



VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA
First Floor 33/11 kV substation, Hyderabad Boats Club Lane
Lumbini Park, Hyderabad - 500 063

:: Present:: **R. DAMODAR**

Tuesday, the Fourth Day of October 2016

Appeal No. 33 of 2016

Preferred against Order Dt. 27-01-2016 of CGRF In

CG.No: 528 /2015 of Warangal Circle

Between

M/s Viom Networks represented by Sri. B. Srinivas, Gowra Plaza,
Door No.1-8-304/308/444, 4th Floor, Sardar Patel Road,
Begumpet, Secunderabad - 500 003. Cell No: 9030000560.

... Appellant

AND

1. The AE/OP/T/Parkal/TSNPDCL/Warangal Dist.
2. The ADE/OP/Parkal/TSNPDCL/Warangal Dist.
3. The AAO/ERO/Parkal/TSNPDCL/Warangal Dist.
4. The DE/OP/Mulugu/TSNPDCL/Warangal Dist.

... Respondents

The above appeal filed on 20.05.2016 coming up for hearing before the Vidyut Ombudsman, Telangana State on 23.08.2016 at Hyderabad in the presence of Sri. Jawahar Chalasani on behalf of the Appellant Company and Sri. M. Ramesh - AAO/ERO/Parkal for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant is a passive telecommunication infrastructure provider to telecom operators and secured service connection No. 0401-08778 Category II released on 26.06.2009 with contracted load of 10 KW. The Appellant claimed that it has received a demand of Rs 1,12,455/- representing shortfall of 25% capacitor charges saying that LT trivector meter should have been installed and the energy charges should be billed in KVAh. The Appellant claimed that it has been maintaining a good Power Factor and therefore, it is not liable to pay the capacitor surcharge. The Appellant thus sought an order to set aside the demand.

2. The 3rd Respondent/AAO/ERO/Mulugu submitted a report dt. 13.1.2016 before the CGRF stating that M/s Thirupathiah & Co., Chartered Accountants submitted an internal audit report for the period from 26.6.2015 to 30.6.2015 advising the DISCOM to get a field report regarding 25% capacitor surcharge and raise it against the consumers who have 10KW and above load in Category II and 15 KW load and above in Category III. Therefore, a notice to the Appellant was issued demanding payment of shortfall amount of Rs 1,12,455/- and the amount has not been paid by the Appellant.

3. On the basis of the material on record, the CGRF observed that as per the tariff order 2015-16, for LT category II non domestic/commercial loads of 10KW and above, LT trivector meter shall be provided and energy charges shall be billed on KVAh and that the CC bills were being issued upto 10/2015 for KWH units, instead of KVAh units and that KVAh billing is being issued from 11/2015. As per GTCS clause 5.13.1.1 “every LT consumer using induction motors/or welding transformers shall install LT shunt capacitors as specified in Appendix VIII. Further failure to install/maintain capacitors by consumers in accordance with provisions under Clause 5.13.1 will be treated as violation of terms of GTCS and it attracts levy of capacitor surcharge at the rates specified by the Commission in the Tariff Orders issued from time to time or otherwise. Where LT consumer is provided with meters capable of measuring active power and reactive power under any directions of the Commission contained in the Tariff Order or otherwise, such consumers shall be required to pay Low Power Factor surcharge as per the surcharge rates applicable for HT consumers for the power factor obtained during the month subject to the ceiling of the level of the capacitor surcharge as specified for LT consumers.

4. CGRF reproduced Clause VII of part ‘A’ of LT Tariff of the Tariff Order FY 2015-16 of TSERC in the order as under:

1. Every LT consumers not provided with tri-vector meters, except LT-I Domestic, using induction motors and/or welding transformers shall install shunt capacitors of the rating specified by the Licensees in the General Terms and Conditions of supply (GTCS) approved by the Commission from time to time. In case the rated capacity of the induction motor or welding transformer falls in between the steps of the stipulated ratings, the capacitors suitable for the next higher step shall be installed by the consumer.
2. The failure on part of the consumer with the above requirement shall be treated as violation of the terms and conditions of supply and the Licensee can terminate the

contract and collect the sum equivalent to the minimum charges for the balance initial period of agreement, apart from disconnection of supply as provided in the General Terms and Conditions of Supply.

