

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 11 -02-2013

Appeal No. 7 of 2013

Between

Sri K.Nagabhushanam
Chartered Accountant
9/309, R.K.Complex, 2nd Floor, Eluru Road,
Gudivada Town – 521 301, Krishna Dist.

... Appellant

And

1. Asst.Accounts Officer/ERO/Gudiwada
2. Asst.Engineer/CO /Gudiwada
3. Asst.Divisional Engineer/operation/Gudiwada
4. Divisional Engineer/Assessments /Tirupathi
5. Divisional Engineer/Operation/Gudiwada
6. Senior Accounts Officer / operation/Vijayawada

....Respondents

The appeal / representation filed on 01.01.2013 of the appellant has come up for final hearing before the Vidyut Ombudsman on 05.02.2013 at Tirupathi. Sri M.Hari Prasad Advocate for the appellant and Sri Y.Sanjay Kumar DE/Assessments/Tirupati, Sri. T.V.Tulasi Ram, ADE/O/Gudivada, Sri R.Suryanarayana AAE/O/D2/Gudivada and Sri G.Naga Srinivas, AAO/ERO/Town/Gudivada for respondents present and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following :

AWARD

The appellant filed a complaint against the Respondents for Redressal of his Grievances and stated as hereunder:

1. *He is a chartered accountant practicing since last 30 years at Gudiwada, Krishna-Dist. He is having electrical service at his office premises bearing service No: 8209 of Gudiwada section.*
2. *The above service was billed under category-II up to 2003.*
3. *In the year 2003 he had filed a writ petition before honourable High Court of A.P., vide WP No:8326 of 2003 (WPMP No: 10779/2003) requesting the honourable high court gave directions to the electricity authority to issue bills from the month of April, 2003 onwards in respect of service No: 8209 under category-I in view of the Judgement of Honourable High Court reported in 1993 (2) APLI 157.*
4. *The Honourable High Court of A.P was kind enough to grant through its interim order dt:04-08-2003 directing the Assistant Accounts Officer, ERO, Gudiwada to issue bills in respect of service No: 8209 under category-I from April 2003 onwards.*
5. *As per the interim order of the A.P.High Court the Assistant Accounts Officer/ERO/Gudiwada, vide his LrNo: AAO/ERO/GDV/JAO-2/West.UBC/D.No:285/Dt:06-02-2004 changed the category of the above service from II to I under intimation of the same to the D.E. (Operation), Gudiwada, ADE/Opn/Gudiwada and AE/Opn/Gudiwada west section and thereafter they are billing the service under category-I only.*
6. *Their service No:8209 was inspected on 09-08-2012 by ADE/DPE-VJA, and booked a case against me for unauthorized use of energy by stating that the service No: 8209 Gudiwada, was released under category-I but the consumer utilizing the total loan to office purpose. Therefore it should be billed under category-II only. Therefore he concluded that the consumer is utilizing the supply for other than stipulated purpose and provisionally assessed an amount of Rs.65,860/- towards the charges payable by him. ADE/DPE/VJA at the time of inspection not enquired us why the service is billing under category-I and in fact that they have not noticed the inspection under taken.*
7. *he had filed a petition, dt:22-09-2012 before the DE /Assessments/ APSPDCL/Tirupati, stating that my service was billing under category-I on the interim directions of the honourable High Court A.P therefore it cannot be said that he is using the energy for unauthorized purpose and requested him to drop the proceedings.*
8. *The learned DE/Assessments/Tirupati refused to consider his request and also ignored and disregard the directions of the A.P.High Court, passed a final assessment order Dt:04-10-2012 under reference DE-ASMT/TPT/F.No.01-12/GDVT/T/DNo:1893/12 and directed him to pay a sum of Rs. 66,859/- as the charges payable for the alleged malpractice within 30 days. It is ones beyond imagination how the billing under category-I under the directions of A.P.High Court order, is amount to malpractice and for which make me liable for the penalty.*
9. *After that it came to my notice, that the honourable high court of A.P has disposed my writ petition and passed a final order on 22-08-2007 holding that the office of the petitioner cannot be treated as a commercial*

establishment and accordingly that the respondents cannot charge Electricity Consumption charges treating the same as a commercial establishment, and accordingly allowed my petition for billing for the above service under category-I.

