



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004

R. P. (SR) No. 15 of 2016

In

O. P. No. 92 of 2015

Dated 15.07.2016

Present

Sri. Ismail Ali Khan, Chairman
Sri. H. Srinivasulu, Member
Sri. L. Manohar Reddy, Member

Between

1. The Divisional Engineer (Operation),
Vikarabad, Southern Power Distribution
Company of Telangana Limited
Vikarabad, R R District.
2. The Senior Accounts officer, Operation Circle
(R R South), Southern Power Distribution
Company of Telangana Limited,
Nanalanagar X Road, Mehdipatnam,
Hyderabad – 500 028.
3. The Superintending Engineer, Operation Circle
(R R South), Southern Power Distribution
Company of Telangana Limited,
Nanalanagar X Road, Mehdipatnam,
Hyderabad – 500 028.

...Review Petitioners /
Respondents 2, 3 & 4 in the Original Petition.

And

1. M/s Sugna Metals Limited
1-8-673, Azamabad,
Hyderabad – 500 020.
...Respondent /
Petitioner in the Original Petition.
2. The Vidyut Ombudsman for the State of Telangana,
1st Floor, 33/11 kV SS, Hyderabad Boats Club Lane,
Lumbini Park, Hyderabad – 500 033.
...Respondent
(Not necessary to this proceedings).

This petition came up for hearing on 16.06.2016 and 22.06.2016 Sri. Y. Rama Rao, Counsel for the Review Petitioners along with Smt. Priya Iyengar, Advocate is present on both the dates of hearing. Sri. Ravindar Srivatsava representing Sri Vinesh Raj, Counsel for the Respondent appeared on 16.06.2016. Sri. N. Vinesh Raj, Counsel for the Respondent in this petition appeared on 22.06.2016. The petition having stood for consideration to this date, the Commission passed the following:

ORDER

The Review Petitioners have filed the present petition seeking review of the order dated 20.01.2016 passed by this Commission in O. P. No. 92 of 2015 under section 94 (1) of the Electricity Act, 2003.

2. The review petitioners stated that the review petition is preferred by the respondents 2, 3 and 4 in O. P. No. 92 of 2015 against the order dated 20.01.2016 passed by the Commission in the said O. P. to the extent detailed hereunder.

- a) That the respondent No. 1 is liable to pay voltage surcharge rates for the month of August, 2014 as the same is applicable to it.
- b) That the respondent No. 2 herein set aside the levy of voltage surcharge vide its order dated 06.07.2015 in Appeal No. 45 and 52 of 2015.
- c) That the review petitioners claim that during August' 2014 the respondent No. 1 has availed 9999 KVA plus 18 KVA through open access totaling 10017 KVA and hence the respondent No. 1 is liable to pay voltage surcharge is within the ambit of clause 6 (4), part B of chapter XIV of the tariff orders of 2015-16 issued by the Commission.

3. The review petitioners stated that they were inadvertently under the impression that the O.P. No. 92 of 2015 is R. P. (SR) No. 42 of 2015 before the Commission moreover, due to the bifurcation of the erstwhile Andhra Pradesh Power Distribution Companies, the officers of the review petitioners were busy in managing the division of assets and liabilities thereby stabilizing the newly formed Telangana State Power Distribution Companies. Non filing of the Counter in O. P. No. 92 of 2015 or not challenging the Award dated 06.07.2015 in Appeal Nos. 45 and 52 of 2015 passed by the Vidyut Ombudsman is neither willful nor wanton, but only due to heavy work load

in view of the bifurcation mentioned supra and due to inadvertence on the part of the review petitioners.

4. The review petitioners stated that the penalty of Rs. 10,000/- and default penalty of Rs. 1000/- per day would cause great hardship to them and the amount payable by the review petitioners would be more than the amount involved in the main O. P.

5. The review petitioners stated that their prayer to file a detailed counter in O. P. No. 92 of 2015 passed by the Commission would not cause any prejudice to the Respondent No. 1. The written submission / counter in O. P. No. 92 of 2015 is not submitted in time by TSSPDCL due to transfers of officers in the general transfers and under the confusion that there was only one case is filed by M/s. Suguna Metals Limited, on voltage surcharge before TSERC and TSSPDCL had already filed counter in another R. P. (SR) No. 42 of 2015 in the same voltage surcharge issue.