3. In the case of LT consumers (except LT Domestic, LT - IV , LT VI (A) , LT - VII(B)) not covered by KVAh billing, if during inspection, no capacitor is found, or the capacitors already installed are found damaged or having defect or ceased to function, such consumer shall be liable to pay capacitor surcharge@ 25% of the monthly bill amount, as per the terms and conditions of supply notified by the licensee and Licensee shall not levy LPF surcharge.

5. On the basis of the material on record, the CGRF disposed of the complaint with the words “in view of the aforementioned reasons, the supplementary bill issued by the Respondents is in order and the consumer is advised to pay the bills through the impugned orders.”

6. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal claiming that as per the Tariff Order, for loads of 10KW and above, a LT trivector meter shall be provided and energy charges shall be billed on KVAh and therefore, the capacitor surcharge of 25% of the monthly bill amount is not applicable to the Appellant and further the Respondents have only the authority to claim the difference between KVAh and kwh consumption in case of the billing being done on KWH and that in spite of the requirement, the DISCOM has not installed any LT trivector meter and that the CGRF failed to observe that the Appellant’s usage is major and continuous load (24X7) and is electronic load (Base Transive Station) which is not an inductive load and that the other partial load is Aircon(2TR - running) running in an average 10 to 12 hrs a day, which is an inductive load and that the DISCOM started billing in KVAh since November,2015 and the power factor recorded (shown below) was optimal.

month	Open KWH	Close KWH	KWH consumption	Open KVAH	Close KVAh	KVAh consumption	Billed units	PF
Nov 15	54098	2414	2615	54098	2474	2675	2675	0.98
Dec 15	2414	4318	1904	2474	4416	1942	1942	0.98
Jan 16	4318	4318	0	4416	4416	0	0	----
Feb 16	4318	6619	2301	4416	6731	2315	2315	0.99
Mar 16	6619	2437	1818	6731	8549	1818	1818	1.00

7. The 3rd Respondent submitted a handwritten note dt.21.6.2016 to state that as per the terms and conditions, the capacitor surcharge of 25% of the monthly bill amount of the service connection was calculated from 01/2014 to 05/2015 raising an amount of Rs 1,12,455/- which the Appellant has to pay and for non payment, the service was disconnected in the month of December,2015. The 3rd Respondent further claimed that after fixing of KVAh meter to the service, the month wise power factors were as follows:

S.No	Month	P.F
1	Nov'2015	0.98
2	Dec'2015	0.98
3	Feb'2016	0.99
4	Mar'2016	1.0
5	Apr'2016	0.69
6	May'2016	0.99

8. The Appellant filed a reply dt. 11.7.2016 to this letter stating that the claim of the Respondents is based only on the audit report without any proper explanation or power factor details and that the tariff order clearly stated that the capacitor surcharges are applicable to only those services having less than 10KW contracted load in the LT II (except domestic) with KWH billing and that if the capacitors are found defective and as per the Tariff Order in LT II for 10KW and above, the billing shall be done on KVAh and therefore, there is no capacitor surcharge for the service and that even without any capacitor, the Appellant's PF is very healthy at 0.97 which is mentioned in the monthly CC bill also and thus, the capacitor surcharge is not applicable to the Appellant.

9. The 3rd Respondent AAO submitted a reply dt.20.8.2016 mainly claiming that as per the Tariff Order 2015-16 relating to LT Category II non domestic and commercial supply, for loads of 10KW and above, a LT trivector meter shall be provided and energy charges shall be billed on KVAh and accordingly, in the present case, the energy charges were billed. The AAO further pointed out that under Clause 4(vii)(3) in case of LT consumers (except LT Domestic, LT-IV,LT-VI(A), LT VII(B)) not covered by KVAh billing, if during inspection no capacitor is found or the existing capacitor is

found damaged or defective or ceased to function, such consumer is liable to pay capacitor surcharge at 25% on the bill amount. The 3rd Respondent further stated that the shortfall was discovered during the audit and that it was found that from 31st January, 2014 to 31.5.2015, KVAh billing was not resorted to and no capacitor was found as such the shortfall billing was made.