10. *After receiving the final assessment order from DE/Assessments/Tirupati, again he had submitted before him through my letter Dt:02-11-2012 stating that he has not considered the AP.High Court order on the given subject for the reasons not known which warrants contempt proceedings and again requested him to rectify or cancel the final order on the basis of the A.P.High Court final order given in his case and so far he had not received any communication from the office of the DE/Assessments/Tirupati on the above petition.*
11. *In the mean while the ADE/Opn/issued the billed for the month of Oct-12 – Nov 12 under category-II and billed an amount of Rs.4,172/- for the above month and pressuring us to pay the amount of Rs.71,131/- including the amount of final order of the DE/Assessments/Tirupati.*

2. The respondents-1, 3 and 5 i.e. the Assistant Accounts Officer/ERO/Gudiwada, the Assistant Divisional Engineer/Operation/Gudiwada and the Divisional Engineer/Operation/Gudiwada in their Separate and similar written submissions submitted as hereunder:

1. *The SCNo: 8209 of D2, Gudiwada is in the name of Sri K.Nagabushanam. The CC.bills are being issued under category-I. The ADE/DPE-I Vijayawada has inspected the service on 09-08-2012 and found that the consumer utilizing the total load to office purpose. Hence unauthorized use of energy case was booked. The case was registered as case No:DPE/GUDV/GUVT/196/12 DATE:13-08-2012. The inspection report was communicated to the respondent-1 office with a request to change the category from I to II.*
2. *A Provisional Assessment notice was issued by the Assistant Divisional Engineer/Operation/Town/Gudiwada vide LR.No: ADE/OSD/town/GDV/ D.No:1234/12, dt:24-08-2012 for unauthorized use of supply under section 126 of the Electricity Act 2003. The notice was issued for the assessment amount of Rs.65,860/- + Supervision charges of Rs.100.00 i.e., total of Rs 65,960.00. Further it was requested to change the category from I to II.*
3. *As per recommendations of the ADE/DPE-I/Vijayawada and the ADE/Opn/Town/Gudiwada the category of the service No: 8209 was changed from I to II.*
4. *The final assessment orders were issued by the Divisional Engineer/Assessments/APSPDCL/Tirupati vide Order.No:DE-ASMT/ TPT/F.No:01-12/GDVT/T/DNo:1893/12, Dt:04/10/2012 for un-authorised use of supply under section 126 of the Electricity Act 2003. The order was*

issued for the assessment amount of Rs.66,859/- + Supervision charges of Rs.100/- i.e. total of Rs.66,956/-. Accordingly the final assessment amount is included in the CC.bills of the SCNo: 8209 of D-2/Gudiwada vide RJNo:15/10-12. The consumer has paid the final assessment amount including the regular CC.bill total an amounting of Rs.71,130/- vide PRNo: 329054 dt: 30-11-2012.

5. The consumer may prefer appeal against the final assessment orders issued by the DE/Assessments/Tirupati within 30 days from the date of receipt of the notice by paying the ½ payment of final assessment order.
6. The consumer has filed W.P.No:8326 of 2003 for billing under category-II. The Honorable High Court of AP has issued orders as below:
 - a. **“Accordingly, the writ petition is allowed holding that the office of the petitioner cannot be treated as a commercial establishment and accordingly holding that the respondents cannot charge electricity consumption charges treating the same as commercial establishment. No costs.”**

The nature of the premises is office purpose as per the inspection report of the ADE/DPE-I/Vijayawada i.e. Non-Domestic purpose. As per the tariff orders LT category-II tariff is applicable to Non-Domestic/Commercial purpose. Further LT category-I tariff is applicable to Domestic purpose only. Here the consumption has not utilize the service for the purpose of domestic, hence the contention of the complainant to bill the service under category-I is not tenable.

7. While filing the court case i.e. W.P.No:8326 of 2003, the service has not in the present address. As per the interim orders of the honourable High court of A.P. the category of the service number 8209 of west (now D1) – Gudiwada was changed from II to I. Then the service was shifted from West (now D1) section, Gudiwada to C&O (now D2) section Gudiwada as per the request of the consumer. Further it is to submit that the consumer is utilising the supply for office purpose by paying the CC.charges under category-I as per the interim directions of the honourable High Court of AP till to date even though the honourable High Court of A.P has issued the final orders as mentioned above on 22-08-2007.
8. Further the petitioner is a Private Accounting Agency of the APSPDCL. The DISCOM is paying the remuneration for PAA work and also for SBA work to the complainant. Further the service tax has also paid to the PAA for rendering his service for onwards paying the same to commercial tax department. The copy of the Remuneration bill along with the service tax challan are herewith enclosed for reference please. As per the remuneration bill the address of the agency is as Sri .K.Nagabhushanam, Chartered Accountant, 9/309, R.K.Complex, Eluru Road, Gudiwada.” The service No: 8209 of D2, Gudiwada is pertains to the same address. This clearly shows that the consumer is utilizing the service for non domestic purpose and the service is to be billed under LT category-II as per the tariff order issued by the Honourable APERC.