6. The review petitioners stated that as per HT Tariff (HT supply) General Condition No. 1.2.1 (3) (ii) & (4) (B), the voltage at which supply has to be availed by M/s. Suguna Metals Limited shall be decided only based on total contracted demand with the licensee and all other sources, but not based on the actual Recorded Maximum Demand in a particular month.

7. The review petitioners stated that in the tariff orders for the FY 2014-15, under voltage surcharge General Condition No. 4, the main basis for declaring supply voltage was contracted demand with licensee and other sources (in KVA), but in the note to voltage surcharge condition it was mentioned that the RMD or CMD only with the licensee whichever is higher shall be the basis for levying voltage surcharge which is contrary to the table. For correction / modification of note to voltage surcharge condition a request letter No. CGM (Comml) / SE (IPC) / DE / RAC / D. No. 425, dated 08.07.2014 was addressed to the then APERC by TSSPDCL.

8. The review petitioners stated that the payment of voltage surcharge levied in the month of August 2014 against M/s. Suguna Metals Limited was in terms of orders of CGRF in Case No. 316 / 2014 / Ranga Reddy South Circle and Ombudsman O.P.

No. 42 and 52 of 2015 and supply was never disconnected for non-payment of voltage surcharge. Hence, non-compliance of Ombudsman order does not arise.

9. The review petitioners stated that the said HT consumer has availed open access power through IEX during August 2014 billing cycle that is 21.07.2014 to 21.08.2014 and contracted / drawn a maximum capacity of 8040 KVA / KW on 26.07.2014 in addition to the CMD with TSSPDCL of 9999 KVA. The total contracted maximum demand for 08 / 2014 was 18037 KVA. Hence, voltage surcharge condition was applied and penalty was imposed as the actual voltage was 33 KV dedicated feeder instead of 132 KV voltage.

10. The review petitioners have stated that this case may be disposed duly considering the para No. 7 of APERC proceedings No. APERC / Secy / 25 / 2013 dated 04.05.2013 on Open Access Metering and demand settlement – FSA billing on minimum energy.

11. The review petitions prayed that the Hon'ble Commission may be pleased to:

- “a) Grant leave to the Review Petitioners to file a detailed counter on quantum of charges including technical aspects as well as jurisdictional issues if any;
- b) Review the order dated 20.01.2016 in O.P. No. 92 of 2015 to the extent detailed at para (1) of this petition and pass such other Order or Orders as this Hon'ble Commission may deem fit and proper in the circumstances of this case.”

12. We have heard the Counsel for the petitioner and the Counsel for the Respondent. The short point that arises for consideration is, whether the review petitioners have made out a case for reviewing the order passed by this Commission.

13. The point raised in the review petition is that the officers were under mistaken impression that there is only one case of the consumer, M/s. Suguna Metals Limited. In fact there are two cases, one case is filed regarding the implementation of the order of Vidyuth Ombudsman in O. P. No. 92 of 2015 and another case is filed by the same consumer in respect of review of the tariff order dated 27.03.2015 passed in O. P. No. 76 and 77 of 2015 vide R. P. (SR) No. 42 of 2015. Incidentally both matters relate to

the issue of voltage surcharge. The fine distinction is that one relates to billing of the consumer and the other relates to the order passed by the Commission. The same has not been understood by the officers' of the licensee.

14. The statement made by the officers that they were involved in bifurcation of the power utilities including transfers of officers as an administrative exercise and therefore could not file a counter affidavit in the matter appears to have been invented for the purpose of this case. It is axiomatic to state that the field officers were not at all concerned or involved in the bifurcation issues, as officers at the corporate level would have been entrusted with the task. The transfers of officers which is an administrative exercise is an internal matter with which the Commission is not concerned while deciding the matter brought for adjudication by any party aggrieved by action of another party. Thus the same cannot effect the defending of the case or assisting the Commission in proper disposal of the case.

15. The next point that is made is that of the figures. At one place it is stated that the consumer has exceeded by 17 KVA and another place it is stated that the consumer has exceeded by 8040 KVA. The officers themselves do not know which one is correct and stated in the verifying affidavit that the contents are based on record. If such is the dichotomy over the figures, there lies no review in the matter.

