



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**

Tuesday, the Fifteenth Day of September 2015

Appeal No. 58 of 2015

Preferred against Order Dt. 5.06.2015 of CGRF In
CG.No:107/2015 of Rangareddy South Circle

Between

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

... 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 13.07.2015 coming up for final hearing before the Vidyut Ombudsman, Telangana State on 3.09.2015 at Hyderabad in the presence of Sri. Ravi, on behalf of the Appellant and Sri. Harish Kumar SAO/I/C for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant has HT service connection RRS-1247 with CMD of 9999 KVA. The Appellant's case is that the Respondents have claimed delayed payment surcharge of Rs 48.80 Lakhs from september, 2013 to August,2014 billing months without there being any authority to claim so. The Appellant further claims that as per the Tariff Order 2013-14, the additional charges for belated payment of charges under clause 9 to the effect that " the licensee shall charge the Delayed Payment Surcharge (DPS) per month on the bill amount @ 5ps /100/Day or Rs 550/- whichever is higher. In case of grant of installments the Licensee shall levy interest @ 18% PA on the outstanding amounts compounded

annually and the two shall not be levied at the same time” the Respondents are not entitled to claim the delayed payment surcharge because the FSA, DMD and other amounts are not part of charges.

2. The Appellant claims that as per the directions of Hon’ble supreme court of India in SLP No. 15245-15270 dt.23.6.2014, the FSA amounts for the term April, 2010 to June, 2012 are not to be collected by coercive methods. Therefore, the Appellant claims that the delayed payment surcharge is not attracted on the present FSA amounts too. The Appellant further claimed that Respondents charged DPS on the amounts more than the outstanding shown in the CC bills, which included FSA, DMD and other charges, which is against the terms in Clause 9 of the Tariff order and that the Respondents claimed excess amounts over which delayed payment surcharge has been claimed in the bills issued from November, 2013 to August, 2014. It is further alleged that if the bills from September, 2013 to August, 2014 billing months were revised as per clause VI.6.1(ii) of Schedule I, Guaranteed Standards of Performance of Regulation 7 of 2004, the due date shall be reckoned from the date of revised bills for the purpose of levy of additional charges for belated payment.

3. The Appellant sought withdrawal of claim of Rs 48,80,022/- claimed by the Respondents towards DPS w.e.f September, 2013 to August, 2014 billing months, issue of revised bills as per clause VI.6.1(ii) of schedule I, Guaranteed Standards of Performance of Regulation 7 of 2014 and payment of compensation and costs.

4. The 3rd Respondent submitted a reply before the CGRF claiming that as per the Tariff Order, the licensee can charge DPS on the bill amount @ 5ps/Rs100/Day if the payment is delayed or not paid till due date. The bill amounts include all components shown in the bill except ED., IED and DPS. Therefore, the claim of the Appellant that FSA, Demand charges are not part of the charges and hence not subject to DPS is not correct.

5. The Respondents alleged that they have levied FSA amounts from 2008-09 to 2012-13 in regular CC bills as per the orders of ERC and the Appellant paid FSA charges by obtaining installment facility from the licensee. When the Respondents levied DPS of pending FSA, the Appellant approached the Hon’ble High Court and Hon’ble Supreme Court and got stay orders on the collection of FSA amount, and as per the orders the Respondents have stopped levy of DPS on the FSA amounts.

The Appellant has to pay DPS on pending FSA upto the date of stay orders.

6. The Respondents further claimed that as per clause 9 of Tariff order 2013-14, the Licensee can charge DPS on bill amount for delay in payment, which include FSA, demand charges etc and there is no specific mention of component wise calculation of DPS in the Tariff order. The claim of the Appellant that the DPS claimed is more than the outstanding amount shown in the CC bills is not correct, because DPS will be calculated on the outstanding or delayed payment of the previous month.

7. After hearing both sides and on consideration of the material on record, the CGRF noted the interim orders dt. 23.6.2014 of the Hon'ble Supreme Court of India in SLP Nos. 15245 to 15270/2014 and observed that this stay order is applicable to FSA pending due from April , 2010 to June, 2012. CGRF further opined that the FSA is a part of Current Consumption bill on which DPS shall be collected, if the payment of CC bill is delayed for 15 days and this DPS is applicable for the balance installments as per the sanction orders. CGRF found that the Appellant failed to show that the DPS amount calculations of the Respondents are against the Tariff Order and so saying, the CGRF dismissed the complaint giving an advice that the Respondents should follow the final judgment of Hon'ble Supreme Court regarding collection of FSA from April,2010 to June, 2012 through the impugned orders.

