders of the Hon'ble High Court dt.26.8.2015 in WP No. 21582 of 2015. Another contention is that the purpose of maintaining balance 50% of ACD amount of Rs 1,13,69,960/- pertaining to FY 2015-16 was closed on 31.3.2016 and the Respondents raised the CC charges form October,2015 to April,2016.

7. The CGRF, on the basis of the fact that the Writ Appeal was disposed of dismissing the WP No. 21582 of 2015, found that the complaint of the Appellant was already redressed by the licensee by review of ACD for FY 2016-17 as per the Tariff Order 2016-17 and found that the ACD amount of the consumer available with the Licensee is sufficient, but the consumer is liable to pay the surcharge thereon for Rs 10,23,296/- and hence rejected the request for refund of surcharge amount of Rs 1,70,549/- per month. It also found that the ACD amount for the period FY 2015-16 was sufficient as per the Review of ACD based on Tariff Order 2016-17 and closed the complaint through the impugned orders.

8. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal contending that during the period from August,2015 to 19.5.2016 the balance 50% of ACD amount of Rs 1,13,69,960/- was not due for payment as per the final order of the Hon'ble High Court dt.26.8.2015 in WP No. 37713/2014 and batch and the claim of Rs 10,23,295.84 towards surcharge from October,2015 to

April,2016 @ Rs 1,70,549/- per month is violation of the order of the Hon'ble High Court and the 50% ACD amount of Rs 1,13,69,960/- pertaining to FY 2015-16 is closed on 31.3.2016 and thus, the Appellant sought an order to a) set aside the claim of surcharge on ACD amount Rs 10,23,295.84 relating to October,2015 to April,2016, b) refund of amount of Rs 11,93,846/- paid on 25.7.2016 under protest towards ACD surcharge pertaining to the period from October,2015 to April,2016.

9. The SE/OP/RR South circle/R3 filed a reply dt.29.11.2016 reporting that the Hon'ble High Court disposed of the Writ Appeal No. 21582 of 2015 allowing the writ Appeal filed by the Licensee and dismissed the Writ Appeals filed by the Appellant and others and therefore, the claim of the Appellant that the 50% of ACD amount for Rs 1,13,69,960.68 along with surcharge amount of Rs 1,70,549.42 per month totalling Rs 1,23,93,256.52/- is not sustainable, because the Writ Petition filed by the Appellant and others was dismissed. The 3rd Respondent contended that the balance ACD amount amounting to Rs 1,23,93,256.52 is due from the Appellant and the Appellant has to pay this amount which represents unpaid 50% of ACD amount along with surcharge applicable on the said amount.

10. The 3rd Respondent stated that on review of the Tariff Order FY 2016-17, the ACD available in the Appellant's account was found sufficient and therefore, no such notice was issued to the Appellant. He asserted that the Appellant is liable to pay the unpaid ACD amount for Rs 10,23,295.84

11. In view of the facts and circumstances, the efforts at mediation failed to succeed and therefore, the matter is being disposed of on merits.

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

ISSUES

1. Whether the Appellant is not liable to pay balance 50% of the ACD amount of Rs 2,27,43,912.68 along with surcharge in view of the orders dt.26.8.2015 of the

Hon'ble High Court in WP No. 37713 of 2014 and batch?

2. Whether the impugned orders are liable to be set aside?

Issues 1 and 2

13. The question involved in this appeal is simple enough. The Appellant when issued a notice for payment of Rs 2,27,43,912/- towards ACD amount for the year 2015-16 preferred WP No. 21582 of 2015 questioning the notice demanding payment of the ACD amount. The Hon'ble High Court disposed of the Writ Petition No. 21582 of 2015 and batch by orders dt. 26.8.2015 as follows:

“In view of the above, the Respondents are directed to install prepaid meters to all the HT consumers, who require supply through a prepaid meter within a period of six months from the date of receipt of a copy of this order. Till such time, the petitioners shall pay half of the additional consumption deposit amount demanded by the Respondents which shall be refunded to the petitioners as soon as the pre paid meters are installed.”

14. The Writ Appeal filed by the Appellant in WA No. 968 of 2015 and batch were dismissed and whereas the writ appeal preferred by the Licensee were allowed by orders dt. 19.5.2016(against orders dt.26.8.2015 in WP No. 21582/2015 and batch) as follows:

“ Both points are answered against the petitioners and in favour of the licensees. Orders of the learned single judge, directing the distribution licensee to provide prepaid meters in six months and permitting the petitioners to deposit only half of the amount demanded are not sustainable. the common order made in group of writ petitions, under appeal is set aside. As a consequence, the demand of petitioners to wave additional security deposit has no merit and contrary to statutory prescription. Accordingly, the writ appeals filed by HT consumers/Petitioners are dismissed. Order accordingly.”

