



VIDUYUT 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 Thirtieth day of July 2015

Appeal No. 23 of 2015

(Old Appeal No. 49 of 2013)

Preferred against Order Dt. 8.2.2013 of CGRF In

CG.No: 124/2012 of Adilabad Circle

Between

M/s Lanco Infratech Ltd represented by
Sri. M. Venkat Rao,
SC NO 286, HT Category
APITTA Projects, BASARA,
Madhole Mandal, Adilabad - 504 101

.....

Appellant

AND

1. The SAO/OP Circle/TSNPDCL/Adilabad/Adilabad District.
2. The DE/OP/TSNPDCL/Nirmal/Adilabad District.
3. The SE/OP Circle/TSNPDCL/Adilabad/Adilabad District.

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Respondents

The above appeal filed on 18.03.2013 came up for final hearing before the Viduyut Ombudsman, Telangana State on 16.06.2015 at Hyderabad in the presence of Sri. Sivaram, Advocate on behalf of the Appellant and Sri. L Kishan- SAO/CO/Adilabad, Sri. D Pramod Kumar - DE/OP/Nirmal for the Respondents and having considered the record and submissions of both the parties, the Viduyut Ombudsman passed the following;

AWARD

The Appellant's case is as follows:-

The Appellant took HT connection with 200 KVA for carrying out project work at IIIT Basara with service connection No. ADB 286 and it has been getting the power through the meter. When the project was in peak stage, the Appellant sought additional power 470 KVA and paid appropriate fee. They have not entered into any agreement for the additional supply of power. The Additional power supply was not given and there was no additional consumption of power by the Appellant.

2. When the project of IIIT was at end stage, the power consumption started coming down and there was naturally no need for additional power. The Respondents levied Unconnected Minimum Charges without release of additional load and without entering into HT agreement for additional load. The Appellant paid the following amounts to NPDCL.

Development charges + Live service charges	Rs 8,21,500
Security Deposit	<u>Rs 5,00,000</u>
	Rs 13,21,500

3. The Appellant seeks withdrawal of UCM charges. CGRF observed that since the Appellant did not respond to the notice of DE/OP and therefore, waiver of UCM charges is not possible.

4. The Appellant argued that if the Discom obtained an undertaking from the consumer the liability to pay UCM charges at the time of Applying for power, similar incidents could be avoided.

5. Before the CGRF, the Appellant broadly pleaded as afore mentioned except that additional load pleaded was for 360 KVA.

6. The Respondents claimed that the Appellant was released HT SC No. ADB 256 WITH 200 KVA on 29.8.2009. They have stated that DE/OP/Nirmal issued a 3 months notice dt 6.8.2011 informing the Appellant that the proposal for additional 200 KVA was sanctioned, the required work executed and the Respondents are ready to give power supply. This notice was received and acknowledged by Sri. M. Rajeshwar, Electrician/Employee of the Appellant on 22.8.2011.

7. The Respondents stated that the additional load was not released due to non erection of DTR by the Appellant, not getting CEIG approval and not getting concluded Agreement etc.

8. The Respondents pleaded that Since three months notice was served, NPDCL is entitled to and raised monthly minimum charges or special minimum guarantee and or fixed charges as the case may be, from the date of expiry of 3 months notice or

from the actual date of release of load whichever is earlier. Therefore the Respondents claim that UCM charges for 300 KVA load is being levied from 12/2011 onwards, as per the approval of the SE/OP/ADB dt 22.2.2012.

9. The Respondents claimed that after expiry of 3 months notice, SAO/OP Circle/ADB levied UCM charges from 12/2011 to 3/2012 and included these charges in the CC bill of 3/2012. On receipt of this CC bill, the Appellant raised an objection through a letter stating that it was not aware of receipt of any 3 months notice and it is not aware of the procedure for withdrawal of additional load applied.

10. After hearing arguments and on consideration of the material on record, the CGRF concluded that UCM charges cannot be waived, while directing SE/OP/ADB to exercise caution while releasing additional load to any HT service and directed him to enquire into the entire matter of release of additional load, loss sustained by the Discom and take necessary action against those responsible for the lapses.

11. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present appeal.

12. Efforts made to bring in settlement could not succeed.

13. Arguments heard. In addition, on behalf of the Appellant, written submissions are filed.

14. The point for determination is whether the Respondents are entitled to collect UCM charges without there being a written agreement?

THE POINT

15. As per the HT agreement dt. 29.8.2009 for 5 years, the sanctioned load (CMD) to the Appellant was 200 KVA.

As per the letter dt. 8.12.2009 of SE/OP/ADB, the enhancement of load was from 230 KVA to 700 KVA (Additional load 470 KVA)

As per the letter dt. 6.8.2011 of DE/Electrical/OP/Nirmal, the proposal for enhancement of load was from 200 KVA to 500 KVA. This three months notice letter was issued to the Appellant acknowledged by an electrician by name M. Rajeshwar of the Appellant on 22.8.2011 informing the Appellant that NPDCL was ready to supply, but for want of erection of DTR, want of approval from CEIG from the side of the Appellant, the service was not released asking the Appellant to take necessary steps, otherwise it would be liable for monthly minimum charges/Special minimum guarantee/fixed charges from the date of expiry of 3 months notice.

16. Later the Respondents stuck to the claim that enhancement of load was from 200 KVA to 500 KVA and whereas, subsequent payments were made by the Appellant for proposal of enhancement of load from 200 KVA to 700 KVA i.e additional load of

500 KVA.

17. For calculation of amount the Respondents are entitled to, the following particulars are found necessary:-

- . Notice dt. 06.08.2011 was issued by the licensee served on the Appellant on 22.08.2011 as per acknowledgement.
- . Completion of three months notice period from 22.8.2011, by 22.11.2011 is noted.
- . UCM charges per month for CMD of 500 KVA from 12.2011 to 25.3.2012 which has to be levied.

18. On receipt of CC bills for 3/2012 which included UCM charges of Rs 3,52,765/-, the Appellant through letter dt. 25.3.2012 raised objection and contended that it is not required to pay UCM charges and contended further that they do not need the additional load anymore, and asserted that the meter was not fixed for the additional load and there was no power consumption through this line. The Appellant further contended that it is not aware of communication sent and the procedure to be followed for withdrawal of additional load applied (cancellation of non required/non used electrical line).

19. The total UCM charges levied by the Respondents is Rs 18,74,562/- w.e.f from 12/2011 to 06/2013 as per the letter dt. 15.5.2014 of the SE/OP/ADB.

20. The Appellant deposited the following development charges towards sanction of additional load from existing 200 KVA to additional load of 500 KVA, total being 700 KVA.

Rs 1500 x 500 = Rs 7,50,000/-

Service line charges = 71,500/-

21. There are instructions in GTCS for refund of amounts in case of applicant withdrawing his requisition before the company takes up the work for erection of service line, but in the present case, the licensee had completed the works of the sanctioned scheme and therefore, there is no question of refund of these two amounts.

22. The Appellant had paid the security deposit @ Rs 1000 per KVA x 500 = Rs 5,00,000/-. This amount the licensee is entitled to use for adjustment of

outstanding amounts and thereafter, the balance can be refunded.

23. The Appellant has not availed the additional load. Importantly there is no HT agreement for the additional load, which is a big lapse on the part of the Respondents, which is going to affect the licensee's right to collect minimum charges for the agreement period. The Appellant, on this aspect, contended that without any agreement for additional load being executed, the respondents can not claim any amounts like minimum charges, UCM charges etc, continuously without any break, which is a valid point to the extent of the licensee charging minimum charges probably for 2 years as per the usual clause in the period fixed in the agreement, if it was executed.

24. The Appellant claimed that UCM charges can not be claimed as the Respondents have not given any notice to inform their readiness to issue additional load, which is countered by the Respondents stating that in fact the notice dt. 6.8.2011 was issued by the DE/ELECTRICAL/OP//APNPDCL/NML to the Appellant specifically mentioning that NPDCL was ready to give supply from 200 KVA to 500 KVA(Note that enhancement was sought for 500 KVA i.e 200 KVA + 500 KVA but since Additional KVA is mentioned by DE/Operation as 300 KVA, the licensee stuck to this figure. While the Appellant paid statutory amounts for additional load of 500 KVA i.e, 200 KVA + 500 KVA= 700 KVA in all). Even by this notice dt. 6.8.2011, DE noted that due to non erection of DTR, not getting CEIG approval, the service was not released. Through this letter, the DE gave 3 months time to avail the additional power from 6.8.2011, otherwise, the DE informed the Appellant that they would raise a monthly minimum charges or special minimum guarantee and or the fixed charges against the Appellant.

25. The Appellant contends that the letter dt. 6.8.2011 was not received by them and therefore, the demand for any charges is not maintainable. The Respondents pointed out the acknowledgement by a staff member of the Appellant by name Sri. M. Rajeshwar, Electrician on this letter dt. 6.8.2011. From the preparations made by the licensee to supply additional power and other correspondence and the acknowledgement on this letter dt. 6.8.2011 on 22.8.2011 shows and supports the claim of the Respondents that this notice was in fact served on the Appellant company. The argument contrary advanced on behalf of the Appellant is untenable and it is advanced only to avoid its liability.

26. The Respondents have charged UCM charges w.e.f December 2011, which is from 3 months notice dt. 6.8.2011. The Appellant pointed out clause 5.9.2.1 of GTCS which is extracted below, to contend that since agreement is not executed,

the specified charges cannot be levied:-

Clause 5.9.2.1 of GTCS

“The company shall, after the consumer has completed all the pre-requisite formalities in respect of execution of Agreement and security deposit, etc., make arrangements to supply electricity in the manner prescribed and issue a notice to the consumer indicating that it is ready to provide supply within the time period specified in the APERC (Licensees’ duty for supply of electricity on request) Regulation, 2004 (No.3 of 2004) read with Section 43 of the Act. Such supply should be availed by the applicant within a period of three months from the date of issue of the notice. Every consumer shall pay to the Company from the Date of Commencement of Supply of energy or from the date of expiry of three months’ notice whichever is earlier, Maximum Demand charges, energy charges, surcharges, Meter rents and other charges, as provided in the Tariff Order and the GTCS. In case the consumer fails to avail supply within the three months’ notice period, he shall have to pay monthly minimum charges and/or the fixed charges as specified in the Tariff order in force, as case may be, from date of expiry of the above said notice.”

27. The contention of the Appellant that a written agreement is essential to claim charges cannot stand scrutiny, because the clause makes it clear that “all the Pre-requisite formalities in respect of execution of agreement”_ are fulfilled and then power supply arrangement should be made. It does not say that everything like demanding various charges should be demanded only after the Agreement is executed and therefore, the contention of the Appellant that since agreement is not executed, no demand for maximum demand charges, energy charges, surcharges, meter rents and other charges like UCM charges as provided under Tariff orders and GTCS could be made, is not tenable and sustainable.

28. The Appellant relied on a decision of Hon’ble High Court in Vinayaka Modern Rice Mill as DE/OP/Eastern Power Distribution Company of AP. Ltd(2007(6) ALD 752 = 2007 (4) A LT 603) wherein the Hon’ble high court observed that during the pendency of the writ petition, the power supply to the petitioner was restored, by requiring to pay certain amounts. The result of the order of termination being held to be invalid, would be that the petitioner is under an obligation to pay the

minimum charges from the date of disconnection till the date of termination i.e 26.8.2006. The emphasis was on termination of contract. In the present matter, the already existing HT agreement was neither amended, nor revised or a fresh agreement was entered into as a consequence of additional load/ demand made and similarly for claiming minimum period liability for the additional load/demand as per the agreement if executed and therefore, the Respondents are not entitled to claim any amounts under the pretext of additional load.

29. The Appellant also relied on a judgement of Hon'ble high court rendered in APSEB vs Krishivali Khandsari Sugar Industry and Others (AIR 1984 AP 360) to contend that the Respondents cannot collect UCM charges. The Electricity act, 2003 came into existence by way of bringing in reforms after the cited judgement dt 30.11.1983 was rendered. The Hon'ble High Court while observing that under the old Regulation 26, minimum period fixed was 5 years with an option to the consumer to terminate the contract. It was also observed that it was necessary to prescribe the minimum period within which the consumer shall apply for reconnection, failing which the contract shall stand terminated to avoid oppressive collection of disconnected minimum charges. A suggestion was made in the case of UCM charges as contemplated under Regulation 26(4).

30. In the present case, general terms and conditions of supply (GTCS) of the distribution and retail supply licensees dt 6.1.2006 amended from time to time govern the present dispute.

31. The Appellant has withdrawn his request for release of additional load by way of letter dt. 25.3.2012 when CC bill for the month of March, 2012 for Rs 3,52,765/- was issued to the effect that "As the works at our IIIT project is in completion stage, the consumption of electricity has come down and it will be continued further. Hence we may not require any additional power consumption further."

32. The Respondents levied UCM charges from December 2011 to June 2013 amounting to Rs 18,74,562/- without mentioning the reasons therefor regarding the time limit. In the present case, there is no HT agreement executed as per clause 5.9.3.2 of GTCS for supply of additional power, which is a handicap to collect minimum charges till end of the agreement period, as far as UCM charges are concerned.

33. The Appellant was expected to draw power after expiry of 3 months notice dt. 6.8.2011 served on 22.8.2011, which they did not, as required under clause

5.9.4.2 of GTCS, for the reason being non erection of DTR and not getting CEIG approval by the time of expiry of 3 months from 6.8.2011 (22.8.2011 date of receipt of this letter by an employee of the Appellant) which is from 22.11.2011, till the Appellant withdraw the request for release of additional load by way of letter dt. 25.3.2015. During this period the Appellant is liable to pay monthly minimum charges/Fixed charges/UCM charges as specified in the Tariff Order in force to the Respondents.

34. As per clause 7 of HT supply general conditions of Tariff Order 2012-13:-

“ 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 loss of a part of the fixed charges of the licensee”

As per clause 7 above, whether power is consumed or not, the consumer is liable to pay monthly minimum charges to the licensee.

35. The Respondents submitted a report dt. 15.5.2014 regarding levying of UCM charges from December 2011 to June 2013 totalling Rs 18,74,562/- claiming as recoverable from the Appellant. The aforementioned discussion discloses that the Respondents are entitled to recover monthly minimum charges from the Appellant, even without any written agreement w.e.f 22.11.2011(after expiry of 3 months notice dt. 6.8.2011) to 25.3.2015 (the date of letter of Appellant stating that they do not require the additional power).

36. The Respondents gave details of monthly minimum charges in their report dt. 15.5.2014 which are mentioned below:

22.11.2011 to 25.3.2012

Demand charges

300 KVA X 80% X 4 months (Retail supply tariff and terms and conditions, HT category II of Tariff order 2011-12) x 250/- per KVA Rs 2,40,000/-

Energy Charges

300 KVA X 80% of the contracted demand x 25 KVAh per KVA X Rs 4.80 Ps x 4 months Rs 1,15,200/-

Total amount of monthly minimum charges due Rs 3,55,200/-

In the absence of written agreement, which would have bound the Appellant to pay

minimum charges till the end of the period of agreement, the Respondents are entitled to recover only Rs 3,55,200/- from the Appellant and not as claimed by them. The Respondents to take appropriate steps based on this UCM charges/Minimum monthly charges arrived herein.

37. The CGRF has not discharged its function as expected under the law. when they have the data and facts before them, they are expected to implement the Tariff order and GTCS in the correct spirit, which duty they failed to discharge. The Impugned order is accordingly set aside to extent indicated above.

Corrected, Signed and Pronounced on this 30th day of July 2015.

VIDYUT OMBUDSMAN

1. M.Venkat Rao
M/s Lanco Infratech Ltd
SC NO 286, HT Category
APITTA Projects, BASARA,
Madhole Mandal, Adilabad - 504 101.
2. The SAO/OP Circle/TSNPDCL/Adilabad/Adilabad District.
3. The DE/OP/TSNPDCL/Nirmal/Adilabad District.
4. The SE/OP Circle/TSNPDCL/Adilabad/Adilabad District.

Copy to:

5. The Chairman, CGRF, TSNPDCL, Nakkalagutta, Hanamkonda, Warangal District.
6. The Secretary, TSERC, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad.