



BEFORE THE VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA

First Floor 33/11 kV Substation, Beside Hyderabad Boat Club
Lumbini Park, Hyderabad - 500 063

**PRESENT : SRI MOHAMMAD NIZAMUDDIN
VIDYUT OMBUDSMAN**

WEDNESDAY THE TWENTY SECOND DAY OF FEBRUARY
TWO THOUSAND AND TWENTY THREE

C.M.P. No. 11 of 2022-23

in

Appeal No. 23 of 2020-21

Between

M/s. L&T Metro Rail (Hyderabad) Limited, Hyderabad Metro Rail Administrative Building, Uppal Main Road, Nagole, Hyderabad - 500 039, represented by Sri Anil Kumar Saini, Cell: 8008355335, 040-22080728.

.....Petitioner / Appellant

AND

1. The Assistant Divisional Engineer / Operation / Uppal / TSSPDCL / Hyderabad.
2. The Divisional Engineer / Operation / Habsiguda / TSSPDCL / Hyderabad.
3. The Divisional Engineer / DPE / Hyd. South Circle / TSSPDCL / Hyderabad.
4. The Senior Accounts Officer / Operation / Habsiguda Circle / TSSPDCL / Hyderabad.
5. The Superintending Engineer / Operation / Habsiguda Circle / TSSPDCL Hyderabad.
6. The Chief General Manager (Commercial) /TSSPDCL/Hyderabad.

..... Respondents / Respondents

This petition is coming on before me for final hearing on 14.02.2023 in the presence of Mr. Chandrachud D. Paliwal - representative of the petitioner and Sri K. Hanuma - SAO/OP/Habsiguda and Sri P.V.Ramesh - SE/DPE representing the respondents and having stood over for consideration till this

day, this Vidyut Ombudsman passed the following:

ORDER

This petition is filed aggrieved by the letter issued by respondent No.5, demanding the petitioner to pay the Delayed Payment Surcharge on the amount adjudicated by this Authority in Appeal No. 23 of 2020-21 dt.06.12.2022.

2. In the petition, it is, inter-alia, submitted that this Authority passed the Award in Appeal No. 23 of 2020-21 on 06.12.2022 revising the short billing of the appellant to Rs. 15,73,168/- from Rs.24,88,892/-, payable in (2) instalments. But respondent No.5 in the letter dt.21.01.2023, demanded Rs.27,14,501.38 ps in (2) instalments as mentioned below:-

| | |
|--|------------------|
| Revised back billing amount | Rs. 15,73,168.00 |
| Amount due from | 10.02.2019 |
| Up to date | 31.01.2023 |
| Days | 1451 |
| Surcharge rate per day | 0.0005 |
| Surcharge amount @ 0.05% for 1451 days | Rs. 11,41,333.38 |
| Total amount to be paid | Rs. 27,14,501.38 |
| No. of instalments | 2 |
| 1st instalment due on 01.02.2023 for Rs. | Rs. 13,57,250.69 |
| 2nd instalment due on 01.04.2023 for Rs. | Rs. 13,57,250.69 |

3. The respondents are not entitled for addition of surcharge on the amount adjudicated by this Authority inasmuch as the dispute was pending before the Forum as well as this Authority at the relevant time. It is accordingly prayed to direct the respondents to follow the Award passed by this Authority in fixing the amount of Rs.15,73,168/- without addition of any surcharge.

WRITTEN SUBMISSIONS OF THE RESPONDENTS

4. In the written reply submitted by respondent No.5, it is, inter-alia, submitted that the dispute is in respect of back billing. The Provisional Assessment Order was served on the petitioner on 10.12.2018 and the final liability was fixed at Rs.24,88,892/- to be paid within (30) days i.e., before 10.02.2019. Since the said amount was not paid, the surcharge was added. It is also submitted that they are obeying the order of this Authority in revising the back billing amount but since surcharge @ 0.05% per day is leviable as per Clause 2.36 of Tariff Order dt.23.03.2022 of Hon'ble Telangana State Electricity Regulatory Commission (in short 'the Commission') from 10.02.2019, surcharge is levied.

REPLY OF THE PETITIONER

5. In the reply filed by the petitioner, it is reiterated that the petitioner is not liable to pay the surcharge demanded by the respondents. It is also submitted that during the relevant period, the country was in lockdown due to

Covid-19.

6. Heard both sides.

7. The points for consideration are:-

i) Whether the petitioner is not liable to pay the Delayed Payment Surcharge demanded by the respondents? and

ii) To what relief?

POINT No. (i)

ADMITTED FACTS

8. It is an admitted fact that initially the respondents have issued a notice demanding back billing amount of Rs. 24,88,892/- from the petitioner. Aggrieved by the said demand the petitioner preferred a complaint before the learned Forum in C.G.No. 37/2020-21/Habsiguda Circle. It was dismissed on 03.11.2020. Aggrieved by the said Award, the petitioner preferred Appeal No. 23 of 2020-21 before this Authority. This Authority allowed the appeal in part revising the back billing from Rs. 24,88,892/- to Rs. 15,73,168/-. Now both the parties herein are obeying the Award passed by this Authority to the extent of fixing of Rs. 15,73,168/-.

