

ELECTRICITY OMBUDSMAN, RAJASTHAN JAIPUR

Case No. : EOR 430/2018

In the matter of representation filed before the Electricity Ombudsman, Rajasthan, Jaipur by

Shri Harmender Singh
House No. 2, Ganga Path
Suraj Nagar West, Civil Lines
Jaipur- 302006

Appellant

v/s

Ajmer Vidyut Vitran Nigam Ltd.,
Vidyut Bhawan, Makarwali Road,
Panchsheel Nagar,
Ajmer – 305 004

Respondent

Represented by

Appellant: Shri Harmender Singh, Owner

Respondent: XEN(O&V), AVVNL, Makrana
Shri Ribhu Dutta, Advocate

Heard on 25.4.18 in presence of

Appellant: Shri Harmender Singh, Owner

Respondent: XEN(O&V), AVVNL, Makrana
Shri Ribhu Dutta, Advocate

Coram
G.R.Choudhary
Electricity Ombudsman,
Rajasthan

Order

Date: 25.4.18

1. Registration of the case

The Appellant filed a representation on 12.3.18 before the Electricity Ombudsman, Rajasthan which was registered on same day at Case No. EOR – 430/2018.

2. Brief of the case

The Appellant is having an electricity connection in MIP category (A/c No. 0591-0451) for sanctioned connected load of 59 HP on LT supply voltage at Gunawati Rez Area under AEN (O&M), AVVNL, Makarana in Nagaur district of the Respondent. The minimal facts leading to this representation are narrated hereunder:

- i. The Respondent debited/recovered charges (difference of tariff) in the bill of Dec'17 due to exceeding the maximum demand 50 kVA more than two times in a financial year from the Appellant for the period Apr'15 to Apr'17.
- ii. The Appellant approached the Circle Level Grievances Redressal Forum of the Respondent at Nagaur (Forum in short) for redressal of his grievance. The Forum accorded its decision on 2.2.18.
- iii. Being not satisfied by the decision of the Forum, the Appellant filed the representation before the Electricity Ombudsman for redressal of its grievance.

3. Representation

In the representation along with documents submitted, the Appellant stated as under:

- I. The Appellant is having an electricity connection in MIP category for sanctioned connected load of 59 HP on supply voltage 400V (LT), at Gunawati Rez Area.
- II. On the basis of demand recorded 60.6 kVA, 60.9 kVA & 61.8 kVA (>50 kVA) during Jan'15, Feb'15 and Mar'15 respectively the audit raised the amount Rs 207000/- which was debited by the Respondent in the electricity bill of Dec'17.
- III. The Respondent never informed about these increased demand recorded and debited the audit amount without intimating to the Appellant and forced to deposit Rs one lakh under threat of disconnection of the supply. The Appellant deposited the amount (Rs 100000/-) on 26.12.17.
- IV. On the basis of record the Forum decided that the amount raised by Audit was in order and the same is recoverable.
- V. The relief sought from The Ombudsman:
 - a) To direct the Respondent to credit the unlawful audit charges and refund the amount deposited with interest.

4. Processing of the case

- 1) The notices were served on dated 13.3.18. A copy of the representation received from the Appellant was forwarded in terms of the **Regulation 7(1)** of the RERC (Settlement of Disputes by Electricity Ombudsman) Regulations 2010 (**Electricity Ombudsman Regulations** in short) to the Respondent and the Forum for sending reply / comments/ factual report, so as to reach to the Electricity Ombudsman by 11.4.18 along with necessary supporting documents and the proof of serving a copy of the same to the Appellant.
- 2) The Appellant was also asked to furnish his comments, if any, on the Respondent's reply, to the Electricity Ombudsman by 20.4.18 along with a proof of serving a copy of the same to the Respondent.

5. Replies, comments and arguments

- 1) The Respondent furnished the reply to the representation on 13.4.18 along with a proof of serving a copy of the same to the Appellant.
- 2) No reply/ comment on the Appellant's representation were received from the Forum.
- 3) The case was heard on 25.4.18 in presence of authorised representatives of both the parties, listed above.
- 4) The Respondent's reply and the arguments furnished during the hearing have been summarised as under:
 - i. The Respondent stated that the Appellant approached the Ombudsman being not satisfied by the decision of the Circle Level Grievance Redressal Committee upon his grievance. In the meeting of Settlement Committee on 2-2-2018, the Committee concluded that as per Comml. order AJ-398 dated 09.02.2009 the amount calculated by the audit was recoverable.
 - ii. The Comml. order AJ-398 makes the recovery of the amount mandatory and the entire recovery has been made strictly as per rules.
 - iii. The Respondent stated that the dues were raised in the bill dated 08.12.2017 after that the Appellant deposited part of the amount recoverable.
 - iv. The Respondent prayed that this reply may be taken on record and the case may be dismissed qua answering Respondent with costs throughout.
 - v. During hearing the Appellant stated that he was depositing the electricity bills regularly and he never received any notice regarding exceeding demand (>50 kVA) till today being a consumer of MIP category on LT having sanction connected load 59 HP. The Respondent stated that they debited the amount as per Commercial Circular AJ-398 on exceeding the demand more than two times in the financial year. The Respondent accepted that they never served any notice to the Appellant as per circular AJ-398 which was mandatory to raise any debit in case of exceeding the demand (>50 kVA) thrice in a financial year. The Respondent did not provide any rules/regulations in support of debited amount due to exceeded demand.

