

## BEFORE THE VIDYUT OMBUDSMAN

Present

**K.Sanjeeva Rao Naidu**  
**Vidyut Ombudsman**

Dated: 15-09-2011

**Appeal No. 32 of 2011**

### **Between**

Jagadamba Rice Mill  
Prop: B.Jagapathi  
S/o. Appa Rao  
RH Road, Near KGRL college,  
Bhimavaram.

**... Appellant**

### **And**

1. Assistant Engineer / operation / D3/Bhimavaram
2. Assistant Divisional Engineer / operation / Bhimavaram
3. Asst.Accounts Officer/ERO/Bhimavaram
4. Divisional Engineer / operation / Bhimavaram

**....Respondents**

The appeal / representation dated 13.08.2011 (received on 16.08.2011) of the appellant has come up for hearing before the Vidyut Ombudsman on 08.09.2011 and 09.09.2011. Sri Y.Satyanarayana appellant present Sri B.V.Gopala Krishna ADE/O/Bhimavaram and Sri Y.Srinivas Rao, AAO/ERO/Bhimavaram on behalf of respondents present, heard and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following:

### **AWARD**

The appellant filed a complaint before the Consumer Grievance Redressal Forum (Forum), APEPDCL to withdraw the notice for payment of shortfall amount issued by AAO and also to stop the same incorporating the same in CC bills.

2. The respondent No.4 has submitted his written submissions as hereunder:-

1) the Elec. Sc.Nos. 3755, under Cat-III of Bhimavaram D3 released in favour of M/s. Sri Jagadamba Rice Mill, with connect and contractor load of 74.8 HP (CMD 62.0) on dt.04-02-1971.

2) the internal audit party M/s Ratnam Devaji and Company Audited on the Accounts of Electricity Revenue Office, Bhimavaram for the period 2008-2009. During 10/09, 11/09.

3) the Internal Audit Party has submitted Internal Audit Report on 28-11-09. The said service was billed under Cat-IIIA and HT Cat-I short fall has been arrived and included in the CC bill regularly in every month with effect from 3/09.

4) the Internal Audit Party audited the consumption pattern of the said service for the period 2008-2009 and Identified HT short fall amount for the period 9/08 to /09 and arrived Rs.21367.00. Copy of the Audit shortfall notice was already submitted vide Lr.No.154/10, Dt.10-02-2010.

5) basing on the above Audit Report this office issued 15days notice to the said consumer vide this office letter No.1899, Dt.23-12-09, where in it is requested to pay the audit of Rs. 21367.00.

6) the said consumer has represented this office vide his letter No. 99/2010, Dt.22-01-2010 and this office has replied the said consumer vide this office letter No.121/10, Dt.5-02-2010.

7) as per the tariff order 2008-2009 the consumer of LT Cat-IIIA shall not exceeded contracted load of 75 HP i.e. CMD 62.16, if they are exceeded as per clause 12.3.3.3 of revised GTCS proceedings No.SECRY/01/2006, Dt.06-01-2006:- cases where the total connected load is above 75HP/56 K.W or cases where the total connected load is above 150 HP under LT Cat-IIIB. These services will be billed at the HT Cat-I tariff rates from the consumption month in which the unauthorized Addl. Load is detected till such Addl. Load is removed and got inspected by the designated officer of the company.

Therefore as per the MRB's and it is reviewed and noticed that the above consumer has exceeded contracted demand for the period from 9/08 to 3/09 and is liable to pay HT Cat-I shortfall.

8) as per the schedule of the tariff rates and terms & Conditions notified by the APERC vide tariff order dt.20-03-2008 of APERC/N/ OP.No.13 of 2007 of General conditions of supply clause 6 pages No.11. ADDL. CHARGES FOR MAXIMUM DEMAND IN EXCESS OF THE CONTRACTED DEMAND: If any month the recorded maximum demand of the consumer exceeds his contracted demand (with Licensee) that portion of the demand in excess of the contracted demand at will be billed at twice the normal charges, therefore the consumer is liable to pay demand charges at twice the normal charges as the consumer exceeded CMD.

9) A copy of this written submission made available to the complainant under acknowledgement and rejoinder will be sent soon on receipt of the same from the complainant please. It is to submit that the Xerox copies of records namely meter reading book was already submitted, vide D.No.154/10, Dt.10-02-10 and consumption particulars from the period 4/08 to 4/09 are here with enclosed.”