9. The respondents imposed a surcharge amount of Rs.11,41,333.38 ps @ 0.05% for 1451 days. This surcharge amount is disputed by the petitioner on the ground that during the relevant period the petitioner was prosecuting the present dispute initially before the learned Forum and thereafter before this Authority in Appeal No. 23 of 2020-21.

CRUX OF THE CASE

10. This Authority after adjudicating the facts of the appeal in Appeal No. 23 of 2020-21, given directions to the respondents to revise the short billing amount levied for an amount of Rs. 24,88,892/- to Rs.15,73,168/-, to be paid in (2) equal instalments. Subsequently, as per the above orders, vide Memo No. CGM(Comml)/SE(DPE)/Hyd/Tech/F.No./D.No.1086/22 dt.10/01/2023, respondent No.6 - CGM(Commercial) directed respondent No.5 - SE/Operation/Habsiguda to revise the back billing amount which was already included in the C.C. bills. Thereafter the SE/OP/Habsiguda vide Lr.No.SE/OP/HBG/SAO/AAO/JAO/D.No.1861/2022-23 dt.21.01.2023 issued notice for payment of the revised amount as stated below:-

| | |
|--|------------------|
| Revised back billing amount | Rs. 15,73,168.00 |
| Amount due from | 10.02.2019 |
| Up to date | 31.01.2023 |
| Days | 1451 |
| Surcharge rate per day | 0.0005 |
| Surcharge amount @ 0.05% for 1451 days | Rs. 11,41,333.38 |
| Total amount to be paid | Rs. 27,14,501.38 |
| No. of instalments | 2 |
| 1st instalment due on 01.02.2023 for Rs. | Rs. 13,57,250.69 |
| 2nd instalment due on 01.04.2023 for Rs. | Rs. 13,57,250.69 |

11. As already stated, the petitioner has accepted the directions of this Authority towards revised short billing amount, but argued that the levy of surcharge in the revised notice by the respondents against the revised amount of Rs.15,73,168/- is unwarranted. In the present case the back billing amount of Rs. 24,88,892/- was levied in the month of December 2018 vide bill dt. 26.12.2018. It is stated that the period for which the licensee is demanding to pay the surcharge amount was under the consideration and hearing before the learned Forum and later before this Authority and that the Licensee is charging the surcharge amount in violation of the orders given in Appeal No. 23 of 2020-21. It is claimed by the petitioner that though the total back billing amount of Rs. 24,88,892/- is untenable and baseless in the interest of amicable resolution of the matter they are agreeing to pay Rs.15,73,168/- as full and final settlement and that for (2) years the country was in lockdown state and hence in the state of Force Majeure, the surcharge during such time cannot be levied on the petitioner. The respondents have relied on the Tariff Order passed by the Hon'ble Commission. The relevant Clause is reproduced here-under:-

Clause 9.27.10 Additional charges for belated payment of charges

The Licensees shall charge the Delayed Payment Surcharge (DPS) per month on the bill amount at the rate of 5 paise/ Rs.100/day or Rs 550/- whichever is higher. In case of grant of instalments, the Licensee shall levy interest at the rate of 18% per annum on the outstanding amounts, compounded annually and the two charges shall not be levied at the same time.”

Further the respondents relied on the Regulation 5 of 2004 of the Electricity Supply Code, the relevant Clause is reproduced here-under:-

"4.7. Erroneous / Disputed Bills

4.7.1 The consumer shall make the full payment of the electricity bill amount: Provided that the supply of electricity shall not be cut off if such

1. Amended vide Regulation No. 7 of 2013 with effect from. 07.08.2013.

2. Amended vide Regulation No. 3 of 2019 with effect from 16.02.2019 consumer deposits, under protest:-

a) an amount equal to the sum claimed from him, or

b) the electricity charges due from him for each month calculated on the basis of average amounts for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute raised by the consumer on the bills.

4.7.2 The Licensee shall normally resolve the billing disputes as per the standards of performance notified by the Commission under section 57 (1) of the Act, failing which the consumer shall be entitled for compensation as prescribed by the Commission under section 57(2) of the Act, without prejudice to his right to seek relief through the Forum for redressal of grievances of consumers under section 42(5) of the Act.

4.7.3 On examination of the complaint, if the Licensee finds the bill to be erroneous, a revised bill shall be given to the consumer indicating a revised due date of payment, which should be fixed not earlier than seven days from the date of delivery of the revised bill to the consumer. If the consumer has paid any excess amount, it shall be refunded by way of adjustment in the subsequent bills. The licensee shall pay to the consumer interest charges at 18% per annum on the excess amount outstanding on account of such wrong billing.

4.7.4 If the Licensee finds the bills to be correct the consumer shall be intimated accordingly and notified to pay the amount with additional charges for belated payment from the due date."