15. The contention of the Appellant is that in the Writ petition by Orders dt. 26.8.2015 the Hon'ble High Court directed the Respondents to instal prepaid meters to all the HT

consumers within a period of 6 months and till such time, the Appellant should pay half of the ACD amount demanded by the Respondents, which shall be refunded to the petitioners as soon as the prepaid meters are installed. The Appellant contended that in the present case, prepaid meters were not installed and the order to deposit only half the ACD amount, which was in fact deposited, remained in operation and therefore, during the period covered by October,2015 to April,2016 the Appellant is not liable to pay the balance 50% of the ACD amount demanded.

16. The Respondents contended that in view of the dismissal of the Writ Petition of the Appellant by the Hon'ble High Court in WA No. 968 of 2015, the order in the Writ Petition No. 37713 dt.26.8.2015 was set aside and therefore, no benefit of the order in the Writ Petition is available to the Appellant, who has to pay the ACD amount during the relevant period.

17. The Writ Appeals filed by the distribution licensees in Writ Appeal No. 968 of 2015 was allowed by orders dt.19.5.2016 whereby, the orders of the single judge of the Hon'ble high court in WP No. 21582 of 2015 and batch was set aside. Once the order in Writ Petition is set aside on appeal by the division bench of the Hon'ble High Court at the instance of the licensee, there is no order favouring the Appellant and the Appellant is thus liable to pay the demanded balance 50% of ACD amount Rs 1,13,69,960.68, which remained unpaid and which should be paid by the Appellant along with ACD surcharge.

18. The Respondents relied on order dt.16.9.2016 in Appeal No. 31 of 2016 preferred by M/s Salasar iron and steels Pvt Ltd Vs SAO/OP/MBNR and three others wherein similar relief sought was rejected, which is also a circumstance favoring the Respondents. The issue No. 1 is answered in favour of the Respondents and against the Appellant. In view of the finding on Issue No.1 there are no grounds to interfere with the impugned orders.

19. The Appellant paid the amounts and the dues on account of ACD as shown below:

For FY 2015-16	Total ACD based on consumption The Appellant paid 50% the demanded ACD Balance due ACD surcharge for non payment of the balance amount	Rs 2,27,43,912/- <u>Rs 1,13,73,960/-</u> Rs 1,13,69,952/- Add : Rs 10,23,295/-
For FY 2016-17	Even non payment of 50% of balance ACD amount Rs 1,13,69,952/- made adequate for the purpose of Additional Consumption Deposit during this period. Hence, only the SURCHARGE amount fell due. The surcharge amount was then paid on 25.7.2016 to the DISCOM (as stated in the orders of CGRF).	

20. In the result, the Appeal is disposed of as follows:-

1. The Appellant is liable to pay 50% of ACD amount for the FY 2015-16 amounting to Rs 1,13,69,952/- along **with surcharge amount**.
2. Since the adequacy of ACD for FY 2016-17 is arrived at even on non payment of 50% ACD due amount, the request of the Appellant for refund of ACD surcharge(for the FY 2015-16) is negated.
3. The impugned orders are confirmed.

21. The licensee shall comply with and implement this order within 15 days for the date of receipt of this order under clause 3.38 of the Regulation 3 of 2015 of TSERC.

Typed by CCO, Corrected, Signed and pronounced on this 1st day of February, 2017.

Sd/-

VIDYUT OMBUDSMAN

1. M/s Sugna Metals Limited, Represented by Sri. Bharat Kumar, Managing Director
1-8-673, Azamabad,Hyderabad - 500020. Cell :93910 33606.
2. The DE/OP/TSSPDCL/Vikarabad/Ranga Reddy Dist.
3. The SAO/OP/TSSPDCL/RR South Circle/Hyderabad.
4. The SE/OP/TSSPDCL/RR South Circle/Hyderabad.

Copy to:

5. The Chairperson, Consumer Grievance Redressal Forum, Greater Hyderabad
Area, TSSPDCL, Vengal Rao Nagar, Erragadda, Hyderabad - 500 045.
6. The Secretary, TSERC, 5th Floor Singareni Bhavan, Red Hills, Lakdikapool,Hyd.