16. The next aspect is about the contradiction in the table and the foot note to the table for which the licensee had sought a clarification from the erstwhile APERC. The heading in the table cannot be corrected now as the tariff order has already worked out itself with the completion of the financial year 2013 – 2014 for it was made and followed in 2014 – 2015 as there was no tariff order for the said year due to various reasons including the bifurcation of the erstwhile state of Andhra Pradesh. The tariff order was for the then entire state and was applicable post bifurcation to both the states. Since no clarification is given by erstwhile APERC the same cannot be given now by this Commission. However, the heading in the table cannot be interpreted to include the supply from the licensee and other source, but it is in respect of either supply from licensee or other source. Nothing is indicated in the table as to how it should be levied, it can be safely inferred that the note gives the modality of levying the same. Thus other sources are not included for levy of voltage surcharge on the aggregate demand. Therefor this point also does not survive.

17. The last point that is raised that the petition should be decided on the basis of clarification given by the erstwhile APERC in respect of open access settlement and levy of FSA in May 2013. Levy FSA was in vogue in the erstwhile state of Andhra Pradesh upon filing of application by the then licensees under the regulation No. 1 of 2003. This levy was done with in June 2013 itself by regulation No. 2 of 2013. In the instant issue there was no levy of FSA though power is drawn from open access. The principle set out in the letter dated 04.05.2013 by erstwhile APERC cannot be applied to the present case in view of the above position.

18. For the reasons and discussion above, it is necessary to examine as to whether the petitioners satisfy the conditions of review. A petition for review of the order of the Commission which is appealable, can be entertained only for the following reasons.

- a. Where there is a typographical mistake that has crept in the order.
- b. When there is an arithmetical mistake that has crept in while effecting calculation or otherwise.
- c. When there is a mistake committed by Commission, which is apparent from the material facts available on record and / or in respect of application of Law.
- d. When the Commission omitted to take into consideration certain material facts on record and 'law on the subject' and that if on taking into consideration those aspects, there is a possibility of Commission coming to a different conclusion contrary to the findings given.
- e. If the aggrieved party produced new material which he could not produce during the enquiry in spite of his best efforts and had that material or evidence been available, the Commission could have come to a different conclusion.

19. Ordinarily there will not be a review of the order at the instance of the parties or effected parties of the order, on the existing facts and contentions that have already been adverted to by the parties, either by way of written objection / suggestion and / or arguments at the time of hearing and when all those aspects have already been considered by the Commission at the time of passing of final order.

20. The review petitioners in their review petition have not shown any of the above grounds as existing warranting a review by the Commission of the order dated 20.01.2016.

21. The Counsel for the review petitioners was at pains to explain why a review is required when the original petition had been filed seeking implementation of the order passed by the Vidyut Ombudsman. The Counsel for the review petitioners merely stated that the licensee will be suffering heavy loss, if such penalties are allowed to be levied and also implement the orders of the Commission as well as Ombudsman. On the other hand, it is the case of the consumer that despite the order of the Commission, the licensee has not implemented the order of the Commission and is going on showing amount due as claimed by it earlier in the bill without insisting on payment.

22. During the hearing we specifically enquired with the concerned officer present at the time of hearing as to why the order of the Ombudsman as merged in this Commission's order has been given a go-by and what are the reasons for non-implementation before seeking a review of the order. The officer through his Counsel has replied that the company has implemented the order of the Commission, thereby implemented the order of the Ombudsman by not insisting on the payment of the amount claimed by the company which has been disallowed by the Ombudsman.

23. We are of the view that seeking review of the order of this Commission without satisfying the conditions for review as well as not implementing the order of the Commission is at best inappropriate if not amounting to disrespect shown to the orders of two authorities including this Commission. We hope that the licensee, distribution company would endeavor to implement the orders of the Ombudsman without fail and, if still aggrieved, take such recourse in law as may be available to it and advised as such.

24. We deem it appropriate to say that the distribution licensee should ensure compliance of Act, 2003, Rules, Regulations and Orders as are applicable to it to the extent they do not interfere with its proper functioning. The licensee has every right to agitate before this Commission or any other Forum in order to ensure the adherence of Act, 2003, Rules, Regulations and Orders, however, it does not mean that without any proper order or proceedings of the Commission or such other authorities under

law, it should abstain from implementing Act, 2003, Rules, Regulations and Orders. Thus, the licensee shall forthwith implement the order of the Ombudsman as merged in the order of this Commission.

25. It shall be lawful for this Commission and the Commissions expects that a compliance report in the matter is necessitated in the circumstances of the case, which shall be filed on or before 05.08.2016.

26. With these observations, the review petition is rejected. The parties are left to bear their own costs.

This order is corrected and signed on this 13th day of July, 2016.

Sd/-
(L. MANOHAR REDDY)
MEMBER

Sd/-
(H. SRINIVASULU)
MEMBER

Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN

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