12. Here the question to be answered is, whether the petitioner is liable to pay the surcharge towards delayed payment on the revised amount of Rs.15,73,168/-. The present case is in respect of the recovery of revenue loss incurred to the Licensee, on account of short billing which was briefly explained in the Award in Appeal No. 23 of 2020-21. The Delayed Payment Surcharges shall be from the due date of the amount payable. The initial short billing amount was raised for an amount of Rs.24,88,892/- now revised to an amount of Rs.15,73,168/-. Whether surcharge is to be levied from the due date of the said amount is the question. In order to understand the issue it is necessary to go through the Assessment Notice issued initially towards the short billing. The last para of Clause 5 of the Assessment Notice for short billing dt: 13.12.2018, which is based on General Terms and Conditions of Supply approved by the Hon'ble Commission read with Appendix - VII Clause 5.3, is reproduced here-under:-

“In case there is no representation from you within (15) days from the date of service of this order, the electricity charges payable by you shall be included in your subsequent CC bill.”

The C.C. bill issued will incorporate the due date for payment. This date shall be reckoned as actual due date for payment

13. The record shows that the petitioner vide letter dt. 11.12.2018, gave a representation objecting to the assessment notice of short billing amount. Subsequently the SE/Operation/Habsiguda after consideration of consumer's representation dt:11.12.2018, all the relevant aspects and documentary

evidence finally confirmed the liability for payment of short billing amount of Rs.24,88,892/- upholding the initial assessment notice, vide order No.SE/OP/HBG/Comml/FAO/D.No.1819 dt.10.01.2019. Subsequently the short billing amount of Rs. 24,88,892/- was included in the bill for the month of January 2019. Hence the present revised short billing amount of Rs. 15,73,168/- liable to be paid shall fall due from the month of January 2019 bill i.e. due date shall be 10.02.2019.

14. As regards the relief sought under Force Majeure, the Hon'ble Commission acknowledging the situation due to our break of Covid-19 issued several orders giving certain relief to the consumers. But there are no provisions or orders to give any reliefs towards Delayed Payment Surcharge.

15. The petitioner has relied upon the judgement of the Hon'ble Supreme Court reported in Pratibha Processors & Ors. v. Union of India¹ and argued that the respondents are not entitled to claim surcharge on the due amount. The Hon'ble Supreme Court in the above said judgement was dealing with a case in respect of the goods imported and kept in the warehouse. In that context the Hon'ble Supreme Court held that the goods kept in the warehouse beyond the permissible period are exempt from the levy of interest especially when custom duty levied was paid. The Hon'ble Supreme Court was dealing with the provisions of the Customs Act. Further in that case the customs duty payable

¹ (1996) 11 SCC-101

was paid. But in the present case the facts and the law applicable are completely distinct. Further the due amount is not paid on time in the present case. Therefore this judgement has no application in this case.

16. A Division Bench of Hon'ble High Court of Andhra Pradesh in a judgement reported in Nava Bharat Ferro Alloys Ltd., v. Transmission Corpn. of A.P. Ltd.,² has held that the Court cannot act like a benevolent despot and any relief that may be granted to a party by the Court should have the constitutional and statutory backing and it cannot be de hors the same and also that the Court granting the relief should find a basis in law which form an edifice to grant the relief. In the instant petition there is no such power with this Authority derived from any law to waive the surcharge now imposed by the respondents. Therefore, I hold that the petitioner is liable to pay the Delayed Payment Surcharge claimed by the respondents. This point is decided accordingly against the petitioner and in favour of the respondents.

Point No. (ii)

17. In view of the finding on point No. (i), the petition is liable to be rejected.

RESULT

18. In the result, the petition is rejected. However the petitioner is granted (10) monthly equal instalments to pay the due amount of Rs.27,14,501.38, with

² (2011) 1 SCC - 216

additional surcharge if any. The first instalment shall be paid on or before 10.03.2023.

A copy of this Award is made available at <https://vidyutombudsman-tserc.gov.in>.

Typed to my dictation by Office Executive-cum-Computer Operator, corrected and pronounced by me on this the 22nd day of February 2022.

Sd/-

Vidyut Ombudsman

1. M/s L&T Metro Rail (Hyderabad) Limited, Hyderabad Metro Rail Administrative Building, Uppal Main Road, Nagole, Hyderabad - 500 039, represented by Sri Anil Kumar Saini, Cell: 8008355335, 040-22080728
2. The Assistant Divisional Engineer / Operation / Uppal / TSSPDCL / Hyderabad.
3. The Divisional Engineer / Operation / Habsiguda / TSSPDCL / Hyderabad.
4. The Divisional Engineer / DPE / Hyd. South Circle / TSSPDCL / Hyderabad.
5. The Senior Accounts Officer / Operation / Habsiguda Circle / TSSPDCL / Hyderabad.
6. The Superintending Engineer / Operation / Habsiguda Circle / TSSPDCL Hyderabad.
7. The Chief General Manager (Commercial) /TSSPDCL/Hyderabad.