3. Further the respondent No.4 filed his written submission as hereunder:

“ notice for Internal Audit Short-fall Amounting to Rs. 21367-00 towards HT Cat-I Short- fall for the year 2008-2009 has been issued duly observing the tariff conditions and guidelines stated in the tariff booklet, it is surprised that noted in the reference cited as the Asst. Accounts Officer has not followed the tariff conditions and guidelines stated in the tariff booklet while issuing the notice and because of the Internal Audit has given a para without observing the rule position the notice issued which is not correct. The notice issued against SC. No. 3755 of D3 Bhimavaram for payment, against the Schedule of Retails tariff rates and terms & conditions of the year 2008-2009 issued by the AP Regulatory Commission vide Memo No. CMD /CGM /CR&P /EPDCI/ VSP/F.: Tariff FY:08-09/D. No. 684/08, dt. 08.05.2008 not for 2005-2006 Schedule of retail tariff rates. But noted in the reference cited for Item No. 5 as after the tariff rates are revised 2005-06 no revised tariff rates were issued and the guidelines issued these are final and further amendments are not also issued by the EPDCL which is not correct.

The APERC has been issued revised tariff rates every year through paper publication not only departmental communications.

And certain guidelines were issued for the LT Cat-III A normal services in the above said tariff orders vide Page No. 28 Item No. 2 of General Conditions of LT Tariff i.e. the connected load of the consumer shall not exceed his contracted load except in; case of LT Cat-III A optional demand tariff consumers, if the connected load of the consumer is found to be in excess of his contracted load, the provision of General Terms & Conditions of Supply separately notified shall be applied.

In this connection as per the General Terms & Conditions of Supply clause 12.3.3.3 where the total connected load is above 75 HP/56KW. These Services will be billed at the H.T Cat-I tariff rates from the consumption month in which the unauthorized additional load is detected till such additional load is removed and got inspected by the designated officer of the company.

Regarding double time tariff (195x2) which is clearly mentioned in the tariff order for the year 2008-2009 vide page No. 11, Item No. 6, for HT Cat-I Consumers i.e. if any month recorded maximum demand of the consumer exceeds his contracted demand (With licensee) that portion of the demand in excess of the contracted demand will be billed at twice the normal charges.

*In view of the above it is requested to pay an amount of Rs. 21367-00 against SC. No. 3755 of D3 Bhimavaram at an early date, other-wise the same amount will be included in the regular CC bill without inviting further remainders.”*

The Respondent – 4 in his letter dt. 10-02-10 has enclosed Consumer’s history along with the copy of the monthly HV reading register of the service which was maintained by the Assistant Engineer for the perusal of this Forum.

The Respondent – 4, again filed following written deposition.

*“the Internal Audit/for the year 2008-09 has been conducted on the account of ERO/Bhimavaram on 20-10-2009 by the Audit Party and arrived Short-fall Rs. 21367-00 towards HT Cat-I Short-fall for the period from 9/08 to 3/09 due to in excess of RMD against CMD a Xerox copy of the month-wise details is herewith submitted for ready reference.*

*Accordingly a notice was issued to the consumer of SC. No. 3755, Cat-III of D3 Bhimavaram for payment of Rs. 21367-00.”*

4. After hearing both sides and after considering the material placed before the Forum, the Forum passed the following order:

*“the complaint’s RMD has exceeded the CMD. Thus the complainant is liable to pay the shortfall amounts raised by the Respondent – 4. Therefore the complainant is directed to pay the demands accordingly.*

*The Respondents are directed to collect the amount accordingly.*

*The CG.No. 254/09 is disposed of accordingly. “*

5. Aggrieved by the said order, the appellant filed this appeal, questioning the same, that the order was not in accordance with law and the Vidyut Ombudsman passed its order on 22.06.2010 and as such the ERO, Bhimavaram has submitted a detailed report to the corporate office Visakhapatnam and all the amounts which were imposed for all the services have been asked to be withdrawn by the corporate office except his service connection 3755 and ERO informed that his case was not covered by the said orders and ERO did not receive any intimation regarding their service connection number. It is also urged that after issuing demand notice for the shortfall amount made under HT Cat-I, the ERO office is continuously incorporating the short fall amount in the CC bills which are not tenable and requested this authority to consider his case.

6. Now, the point for consideration is, “whether the impugned order, dated 27.03.2010, is liable to be set aside? If so, on what grounds?”

7. The appellant present and he reiterated the submissions made in the grounds of appeal. Whereas, the respondents are represented by Sri B.V.Gopala Krishna ADE/O/Bhimavaram and Sri Y.Srinivas Rao, AAO/ERO/Bhimavaram submitted written submissions before this authority reiterating all the grounds mentioned in the written submissions filed before the Forum and requested this authority to dismiss the appeal.

