



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

Monday, the Tenth Day of April 2017

Appeal No. 5 of 2017

Preferred against Order Dt. 31-01-2017 of CGRF
in CG No. 670/2016-17/Hyderabad North Circle

Between

M/s Laxmi Powder Coatings, Plot No. 56 and 57, IDA Gandhinagar,
Bala Nagar, Hyderabad - 500 037. Cell : 9849339932.

... Appellant

AND

1. The ADE/OP/Balanagar/TSSPDCL/Hyderabad.
2. The AAO/ERO/Bowenpally/TSSPDCL/Hyderabad.
3. The DE/OP/Bowenpally/TSSPDCL/Hyderabad.
4. The SE/OP/Hyd.North Circle/TSSPDCL/Hyderabad.

... Respondents

The above appeal filed on 09.02.2017 coming up for hearing before the Viduyut Ombudsman, Telangana State on 28.03.2017 at Hyderabad in the presence of Sri. Vipin Kumar - On behalf of the Appellant Company and Smt. G.V.N.L. Bhavani - AAO/ERO-XII/Bowenpally, Sri. S. Ravi Prasad - DE/OP/Bowenpally for the Respondents and having considered the record and submissions of both the parties, the Viduyut Ombudsman passed the following;

AWARD

The Appellant has SC No. S7012760 LT category III (Industrial) released on 22.6.2007. The Appellant is a powder coating unit. The service was inspected on 20.09.2016 and the workers in the unit have not shown the industrial certificate to the inspecting officer. Thereafter, the category of the service was changed from LT Category III(Industrial) to LT Category II (Commercial). The Appellant gave a representation to the DE/OP/Bowenpally on 31.10.2016 and also to the 4th Respondent SE/OP/Hyd.North on 9.11.2016 enclosing the certificates issued by the Industries Department of the Government. On 15.11.2016, the 3rd Respondent DEE/OP/Bowenpally has issued final assessment orders dt.15.11.2016

for Rs 1,95,983/- plus incidental charges confirming the preliminary assessment notice dt.5.10.2016 of the 1st Respondent ADE/OP/Bala Nagar. The Appellant lodged a complaint seeking restoration of the service category to industrial and withdrawal of the back billing amount.

2. Before the CGRF, the AAO/ERO/Bowenpally/2nd Respondent through letter dt.12.1.2017 stated that the back billing case was booked by the DPE Wing on the ground that the consumer has been using the service for commercial activities instead of industrial purpose and a final assessment order was issued by the 3rd Respondent DEE/O/Bowenpally on 15.11.2016, which has not been paid by the consumer.

3. The Appellant reiterated his request for restoration of his service to LT category III and withdrawal of the demand under the final assessment order. The 3rd Respondent claimed that the consumer has been carrying out powder coating works and not production, processing or preserving goods coming under the industrial activity and therefore, the category was changed to LT II (Commercial).

4. On considering the material on record and contentions, the CGRF while referring to Clause 3.4.1 of GTCS relating to the requirement of sufficient notice for change of category, observed that the dispute is a subject matter of prohibition covered by clause 2.37(b) of Regulation 3 of 2015 and Section 145 of the Electricity Act under which the forum has no jurisdiction to entertain the complaint, has rejected the complaint of the Appellant through the impugned orders.

5. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal on the ground that he has submitted a representation to the 3rd Respondent/DE/OP/Bowenpally on 31.10.2016, so also to the SE/OP/Hyd North/R4 and further he has also submitted a representation to the 3rd Respondent DE/OP/Bowenpally on 18.11.2016 without success and that he has been running the same industry since the last 8 years and getting the consumption bills under LT III (Industrial) category and that now without any intimation, the DISCOM has changed the service connection to LT II (Commercial) category which is not correct and that his industry is not identified as coming under LT II in the Tariff Order.