8. Aggrieved and not satisfied with the impugned orders, the Appellant Preferred the present Appeal.

9. Efforts made to arrive at a settlement by mediation failed, because of the stand of the each party.

ARGUMENTS HEARD.

10. The points for determination are:-

1. Whether the impugned orders are liable to be set aside?
2. Whether FSA charges are not subject to delayed payment surcharge?

POINTS 1&2

11. The Appellant contended that DPS cannot be claimed on FSA charges and DMD, and that DPS is applicable only in case of delay in payment of CC charges and that the Respondents have not disclosed the details of various heads under

which DPS is being claimed. The Appellant sought setting aside the impugned orders, setting aside DPS of Rs 48,80,022/- levied from September, 2013 to August, 2014 billing months and issue of revised bills during the relevant months.

12. The Respondent No.3 submitted written submission stating that bill amount means all parameters shown in the bill except ED,IED and DPS and therefore, the licensee is entitled to levy the belated payment surcharge on all parameters of the bill. As per the Tariff Orders, the Respondents levied DPS on pending FSA. In the matter, the Appellant approached the Hon'ble High court and the Hon'ble Supreme Court against DPS on FSA and therefore, the Respondents have stopped levying DPS and started showing the amount in the **COURT CASE COLUMN**. As per clause 9 of Tariff order 2013-14 the Licensee can charge the DPS on bill amount for delay in payment which include FSA, Demand charges etc and the Tariff order did not mention about component wise calculation of DPS. The Appellant, in the written arguments as well as oral arguments advanced in its behalf reiterated that non mention of component wise DPS is against clause 6(9) Additional charges for belated payment of charges of the Tariff order and the total claim of the Respondents for Rs 48,80,022/- towards DPS from September, 2013 to August, 2014 is in violation of clause 6(9) of GTCS of Tariff Order for financial year 2013-14 which continued for 2014-15.

13. On behalf of the Appellant, it is contended that Fuel Surcharge Adjustment cannot be part of CC bill and therefore, Fuel Surcharge Adjustment amount is not subject to the delay payment surcharge as mentioned in subclause 9 of clause 6 of the Tariff Order 2013-14. The Respondents on the other hand, assert that the Fuel Surcharge Adjustment is part of CC bill and it is subject to Delayed Payment Surcharge, if the payment is delayed and even in case of grant of installments, FSA amount is subject to interest @18% P.A.

14. Clause 6(9) of the Tariff Order 2013-14 reads as follows;-

Additional charges for belated payment of charges:

The licensees shall charge the delayed payment surcharge(DPS) per month on the bill amount @ 5ps/Rs100/Day or Rs 550/- whichever is higher. In case of grant of installments, the licensee shall levy interest @ 18% P.A on the outstanding amounts, compounded annually and the two shall not be levied at the same time.

15. There is no mention specifically that the bill amount includes Fuel Surcharge Adjustment. The Licensee adds Fuel Surcharge Adjustment charges to the bill every month claiming that it is part of the bill. The Appellant claims that Fuel Surcharge Adjustment charges are separate from the bill and they are not part of the bill and therefore, the Fuel Surcharge Adjustment charges are not subject to Delayed Payment Surcharge. The Appellant further relied on Regulation 188 of the Tariff order 2013-14 under the caption **REVENUE FROM TARIFFS AND NON TARIFF INCOME** under which the Tariff Order provides that “The revenue to Licensees will be in two ways, consumption charges (energy, fixed, minimum and customer charges) and Non-tariff income (recoveries from theft of power or other malpractices, interest on income and other miscellaneous receipts).”. The learned counsel for the Appellant on the basis of this provision, contends that the Fuel Surcharge Adjustment is not part of Regulation 188 of Tariff Order 2013-14 and therefore, it is not subject to Delayed Payment Surcharge. The Respondents on the other hand assert that the Fuel Surcharge Adjustment charges are part of consumption charges and it also comes under the caption “the other miscellaneous receipts”.

16. What is Fuel Surcharge Adjustment?

As per amendment Regulation 1 of 2003 read with enabling section 62(4) of Electricity Act, ERC has the power to fix Additional cost of fuel and power purchase costs to be passed on to the consumers as Fuel Surcharge Adjustment(FSA) on quarterly basis as per the specified FORMULA.

The Tariff Order 2013-14 regarding terms and conditions of supply at page 181 specifies that the **Fuel Surcharge Adjustment will be extra as applicable and notified by the Commission from time to time.** The observation of the Hon’ble Supreme Court in Rohtas Industries Ltd., Vs The Chairman, Bihar Electricity Board (AIR 1984SC657) at para 9, is relevant and to the following effect:

“Though the nomenclature given to the levy is: “Fuel Surcharge,” it is really a surcharge levied to meet the increased cost of generation and purchase of Electricity.”