6. Settlement by Conciliation

Both the parties were explained about the factual position of the case within the framework of the Act/ Rules and the Regulations made there under and were advised in view of the **Regulation 7(2)** of the Electricity Ombudsman Regulations, to reach some settlement of the representation but no settlement could be reached. They furnished a written statement in this regards. The Electricity Ombudsman, therefore, analysed the case and accorded the decision as hereunder.

7. Analysis of the case

Based on the written statements / documents provided by both the parties, arguments made during the hearing and considering the applicable provisions of the Act, relevant Rules & Regulations, Tariff and TCS etc, the case has been analysed as under:

Audit Charges

- 1) The Respondent accepted that they never informed to Appellant about exceeded demand. The Respondent debited the audit amount through electricity bill Dec'17 and forced to deposit Rs one lakh. The Appellant deposited the amount (Rs 100000/-) on 26.12.17.
- 2) The Respondent stated that as per recommendation of the audit party they charged the difference amount of Rs 207000/- for the period Apr'15 to Apr'17 due to exceeding the demand from 50 kVA more than twice in a financial year from the Appellant as per circular AJ-398.
- 3) For dealing the cases of MIP consumers causing maximum demand beyond 50 kVA, more than two times in a financial year Condition 16 of the 'General Conditions of Application' part-(iii) appearing under Tariff- 2013 is relevant which reads as under:

'(15) Changeover from LT to HT supply shall be effected if maximum demand as per MDI exceeds 50 kVA more than two times in a financial year. The consumer in such a case shall have to take supply on 11 kV within the notice period of two month to be issued by Asstt. Engineer concerned after the maximum demand has exceeded third time, in a financial year failing which his connection would be disconnected.'

- 4) Vide Circular bearing number D. 4326 dated 9.2.2009 (AJ-398) certain guidelines have been issued by the Respondent to implement the tariff provisions in reference to where demand exceeds more than 50kVA three times in a financial year. The relevant text of these guidelines is reproduced below, for ready reference.

"(1) whenever an LT supply consumer exceeds maximum demand 50 KVA for more than two times in the same financial year i.e. three times, a notice of one month, as under shall be issued by the concerned Asstt. Engineer :

"You have caused the maximum demand above 50 KVA for more than two times in the financial year _____ and therefore under the provisions of Tariff for Supply of Electricity – 2004, for the purpose, you have to take supply on 11KV or 33 KV as the case may be. You are also required to stipulate your contract demand. Till you stipulate your contract demand, it will be computed by taking the highest of the maximum demand recorded during the said three months or the sanctioned connected load, whichever is higher as contract demand. Billing during these 3 months of the financial year, (wherein demand exceeded) shall be as per the LT tariff schedule under which the connection was existing.

(2) Billing under HT tariff, considering the demand as contract demand as above at Item-1, shall be started from the month next to the month in which the demand above 50 KVA was caused 3rd time. Further till the consumer installs his own Transformer and Metering is done on HT, Transformer losses @3% and Transformer rent as per TCS-04, shall be recovered from the consumer at the rate prevailing as on date."

Hon'ble Rajasthan High Court Jaipur in the S.B. civil writ petition no. 3851/2012 (Judgement dated 10.02.2017) J.V.V.N.L.v/s M/S Krishana Food Products, Sitapura, Jaipur (writ against the award passed by EOR-21/2011 which is similar to this case and Ombudsman quashed the demand raised by J.V.V.N.L.) given judgement as under:-

Brief of the J.V.V.N.L. v/s Krishana Food Products, Sitapura, petition 3851/2012:-

Maximum demand exceeded 50 KVA in billing month of January 2007, March 2007, April 2007 demand raised by audit for difference of tariff from June 2007 to March 2010. Notice issued on 21.06.2008 to take supply on HT within one month.

Judgement by Hon'ble High Court in case No. 3851/2012:-

"The circular refers about arrangement when a LT consumer consumes more than 50kVA electricity on more than two occasions in the financial year, it is condoned. One month's notice is to be given by the Assistant Engineer in case of consumption of 50 KVA or more on three occasions. After the notice aforesaid, the tariff would be chargeable as is applicable to the ST consumers, after expiry of one month.