8. In the notice served on the appellant, it was simply mentioned as 62 as CMD though there is no wording of CMD in the LT Cat-III. It is only there, in HT service LT-Cat-III(B). The contracted load is 74.8HP equivalent to 55.8KW. How it is arrived 62 as CMD is not explained by the respondents, in the notice dt.23.12.2009. It is simply mentioned as CMD 62, RMD 69.5 excess as 7.5 for the month of 09/08 like wise 3 for 12/08, 1 for 01/09, 1 for 02/09 and 1.2 for 03/09, as excess demand. It is only connected load that has to be taken, but not CMD, as the same is also clearly mentioned in 12.3.2 of GTCS. The wording used in the above clause of the LT consumer exceeds contracted load without prior approval of the company, they have to compensate for the damages caused, etc. It is not mentioned in the above said clause as the CMD. The fixation of CMD by the respondents is not correct, as the same is divided by the power factor of 0.90 to arrive at the CMD, though it is not mentioned anywhere, either in the tariff order or in the GTCS. When contracted load is 74.8HP, how it is recorded CMD 62 in the impugned notice is not explained, nor filed any document to substantiate the same.

9. Though the Forum has elaborately discussed the above conditions of the complainant and findings of the Forum without looking into the *ratio decedendi* incorporated either in the Tariff order or in the GTCS. The Forum has

categorically mentioned, the failure on the part of the respondent No.4 and respondent No.1 for their non observations of the readings till, the same is detected by the internal audit team.

10. The Forum has observed that the appellant is liable to pay the same. It is also mentioned in the written arguments of the respondents that the appellant is liable to pay under clause 12.3.3.3. Infact the said clause is applicable to the cases above 75HP or the cases totalling connected load of 150HP under LT Cat-III(B). Clause 12.3.3.1 reads as follows:

*“12.3.3.1 Where the total Connected Load is 75 HP/56 kW or 150HP in cases of LT Cat III(B) or below at the time of detection:*

- (i) One Month notice shall be given to regularise the additional Connected Load for payment of required service line charges, development charges and consumption deposit, in accordance with the format prescribed in Appendix IX.*
- (ii) Service of consumers who do not get the additional loads regularised, shall be disconnected immediately on expiry of notice period and these services shall remain under disconnection, until they are regularised.”*

11. Here there is no such notice given to the appellant nor personal inspection is made by any of the officials of the respondents to verify physically about the exact connected load and utilization of the same by the appellant at the relevant point of time.

12. When once personal inspection is made and if it is found that there is excess load being connected by the appellant and if the total connected load is more than 75HP, the service can be billed under HT category otherwise, the penal charges shall be levied under LT category provisions. If he fails to pay the same, the service can be disconnected in accordance with the procedure.

13. Here in this case, no personal inspection is made and demand notice is issued. Basing on the report of the internal audit report behind the back of the appellant adopted the procedure of imposing penalty by invoking clause 12.3.2. The above said clause gives power to follow the procedure for imposing penalty if the contracted load exceeds without the prior approval.

14. It is necessary to note that the purpose of providing M.D. meter is to levy LPF penal charges and it is only to have a continuous check on the use of connected load. If the meter records more demand than the contracted load, the concerned officer shall inspect the premises physically and adopt the due procedure contemplated under 12.3.3.3 of GTCS. But billing cannot be made simply basing on the maximum demand recorded by the meter. The respondents herein have not followed the procedure contemplated under the above said GTCS of the Commission.

15. In this case, no notice is served on him either under clause 12.3.3.1 or under 12.3.3.3 of GTCS. They have simply made demand basing on the internal audit report without making any personal inspection. They may have the connected load of 74.8HP and he may consume more by adding some more HP, but the same has to be personally inspected and after verification only, he can ask him to remove the additional load or to regularise the additional load by collecting additional deposit, development charges, etc., and also by imposing penalty for the exceeded load. No such procedure is adopted and infact, the procedure adopted in fixing the CMD is not only against to the tariff conditions, but also against to the principles of natural justice. The Forum has failed to observe these aspects and simply ordered to pay the amounts demanded. Hence, the same is liable to be set aside.

16. In the result, the appeal is allowed by setting aside the impugned order and the respondents are directed to verify the service connection of the appellant in person and if any excess load is there, they can proceed with the said GTCS

by giving notice to regularize or to remove the excess load within 30 days from the date of receipt of this order.

This order is corrected and signed on this day of 15<sup>th</sup> September 2011

**VIDYUT OMBUDSMAN**