10. The 4th Respondent/DE/O/Mulugu submitted a written statement on behalf of the Respondents stating similarly as the 3rd Respondent denying the claim of the Appellant and supporting the claim for Rs 1,12,455/- by way of shortfall bill on capacitor surcharge.

11. The Appellant submitted a reply dt.22.8.2016 to the letter of the 4th respondent DE along with a letter dt.29.01.2016 addressed to the AAO/R3 asserting that the power was disconnected affecting the essential Telecom Service and therefore the demanded amount was paid under protest. The Appellant claimed that the capacitor surcharge are not applicable to the Appellant while maintaining that the DISCOM can claim KVAh charges instead of KWH and sought refund of the amount of Rs 1,12,455/-.

12. The efforts at mediation came to a naught because of no meeting point between the parties.

13. On the basis of the material on record and respective contentions, the following issues arise for disposal:

i. Whether the Appellant is liable to pay the capacitor surcharge representing 25% of the bill amount from 31.1.2014 to 31.5.2015 for Rs 1,12,455/- based on Clause 7(3) of the Tariff Order 2015-16?

ii. Whether the Appellant is liable to pay CC bills under KVAh units and not under KWH units?

iii. Whether it was the Appellant or the DISCOM which is duty bound to fix trivector meter to the service connection of the Appellant?

iv. Whether the impugned orders are liable to be set aside?

Heard.

Issues i to iv.

14. The Appellant claimed that it is not liable to pay the capacitor surcharge and demanded withdrawal of the amount levied, relying on the following grounds:-

- a) the Appellant has maintained a good power factor, since the load is predominantly resistive one,
- b) though the service is covered under the KVAh billing, the licensee did not install the LT Trivector meter, in spite of the guidelines issued by the ERC and thus KVAh billing has not been done,
- c) further the penalty clause under which the capacitor surcharges were levied, pertain to the consumers below 10KW load and whereas, the contracted load of the Appellant is 10KW,
hence the charges levied are not applicable to them.

15. The Respondents pleaded that during internal audit conducted by M/s Thirupathaiah & Co., CA in ERO, PARKAL for the period 1/2014 to 5/2015 and 26.6.15 to 30.6.15, the Respondents were advised to get field report of those consumers having contracted loads between 10 KW and above under cat-II, 15 KW and above cat -III w.r.t. Levying 25% capacitor surcharge. Based on the said advisory, the AE/OP PARKAL(T) submitted a report to AAO/ERO, Vide Lr No AAE/OP/PK(T)/F.no IA/D.no camp Dt 28.7.2015 stating that the service was personally inspected and it was observed that certain services (including the appellant's service) were not having provision to bill with KVAh readings and have no capacitors. Hence, the AE requested to include the 25% capacitor surcharge against SC No 0401-03757 of the Appellant. He further stated that the KVAhmmmmg meters would be fixed soon. Later, under reference Journal Entry (J.E.)No. 24 of 7/2015, the capacitor surcharge of Rs 1,12,455/- for the period from 31.01.2004 to 31.5.2015 has been levied, based on Sub clause VII(3) of Clause 4 of part 'A' of LT Tariff of the Tariff Order 2015-16.

16. The Sub Clause VII (3) of Clause 4 of part 'A' of LT tariff of the Tariff order 2015-16 states that in case of LT consumer (except LT Domestic, LT-IV, LT VI(A), LT-VII(B)) not covered by KVAh billing, if during inspection, no capacitor is found, or the capacitors already installed are found damaged or having defect or ceased to function, such consumer shall be liable to pay the capacitor surcharge @ 25% of the monthly bill amount, as per terms and condition of supply notified by the licensee and the

Licenseses shall not levy Low Power Factor (LPF)surcharges. Based on this provision, the capacitor surcharge of Rs 1,05,286/- has been raised.

17. From the material on record, it is clear that the CC bills were issued upto 10/2015 under KWH units instead of KVAh units and subsequently, KVAh billing is resorted to from 11/2015. Thus it is clear that the capacitor surcharge was levied based on the audit observation that the bills of the Appellant were raised under KVH units, instead of KVAh units.

