

BEFORE THE VIDYUT OMBUDSMAN

Present

**K.Sanjeeva Rao Naidu
Vidyut Ombudsman**

Dated: 11 -03-2013

Appeal No. 97 of 2012

Between

Sri. Rohit,
M/s. Shri Darshana Industries, Lakkampur (V),
Neradingunda (M), Adilabad (Dist)

... Appellant

And

1. Assistant Engineer / Operation / APNPDCL/ Town / Adilabad
2. Asst. Divisional Engineer / Operation / APNPDCL / Town / Adilabad
3. Divisional Engineer / Operation / APNPDCL / Adilabad
4. Senior Accounts Officer / Operation Circle / APNPDCL / Adilabad
5. Superintending Engineer / Operation / APNPDCL / Adilabad

.....Respondents

The appeal / representation filed on 13.12.2012 of the appellant has come up for final hearing before the Vidyut Ombudsman on 09.01.2013. Sri A.Gattaiah Advocate filed vakalat for the appellant, Sri E.Damodar, ADE/Op/Rural /Adilabad and Sri D.Narahari, JAO/HT / Adilabad 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. They have already submitted their point of contention to the Superintending Engineer, Divisional Engineer, Assistant Divisional Engineer and Senior Accounts Office, but till date they did not get any reply.

- ii. The demand raised by the department is for RMD for off season which is less than 15% of CMD. It is unimaginable to think that the main plant can run with 15% of CMD.
- iii. The above shortfall is levied in the bill only to harass them and put mental burden on them.
- iv. kindly look into the matter keenly and do the needful.

2. The Senior Accounts Officer/Operation Circle/ Adilabad has submitted his written submissions as hereunder:

- i. The off season period of the above service was May to October. The Recorded Maximum Demand and Consumption furnished by Assistant Divisional Engineer/Operation/Town/Adilabad is as below :-

Month	CMD Load	RMD	Consumption
05/11	300 KVA	9.60	2048
06/11		5.60	1764
07/11		5.60	864
08/11		11.20	1116
09/11		11.20	2104
10/11		254.00	2904

- ii. As per Conditions No. viii of Schedule of Retail Supply Tariff and Terms and Conditions for the Year 2011-12, "Any consumer who after declaring the period of season consumes power for his main plant during the off season period, shall not be entitled to this concession during that year".
- iii. The above recorded maximum demand and consumption clearly confirms that the main plant is functioned during the off season period.
- iv. Hence Assistant Divisional Engineer/Operation/Town/Adilabad was requested vide this Office Memo. No. SE/OP/ADB/SAO/JAO(HT)/D. No. 1605/11, Date : 14.12.2011 to submit a detailed report to take a decision on allowing seasonal benefit to the consumer.
- v. Further the matter was reminded vide this Office Memo No. SE/OP/ ADB/SAO/JAO (HT)/D. No. 218/11/Dt.

01.02.12. But Assistant Divisional Engineer/Operation/Town/Adilabad failed to submit the detailed report.

- vi. Hence a 15 days notice was issued to the consumer vide this Office Lr. No. 451/11, Dt. 03.03.2012 and requested to pay the shortfall amount of Rs. 3,91,565/- (By revising the C.C. bills for the months 05/11 to 10/11 with normal tariff).
- vii. Further it was informed that in case of any objections regarding disallowing of seasonal benefit, the same may raise to the Superintending Engineer/ Operation/Adilabad (Through Assistant Divisional Engineer/ Operation/Town/Adilabad within 15 days from the date of receipt of the notice).
- viii. But the consumer failed to pay the shortfall amount and no objections are received through Assistant Divisional Engineer/ Operation/Town/Adilabad, hence the shortfall amount was included in C.C. bill for the month of 04/2012.

3. After hearing both sides and after considering the material placed before the Forum, the Forum passed the impugned order as hereunder:

- i. The complainant is advised to pay the shortfall levied by the respondent in connection with consumed power for his main plant during the off season period declared from May'2011 to October'2011.
- ii. The respondents are directed to collect the shortfall amount as per the Tariff Order 2011-2012 during the off season period.