6. Pending Appeal, the 3rd Respondent DE/OP/Bowenpally submitted a report in respect of the Appellant unit stating the Appellant M/s Laxmi Powder Coating works having addressed the 3rd Respondent DE/OP/Bowenpally stated that he has enclosed a

copy of certificate issued by district industries certificate in support of his claim that his service is industrial and not commercial.

7. The 3rd Respondent DE/OP/Bowenpally submitted that the officials of the DISCOM inspected the service connection on 20.9.2016 and booked a back billing case on the ground of change from Category III to Category II and that the power supply has been used for powder coating purpose, which comes under the commercial category. The officials observed that even as per GTCS, only manufacturing, processing or preservation of goods come under the Category III and directed the consumer to prefer an Appeal before the 4th Respondent SE/OP/Hyd. North

8. Mediation has not succeeded and therefore, the matter is being disposed of on merits.

9. On the basis of the material on record and contentions, the following issues arise for determination:

1. Whether the service connection of the Appellant is subjected to change from LT Category III(Industrial) to LT Category II (Commercial)?
2. Whether the final assessment for Rs 1,95,983/- based on change of LT category III (Industrial) to LT Category II(Commercial) is legal?
3. Whether the complaint before CGRF is barred under Clause 2.37(b) of Regulation 3 of 2015?
4. Whether the impugned orders are liable to be set aside?

Issues 1 to 3

10. The following facts are not disputed:

The Appellant secured service connection on 22.6.2007 under LT category III(Industrial). The consumer is a powder coating unit and it has not changed its operations. Without any prior notice, the consumer was issued a back billing demand notice dt.5.10.2016 for Rs 1,96,083/- in view of reclassification of the service category. The 3rd Respondent passed final assessment order dt.15.11.2016 confirming the preliminary assessment dt. 05.10.2016. The Appellant has not preferred any Appeal before the 4th Respondent/SE/OP/Hyd.North as suggested in the final assessment order.

11. The inspecting officer has relied on Clause 3.4.1 of GTCS to place demand after changing the category of the service. For clarity the Amended Clause 3.4.1 of GTCS is reproduced below:

“ Where a consumer has been classified under a particular category and is billed accordingly and it is subsequently found that the classification is not correct (subject to the condition that the consumer does not alter the category/purpose of usage of the premises without prior intimation to the Designated Officer of the Company), the consumer will be informed through a notice, of the proposed reclassification, duly giving him an opportunity to file any objection within a period of 15 days. The Company after due consideration of the consumer's reply if any, may alter the classification and suitably review the bills if necessary, even with retrospective effect, the assessment shall be made for the entire period during which such reclassification is needed, however, the period during which such reclassification is needed cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.”

It is clear from Clause 3.4.1., there is a procedure prescribed for change of category/classification of the service wherein a notice has to be issued to the consumer about proposed reclassification giving 15 days time for filing objections and thereafter, the DISCOM may take suitable decision even with retrospective effect. In the present case, a direct demand notice dt.5.10.2016 by way of a provisional demand was sent to the Appellant without giving any prior notice or an opportunity to submit his objections for the proposed change of category.

12. The question now that arises is on what basis the category III(Industrial) issued to the Appellant on 22.6.2007 was changed to Category II(Commercial), only through the demand notice dt.5.10.2016 after inspection. The criteria as relied on by the officials of the DISCOM is “at the time of inspection, the consumer was availing supply for commercial i.e. powder coating purpose which comes under commercial category while the sanctioned category is industrial category.” The activity of the Appellant unit i.e powder coating unit is not changed right from the time of release of the service connection. How powder coating unit became commercial unit from the industrial unit is not explained by the Respondents.

13. Whether the Appellant unit is an Industrial Activity or Commercial one has to be examined. The Department of Industries identified/certified M/s. Lakshmi Powder Coatings for providing:

1. Spray painting
2. Powder coating works
3. Polishing job works

The basic purpose of powder coating is to protect the roughest, toughest machinery as well as the household parts that one depends on daily and to make the subjected articles most attractive, durable with high quality finish.

The tariff order defines the LT-III (Industry) Category as “the industrial purpose shall mean supply for purpose of manufacturing, processing and/or preserving goods for sale.” The powder coating industry with similar purpose falls under the ambit of preservation i.e. to keep and maintain the machinery or goods for sale in a high quality/durable state.

14. Though the Respondents claim that powder coating is not an industrial activity, based on the Tariff Order, they have not been able to show where this fact is mentioned. The DISCOM has the power to change the categories, but not in an arbitrary way. From out of the blue, the inspecting officer suddenly realized that the powder coating activity is a commercial activity and not industrial activity and initiated back billing process by changing the Category. This type of arbitrary action is not supported by the provisions of either GTCS or any statute and it is untenable and cannot be supported on any ground. This short circuiting of the procedure for change of category and not affording an opportunity for submitting objections by giving sufficient time to the consumer cannot be countenanced. On either ground, the impugned action of the Respondents cannot be sustained.

15. The CGRF has rejected the complaint of the Appellant on the ground that it falls under the purview of Section 126 and 127 of the Electricity Act,2003. It may be noted that S.126 of Electricity Act,2003 is a penal provision mandating demand of twice the tariff rates and S.127 is an attached appellate provision. These provisions have nothing to do with the back billing cases. Further S.145 of the Electricity Act,2003 prohibits any Civil Court from entertaining any suit regarding steps taken under Sections 126 and 127 of the Electricity Act. The CGRF has quoted these provisions to deny relief to the Appellant by making an out of context interpretation. Since the question of provisional assessment came up, the CGRF was of the view that the final assessment order passed by the 3rd Respondent/DE/OP/Bowenpally, in the normal course would be subject matter

for further Appeal to the SE/OP/Hd.North/R4, which the Appellant has not preferred. In the first instance, the change of Category from LT-III(Industrial) to LT-II(Commercial) is found to be invalid and if so, the further proceedings regarding the provisional assessment etc would face the same fate.

16. Without examining whether the subject matter in dispute raises any valid question about legality even as per Clause 3.4.1 of GTCS in its amended form, the CGRF has chosen not to examine the controversy involved in the complaint which is untenable. Thus, the impugned orders are found unsustainable, being violative of Clause 3.4.1 of GTCS and also regarding the procedure adopted by the Respondents for change of category, without any valid reason. The issues are answered accordingly.

17. In the result, the Appeal is allowed directing as follows:

1. The procedure adopted by the Respondents for change of category from LT-III(Industrial) to LT-II(Commercial) is found invalid.
2. The provisional and final assessment orders imposing charges of Rs 1,95,983/- based on change of Category LT -II (Commercial) are set aside as not legal.
3. The finding of the CGRF that the complaint is barred under Clause 2.37 of Regulation 3 of 2015 and the dispute is not maintainable in view of the provisions of Sections 126,127 and 145 of the Electricity Act,2003 is set aside as unsustainable and illegal.
4. The impugned orders are set aside.

18. 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 10th day of April, 2017

Sd/-

VIDYUT OMBUDSMAN

1. M/s Laxmi Powder Coatings, Plot No. 56 and 57, IDA Gandhinagar, Bala Nagar, Hyderabad - 500 037. Cell : 9849339932.
2. The ADE/OP/Balanagar/TSSPDCL/Hyderabad

3. The AAO/ERO/Bowenpally/TSSPDCL/Hyderabad.
4. The DE/OP/Bowenpally/TSSPDCL/Hyderabad.
5. The SE/OP/Hyd.North Circle/TSSPDCL/Hyderabad.

Copy to:

6. The Chairperson, CGRF,TSSPDCL, Greater Hyderabad Area, GTS Colony, Vengal Rao Nagar, Erragadda, Hyderabad..
7. The Secretary, TSERC, 5th Floor, Singareni Bhavan, Red Hills,Hyderabad.