3. The complainant in his further petition dt: 05-12-2012 submitted to the Forum as hereunder:

1. *He had received the copy of the written submissions filed by the respondents in the above case and noted that the respondents in their written submissions stated that he was doing private accounting agency work & spot billing work of APSPDCL from his office premises therefore he was carrying business and hence liable for billing under category-2.*
2. *In this contest he humbly submit before the Forum that APSPDCL considers the above work as a professional engagement and therefore deducting the income tax from his bills @ 10% U/s 194J of the income tax act, which covers TDS deduction from payment of fee for professional services. If the assignment is a contract payment (business) they are supposed to deduct tax only @ 2% U/s 194C of the income tax Act.*
3. *Moreover they are not doing any PAA work or spot billing work from his office. They are doing PAA work only in the ERO itself and spot billing work is done in the field. Therefore the contention of the respondents is not correct on facts.*
4. *Further the respondents have stated vide Para No: 5 of their written submissions that consumer may prefer appeal against the final assessment orders issued by the DE/Assessments, Tirupati within 30 days from date of receipt of the notice by paying 50% payment of the final assessment order.*
5. *The issue is not alternative remedy available to him, but the willful disregarding and grossly ignoring the binding nature of the honourable AP High Court decision given in his case by the DE/Assessments/Tirupati and ADE/Opn/D2/Gudiwada. If the respondents have a case if any against him on this point they have to prefer before Supreme Court not otherwise.*

4. After hearing both sides and after considering the material placed before the Forum, the Forum passed the impugned order as here under:

"No separate order need to be issued".

Accordingly the case is allowed and disposed off

The Forum has extracted 3.5.1 of GTCS with regard to details of the establishment. It is extracted as hereunder:

Definition of Separate Establishment

3.5.1 For the purpose of the GTCS, separate establishments shall include the following types of establishments:

- i Having distinct set-up and staff;
- ii Owned or leased by different persons;

- iii Covered by different licenses or registrations under any law where such procedures are applicable; and
- iv For domestic category, the households having a separate kitchen.

Basing on the above said definition, the Forum has disposed of the complaint by ordering the same as above.

5. Aggrieved by the said order, the appellant preferred this appeal, questioning the same by narrating the following grounds:

- (i) He has filed WP No.8326/2003 on the file of Hon'ble High Court of A.P which issued a direction to issue the monthly bills under Cat-I.
- (ii) Basing on the interim order of the Hon'ble High Court, the AAO /ERO/Gudivada changed the category from II to I under intimation to the DE/O/Gudivada.
- (iii) Finally, the writ petition was disposed by allowing the same that the premises cannot be treated as commercial establishment and the respondent cannot charge the electricity consumption charges treating the same as a commercial establishment.
- (iv) The service connection was inspected on 09.08.2012 and booked a case against the appellant for unauthorized use of energy holding that the appellant is using the total load for office purpose and it should be billed under Cat-II only.
- (v) The ADE has also concluded that he is utilizing the supply for other than the stipulated purpose and provisionally assessed an amount of Rs.65,860/- towards charges payable by him and that he has not noticed the inspection under taken.
- (vi) When it is ordered that it is under Cat-I, it cannot be said that he is utilizing for unauthorized purposes and requested DE/Assessments to drop the proceedings.
- (vii) Again, he has submitted a representation after receiving the final assessment order from DE/Assessments and that they have not considered the orders of the Hon'ble High court and willfully disregarded the decision of the Hon'ble High Court and directed him to pay the amount.
- (viii) In the meanwhile, ADE/Operation issued a bill under Cat-II sending a bill for an amount of Rs.71,131/- including the amount ordered by DE/Assessment.

(ix) He has submitted an application before the Forum and requested to consider his premises under domestic category, but his service is to be billed under Cat-I on the directions of the Hon'ble High Court and any disobedience shown to the Hon'ble High Court decision warrants contempt proceedings against them.

(x) The officers of APSPDCL willfully disregarded and disobeyed the decision of the Hon'ble High Court .

(xi) The executive cannot interpret the law. It is the duty of the law courts and the interpretation of the law courts are to be followed by the executive.

(xii) It is therefore prayed to consider the facts of the case and grant just and appropriate relief.

6. Now, the point for consideration is, whether the impugned order passed by the Forum is liable to set aside. If so, on what grounds?

7. The appellant is represented by his advocate Sri M.Hari Prasad and he has stated that the order of the Hon'ble High Court has to be implemented and the same is ignored by the Forum; and that the appeal is to be allowed by setting aside the impugned order.

8. Whereas, the respondents are represented by Sri Y.Sanjay Kumar DE/Assessments/Tirupati, Sri. T.V.Tulasi Ram, ADE/O/Gudivada, Sri R.Suryanarayana AAE/O/D2/Gudivada and Sri G.Naga Srinivas, AAO/ERO/Town/Gudivada are present and submitted their written submissions as hereunder:

(i) The ADE/DPE-I, Vijayawada has inspected the service on 09.08.2012 and found that the consumer utilizing the total load to office purpose. Hence unauthorized use of energy case was booked. The inspection report has communicated to this office with a request to change the category from I to II.