4. Aggrieved by the said order, the appellant preferred this appeal questioning the same by narrating the following grounds:

- i. The appellant was declared off season period of the above service from May 2011 to October 2011.
- ii. The appellant has used the main plant during the off season period basing on the RMD & consumption recorded during the off season period is imaginary & far from truth. It does not confirm that the

main plant is functioned during the off season period with just 8% RMD load of CMD. It cannot run with even 50% of CMD load. The RMD and consumption during the off season period from 5/11 to 10/11 never exceeded to 8% of CMD.

- iii. They never stated that they have consumed power to the main plant maximum of 30% of CMD during the off season period but they have stated in their letter dated 14.03.2012 addressed to SE/O/Adilabad that "their CMD is 850 KVA and that they are entitled to use 30% of the same in the off season period". But the Forum has wrongly interpreted and added the words in the sentence of "Consumed power to his main plant". Even though they never consumed power to run main plant during off season period as 12% of CMD load is not enough to run the main plant.
- iv. They never consumed power for their main plant during the off season period. This has been confirmed by the ADE/D/Town/Adilabad vide his letter dt.30.08.2012 received by the Forum on 03.09.2012 in reply to the Forum's notice dt.31.07.2012.
- v. The reply of the ADE/D/Town/Adilabad clearly indicates that there are no records available whether the supply to the main plant utilized or not. Once again they confirm that the power is not utilized to main plant.
- vi. After examination of the reports submitted by the respondents, the Forum came to a conclusion that the complainant has consumed power for his main plant during the off season period by violating the declaration period given by the complainant as per Condition No.viii of Schedule of Retail Supply Tariff 2011-12. It is imaginary and based on fictitious reports.
- vii. The tariff itself allows entitlement to utilize power up to 30% of the contracted demand during the off season period.
- viii. The meager RMD & consumption which is less than 8% of CMD load cannot be attributed / confirmed as main plant functioned during

the off season period thus, they have not violated the terms & conditions.

- ix. It is therefore prayed that the impugned order is liable to be set aside.
5. Now, the point for consideration is, "Whether the impugned order is liable to be set aside? If so, on what grounds?"
6. The learned advocate for the appellant submitted his written arguments projecting the following grounds:
- (i) The Forum has simply looked into the RMD recorded and arrived at a conclusion that the main plant was utilized, though there was no record to that effect.
 - (ii) The Forum has failed to look into the letter addressed by ADE dated 12.10.2012 in which it is clearly mentioned that the load particulars of the main plant of the service are available but not utilised by the appellant due to off-season of the industry. But at the same time, the lighting load available at present on the service is utilized by the appellant during the period of off-season.
 - (iii) The Forum has failed to apply its mind to the letter addressed by the respondent no.2 and the said letter indicates that there is no evidence of functioning of the main plant.
 - (iv) The Forum has failed to appreciate the letter addressed by the respondent no.4 dated 02.01.2013 demanding the appellant to pay the shortfall amount of Rs.3,91,565/- and it is otherwise admitted by the respondent no.4 that the shortfall raised by him is without any report since no detailed report is filed by the ADE/O/Adilabad.
 - (v) The Forum has failed to look into the objections raised by the appellant and the respondent no.4 has erroneously stated that no objection was received from the appellant.

- (vi) The Forum has failed to observe the real facts while raising shortfall amounts without any proper field reports and without looking into the objections raised by the appellant.
- (vii) The respondents have withdrawn the case against M/s. Sindhu Ginning & Pressing Factory, Adilabad and Sri Ram Industries, Adilabad on the shortfall levied basing on the A.G.Audit but withdrawn basing on the ADE's report.
- (viii) Though the appellant is standing on the same line, they have issued a shortfall notice and it is nothing but a clear cut harassment on the appellant.
- (ix) The department officials of Adilabad have over acted in order to harass the consumers or to extract more revenue for the department, which is not as per tariff spirit.
- (x) In the light of the above said facts, the impugned order is liable to be set aside.