In the instant case, the notice, as provided in the circular was not given in the financial year 2007 though respondent company had consumed more than 50 KVA electricity on three occasions. The story was repeated even for the financial year 2008. A notice was given on 21st June, 2008. The said notice does not indicate consumption of electricity beyond 50 KVA on more than two occasions. It makes a reference of consumption beyond 50 KVA electricity on two occasions only. The notice can not be said to be in conformity to the circular dated 2nd January, 2009. The proper notice for it was given in the year 2010 and since thereafter the respondent is paying bill on the tariff applicable to the ST consumers. In view of above, I do not find any illegality in the order passed by the Ombudsman. The writ petition is dismissed,

It is a case of serious default of the petitioner-Nigam who did not serve notice in the year 2007. If one month's notice would have been given in the year 2007 itself, when respondent company consumed more than 50KVA electricity on more than two occasions, bill could have been raised on tariff applicable to the ST consumers. Due to default of the officer, the Nigam has suffered financial loss for three years.

The writ petition has been dismissed without causing interference in the order passed by the Ombudsman but petitioner-Nigam is called upon to furnish details of the officers who defaulted in issuance of the notice so that a direction may be given for appropriate action against them and to recover the amount of loss. Due to default of the officers, public exchequer should not suffer and otherwise officers need to be made accountable for their default."

The instant case is similar to the above mentioned case, in which maximum demand exceeded more than 50 kVA in the billing month of Jan'15, Feb'15 & Mar'15 in Financial Year 2014-15; as such notice would have to be issued in Apr'15 itself. In this case action taken was neither as per tariff provisions nor as per circular AJ-398 and the Respondent raised the arrear first time through the electricity bill for the month Dec'17. As such the arrear amount claimed by the Respondent towards the difference of LT & HT tariff without prerequisite notice as per tariff provisions or commercial circular AJ-398 cannot termed to be legitimate.

The contention of the Respondent is not correct that the decision of the Circle Forum that the amount raised by Audit was in order and they raised the demand strictly as per commercial circular AJ – 398. The Respondent remained unable to produce any notice issued in this regard as mentioned in the Comm. Circular AJ-398 and not followed the procedure mentioned therein.

Payment of interest

The Appellant also requested for payment of interest on the amount found refundable to them. In this respect it is stated that as per Regulation 37 of the Supply Code Regulations, interest is payable if a licensee recovers charges exceeding the tariff fixed by the Commission. Regulation 37 reads as under;

Refund of excess amount

If a licensee recovers charges exceeding the tariff fixed by the Commission, the licensee shall refund the excess amount recovered to the person from whom it was recovered along with interest equivalent to bank rate of Reserve Bank of India prevalent on April 1 of the year when the amount was recovered.

In the instant case the amount pertains to tariff, hence the Appellant is entitled to get interest as per regulation 37.

8. Award on Representation

After due consideration of the analysis of the case as above, the Electricity Ombudsman hereby pass the award under Regulation 8 of the Electricity Ombudsman Regulations, as under:

- i. The Respondent shall credit the debited amount (as per Audit) along with LPS /DPS on it, claimed from the Appellant without any prior notice for causing the maximum demand more than 50 kVA more than twice in a financial year.
- ii. The interest at RBI rate on excess amount deposited by the Appellant shall be refunded/credited, as per the **Regulation 37** of the Supply Code Regulations, payable from the date of recovery till the date of refund.
- iii. The amount as above shall be credited in next electricity bill to be issued by the Respondent, just after the receipt of acceptance of this award by the Appellant.

9. Compliance of Award

- i. The Appellant may furnish to the Respondent within a period of **fifteen days** from the date of receipt of this award, a letter of acceptance that the award is accepted in full and final settlement of his claim. A copy of such acceptance be also forwarded to the Electricity Ombudsman.
- ii. The Respondent shall comply with this award as above, on receipt of the acceptance letter from the Appellant otherwise it shall be deemed to be a contravention of the RERC (Settlement of Disputes by Electricity Ombudsman) Regulations, 2010 and in that case the Appellant would be at liberty to take appropriate action against the Respondent including filing a representation before the Rajasthan Electricity regulatory Commission under the Section 142 of the Electricity Act, 2003, for such non-compliance.
- iii. The Respondent shall intimate the compliance of the award to the Electricity Ombudsman, Rajasthan.
- iv. If the Appellant does not intimate the acceptance, the award shall not be required to be implemented by the Respondent.

10. Applicability of stay order

- i. The interim stay granted by the Electricity Ombudsman in this case vide order dated 13.3.18 shall not exceed beyond **fifteen days** from the date of this award.
- ii. In case this award is acceptable to the Appellant, the stay would get vacated on the date he furnishes the letter of acceptance within fifteen days of this award.

(G.R.Choudhary)
Electricity Ombudsman,
Rajasthan