

BEFORE THE VIDYUT OMBUDSMAN

::Present::

C.Ramakrishna

Date: 26-05-2014

Appeal No. 144 of 2013

Between

M/s. Mancherial Cement Company (P) Ltd., H. No. 6-3-655/2/4, Civil Supplies
Bhavan Lane, Somajiguda, Hyderabad 500 082

... Appellants

And

1. The Asst. Divisional Engineer, Operation, APNPDCL, Mancherial, Adilabad Dt.
2. The Asst. Accounts Officer, ERO, APNPDCL, Mancherial, Adilabad Dt.
3. The Divisional Engineer, Operation, APNPDCL, Mancherial, Adilabad Dt.

... Respondents

The above appeal filed on 28-02-2014 has come up for final hearing before the Vidyut Ombudsman on 12-05-2014 at Hyderabad. The appellant as well as respondents 1 to 2 represented by their Senior Accounts Officer, Adilabad and respondent 3 above were present. Having considered the appeal, the written and oral submissions made by the appellants and the respondents, the Vidyut Ombudsman passed the following:

AWARD

The appeal arose out of the grievance of the appellant against the orders of the CGRF in C.G. No. 297/2013-14/Adilabad Circle dtd: 31-01-2014. On 28-02-2014, the appellants filed the appeal stating that the respondent DE coercively collected an amount of Rs. 5,47,105/- pertaining to November, 2012 citing an internal audit objection; that the respondents contend that the appellants' colony consumption was to be included while computing R&C penal charges for the month of November, 2012; that they have filed their objection to the proposed inclusion immediately on receiving the claim on 30-07-2013; that they had also pointed out that the tariff charged for colony consumption is very high compared to factory consumption; that on their meeting with the SE, Operation, Adilabad on 19-09-2013 when they had objected to the raising of the demand, they gained an impression that the demand was dropped; that suddenly on 05-12-2013, the respondent DE visited and collected the amount under threat of disconnection; and that their approaching the CGRF on the issue did not give them any relief. They prayed for orders to set aside the demand raised against them based on the internal audit and wanted a refund of the Rs. 5,47,105/- that was collected under threat of disconnection.

The respondents were served with a notice for hearing the appeal on 07-04-2014, directing them to submit their written submissions, if any, duly serving copies of the same on the appellant. The respondents submitted their written submissions on 25-03-2014, 03-04-2014 & 17-04-2014 while the appellants submitted representation again on 07-04-2014. Heard the appeal finally on 12-05-2014.

The CGRF noted in its order that while computing the R&C penal charges for the month of November, 2012, exclusion of colony consumption was not correct and upheld the demand of Rs. 5,47,105/- raised in internal audit.

In their written submissions and oral submissions during the hearing, the respondents submitted that the CC bill for the month of November, 2012 was prepared for 33 days as per the meter readings furnished by the respondent DE; that the CC bill was duly revised for 31 days as per the report dated 29-12-2012 of the respondent DE; that while so revising, the colony consumption was excluded for arriving at the Permitted Consumption Limit; that the internal pointed out this exclusion as incorrect in April, 2013; that as per the orders of the Hon'ble APERC colony consumption cannot be excluded for arriving at the R&C limits; that the CGRF also had dismissed the complaint of the appellant herein on merits; that they have not implemented the 50% waiver of R&C penal charges in view of their filing the recall petition before the Hon'ble Commission; and that the service of the appellants is being billed under continuous process industry w.e.f 21-11-2012 as per the date of approval for the service as continuous process received by them and that prior to that date, the service of the appellants is liable to billed as a non-continuous process industry. The respondents further stated that in respect of M/s. G.M.R Spintex Pvt. Ltd., Adilabad also, this authority, had passed an order stating that the benefit of continuous process industry for the purpose of calculation of PDL and PCL can be given only after the consumer approaches and obtains permission as continuous process industry from the CMD of the DISCOM.

The appellants on their part in their written submissions on 07-04-2014 stated that the levy of huge R&C penalties was found to be unjustified and

illegal by the Hon'ble AP High Court; that hence the penal charges levied be ordered to be refunded; that the relief of 50% provided by the Hon'ble APERC has not been passed on to them; and that seeking inclusion of colony consumption for the purpose of calculation of R&C limits in spite of there being a separate and distinct meter for the same and the same being subjected to a higher tariff rate than the factory rate is unjustified and illegal.

The CGRF appears to have not gone into the crux of the issue in the complaint of the appellant herein. The two important points that arise for consideration in this appeal are:

- whether or not the colony consumption of the appellants herein is to be excluded for computing R&C limits for the purpose of calculation of R&C limits & penalties; and
- whether or not the appellants herein are to be treated as continuous process industry and if so, the exact date from which they should be so treated for the purpose of calculation of R&C limits and penalties.

The appellants are a cement manufacturing industry located in Mancherial, Adilabad. They are a HT Category I consumer taking supply at 132 kV with a CMD of 6,500 kVA. They have a colony which also is supplied power from the same substation where from the main factory draws power. But the consumption of the colony is subjected to a higher tariff and is metered separately. This is not disputed by the respondent officers. The orders of the Hon'ble Commission dated 14-09-2012 specifically excluded domestic services, townships and residential colonies from the purview of levy of R&C orders. This being so, including colony consumption for the purpose of calculation of R&C limits and penalties is not correct.

In so far as treating the appellants as a continuous process industry, it is clear from the orders of the Hon'ble Commission that the consumers desirous of availing the dispensation of continuous process industry have to necessarily approach the CMD of the DISCOM concerned and get recognized as such before being shown a dispensation of continuous process industry. In view of this specific provision in the Hon'ble Commission's orders referred supra, and in view of the fact that such recognition as continuous process industry was conferred on them by the DISCOM only on 23.11.2012 w.e.f 21.11.2012, they shall be treated as a continuous process industry for the purpose of calculation of R&C limits and penalties only w.e.f 21.11.2012.

In so far as the appellants' contention about the levy of huge R&C penalties being held as unjustified and illegal by the Hon'ble AP High Court, the appellants have not produced any copy of the judgment which says so. Therefore, their contention to this extent is not accepted.

Therefore, the order of the CGRF is set aside and it is hereby ordered that:

- the respondent officers shall treat the appellants as a continuous process industry only with effect from 21.11.2012 for the purpose of calculation of R&C limits and penalties;
- the respondent officers shall exclude the colony consumption of the appellants herein while calculating the R&C limits and penalties;
- the respondent officers shall implement the 50% waiver of R&C penalties ordered by the Hon'ble Commission in their orders dated 08-08-2013

as the recall petition being referred to by the respondents also stood dismissed by the Hon'ble Commission; and

- the respondent officers shall give effect to these orders within 15 days from the date of receipt of this order and submit a compliance report about the same within 15 days from thereafter.

This order is corrected and signed on this 26th day of **May, 2014**.

VIDYUT OMBUDSMAN

To

1. M/s. Mancherial Cement Company (P) Ltd., H. No. 6-3-655/2/4, Civil Supplies Bhavan Lane, Somajiguda, Hyderabad 500 082
2. The Asst. Divisional Engineer, Operation, APNPDCL, Mancherial, Adilabad Dt.
3. The Asst. Accounts Officer, ERO, APNPDCL, Mancherial, Adilabad Dt.
4. The Divisional Engineer, Operation, APNPDCL, Mancherial, Adilabad Dt

Copy to:

1. The Chairperson, CGRF, APNPDCL, 'Vidyut Bhavan', Nakkalagutta, Hanamkonda, Warangal - 506 001.
2. The Secretary, APERC, 11-4-660, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad - 500 004.