(ii) The notice was issued for the assessment amount of Rs.65,860/- + Supervision charges of Rs.100.00 i.e., total of Rs 65,960.00. Further it was requested to change the category from I to II.

(iii) The final assessment orders were issued by the Divisional Engineer/Assessments/APSPDCL/Tirupati. The order was issued for the assessment amount of Rs.66,859/- + Supervision charges of Rs.100/- i.e. total of Rs.66,956/-. Accordingly the final assessment amount is included in the CC.bills of the SCNo: 8209 of D-2/Gudiwada vide RJNo:15/10-12. The consumer has paid the final assessment amount including the regular CC.bill total an amounting of Rs.71,130/- vide PRNo: 329054 dt: 30-11-2012.

(iv) The consumer may prefer appeal to the Superintending Engineer, Assessments, Tirupathi against the final assessment orders issued by the DE/Assessments/Tirupati within 30 days from the date of receipt of the notice by paying the ½ payment of final assessment order. But the consumer has not preferred the same and approached the Forum.

(v) In this connection, it is to state that the nature of the premises is office purpose as per the inspection report of the ADE/DPE-I/Vijayawada i.e. Non-Domestic purpose. As per the tariff orders LT category-II tariff is applicable to Non-Domestic/Commercial purpose. Further LT category-I tariff is applicable to Domestic purpose only. Here the consumer has not utilized the service for the purpose of domestic, hence the contention of the complainant to bill the service under category-I is not tenable.

9. It is an admitted fact that the premises is being utilized for office purpose and it is not under domestic category. This fact has been also admitted by the appellant. Whereas the appellant has filed a WP No. 8326/2003 questioning the categorization and the Hon'ble High Court has held on 22.08.2007 as hereunder:

“Having heard the learned counsel for both the parties and having perused the decisions relied upon by the learned counsel for the petitioner, I am of the opinion that the ratio laid down in the above decisions squarely applies to the case on hand .

Accordingly, the writ petition is allowed holding that the office of the petitioner cannot be treated as a commercial establishment and accordingly holding that the respondents cannot charge electricity consumption charges treating the same as commercial establishment. No costs.”

10. So, it is bounden duty of the department to implement the orders of the Hon'ble High Court. The Forum has failed to observe the same and rejected the request made by the appellant. No doubt it is being used for non-domestic purpose i.e, office purpose but that cannot be categorized under Cat-II in view of the above said direction given by the Hon'ble High Court.

11. So far as unauthorised use of the power is concerned, it is subsequent to the order of the Hon'ble High Court i.e, 09.08.2012. He has got actual connected load of 10,190W and mis-used the load to an extent of 10190W. Therefore, the department has booked a case of unauthorized use of service connection by using more connected load. As per amendment condition no.12.3.3.1 of GTCS in proceedings no. APERC/Secy/01/2012 dt.07.03.2012, it is clear that one month notice shall be given to regularize the additional load or part thereof. The said condition reads as follows:

12.3.3.1 Where the total Connected Load is 75 HP/56 kW or 150HP in cases of LT Cat III(B) or below at the time of detection:

(i) One Month notice shall be given to regularise the additional Connected Load or part of additional load as per the requirement of the consumer or to remove the additional connected load. If the consumer desires to continue with the additional connected load, he shall pay the required service line charges, development charges and consumption deposit, in accordance with the format prescribed in Appendix IX. However, if the consumer opts to remove the additional connected load and if the additional load is found connected during subsequent inspection, penal provisions shall be invoked as per the rules in vogue.

(ii) One Month notice shall be given to regularise the additional Connected Load or part of additional load as per the requirement of the consumer or to remove the additional connected load. If the consumer desires to continue with the additional connected load, he shall pay the required service line charges, development charges and consumption deposit required for conversion of LT service into LT 3(B) or Ht service depending upon the connected load. However, if the consumer opts to remove the additional connected load and if the additional load is found connected during subsequent inspection, penal provisions shall be invoked as per the rules in vogue.

12. Unauthorised use is not-connected with categorization. It is for the department to issue a notice and to regularize the same if the appellant wants to continue the same or otherwise reduce the connected load to the extent which is authorized for him as prescribed in the above said condition.

13. In the light of the above said discussion, the appeal is allowed in part directing the respondents to keep the service connection under non-commercial category as directed by the Hon'ble High Court and necessary steps may be initiated as per the above said condition 12.3.3.1 of GTCS. If any amount is collected in excess, the same may be adjusted in the future bills. With the above said observation, the appeal is disposed accordingly.

This order is corrected and signed on this day of 11th February 2013

Sd/-
VIDYUT OMBUDSMAN