17. The Hon’ble Supreme court in M/s Hindustan Zinc Ltd Vs APSEB(AIR1991SC1473) at para 29 opined that the Fuel Cost Adjustment tariff is

an expression wide enough to include the other charges representing fuel cost adjustment, which is applicable to all HT consumers as a result of the escalation in fuel prices. The Hon'ble Supreme Court clarified further that the method adopted was to prescribe a formula linking it to the increasing fuel cost, so that it was not necessary to revise the tariff each time as a result of increase in fuel prices, the same being taken care of the relevant factors in the formula for fuel cost adjustment.

18. From the interpretation given in the cited cases by the Hon'ble Supreme Court, it is quite clear that the Fuel Surcharge Adjustment is really a surcharge levied to meet the increased cost of generation and purchase of Electricity. Therefore the Fuel Surcharge Adjustment is a surcharge levied to meet the increased cost of Generation and purchase of electricity and not any other amount representing 'some other charges.' Fuel Surcharge Adjustment is actually the cost of Electricity levied in a future date for cost escalation in the past. It cannot be said that the Fuel Surcharge Adjustment is not part of Clause 6(9) of Tariff Order 2013-14 and therefore, the Fuel Surcharge Adjustment is not subject to delayed payment surcharge. When questioned as to what is the remedy for recovery if payment of Fuel Surcharge Adjustment amount is delayed infinitely and interest is not leviable, the answer of the Appellant is that the licensee may disconnect the service, but it cannot impose interest. This argument is totally untenable and not acceptable.

19. The contention of the Appellant that the Fuel Surcharge Adjustment is not part of the bill and it is not subject to Delayed Payment Surcharge as per Sub Clause 6(9) of Tariff Order 2013-14 is totally untenable and against the Tariff orders. The power of ERC to determine Fuel Surcharge Adjustment is derived from Section 62 (4) of the Electricity Act 2003. In the Regulation No. 5 of 2004 under Clause 4.2 (n), the billing details are given which include in item no.6 "Fuel Cost Adjustment Charges." In the same regulation No. 5 of 2004, which was amended by Regulation No. 7 of 2013, it is specifically mentioned in amended clause 2(C) that the "consumption charges" means energy charges for consumption of electrical energy (calculated on the basis of kwh or kVAh rate as applicable), and includes demand/fixed charges/Fuel surcharge Adjustment(FSA) charges, Customer charges wherever applicable. This definition settles the present issue to say that the Fuel Surcharge Adjustment is part of the

Consumption Charges and they are naturally subject to Delayed Payment Surcharge, if payment is delayed on the bill amount including FSA charges. The contention on behalf of the Appellant in the present matter is contrary to the Tariff orders and the power of ERC to fix Tariffs including Fuel Surcharge Adjustments (Additional cost of fuel and power purchase costs).

20. The order of the CGRF claiming that there are no merits in the complaint and that the licensee should follow the final judgement of the Hon'ble Supreme Court with regards to collection of balance FSA from the consumers and until such time, the Respondents should not take any coercive measures to recover FSA charges from April, 2010 to June, 2012 and shall not levy any Delayed Payment Surcharge, does not show that the members of the CGRF have applied their mind to the facts of the case and shows that CGRF had mechanically disposed of the complaint, without going into the merits of the case.

21. The controversy is regarding the Delayed Payment Charges on Fuel surcharge Adjustment amount and whether it is part of the CC bill. The foregoing paras clearly establish that the FSA charges are part of CC bills and subject to levy of delayed payment charges, in case of delay. The Delayed payment surcharge on Fuel Surcharge Adjustment in question is w.e.f from November,2013 to August,2014. The Hon'ble Supreme Court passed interim direction to the effect that "no coercive action for recovering FSA charges for the term April,2010 to June,2012 shall be taken.' The present controversy is regarding recovery of FSA amount w.e.f November, 2013 to August, 2014, which is not covered by the direction of the Hon'ble Supreme Court dt. 23.6.2014 and passed in Special leave to Appeal in (Civil) No(s). 15245-17270/2014 and batch. **The Licensee therefore is found entitled to charge Delayed Payment Surcharge on Fuel Surcharge Adjustment amount also along with consumption and other specified charges. Both the issues are answered accordingly.**

In the result, the Appeal is dismissed as having no merits.

Corrected, Signed and pronounced on this 15th day of September 2015.

Sd/-

VIDYUT OMBUDSMAN

To

1. Sri. Bharat Kumar,
Managing Director,
M/S Suguna Metals Limited, 1-8-673,
Azamabad, Hyderabad - 500020.
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.