18. Appellant claimed as follows:

- a) A LT Trivector meter shall be provided for the load of 10 KW & above under cat-II, and energy charges shall be billed on KVAh.The DISCOM did not provide the LT trivector Meter to the service connection in question.
- b) The Respondents have the authority to claim only the difference between KWH and KVAh consumptions in the present case.
- c) The contracted load of the Appellant is not below 10 KW (under category II) and as per the Tariff Order 2015-16, Clause(j) of terms and conditions the Capacitor surcharges are not applicable to the Appellant.
- d) The audit team pointed out the mistake of notional loss, based on the proposed capacitor surcharge.
- e) No inspections were conducted.
- f) Against GTCS clause 5.13.1, the Appellant argued that their usage is major and continuous load (24x7) and is electronic load (BASE Transive station) which is not an inductive load and that the other partial load is Aircon(2TR running) and it runs in an average 10 to 20 Hrs per day, which is an inductive load. The Appellant would install the capacitor at the sites where PF is ≤ 0.95 , and it can be seen that their PF in table below without any additional capacitor installation.

month	Open KWH	Close KWH	KWH consumption	Open KVAh	Close KVAh	KVAh consumption	Billed units	PF
Nov 15	54098	2414	2615	54098	2675	2675	2675	0.98
Dec 15	2414	4318	1904	2474	4416	1942	1942	0.98
Jan 16	4318	4318	0	4416	4416	0	0	
Feb 16	4318	6619	2301	4416	6731	2315	2315	0.98
Mar 16	6619	8437	1818	6731	8549	1818	1818	0.98

19. The AAO/ERO/Parkal through his reply dt.21.6.2016 in the Appeal stated about levying capacitor surcharge on the ground of non functioning of the installed capacitor and after fixing KVAh meter to the service, he gave the following reading:

S.No	Months	P.F
1	Nov'2015	0.98
2	Dec'2015	0.98
3	Feb'2016	0.99
4	Mar'2016	1.0
5	Apr'2016	0.69
6	May'2016	0.99

20. Thus the Respondents contended that the capacitors were not functional during the month of April,2016 and the power factor was as low as 0.69, the capacitors surcharge levied is found as valid and tenable and the CGRF direction is in order.

The Appellant, in the Letter addressed to AAO/ERO Dt 11.7.16 opposed the power factor readings of April, 2016 showing 0.69, as contradicting the actual readings on the ground that they have installed 5 KVAR capacitor on 05-01-2016 and noticed that without the capacitor, the PF is 0.98 and with the capacitor of 5KVAR 3Ph installed on 5.1.2016 the PF is unity and hence termed the capacitor surcharge as unauthorised. According to the Appellant the Monthly readings of the capacitor (with photo evidence) are as follows:

Monthly readings captured by our site technician					
	EB meter readings		Monthly consumption KWH	KVAh consumption	PF
Date	KWH	KVAh			
19 oct-15	776	796			
18 nov-15	2893	2964	2117	2168	0.98
19 dec-15	4893	5005	2000	2041	0.98
18 jan-16	Power source was disconnected				
18 feb-16	7424	7535	2531	2530	1.00

19 mar-16	10010	10310	2586	2595	1.00
18 apr-16	12833	12944	2823	2814	1.00
18 may-16	15689	15801	2856	2857	1.00
18 jun-16	18606	18718	2917	2917	1.00
11 jul-16	20482	20594	1876	1876	1.00

The Appellant while quoting clause(j) of the Terms and Conditions of Tariff Order 2015-16, claimed that they have connected load of 10kw, they are not liable to pay capacitor surcharge, as the levy is proposed for the services having less than 10 KW connected load with KWH billing with defective capacitors.

21. The KVAh billing started from the Tariff Order of FY 2011-12, which was introduced to reduce the Reactive power drawal from the system which is undesirable, for better system of management, to improve the system efficiencies and reducing the losses, if Unity power factor is achieved.

