



BEFORE THE VIDUYUT 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
VIDUYUT OMBUDSMAN

FRIDAY THE SEVENTH DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR

Appeal No. 08 of 2024-25

Between

M/s. Admerus Biosciences Pvt. Ltd., rep. by its Managing Director,
Sri Pattabharam Koppineedi, # 480, Basuragadi, Hyderabad - 501 401,
Cell:9849573000.

.....Appellant

AND

1. The Assistant Divisional Engineer/Operation/Medchal/TSSPDCL/Medchal.
2. The Divisional Engineer/Operation/Medchal/TSSPDCL/Medchal.
3. The Senior Accounts Officer/Operation/Medchal Circle/TSSPDCL/Medchal.
4. The Superintending Engineer/Operation/Medchal Circle/TSSPDCL/Medchal.
5. The Chief General Manager/Commercial/Corporate Office / TSSPDCL / Hyderabad.
6. The Assistant Divisional Engineer/DPE/HT/Medchal /TSSPDCL/Medchal Circle.

.....Respondents

This appeal is coming on before me for final hearing on 05.06.2024 in the presence of Sri G. Lava Kumar, advocate for the appellant and Sri R. Suresh Kumar - AE/DPE/HT/Medchal, Sri S.V.V. Satyanaryana Raju - ADE/OP/Medchal, Sri S. Raju Naik - ADE/DPE/HT/Medchal Circle, Sri G. Madhusudhan Reddy - SAO/OP/Medchal Circle, Sri Srinath Reddy - DE/OP/Medchal and Sri Pothraju John - DE/Commercial/TGSPDCL for the respondents and having stood over for consideration, this Viduyut Ombudsman passed the following:-

AWARD

This appeal is preferred aggrieved by the Award passed by the Consumer Grievances Redressal Forum - Greater Hyderabad Area, (in short 'the Forum') of Telangana State Southern Power Distribution Company Limited (in short 'TGSPDCL') in C.G. No.303/2023-24/Cybercity Circle on 01.05.2024, rejecting the complaint.

CASE OF THE APPELLANT BEFORE THE FORUM

2. The case of the appellant before the learned Forum is that the respondents have released H.T. Service Connection No. MCL 3124 (in short 'the subject Service Connection') to the appellant- Research and Development organisation on 06.10.2018. The appellant has been paying the power consumption charges regularly since then. While so, on 24.01.2024, respondent No.1 issued show cause notice to the appellant to file objections within (15) days for conversion of the subject Service Connection from HT Category-IA to HT Category-II on the ground that it has been carrying on commercial activity which comes under HT Category-II as per Tariff Order. The appellant replied to the said notice on 07.02.2024. Thereafter respondent No.1 addressed another letter on 22.02.2024 after receiving the reply from the appellant, provisionally assessing back billing amount of Rs.31,66,942/- on the subject Service Connection giving (15) days' time to the appellant to pay the said amount. Therefore it was prayed to take necessary steps in this regard.

WRITTEN SUBMISSIONS OF THE RESPONDENTS

3. In the written reply filed by respondent No. 4 before the learned Forum, it is, inter-alia, submitted that the subject Service Connection was inspected by respondent No.6 on the complaint of respondent No.1 and found that the consumer was availing a healthy 3-phase power supply. It was also observed that the supply was being utilised for Contractual Research Organisation and also for drug research analysis to arrive investigational products which falls under HT Category-II as per Tariff Order. Thereafter respondent No.1 issued the first notice on 24.01.2024 to the appellant proposing to change the Category of the subject Service Connection to HT Category-II (industry-commercial) on the ground that the power was being utilised for the purpose of Research and Development activity and there is no production activity in the premises of the appellant, basing on Clause 3.4.1 of the General Terms and Conditions of Supply (in short 'GTCS'). Thereafter respondent No.1 issued another notice reclassifying the Category of the subject Service Connection to HT-II and proposing back billing Rs.31,66,942/- with retrospective effect from October 2018 to January 2024.

4. In the written reply filed by respondent No.6 before the learned Forum, it is submitted that he inspected the premises of the appellant at Gowdavalli, Palodiram Nagar, Medchal Sub Division on 03.01.2024 at about 11.40 A.M., and observed that the activity of the appellant is only pharma

related Research and Development for which the correct Category is HT-II.

AWARD OF THE FORUM

5. After considering the material on record and after hearing both sides, the learned Forum has rejected the complaint basing on Clause 3.4.1 of GTCS.

6. Aggrieved by the Award passed by the learned Forum, the present appeal is preferred, contending among other things, that it is the responsibility of the respondents to look into the correct Category while releasing the Service Connection itself. The back billing claim of the respondents is barred under Sec 56(2) of the Electricity Act (in short 'the Act'). For the mistake of the respondents the appellant cannot be penalised. It is accordingly prayed to set aside the Award of the learned Forum and to declare that the respondents are not entitled for the back billing amount of Rs.31,66,942/-.

WRITTEN SUBMISSION OF THE RESPONDENTS

7. In the written reply filed by respondent No. 4, before this Authority, he has reiterated the contents of the written reply filed by him before the learned Forum.

8. In the written reply filed by respondent No. 1 and 2, they too submitted the contents similar to the written reply of respondent No.4.

ARGUMENTS

9. The learned Advocate for the appellant has submitted written arguments, contending among other things, that it is the responsibility of the respondents to categorise the Service Connection correctly since the appellant gave full particulars of its activities initially while applying for Service Connection; that the officials of the respondents have visited the subject Service Connection on several occasions but they have not noticed the wrong categorisation and that Clause 3.4.1 of GTCS is not mandatory to collect the entire back billing from the consumer; that since respondents have claimed the back billing of huge amount after a long lapse of time, it is barred by limitation. Therefore it is prayed to set aside the Award of the learned Forum and to do justice to the appellant.

10. On the other hand, it is argued on behalf of the respondents that the mistake of categorization of the subject Service Connection was noticed on the date of inspection and the respondents are entitled to reclassify the category of the subject Service Connection after issuing notice to the consumer and back billing with retrospective effect under Clause 3.4.1 of GTCS. Therefore it is prayed to reject the appeal.

POINTS

11. The points that arise for consideration are:-

- i) Whether the appellant is not liable to pay the entire back billing amount of Rs. 31,66,942/-?

- ii) Whether the Award of the learned Forum is liable to be set aside? and
- iii) To what relief?

POINT Nos. (i) and (ii)

ADMITTED FACTS

12. It is an admitted fact that the respondents have released the subject Service Connection to the appellant on 06.10.2018 under H.T. Category-I. It is also an admitted fact that the appellant is a Research and Development organisation in the pharma sector without any manufacturing or production activity.

SETTLEMENT BY MUTUAL AGREEMENT

13. Both the parties have appeared before this Authority. Efforts were made to reach a settlement between the parties through the process of conciliation and mediation. However, no settlement could be reached. The hearing, therefore, continued to provide reasonable opportunity to both the parties to put-forth their case and they were heard.

REASONS FOR DELAY IN DISPOSING OF THE APPEAL

14. The present appeal was filed on 22.05.2024. This appeal is being disposed of within the period of (60) days as required.

CRUX OF THE MATTER

15. In the instant appeal, initially the respondents have released the subject Service Connection to the appellant under H.T. Category-I. After inspecting the subject Service Connection on 03.01.2024 and after issuance of first notice on 24.01.2024 and also after considering the reply of the appellant, respondent No.1 issued assessment notice dt.22.01.2024 requiring the appellant to pay Rs.31,66,942/- towards back billing of the subject Service Connection after classifying the subject Service Connection in HT Category-II on the ground that the power supply was being utilised by the appellant for commercial activities like drug research on volunteers and analysis of the investigational products etc.,

CORRECT CATEGORY OF THE SUBJECT SERVICE CONNECTION

16. According to the respondents, the appellant had been using the electricity supply for Research and Development activity but not for production purposes. At this stage it is necessary to extract Clause 8.84 of the Tariff Order for the year 2017-18 issued by the Telangana State Electricity Regulatory Commission which reads as under:-

“8.84. This tariff is applicable for supply to all HT consumers using electricity for industrial purpose. Industrial purpose shall mean manufacturing, processing and/or preserving goods for sale, but shall not include shops, Business Houses, Offices, Public Buildings, Hospitals, Hotels, Hostels, Choultries, Restaurants, Clubs, Theatres, Cinemas, Printing Presses, Photo Studios, Research & Development Institutions, Airports, Bus Stations, Railway Stations and other similar premises (The enumeration above is illustrative but not exhaustive)

notwithstanding any manufacturing, processing or preserving goods for sale.”

The above Clause makes it very clear that the Research and Development institutions like the appellant is not covered under HT Category-I, but it covers only HT Category-II. The finding of the learned Forum in this regard is correct. The appellant is not seriously disputing the said classification but its grievance is that the mistake was identified by the respondents after a long lapse of time heavily burdening on the appellant financially.

ANALYSIS AND EFFECT OF CLAUSE 3.4.1 OF GTCS

17. In the present case it is necessary to analyse Clause 3.4.1 of GTCS.

The said Clause reads as under:-

“Clause 3.4.1:- 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 revise 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.”

A perusal of this Clause makes it clear that the respondents have authority to reclassify any Category if the earlier classification of the Category is not correct. It is however by giving (15) days’ notice to the consumer and by

calling for objections of the consumer etc., In the present case the required initial notice was issued. Further the respondents also have authority to suitably revise the bills if necessary even with retrospective effect. This indicates that the respondents have also an authority to revise the bills with retrospective effect. The meaning of the words suitably revise the bills if necessary mentioned in the above Clause will be dealt with later.

CLASSIFICATION OF THE CATEGORY OF THE SERVICE CONNECTION AFTER LONG LAPSE OF TIME

18. Now it is clear that if there is any mistake in classifying the category of any Service Connection of the consumer the Licensee is entitled to recoup such monetary loss sustained by it by way of back billing even with retrospective effect. Here the aspects that are relevant in deciding the present issue is the sum and substance of Clause 3.4.1 of GTCS and also the Electricity (Rights of Consumers) Rules 2020 (in short 'the Rules'), apart from other aspects.

19. As already stated, Clause 3.4.1 gives power to the respondents to claim back billing with retrospective effect. It is also mentioned in Clause 3.4.1 that the company (Licensee-respondents) shall consider the reply of the consumer and alter the classification and also suitably revise the bills if necessary even with retrospective effect. This means the claim of the respondents back billing the subject Service Connection is not automatic for the entire period. The respondents have to consider the delay and also the

difficulty experienced by the appellant-consumer financially also. The Central Government has notified the Rules recently which came into force w.e.f., 31.12.2020. There are several rights provided to the consumers under the said Rules. One such right is the right to receive a rebate of Two to Five percent in case the electricity bill is not served within a specified time. No doubt in the present case, it is not the case of the parties herein that the dispute is in respect of regular bill, but the Rule now specifies awarding of rebate to the consumer if there is delay in issuing the electricity bill. But this equally applies in every case where there is delay in issuing any notice claiming back billing for a long period etc., also. In the instant case the inspection was carried out by respondent No.6 on 03.01.2024. The record shows that the respondents have released the subject Service Connection on 06.10.2018. That means after more than five years, leisurely the licensee undertook to rectify the mistake. Clause 7.3.1 of the GTCS specifies the periodical checking of the Service Connection especially the HT Service Connection like the present one once in every year. This was not done by the Licensee-respondents in the present case. More number of HT Service Connections under the control of the respondents is not at all a ground for inspecting the subject Service Connection beyond the reasonable time of every one year or so. This delay aspect can also be viewed from a different perspective. For instance if the mistake is noticed after two or three decades, the back billing will be a hefty sum that may affect their financial transactions. When the mistake is

admittedly with the respondents one cannot expect rectifying such a mistake after a long lapse of time claiming especially a huge amount as claimed in the present case. In the Rules it is also provided the right to be automatically compensated for parameters which can be monitored remotely when it can be successfully established that there is a default in performance of the distribution licensee. This Rules is an indication that the new electricity consumers are not helpless for the deficiency of services caused by the licensee-respondents. Thus the words suitably revise the bills in Clause 3.4.1 of GTCS means the respondents have also to keep in view the delay caused by them in identifying the mistake and they have to restrict the claim depending upon the delay. Therefore in view of the above facts and circumstances the respondents are not justified in issuing the assessment notice dt.22.02.2024 assessing the back billing amount of Rs.31,66,942/- for the entire period. Hence to meet the ends of justice, it is necessary to restrict the period of such claim to a reasonable limit. In the present case the back billing period is from October 2018 to January 2024 which is about five years five months. This should be restricted to three years.

20. The learned counsel for the appellant has relied upon the judgement of the Hon'ble Supreme Court reported in Assistant Engineer (D1), Ajmer

Vidyut Vitran Nigam Ltd., & another v. Rahamatullah Khan alias Rajamjulla.¹

wherein the Hon'ble Supreme Court has considered the following issues:-

- i) What is the meaning ascribed to the term "first due" in Sec.56(2) of the Act.
- ii) In the case of a wrong billing tariff having been applied on account of mistake, when would the amount become " first due" and
- iii) Whether recourse to disconnection of electricity supply may be taken by the Licensee-Company after the lapse of two years in case of a mistake.

The Hon'ble Supreme Court as regards the first point "first due" in Sec 56 (2) of the Act, has held that the electricity charges would become "first due" only after the bill is issued to the consumer, even though the liability to pay may arise on the consumption of electricity. As regards the second point in case of wrong billing on account of mistake, the meaning ascribed to "first due" the Hon'ble Supreme Court has also held that the period of limitation would commence from the date of discovery of mistake. In the present case the mistake was discovered on 03.01.2024 on the date of inspection. As regards the third point, the Hon'ble Supreme Court has held that the Licensee may take recourse to any remedy available in law for recovery of the additional demand, but is barred from taking recourse to disconnection of supply of electricity under Sec. 56(2) of the Act. This judgement is not of much help to the appellant as it is also necessary to consider Clause 3.4.1 of the GTCS and also the Rules.

¹(2020) 4 SCC 650

21. The respondents have relied upon the Award of Karnataka State Electricity Ombudsman in Case No.OMB/B/G-492/2022 dt.29.11.2022, wherein the learned Ombudsman confirmed the back billing assessment. That Award is not helpful to the respondents herein for many reasons. The first reason is that it does not pertain to the State of Telangana. Further there is no reference to Rules and Clause 3.4.1 of GTCS discussed above. The last reason is that the Electricity Ombudsman Karnataka is equivalent rank to the Vidyut Ombudsman, Telangana which is not binding. Accordingly, I hold that the appellant is not liable to pay the entire back billing amount and the Award of the learned Forum is liable to be set aside. These points are accordingly decided partly in favour of the appellant.

POINT No. (iii)

22. In view of the findings on point Nos. (i) and (ii), the appeal is liable to be allowed in part to the extent indicated above.

RESULT

23. In the result, the appeal is allowed in part by setting aside the Award of the learned Forum. The back billing amount of Rs.31,66,942/- is set aside. The respondents are directed to issue fresh assessment for back billing restricting for a period of three years prior to 01.02.2024. After receipt of the said assessment notice towards back billing of the subject Service Connection, the appellant shall pay the said amount in (12) monthly equal instalments

commencing within one month from the date of receipt of the above said assessment notice. In default of payment of any such instalment the respondents are at liberty to realise the entire due amount in lump sum.

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 the 7th day of June 2024.

**Sd/-
Vidyut Ombudsman**

1. M/s. Admerus Biosciences Pvt. Ltd., Rep. by its Managing Director, Sri Pattabhiram Koppineedi, # 480, Basuragadi, Hyderabad - 501 401, Cell:9849573000.
2. The Assistant Divisional Engineer/Operation/Medchal/TSSPDCL/Medchal.
3. The Divisional Engineer/Operation/Medchal/TSSPDCL/Medchal.
4. The Senior Accounts Officer/Operation/Medchal Circle/TSSPDCL/Medchal.
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6. The Chief General Manager/Commercial/Corporate Office / TSSPDCL / Hyderabad.
7. The Assistant Divisional Engineer/DPE/HT/Medchal /TSSPDCL/Medchal Circle.

Copy to

8. The Chairperson, Consumer Grievances Redressal Forum of TSSPDCL- Greater Hyderabad Area, Door No.8-3-167/E/1, Central Power Training Institute (CPTI) Premises, TSSPDCL, GTS Colony, Vengal Rao Nagar, Erragadda, Hyderabad - 45.