7. The respondents have submitted their written submissions narrating the following grounds:

- (i) The industry of the appellant is seasonal industry.
- (ii) The service was recorded RMD during off-seasonal period as against CMD 300 KVA.

Month	CMD in KVA	RMD in KVA	Main plant Consumption	Lighting load consumption
05/11	300 KVA	9.60	2048	1154
06/11		5.60	1764	1026
07/11		5.60	864	510
08/11		11.20	1116	486
09/11		11.20	2104	1170
10/11		254.00	2904	1667

- (iii) As per the RMD recorded during off-season period, notice was issued to consumer but the consumer approached Consumer Grievance Redressal Forum.

- (iv) The consumer also paid the shortfall amount of Rs.3,91,565/- under protest.
- (v) It is also stated that the very table submitted above clearly indicates the using of the main plant and that itself is the indication that the main plant is put into operation and the appellant is not entitled to the benefit and the appeal preferred by the appellant is liable to be dismissed.

11. It is an admitted fact that Sc.No.ADB-296 M/s. Shri Darshana Industries, is a seasonal industry and it declared off-season period from May 2011 to October 2011. The SAO/Op/Adilabad has analysed basing on the RMD and consumption recorded during off-season period and arrived at a conclusion that the appellant has used the main plant during off-season period.

12. The Forum has observed that the appellant has stated that they consumed power to the main plant as they can use up to 30% of CMD during the off-season period is in correct. They have stated that they are entitled to use 30% of the same for the off-season period. This itself shows that the very observation made by the Forum that they have admitted using of the 30% even for running main plant is incorrect and this is a wrong interpretation made by the Forum.

13. It is clear from the reply to the SE that they are attending the works of repairing the plant and the machinery during off-season and that they have also utilized the lighting. When there is a possibility of attending the repairs of machinery to put the machinery in good working condition to operate in the seasonal period, naturally there may be some use of power for attending the same.

14. It is an admitted fact that "any consumer as per Retail Supply Tariff order who consumes power for his main plant during the off-season period shall not be entitled to the concession during that period." This fact has to be looked into whether the main plant, as pointed out by the respondents is put to use or not.

15. The Tariff order reads as follows:

DEMAND CHARGES & ENERGY CHARGES		
Voltage of Supply	Demand Charges Rs/kVA / month of Billing Demand#	Energy Charges Paise/kVAh
132kV and above	250	410
33kV	250	430
11kV	250	480
#Based on the Recorded Maximum Demand or 30% of the Contracted Demand whichever is higher		

16. The declared off-season period is 5/11 to 10/11. As per the Tariff Order, the appellant is entitled to utilize power up to 30% during off-season period. In this case, the RMD is 254 for the month of October 2011, which is more than 80% out of 300kVA and for the remaining months it is far below 30%. No plausible explanation is forthcoming as to why it has crossed 80%. The Tariff order is silent that if consumption exceeds beyond 30% by using the main plant in any month in the declared off-season period in any month, the party is entitled for off-season benefit, basing on the RMD less than 30% during the remaining months. It shows that even if exceeds in a month the party is not entitled for seasonal benefit.

17. The only ground mentioned by the appellant is that they have utilized the power for attending the repairs, overhauling of machinery, etc. But it cannot be concluded that in the month of October 2011, the power is used only for attending the repairs. If it is a case of attending repairs, the RMD must be equivalent to that of the other months of June to September but it is more than 80%. Hence, it has to be presumed that the season has started from the month of October 2011 itself by using the main plant functioning with the raw material available with the company. The RMD recorded in the month of October 2011 gives an impression that the main plant is put to use even before the end of off-seasonal period and beginning of on-season. In the light of the RMD at 254 out

of 300 kVA and in view of the presumption that the main plant is put to use even before closure of the off-season period, the appellant is not entitled to the seasonal benefit so far as this unit is concerned.

18. The appeal preferred by the appellant is not sustainable and the same is liable to be dismissed.

19. In the result, the appeal is dismissed.

This order is corrected and signed on this day of 11th March, 2013

Sd/-
VIDYUT OMBUDSMAN