Further, while implementing the KVAh billing, the ERC had given certain directions in the Tariff Order 2011-12, under **NOTES in clause 4**. It is reproduced here under:

“ Energy charges shall be billed on KVAh wherever LT Trivector meters are provided by Licensee/Consumers. In the absence of LT Trivector Meters, energy charges shall be billed on KWH basis”

The above clause referring to billing the energy charges on KWH basis in the absence of LT Trivector Meters has also been mandated in the Tariff Orders of 2013-14. The subsequent Tariff Orders mandated KWH based billing only for the loads below 10 KW and directed to provide LT tri-Vector meters for the loads 10 KW and above and energy charges billing on KVAh basis.

22. The Sub Clause VII of Clause 4 of part ‘A’ of Tariff Order 2015-16 is with the following heading:

POWER FACTOR APPARATUS AND CAPACITOR SURCHARGE FOR LT:-

Clause 1:-

“Every LT consumer not provided with tri-vector meters, except LT-I domestic, using induction motors and/or welding transformers shall install shunt capacitors of the rating specified by the Licensee in the general

terms and conditions of supply (GTCS) approved by the commission from time to time. In case the rated capacity of the induction motor or welding transformers falls in between the steps of the stipulated ratings, the capacitors suitable for the next higher step shall be installed by the consumer.”

23. This above clause mandates that those consumers having Induction Motors and Welding machines, have to provide shunt Capacitors of the specified ratings. This requirement is specifically to the consumers having loads that causes voltage dip / fluctuation. Under this clause, failure to comply with the above requirement enables the licensee to disconnect the power supply as mandated under clause 2.

24. The Appellant, while referring to the usage of power supply, has stated that the load to a major extent consists of continuous load (24x7) and is electronic load (BASE Transive station) which is not an inductive load and that the other partial load is aircon(2TR running) running in an average 10 to 20 Hrs per day which is an inductive load so will install capacitor at the sites where PF is ≤ 0.95 and that its PF has been above 0.95.

25. In the present case, the loads of the appellant are constant in nature and continuous and thereby, the chances of voltage fluctuation is nil and therefore, the service in question does not fall under this category. Hence this clause VII(1) does not apply to the Appellant's case.

26. The Sub Clause VII(3) of Clause 4 of part 'A' of the Tariff Order 2015-16 states that In the case of LT consumer (except LT domestic, LT-IV, LT VI (A), LT-VII(B)) not covered by KVAh billing, if during inspection, no capacitor is found, or the capacitor already installed is found damaged or having defect or ceased to function, such consumer shall be liable to pay capacitor surcharge@ 25% of the monthly bill amount , as per the terms and conditions of supply notified by the licensee and then the Licensees shall not levy LPF surcharge.

27. The Sub Clause VII(3) of Clause 4 of part 'A' of the Tariff Order 2015-16 mentioned above does not speak about the loads of the consumers. The reference to the consumers made is of only those who does are not covered by KVAh billing & LT Consumers (Except LT Domestic, IV ,VIA,VII(B) and then the inspection of the

service is stated to be mandatory. The appellant claimed that no such inspection has been conducted.

28. As per the terms and conditions, under subclause (j) capacitors surcharge, LT consumer (except LT I domestic) having connected loads mentioned in table below shall pay capacitor surcharge (as per rules in vogue) at the rate of 25% of the billed amount, if capacitors are found defective in the following categories.

category	Connected load
LT II & LT VII (A)	<10 KW
LT III & LT VI (B)	< 20 HP

It is clear that , there is contradiction on levy of 25% capacitor charge on those consumers having contracted load of 10 KW compared with clause 3 above.

29. As per Clause 2(1) of Sub Clause 3 of LT Tariff part 'A' of Tariff Order 2015-16 the category wise specific conditions of LT tariff, under sub clause 2(1) of the Tariff Order 2015-16 specifies (cat-II) for loads 10KW and above, a LT trivector meter shall be provided and energy charges shall be billed on KVAh. This Clause indicates the responsibility of providing the LT trivector meter for KVAh billing. The **Consumer Rights Statement of the ERC, (Clause 10)** mandates the Licensee to provide the Standard meter and responsibility towards periodical inspection by the Licensee and replacement / repair whenever the meter is found defective within the time limit prescribed in the complaint handling procedure document.

30. It is evident that the Licensee did not replace the KVAh reading meter since 2011. It took almost 4 years for the KVAh billing of the Appellant service connection got started from 11/2015, that too after the remarks of the internal audit.

31. There is contradiction whether 10 KW load services have to be penalised for capacitor surcharge of 25% of monthly bill? The clause(j) of the Tariff order 2015-16 specifies the penalty to the consumer for less than 10 KW and Clause VII(3) which enforces the penalty, does not specify W.r.t. the load of the consumer. Here the appellant service falls under the condition "not covered by KVAh billing". The clause 3(2) mandates provision of LT trivector meter & billing of the service with KVAh billing for consumer having load 10 KW & above.

32. There are no inputs to ascertain the claim of the Appellant for maintaining the PF well above 0.95 during the time before inception of KVAh billing. However it can be seen that the Appellant has installed the 5KVAR capacitor on 05.01.2016.

33. If the responsibility of replacing with KVAh reading meter lies on Licensee, the equivalent responsibility of fixing the rated capacitor & maintaining good PF Lies on the appellant also (as per clause VII(3)).

34. So far as the period between the date of issue of notice dt.20.7.2015 of AE/OP/Parkal demanding payment of Rs 1,12,456/- towards 25% capacitor surcharge and fixing of Trivector Meter (starting of KVAh billing from 11/2015), the capacitor was not found in the premises in question. If so, under Clause VII(3) of part 'A' of Tariff Order 2015-16 the consumer has to pay the 25% capacitor surcharge on the monthly bill for the period covered by 20.7.2015 upto 11/2015 (before KVAh billing). The DISCOM may collect the capacitor surcharge from the Appellant w.e.f. 20.7.2015 upto 11/2015 (before KVAh billing). There is no record to show that any inspection was conducted by the AE/OP/Parkal to note availability of capacitors.

35. The Respondents have not fixed Trivector meter to the Service Connection of the Appellant prior to the date of KVAh billing, which is a breach of mandate. Merely because the Auditor report says so, without any authority either under GTCS, Tariff Order or any Regulation the Respondents cannot levy the Capacitor Surcharge. As indicated in the foregoing paras, there is no clear cut direction for imposition of Capacitor Surcharge in the circumstances presented in the Appeal. The benefit of discrepancy should go to the Appellant. As on now the DISCOM has been collecting charges on KVAh units. The Appellant is found not liable to pay the Capacitor Surcharge so long as the DISCOM fails to fix the Trivector meter for charging KVAh units. Issues i to iii are answered accordingly in favour of the Appellant.

36. Issue iv. In view of the findings on Issues i to iii, the impugned orders are set aside. The issue is answered accordingly.

37. In the result, the following directions shall issue:

- i. The demand for the Capacitor Surcharge from 31.1.2014 to 31.5.2015 for Rs 1,12,455/- is set aside as unauthorised.
- ii. The DISCOM is duty bound to fix Trivector Meter to the Appellant's Service Connection to charge KVAh units.

iii. The DISCOM is entitled to collect capacitor surcharge of 25% on the monthly bills w.e.f. 207.2015 (the date of notice issued by AAO/ERO/Mulugu) upto 11/2015 (before start of KVAh billing).

iv. In case of non maintenance of power factor, the remedies available to the DISCOM can be resorted to.

iv. The amount collected as Capacitor Surcharge can be adjusted in the future CC bills.

v. The impugned orders are set aside.

38. This award shall be implemented within 15 days of its receipt at the risk of penalties as indicated in Clauses 3.38, 3.39 and 3.42 of the Regulation No. 3/2015 of TSERC.

TYPED BY CCO, Corrected, Signed and Pronounced by me on this the 4th day of October, 2016.

VIDYUT OMBUDSMAN

1. M/s Viom Networks represented by Sri. B. Srinivas, Gowra Plaza,
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3. The ADE/OP/Parkal/TSNPDCL/Warangal Dist.
4. The AAO/ERO/Parkal/TSNPDCL/Warangal Dist.
5. The DE/OP/Mulugu/TSNPDCL/Warangal Dist.

Copy to:

6. The Chairperson, CGRF, TSNPDCL, Nakkalagutta, Hanamkonda, Warangal.
7. The Secretary, TSERC, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad.