



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 Fifteenth Day of December 2016

Appeal Nos. 64 and 65 of 2016

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

CG.Nos: 30 and 31/2016-17 of Medak Circle

Between

M/s Emmennar Pharma Private Limited, represented by Sri. L.D.Maheshwara Reddy, Plot No. A-4, Industrial Estate, Opp: Sanathnagar Police Station, Sanathnagar, Hyderabad - 500 018. Cell: 9989058873.

... Appellant

AND

1. The ADE/OP/Gummadidala/TSSPDCL/Medak Dist.
2. The SAO/OP/Medak/TSSPDCL/Medak Dist.
3. The DE/OP/Medak/TSSPDCL/Medak Dist.
4. The SE/OP/Medak Circle/TSSPDCL/Medak.

... Respondents

The above appeals filed on 27.10.2016 coming up for hearing before the Vidyut Ombudsman, Telangana State on 29.11.2016 at Hyderabad in the presence Sri. M.V.S. Achary - HR Manager on behalf of the Appellant Company and Smt. P. Manjula - SAO/OP/Medak 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 Pharma Company with HT SC No. 878 at Gaddapotharam Village of Medak District. The Appellant is aggrieved of being charged with minimum charges without supplying power.

2. The 2nd Respondent/SAO/OP/Medak through letter dt.03.09.2016 stated that the Telangana State Pollution Control Board (TSPCB) has issued disconnection of power supply orders against the Appellant company addressed to the DISCOM and based on this order, the 1st Respondent/ADE/O/Gummadidala effected

disconnection of power supply on 30.4.2016. The DISCOM issued CC bills from 20.04.2016 to 19.5.2016 for an amount of Rs 7,70,568/- and the Appellant paid the CC bill on 08.06.2016. In the month of June,2016 CC bill (19.5.2016 to 19.6.2016) the service remained under disconnection and the minimum bill was issued on 80% of CMD i.e $950 \text{ KVA} \times 80\% = 760 \text{ KVA}$ of May,2016 upto 19.5.2016 for Rs 5,10,325/- as per the terms of the HT agreement, which the Appellant paid on 20.7.2016. For the month of July,2016 CC bill for the period from 19.6.2016 to 19.7.2016 the minimum bill based on CMD was issued for Rs 5,34,201/- while the service was under disconnection and the Appellant paid the amount on 9.8.2016. In the meanwhile, TSPCB issued orders for restoration of power and accordingly, the 1st Respondent restored power supply on 14.7.2016.

3. The 1st Respondent further stated that the Appellant protested about imposing of minimum charges while the service was under disconnection, as unjustified. He claimed that as per the provisions of GTCS, the HT agreement was entered into which mentioned that **“ The consumer shall pay minimum charges every month as prescribed in Tariff, and General Terms and Conditions of Supply even if no electricity is consumed for any reason whatsoever and also if the charges for electricity actually consumed are less than the minimum charges. The minimum charges shall also be payable by the consumer even if electricity is not consumed because supply has been disconnected by the company because of non payment of electricity charges, theft of electricity or un-authorised use of electricity or for any other valid reason”**.

4. Before the CGRF, the Appellant's representative stated that there is no specific condition in the HT agreement that in case of instructions from the Pollution Control Board, the DISCOM should disconnect the power supply and levy minimum charges, while the 2nd Respondent/SAO stated that the service was disconnected on the instructions of TSPCB and as per the agreement conditions, the minimum charges have been levied during the disconnection period.

5. After hearing and on consideration of the material on record, the CGRF observed that even though the service was disconnected as per the orders of TSPCB, the Appellant is liable to pay the minimum charges during the disconnection period as per the terms of GTCS and HT agreement and disposed of the complaint through the impugned orders.

6. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal, stating that it is not involved in any malpractices regarding usage of electricity, payment of bills and only on the instructions of the TSPCB, the DISCOM disconnected power causing financial loss due to disruption of business for a long period resulting in theft of materials, damage to semi finished products and raw material etc., and for safety of chemicals and security, the Appellant is forced to run single phase diesel generator procured on rent basis suffering loss.

7. The Respondents filed record in support of their plea on justification of collection of minimum charges. They have filed a copy of HT agreement dt.12.1.2016 executed between the Appellant and the DISCOM with term No. 10 showing monthly minimum charges as follows:

“I/We shall pay minimum charges every month as prescribed in prescribed tariff, and General Terms and Conditions of Supply even if no electricity is consumed for any reason or whatsoever and also if the charges for electricity actually consumed are less than the minimum charges. The minimum charges shall also be payable by me/us even if electricity is not consumed because supply has been disconnected by the company because of non-payment of Electricity charges, Theft of Electricity or unauthorised use of electricity or for any other valid reason.”

8. The 4th Respondent submitted written submission dt. 23.11.2016 explaining about the disconnection of the power supply and levying minimum charges based on CMD as per the terms and conditions of the HT agreement and about restoration of power supply on 14.7.2016. He stated about imposition of minimum charges based on terms of HT agreement and GTCS. He also filed correspondence and orders of TSPCB addressed to the 4th Respondent/SE/O/Medak Circle, one order dt.13.4.2016 directing him (4th Respondent) to disconnect the power supply to the Appellant, another letter of TSPCB dt.13.4.2016 ordering closure of the Appellant industry, order of TSPCB dt.14.7.2016 directing temporary restoration of power supply and order dt.14.7.2016 regarding temporary revocation of closure order, in support of the claim of the DISCOM.

9. Both the Appeals arise out of similar issues with different CGRF numbers and therefore, both are being disposed of by common award.

10. In view of the nature of dispute and facts, mediation has not succeeded and therefore, the matter is being disposed of on merits.

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

- i. Whether the DISCOM is entitled to impose minimum charges 80% of CMD during the time of disconnection of supply ordered by TSPCB?
- ii. Whether the DISCOM is entitled to impose minimum charges as per the terms of HT agreement as well as the terms of GTCS?
- iii. Whether the impugned orders are liable to be set aside?

Heard.

Issues 1 to 3

12. As per the orders of TSPCB dt.13.4.2016 directing the 4th Respondent/SE/O/Medak to disconnect the power supply to the Appellant, the power supply was disconnected. Further TSPCB by order dt.13.4.2016 directed closure of the Appellant unit for non compliance of the Board directions regarding pollution issues. The DISCOM issued CC bills for the period from 20.4.2016 to 19.5.2016 for an amount of Rs 7,70,568/- which the Appellant paid on 8.6.2016. The DISCOM issued CC bill for the period from 19.5.2016 to 19.6.2016 while the service was under disconnection and the minimum bill of 80% of CMD of May,2016 upto 19.5.2016 for Rs 5,10,325/- was levied as per the terms of HT agreement and the Appellant paid the amount on 20.7.2016. Similarly for the period from 19.6.2016 to 19.7.2016 during the period under disconnection, the minimum bill for Rs 5,34,201/- was issued and the Appellant paid the bill on 09.08.2016.

13. In the meanwhile, TSPCB by orders dt.14.7.2016 directed temporary restoration of power supply, addressed to the 4th respondent SE/O/Medak. TSPCB by orders dt.14.7.2016 gave reasons for temporary restoration of power supply. Based on the orders of TSPCB, the power was restored on 14.7.2016. The Appellant is seeking a direction to the DISCOM not to levy the minimum charges during the disconnection period, as it is were not involved in any malpractices regarding usage of electricity and there is no question of nonpayment of bills due to the company. Because of the instructions of the TSPCB, the DISCOM disconnected the power supply causing financial loss due to disruption of business for a long period. It is further claimed that

the Appellant suffered theft of materials, damage to semi finished products and raw materials etc and that they were forced to use a Diesel Generator procured on rental basis, because of the action of the Respondents.

14. The Respondents on the other hand contended that it is not because of the action or inaction of the DISCOM, the power was disconnected but by an order of statutory body like TSPCB the power was disconnected and also restored and that they are bound to comply with the orders of the TSPCB. The Respondents further contended that based on the terms of HT agreement as well as GTCS, the minimum bills are being issued to the Appellant and therefore, the Appellant is not entitled to any relief as claimed by it.

15. As mentioned supra, the Term No. 10 of HT Agreement, clearly mentions that the Appellant is liable to pay minimum charges even if no electricity is consumed for any reason whatsoever or if the electricity consumed is less than the minimum or if the electricity is not consumed because the power has been disconnected for non payment of electricity charges, theft of electricity, or unauthorised use of electricity or any other valid reason. This term in the HT agreement entitled the DISCOM to collect minimum consumption charges. The question is whether the directions from the TSPCB come within the purview of the Terms of the HT agreement or GTCS, to enable the DISCOM to collect the minimum charges.

16. Clause 17.2 of GTCS is relevant regarding disconnection of power supply due to non possession of license, which is reproduced for clarity:

“ Where the consumer requires a license or permission from any statutory authority or any authority of the Government to run the business/industry, or permission for lifting of water wherever necessary for purpose of irrigation, or for any other purpose for which he seeks or availing supply of electricity or for locating such business/industry/ pump set or any other equipment at the place where he is receiving such supply and where the conduct of his said business/industry/activity at such place becomes unlawful by reasons of his failure to obtain initially or secure the continuance of such license or permission, the Designated Officer of the Company in this regard may, if desired by the concerned statutory or any other competent authority of the Government, after giving notice calling for explanation and after considering the same discontinue supply without forfeiting the rights of the Company under the Agreement with the consumer. Provided that in the cases where

specified directions in writing are issued by AP Pollution Control Board in exercise of the powers vested with it under Section 33(A) of the Water (Prevention and Control of Pollution) Act 1974, to disconnect power supply to any industrial unit, the Designated Officer of the Company shall comply with such directions without the necessity of issuance of the notice mentioned in this clause”.

17. Even Clause 7 of Part B HT Tariffs of TO 2015-16 provides for monthly minimum charges as follows:

“Every consumer whether he consumes energy or not shall pay monthly minimum charges calculated on the billing demand plus energy charges specified for each category in this part to cover the cost of a part of the fixed charges of the licensee”.

18. The orders of PCB under Section 33 (A) of the water (Prevention and control of Pollution Act) 1974 are binding on the DISCOM as noted in the clause 17.2 of GTCS. Similarly the HT agreement mandates collection of minimum charges even if the electricity is not consumed or the supply has been disconnected by the company for whatever reason. The orders of TSPCB for disconnection of power supply based on Section 33(A) (Prevention and control of Pollution) amendment Act 1988, Air(Prevention and Control of Pollution) Amendment act 1987, similarly closure orders with reasons and orders directing temporary restoration of power supply coupled with orders dt.14.7.2016 directing temporary revocation of closure order, are binding on the DISCOM authorities and accordingly, the power supply was disconnected by the Respondents and restored on the directions of TSPCB, which are binding on the DISCOM and statutory in nature. Thus Clause 10 of HT Agreement and Clause 17.2 of GTCS and Clause 7 of Part B of Tariff Order 2015-16 clearly enables the DISCOM to collect minimum consumption charges, whether the power was not consumed, or less consumed than the minimum or even if the power is disconnected for any reason.

19. Thus the Appellant cannot take shelter of closure under the direction of the TSPCB to plead that it has been paying CC charges regularly and that it has not committed any malpractice to exempt it from paying the minimum charges. Either based on the terms of the agreement or the terms of GTCS, the Appellant is found not exempt from paying the minimum consumption charges as per the agreement during disconnection of power supply for whatever reason, including that of forcible disconnection of power supply of TSPCB while acting as a statutory authority under

Section 33(A) of the Water (Prevention and control of Pollution) Amendment Act 1988, Air ((Prevention and control of Pollution) amendment Act 1987. Thus the plea of the Appellant that is not liable to pay the minimum CC charges is found to be untenable and the claim of the Respondents that the DISCOM is entitled to collect the minimum consumption charges is found tenable. The impugned orders are thus found reasonable and based on the correct evaluation of the issues involved in the case. The issues are answered accordingly.

20. The Appeal is disposed of as follows:

- i. The DISCOM is found entitled to collect minimum consumption charges from the Appellant during disconnection of power supply, even in case where the TSPCB directed disconnection of power supply.
- ii. The terms of the HT agreement, GTCS and Tariff Orders 2015-16, all enable the DISCOM to collect the minimum consumption charges, even in case of disconnection of power supply directed by the TSPCB.
- iii. The impugned orders are confirmed.

21. 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 15th day of December, 2016.

Sd/-

VIDYUT OMBUDSMAN

1. M/s Emmennar Pharma Private Limited, represented by Sri. L.D.Maheshwara Reddy, Plot No. A-4, Industrial Estate, Opp: Sanathnagar Police Station, Sanathnagar, Hyderabad - 500 018. Cell: 9989058873
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5. The SE/OP/Medak Circle/TSSPDCL/Medak.

Copy to:

6. The Chairperson, CGRF-1, TSSPDCL, GTS Colony, Vengal Rao Nagar, Hyderabad.
7. The Secretary, TSERC, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad.