



**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**

Monday, the Fourth Day of July 2016

CMP No. 1 of 2016

in

Appeal No. 154 of 2013

Order Dt. 27-10-2014 of Vidyut Ombudsman

Between

M/s. Sugna Metals Limited, (Rep. by Adv. N. Vinesh Raj), 1-8-673,  
Azamabad, Hyderabad. 500 020.

**... 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.
4. The CGM/(Comml.& RAC)TSSPDCL, Corporate Office, Mint Compound,  
Hyderabad.

**... Respondents**

The above petition filed on 03.03.2016, coming up for hearing before the Vidyut Ombudsman, Telangana State on 18.05.2016 at Hyderabad in the presence of Sri. Ravi - for the Appellant Company and Sri. P. Krishna reddy - CGM(Comml.), Sri. M. Srinivas - SAO/RR South Circle, Sri. L. Anil Kumar - SE/Commercial/TSSPDCL and Sri. K.Lingaiah -DE/Comml./TSSPDCL for the Respondents and having considering the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

**ORDER**

The petitioner is the Appellant in the Appeal and filed the present application under Clause 3.42 of the Regulation 3 of 2015 seeking compensation for non compliance of the order dt.27.10.2014 in Appeal No. 154 of 2013 of the Vidyut Ombudsman, AP & Telangana.

2. The operative portion of the order of the Vidyut Ombudsman is in para 30 of the order. The allegation of non compliance is against the specific directions contained in para 30 which are as follows:

- a. **“The Respondents shall rework the bills of the Appellants and not levy demand charges on the Appellants for the 12 day period when they were not availing power. In other words, the DISCOM cannot charge demand charges for the meagre 10% demand that was allowed to the Appellants during the power holiday period, as doing so contravenes the direction of the Hon’ble Commission.**
- b. **The Appellant’s contention about demand charges at penal rate for the months of September,2012 and October,2012 is negated as the charges levied by the DISCOM are found to be in accordance with the directions of the Hon’ble Commission.**
- c. **The Respondents will have to rework the off-peak penal consumption charges for the month of November,2012 duly taking 00.00 hrs as the starting period for computing the entitlements and penalties and not 06.00 hrs as was done by them. If this results in revision of bills for the subsequent periods, it shall be carried out accordingly.**
- d. **The Respondents are not correct in charging delayed payment charges at the rate of 1.5% on the total bill amount for the month, even when the delay is less than a month. In other words, the delayed payment charges have to be levied only on the actual number of days delay that is there in payment of electricity bills.**
- e. **The R&C penalties that are reworked because of this adjustment will also impact the 50% waiver of R&C penalties that is already done by the Respondents. The 50% waiver shall accordingly be adjusted to take into account the reworked R&C penalties that is now ordered.”**

3. The order in Appeal No. 154 of 2013 is summarised below as complied with and not complied with in a table form for clarity:

TABLE- 1

Sl. No	Award dt. 27.10.2014 in Appeal No.154/2013 of Vidyut Ombudsman	VO Directions in Appeal Para 30(a) to (e)	Respondent's compliance	Remarks
1.	<p><b>Demand charges normal rate:</b> Withdrawal of demand charges during off peak Hrs in power 'ON' days and total demand charges levied during power OFF days. For both the above periods, the ERC had restricted the usage of power upto 10% of CMD during the R&amp;C period.</p>	DISCOM cannot charge demand charges for the meagre 10% demand.	<b>Not complied with</b>	As per the Clause 19(a) of the ERC proceedings dt. 1.11.2012 towards R&C measures, there are no directions for free power to an extent of 10% of CMD during power holidays.
2.	<p><b>Demand charges penal rate:</b> Demand charges penal rate was charged by the respondents, even though the Appellant was not liable, as it was argued that there was no excess consumption.</p>	This appeal on demand charges penal rate was negated.	-----	-----
3.	<p><b>OFF peak penal energy charges rate:</b> Even though the consumption is well within the entitled limits, the Respondents have charged penal energy charges of Rs 19,92,742/- during the month of November,2012.</p>	The respondents were directed to rework the OFF peak penal consumption charges for the month of Nov,2012, duly taking 00.00 Hrs as the starting period for computing the entitlements and penalties and not 06.00Hrs as was done by the respondents. If this results in revision of bills for the subsequent periods, it shall be carried out accordingly.	<p><b>Not complied with</b></p> <p>As per the directions, reworked the bills duly taking 00.00Hrs as starting period for computing the entitlements and penalties. This resulted in increase in the amount payable by the Appellant by Rs 78,56,488/-</p>	The ERC proceedings on R&C measures dt.1.11.2012 repealing the earlier proceedings on the same matter dt.14.9.2012 was w.e.f. 00.00.00Hrs on 7.11.2012. The Respondents claimed that billing by the above method has resulted in increase of amount payable for the off peak penal charge for the month of November, rather than decrease. The Appellant is seeking billing by taking 00.00 Hrs as starting time.

4.	<b>Late payment charge &amp; Interest on ED</b> An amount of Rs 5,73,262/- was excess claimed towards late payment charges.	The respondents are not correct in charging delayed payment charges at the rate of 1.5% on the total bill amount for the month, even when the delay is less than a month. DPS shall be levied only on the actual number of days delay in payment of electricity bills.	<b>Not complied with</b>	As per the Tariff Order 2012-13, the additional charges for belated payment of bills shall charge <b>at the rate of 1.5% of Bill amount or Rs 550 whichever is higher</b> per month. The above rates have been changed from the Tariff Order 2013-14. The Distribution Company shall charge the Delayed Payment Surcharge (DPS) <b>per month on the bill amount at the rate of 5paise/Rs 100/day or Rs 550 whichever is higher</b>
5.	<b>Effect of 50% waiver of R&amp;C penalties.</b> To allow the waiver of 50% R&C penalties as per the proceedings dt. 8.8.2013.	The 50% waiver of R&C penalties was allowed.	<b>Complied with</b>	_____

4. The petitioner has been seeking implementation of the orders in Appeal No. 154/2013 and preferred 2 WPs. The Appellant filed several consumer complaints before CGRF. The details of these proceedings and orders are listed below chronologically, to understand the nature of orders and facts:-

**TABLE -II**

Sl.No	Date	Relief sought through	Directions given
1	15.2.2014	CG.No. 1245/2013-14 dt.15.2.2014 in CGRF i. Demand charges normal ii. Demand charges penal rate iii. Off peak penal energy charges rate iv. Late payment charges and interest on ED v. Effect of 50% of waiver of R&C penalties	Order :- Sl.No i to iv are in order. No interference. Sl.No. v - The Respondents were directed to follow the final orders of APERC against recall petition No. 5/2013 which is pending
2	27.10.2014	Appeal No. 154 of 2013 in Vidyut Ombudsman against CG.No. 1245/2013-14	Order:-i. Levy of penal charges to be revised, disallowing demand charges on 12 days power holidays(no charges). ii. Demand charges penal rate is in order iii. Off peak penal charges to be revised for the month of November,2012 taking 0.00Hrs as starting period rather than 06.00 Hrs

			iv. DPS charges to be revised, levying DPS charges only on actual number of days delayed in payment. v. 50% waiver of R&C penalties is already done by the Respondents. This shall be adjusted.
3.	7.7.2015	WP.No.16367 of 2015 on the file of the Hon'ble High Court. By orders dt.7.7.2015 the WP was Disposed of.	Order:- Implement the orders of VO in Appeal No. 154 of 2013 within 30 days.
4	26.10.2015	CG.No. 286/2015 in CGRF RR South Circle <b>a)</b> Withdrawal of voltage surcharges for the months of June and July, 2015 and <b>b)</b> demand of open access may not be included in the CMD or RMD	Order:- Not to levy voltage surcharge since the complainant has not crossed the CMD 9999 KVA including open access demand.
5.	18.1.2016	CG.No. 323/2015 of CGRF RR Circle. <b>a).</b> To set aside Excess claim of Rs 50.10 lakhs towards LPS in the bills from Sept,2014 to Aug,2015.	Order dt.18.1.2016:- The Respondents have been directed <b>a)</b> not to levy DPS on FSA and amounts kept towards court cases. <b>b)</b> Comply orders of Hon'ble High Court, Ombudsman, TSERC and CGRF.
6.	23.2.2016	CG.No. 648 of 2015-16 in CGRF RR South Circle i. Claim of Rs 1.92 Cr to be set aside and bills shall be revised as per the orders of VO in Appeal No. 154/2013 and CGRF order in CG.No. 323/2015. ii. 3.50 Cr of refund is claimed after revision.	Order dt.23.2.2016:- Issue revised bills of the disputed amounts implementing the orders given earlier by Hon'ble High Court, VO and CGRF and not to keep aside the disputed amounts without resolving, owing to court cases, which is not a solution.
7.	9.3.2016 Records sent to High Court	WP.No. 7334 of 2016 on the file of Hon'ble High Court directing the Respondents to implement the orders in: <b>i.</b> Appeal No. 154 of 2013 dt.27.10.2014 of Vidyut Ombudsman and <b>ii.</b> Orders of CGRF in CG.No. 286,323 and 648 of 2015-16	Order:-WPMP.No. 9362 of 2016 in WP.No. 7334 of 2016 - Not to disconnect the supply without following due procedure U/s-56 of Electricity Act - 2003.

5. The 1st Table discloses the items which are not complied with by the Respondents, in spite of the directions in the award dt.27.10.2014 in Appeal No. 154 of 2013-14 of the Vidyut Ombudsman for the states of AP & Telangana. An examination of items of noncompliance of orders in para 30 of orders in

Appeal No. 154/2013 discloses certain aspects which are noted below as (a) to (c):

(a). The DISCOM cannot charge demand charges for the meagre 10% demand. The CMD of the Appellant is 9999 KVA. The 10% of the consumption allowed for maintenance as per the R&C measures would be 999 KVA. A Perusal of R&C measures dt.1.11.2012 does not disclose anything indicating this consumption of 10% of the CMD is free of charge. Nowhere, either in the Tariff Orders or Regulations or GTCS there is any mention about supply of free power.

(b). The reworking of off peak penal consumption charges for the month of Nov,2012 by taking 00.00 Hrs as the starting point for computing the penalties and entitlements and not 06.00 hrs as has been done by the Respondent. This direction has not been complied with by the Respondents. Their response is that if the direction is complied with by taking the starting period as 00.00 Hrs, there would be an increase in the amount payable by the Appellant by Rs 78,56,488/-.

(c). Another item which is not complied with is delayed payment charges. The Appellant alleged that the Respondents have levied excess claim of Rs 5,76,262/- towards delayed payment charges. This claim has been answered by the Vidyut Ombudsman in Appeal No. 154 of 2013 to the effect that the delayed payment charges shall be levied only for the delay of actual no.of days in payment of electricity bills. The Tariff Order 2012-13 specifies that the delayed payment charges shall carry interest @ 1.5% of the bill amount or Rs 550/- whichever is higher. This was changed in Tariff Order 2013-14 fixing the charge as per month on the bill amount @ 5ps/Rs100/day or Rs 550/- whichever is higher.

It is clear from the aforementioned (a) to (c) that these 3 items have not been complied with by the DISCOM without any valid reason or excuse.

6. As far as the 1st item relating to non compliance of the order in award at para 30(a) regarding billing of usage of power upto 10% of CMD during the R&C period is concerned, the order in the award is that the DISCOM cannot charge meager 10% of the demand, which in the present case amounts to 999 KVA. It is clear from the record that there is no provision either in the R&C measures or in the Tariff Orders, Regulations or GTCS providing for free usage of power. The Appellant preferred WP No. 16367 of 2015 to the Hon'ble High Court and by orders dt. 7.7.2015 the Hon'ble High Court

disposed of the WP directing implementation of the orders of the Vidyut Ombudsman in Appeal No. 154 of 2013 within 30 days. The time to implement the order was over by 6.8.2015. The DISCOM has not preferred any appeal against the orders in the Writ Petition. There appears to be no proper representation before the Hon'ble High Court about the 10% usage of CMD during the R&C period. Infact, there was no proper representation before the Vidyut ombudsman also. Similar is the attitude displayed with the direction contained in para 30(c) regarding off peak penal energy charges which were not complied with by the DISCOM. Even according to them, they would get additional amount of Rs 78,56,488/- if the bills were reworked as per the orders by taking 00.00hrs as starting period for computing the entitlements and penalties.

7. The last non compliance is relating to late payment charge. The direction was regarding the rate of interest @ 1.5% per month on the total bill amount. This should be levied only on the actual no.of days delay and not on whole month if the delay is less than a month. There is no ambiguity in the order and it is not complied with by the DISCOM.

8. The 3 items of non compliance by the DISCOM, in the face of the directions of the Hon'ble High Court dt.7.7.2015 in WP No. 16657 of 2015, is totally inexcusable. The mandatory direction given to the DISCOM/Respondents have not been complied with, which may invite the wrath of the Hon'ble High Court if reported. There is absolutely no reason, so long as the directions of the Hon'ble High Court to the DISCOM to implement the orders dt.27.10.2014 in Appeal No. 154 of 2013 stand, and it is not varied or corrected in appeal, for non implementation of the order. Further another Writ petition No. 7334 of 2016 filed by the petitioner on the file of the Hon'ble High Court seeking also a direction to the Respondents to implement the orders of the Vidyut Ombudsman in Appeal No. 154 of 2013 dt 27.10.2013 pending in which the records have also been sent, ought to have opened the eyes of the Respondents to the urgency in the matter.

9. The Appellant is justified in seeking implementation of the orders of Vidyut Ombudsman and orders of the Honble High Court and the Respondents, who are bound by the orders, without any reason, have not chosen to implement the orders, which prompted the Appellant to seek compensation.

10. The Respondents have no excuse not to implement the order on the ground that there is no provision in the Tariff Order, R&C measures, GTCS or Regulations to forgo 10% of the CMD used during R&C measures. If they are so serious, they could have made effective representation before the Vidyut Ombudsman, before the Hon'ble High Court and would have preferred an appeal against the orders in W.P, which they have not done.

11. The Respondents shall implement the orders relating to 3 items a,c & d of para 30 of Orders in Appeal No. 154/2013(also noted in this para as a to c) and shall also pay compensation for non compliance of the valid orders of Vidyut Ombudsman as well as mandate of the Hon'ble High Court.

**COMPLIANCE OF DIRECTIONS OF VIDYUT OMBUDSMAN AND OF THE HON'BLE HIGH COURT:**

- a. The DISCOM cannot charge demand charges for 10% of the CMD during R&C period meant for maintenance.
- b. The Respondents shall rework the off peak penal consumption charges for the month of Nov,2012 duly taking 00.00 hrs as the starting period for computing the entitlements and penalties and they should revise the bills accordingly.
- c. The delay payment charges should be levied on the actual No.of day delay in payment of electricity bills.

**COMPENSATION**

12. The relevant provisions relating to compensation to be paid for non compliance of orders of Vidyut Ombudsman as on 27.10.2014 are noted below:-

- a. Clause 9(6) of Regulation 1 of 2004 mandates Licensee that it shall duly comply with and implement the decision of the Vidyut Ombudsman on the representation filed by the Complainant.
- b. Clause 12(6) of Regulation 1 of 2004 states that the complainant may furnish to the Licensee within a period of One month from the date of receipt of the award or within such period the Vidyut Ombudsman may allow for reason to be recorded, a letter of acceptance that the award is in full and final settlement of his claim.
- c. Clause 12(7) states that the Licensee shall comply with the award within 15 days of the receipt of the acceptance letter under sub Clause(6) and it shall



intimate the compliance to the Vidyut Ombudsman.

- d. Clause 12(8) states that if the complainant does not intimate the acceptance under sub Clause (6), the award shall not be required to be implemented by the Licensee.

The current Regulation No.3/2015 governs payment of compensation and the relevant provisions are as follows:

- i. Regulation 3 of 2015 came into force w.e.f. 16.9.2015 and till this date, the regulation 1 of 2004 held the field.
- ii. None of the Clauses mentioned above under Regulation 1 of 2004 have been complied with by the petitioner and therefore, the compensation has to be governed on the basis of Regulation 3 of 2015 from the time of its operation Only.
- iii. The Hon'ble High Court by orders dt.7.7.2015 in WP.No. 16367 of 2015 directed the DISCOM to implement the orders of Vidyut Ombudsman dt.27.10.2014 in Appeal No.154 of 2013.

The provisions in Regulation No.3/2015 relating to payment of compensation are as follows :

- a. Clause 3.38 of Regulation 3 of 2015 mandates that the Licensee shall duly comply with and implement the decision of the Ombudsman on the representation filed by the complainant within 15 days of the receipt of the order/award, with further mandate under Clause 3.39 that non compliance would be deemed to be a violation of the Regulation and liable for suitable action by the ERC under the Electricity Act 2003.
- b. Even though no application for compliance of the order of Vidyut Ombudsman in Appeal No. 154 of 2013 has been filed by the petitioner, after the mandatory direction of the Hon'ble High Court, the Licensee is duty bound to implement the orders, which it did not, without any reasonable cause.
- c. Regarding payment of compensation for non compliance of the order, Clause 3.42 prescribes compensation upto a sum of Rs 50,000/- for each non compliance and for continuing failure, additional compensation which may extend to Rs 2,000/- for each day, which has to be followed in the present case.

13. On the basis of the provisions of the Regulation No.3/2015, the compensation payable by the DISCOM to the petitioner has to be calculated in the following manner:-

Date of Implementation of Regulation 3 of 2015	: 16.9.2015
No. of Days delay in implementation from 16.9.2015 to 2.7.2016	: 275 days
Compensation amount for non compliance	: Rs 50,000/-
For each day's delay(275 days) @ Rs 2000/- per day : 275 x 2000	: <u>Rs 5,50,000/-</u>
Total compensation payable :	<u>Rs 6,00,000/-</u>

14. It is hoped that the DISCOM even at this stage complies with directions as noted in para 11 supra and pays compensation for non compliance of orders as noted in Para 13 supra without giving any excuses.

15. Further, the DISCOM may enquire into the matter and identify the persons responsible for non compliance of the orders and recover the compensation payable to the petitioner, so that there would be no repetition of similar situation, resulting in loss to the DISCOM.

Typed by CCO, Corrected, Signed and Pronounced by me on this the 4th day of July, 2016.

Sd/-

**VIDYUT OMBUDSMAN**

1. M/s. Sugna Metals Limited, (Rep. by Adv. N. Vinesh Raj), 1-8-673, Azamabad, Hyderabad 500 020
2. The DE/OP/Vikarabad/TSSPDCL/RR DIST.
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**Copy to:**

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