

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 21-03-2013

Appeal No. 31 of 2013

Between

Sri Y.Aditya Krishna
Managing Director
M/s. East India Brines Ltd.
Admn Office: 6-4/1/1, Veer Savarkar Nagar,
Nacharam, Hyderabad -76.

... Appellant

And

1. Asst.Engineer /operation /APSPDCL/Maddipadu
- 2.Asst.Divisional engineer/operation/Rural-1/APSPDCL/Ongole
- 3.CGM/Finance/APSPDCL/Ongole
- 4..Divisional Engineer / Operation/ /APSPDCL /Ongole
5. Senior Accounts Officer/operation/APSPDCL/Ongole
6. Superintending Engineer/operation/APSPDCL/Ongole

....Respondents

The appeal / representation dated 05.02.2013 (received on 07.02.2013) of the appellant has come up for final hearing before the Vidyut Ombudsman on 20.03.2013 at Hyderabad. Sri Y.Aditya Krishna, appellant present and Sri H.Haranatha Rao, SE/O/Ongole, Sri T.Srinivasa Rao, DE/O/Ongole and Sri M.Hari Babu, ADE/O/Rural-1/Ongole for respondents present and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following :

AWARD

The appellant filed a complaint against the Respondents for Redressal of his Grievances and stated as hereunder:

- (i) The Superintending Engineer, Operation, APSPDCL, Ongole has accorded load approval and sanction for extension of supply to their units

at Gundlapalli Village at 11KV potential under HT category-I for 250KVA with a connected load of 318 HP in the name of Managing partner of their company.

- (ii) In terms of the sanction, they have paid the required service line and development charges and security deposit and submitted DDs to the DE/OPn/APSPDCL, Ongole, on dt: 27-7-2009.
- (iii) Subsequent to this, on 7-12-2009, they addressed to the SE/Opn/APSPDCL, Ongole and have requested for phasing of their requirements as follows:-
 - a. 1st phase – 75 KVA – Immediately
 - b. 2nd phase – 175KVA –May 2010.
- (iv) CMD, SPDCL, Vide Memo No: dt:02-01-2010 has accorded approval for the above phased availment.
- (v) Accordingly they have entered in to HT agreement with APSPDCL represented by the DE/Opn/Ongole on 05-02-2010 for CMD not exceeding 75KVA for utilizing supply to them 1st phase with CEIG approval for a connected load of 84KWs.
- (vi) Subsequently they have requested the SE/Opn/Ongole in their letter dt:26-5-2010 to accord revised sanction for release of 2nd phase of requirement of 175KVA with effect from September 2010 instead of May 2010 as the machinery erection was not ready.
- (vii) The CMD, SPDCL was kind enough to accord revised approval vide Memo dt:11-6-2010 for release of 2nd phase of 175KVA wef September 2010.
- (viii) As they could not commission the full equipment due to various reasons they could not avail 2nd phase of power release wef September to various reasons
- (ix) They have not obtained CEIG approval for the commissioning of additional load as the same was not erected.
- (x) They submit that they have not entered into the HT agreement for the second phase of load i.e. 175KVA till the date of the complaint

- (xi) However, as they could complete erection works only during March 2012, they have requested Superintending Engineer, Operation, Ongole vide their letter dt:30-3-2012 to release supply to their 2nd phase CMD of 175 KVA immediately.
- (xii) When they are awaiting to get the supply released as per their request, they have received letter dt: 19-5-2012 from the SE/Opn/Ongole requesting them to pay Rs 11,72,920/- within 30 days as a short fall amount, due towards non availing of supply to the 2nd phase CMD of 175 KVA wef September 2010 which is unjust.
- (xiii) The HT agreement entered with APSEB on 05-02-2010 guarantees availment of supply to CMD of 75KVA only, which they are continuing to avail till the date of complaint, paying the energy bills regularly.
- (xiv) In view of the above and due to non existence of any agreement for availment of 2nd phase CMD of 175 KVA from 9/10 and CEIG approval for additional connected load no reference can be taken for 9/10.
- (xv) As such the demand of SE/Opn/Ongole for payment of Rs 11,72,920/- as shortfall amount is not justified and they cannot be forced to pay on the basis of deemed commitment.
- (xvi) Moreover as a small upcoming company, they will not be able to afford any additional payments other than regular.

2. The respondent-4 submitted his written submissions as hereunder:

- (i) Managing partner of M/s East India Brines Ltd. Gundlapalli (village), Maddipadu section in Ongole division has applied for HT supply with CMD of 250KVA with connected load of 318HP on 10-6-2009 and the estimate was sanctioned by the SE/Opn/Ongole vide sanction No:DE/ONG/HT/08/2009-10 for Rs 2,04,320/- and addressed the Managing Partner to pay the following amounts vide LrNo. SE/O/ONG/CM/DNO:4486/09, Dt:23-6-2009.
 - a. Rs. 1,52,630/- - Service line charges.
 - b. Rs. 3,75,000/- - Development Charges

- c. Rs. 3,75,000/- - Security deposit charges.
- (ii) As per the zonal manager, APPIIC, Nellore letter, addressed to the managing partner for payment of the following amounts duly deducting 75% development charges.
- a. Rs. 1,52,630/- - Service line charges.
- b. Rs. 93,750/- -Balance development charges
- c. Rs. 3,75,000/- - Security deposit charges.
- (iii) Vide LrNo:DEE/O/ONG/CM/AAE/DNo.2438/09, DT:08-07-2009. The consumer has paid necessary charges and the details are as follows.

Sl.No.	Amount	DDNo. & date	PCB NO. Date	Remarks
1.	2,46,380.00	352152 dt:16-07-09	17053 Dt:29-7-09	S.L.Charges, Terminal & Metering charges and development charges
2.	3,75,000.00	352153 dt:16-7-09	PR.No.18384 Dt:29-7-09	Security deposit

- (iv) On 07-12-2009, the consumer has requested the Superintending Engineer/Operation/Ongole for releasing the total load 250 KVA in two phases, ie; 1st phase for CMD of 75 KVA in January 2010 and balance CMD of 175 KVA in May 2010.
- (v) As per request of the consumer, the SE/Opn/Ongole has requested for approval from the CGM/Opn/Tirupati Vide LrNo:SE/O/OGL/Comml/AE/DNo:9209/09, dt:30-12-2009.
- (vi) Chairman and Managing Director has accorded approval vide Memo No. CMD/DE/COmml/F.91/DNo:05/10, Dt:02-01-10 for releasing supply in two phases. HT supply was released on 05-02-10 for CMD 75KVA with connected load 56HP + 40KVA + 2KW as 1st phase.

- (vii) The consumer has requested on 20-5-2010 to the SE/Opn/Ongole for releasing supply in September /2010 instead of May/2010 for releasing 2nd phase load 175KVA due to delay in procurement of further production machines.
- (viii) As per consumer request, the SE/Opn/Ongole again requested for further approval from CGM/Opn/Tirupati vide LrNo.SE/O/OGL/AE/C/DNo:4021/10, dt:05-06-10. Chairman and Managing Director has accorded approval vide Memo No:CGM/DE/Coml/ F.91/DNo:876/10, Dt:11-6-10 to release 2nd phase load in September 2010 instead of May 2010.
- (ix) The consumer has again requested the SE/Opn/Ongole on 30-03-12 to release 2nd phase CMD 175KVA in 04/2012 instead of September 2010, due to delay in machinery erection. As per the consumer request Superintending Engineer/Opn/Ongole has requested Chief General Manager/Opeartion/Tirupati vide LrNo: SE/O/OGL/AE/C/DNo:1685/12 dt:04-04-12 for approval.
- (x) Chairman and Managing Director has accorded approval vide Memo.NoCGM/DE/Coml/DNo:326/12, dt:24-04-12 for releasing 2nd phase CMD 175 KVA in 04/2012 instead of 09/2010 duly collecting Rs 11,72,920/- as minimum charges for 2nd phase. As per Chairman and Managing Director instructions, Superintending Engineer/Opn/ Ongole has requested the consumer to pay Rs. 11,72,920/- towards shortfall amount.

3. The respondent-3 submitted his written submissions as hereunder:

- (i) On the grievance of the consumer of the HT SCNo: 343 ONG about levy of shortfall without utilization of second CMD, instructions were issued by CGM/Opn/APSPDCL/Tirupati, on 12-4-2012 and 24-4-2012 and the said complaint is to be dealt with and redressed by the CGM/Opn/APSPDCL/Tirupati.
- (ii) The CGM, Finance is no way concerned and not responsible for the said matter

4. After hearing both sides and after considering the material placed before the Forum, the Forum passed the impugned order as here under:

The respondents are directed that

- (i) They shall bill the service at 250 KVA CMD from the date of request of the complainant to release 2nd phase load of 175 KVA subject to final decision on items 20 and 21 of the findings above.**
- (ii) The consumer is directed to approach with written application seeking grant of time extension for the disputed period to APSPDCL authorities regarding disputed amount of Rs.11,72,920/- back billed for the period from September 2010 to March 2012.**
- (iii) The licensee shall consider his application and pass appropriate orders duly quoting the rule position thereof within a period of 30 days from the date of this order on merits of the case with ref. to General Terms and Conditions of Supply, Tariff Order and Electricity Act 2003 or any other commission approved manual procedures and rules.**

Accordingly the case is allowed and disposed off

5. Aggrieved by the said order, the appellant preferred this appeal narrating the following grounds:

- (i) Chairman, CGRF erred in ordering them to approach APSPDCL authorities to consider their application afresh as it amounts to denial of justice.**
- (ii) The findings of the Forum is in relation to clauses 2.2.11, 5.9.3 and 5.9.4 of GTCS under paras 12 and 19 are out of context, as they relate to period of agreement and termination of agreement to only HT agreement in force and load covered by such agreement. The present HT agreement was entered on 05.02.2010 and it would only cover 1st phase of CMD of 75 kVA and the 2nd phase CMD of 175 kVA do not cover any agreement so far.**

- (iii) Hence, it is requested to cancel the order of CMD, SPDCL insisting for payment of Rs.11,72,920/- as a pre condition for release of supply of 2nd phase CMD of 175 kVA and to release supply of 2nd phase immediately and for refund / adjustment of penalties already collected on or after 30.03.2012 for exceeding 1st phase of CMD of 75 kVA.

6. Now, the point for consideration is, "Whether the appellant is entitled for the relief as sought for in this appeal"?

7. Sri Y. Aditya Krishna, appellant present and submitted the same grounds mentioned in the grounds of appeal.

8. Whereas, the respondents are represented by Sri H.Haranatha Rao, SE/O/Ongole, Sri T.Srinivasa Rao, DE/O/Ongole and Sri M.Hari Babu, ADE/O/Rural-1/Ongole submitted their written submissions narrating the following grounds:

- (i) The 2nd phase is scheduled from September 2010, the consumer did not avail the same.
- (ii) The consumer requested from May 2010 to April 2012 is denied by the respondents and directed to pay CC charges considering the date of 2nd phase load release as September 2010.
- (iii) The consumer has submitted his representation to the CMD / APSPDCL on 22.01.2013 as per the orders of the Forum and requested for back billing penalty but before receiving any final order, the consumer approached this authority and he did not exhaust the appellate channels. Thus, the appeal is liable to be dismissed.

9. It is clear from the record that the complainant availed supply of 11kV potential under HT-I category for a CMD of 75 kVA as the first phase out of total CMD of 250 kVA for which the agreement was also concluded on 05.02.2010. Due to delay in erection of the equipment, the consumer requested for extension of time and the same was extended from May 2010 to September 2010. Even then the

appellant did not avail the same, but approached SE/Op/Ongole on 30.03.2012 with a request to release 175 kVA.

10. While awaiting for release of balance CMD, a 30 days demand notice was served on him demanding an amount of Rs.11,72,920/- towards shortfall against the 2nd phase CMD of 175 kVA with effect from September 2010 though not released and not reflected in the monthly bills from September 2010 onwards.

11. The Forum considered all the above aspects and directed to approach the authorities of APSPDCL regarding the disputed amount of Rs.11,72,920/- back billed for the period from September 2010 to March 2012. It is also directed that “the Licensee shall consider and pass appropriate order duly quoting rule position thereof within a period of 30 days from the date of the order on merits of the case with reference to GTCS, Tariff Order and Electricity Act, 2003 or any other Commission approved manual procedures and rules.”

12. Even before passing any order, the appellant approached this authority for a relief even without waiting for the result of the application submitted to the CMD / APSPDCL. The Forum has rightly considered that deemed supply cannot be demanded on the appellant.

13. So far as the request for refund / adjustment of penalties for exceeding 1st phase CMD is concerned, it cannot be considered by this authority since it is used beyond the capacity of CMD, unless the same request made by the appellant is accepted by the CMD / APSPDCL the waiver of the amount of Rs.11,72,920/- towards shortfall. Similarly, with regard to supply of 2nd phase CMD of 175 KVA is concerned, the request is already pending before the CMD / APSPDCL. It is for him to release 175 kVA with retrospective or prospective effect as per the direction given by the Forum. However, the extension of CMD of 175 kVA may be granted immediately. So far as the payment of amount is concerned, it is completely based on the order of the CMD / APSPDCL if he has given with retrospective effect automatically it is to be waived by the authorities of the APSPDCL.

14. In view of the above observation, there are no grounds to interfere with the order of the Forum and the licensee is directed by this authority to dispose of the application of the appellant within 30 days from the date of receipt of this order as directed by the Forum (CGRF, Tirupati).

15. With the above said finding, the appeal is disposed. No order as to costs.

This order is corrected and signed on this day of 21st March 2013

Sd/-
VIDYUT OMBUDSMAN