BEFORE THE VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA

First Floor 33/11 kV Substation, Hyderabad Boat Club Lane
Lumbini Park, Hyderabad - 500 063

PRESENT : SRI MOHAMMAD NIZAMUDDIN
VIDYUT OMBUDSMAN

SATURDAY THE FIFTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY TWO

Appeal No. 34 of 2021-22

Between
M/s. Allwyn Food Products, Plot No.42, Sy No.53, 55-60, IDA Kattedan, M.D.Pally, Ranga Reddy District, represented by its Proprietor Mr. Raghupathy, Contact: 9533318969 & 7036205211.

…..Appellant

AND

1. The Assistant Engineer / Operation / M.D.Pally / TSSPDCL / Hyderabad.
2. The Assistant Divisional Engineer / Operation / Gaganpahad / TSSPDCL / Hyderabad.
3. The Assistant Accounts Officer / ERO / Gaganpahad / TSSPDCL/ Hyderabad.
4. The Divisional Engineer / Operation / Rajendra Nagar / TSSPDCL / Hyderabad.
5. The Superintending Engineer / Operation / Rajendra Nagar Circle / TSSPDCL / Hyderabad.

….. Respondents

This appeal is coming on before me for final hearing on 01.10.2022 in the presence of Kumari Nishtha, authorised representative of the appellant and Sri K. Eshwar Prasad - ADE/OP/Gaganpahad, Smt. G. Nagamani - AAO/ERO/Gaganpahad and Sri G. Venu Gopal - JAO/Gaganpahad representing the respondents and having stood over for consideration till this day, this Vidyut Ombudsman passed the following:-

AWARD

This appeal is preferred aggrieved by the Award passed by the Consumer Grievances Redressal Forum - Greater Hyderabad Area,

Hyderabad - 45 (in short 'the Forum') of Telangana State Southern Power Distribution Company Limited (in short 'TSSPDCL') vide Lr.No.CP / CGRF-2/ Orders / C.G.No.84/2021-22/D.No.504/21 dt.30.11.2021, rejecting the complaint in terms of Clause 2.37 of Regulation 3 of 2015 of the Hon'ble Telangana State Electricity Regulatory Commission (in short 'the Regulation') on the ground that the case is pending before DE/OP/Rajendra Nagar.

CASE OF THE APPELLANT BEFORE THE FORUM

2. The case of the appellant is that the appellant is a consumer of the respondents vide LT-III Commercial Service Connection No.3404 03272 for supply of energy of less than 99 HP. The second respondent vide his Lr.No.ADE/OP/Gaganpahad/D.No.1390/21 dt.18.10.2021 has issued assessment notice for short billing of Rs. 17,23,005/- pertaining to the period from May 2013 to November 2020. The appellant replied to the said notice. The claim is in violation of Sec.56(2) of the Electricity Act (in short 'the Act'). Since the meter is not defective, such a notice cannot be issued under Clause 7.5.1 of the General Terms and Conditions of Supply (in short 'GTCS'). For change of Category prior notice is necessary.This Authority in a similar case in Appeal No. 17 of 2020-21 has held in favour of the consumer. The respondents are threatening to disconnect the power supply if the payment of 50% of the demanded amount is not paid. It is accordingly prayed to set aside

the claim of Rs.17,23,005/-.

CASE OF THE RESPONDENTS BEFORE THE FORUM

3. In the written submissions of respondent No.2, it is, inter-alia, submitted that the Service Connection of the appellant was inspected on 12.11.2021 and found that the load of the power supply was 98472 Watts.

4. In the written submissions of respondent No.3, it is inter-alia, submitted that initially the appellant was having contracted load of 100 HP. The service was inspected on 21.05.2021 and a case for Development Charges for excess load of 30 HP (totalling to 130 HP) for an amount of Rs. 60,000/- was booked. The appellant has paid the said amount. Though the connected load was 130 HP, the service was billed in the LT Category-III from August 2014 to September 2021 which is not applicable as per Tariff Order. As per Clause 12.3.3.2 of GTCS, the suitable Category is HT-I.

5. In the rejoinder filed by the appellant, it is, inter-alia, submitted that Clause 3.4.1 of GTCS was violated.

AWARD OF THE FORUM

6. After considering the material on record filed by the parties and after hearing both sides, the Forum has rejected the complaint as stated above.

7. Aggrieved by the Award passed by the learned Forum, the present appeal is preferred, contending among other things, that the learned Forum

has passed the Award without properly analysing the facts on record and without properly considering the relevant provisions.

GROUNDS OF THE APPEAL

8. In the grounds of the appeal, it is, inter-alia, submitted that the learned Forum has not understood Clause 2.37 of the Regulation properly.

WRITTEN SUBMISSION OF THE RESPONDENTS

9. In the written submissions of the Assistant Accounts Officer of the respondents, it is, inter-alia, submitted that in May 2011, a Development Charges case was booked for Rs 60,000/- for regularisation of load from 100 HP to 130 HP and the appellant paid the said amount on 25.08.2014. On the request of the appellant the load deration from 129 HP to 99 HP was approved on 05.07.2020. In April 2011, a Development Charges case was booked for Rs.1,52,000/- for regularisation of load from 100 HP to 176 HP. The appellant paid the amount and load was regularised from 99 HP to 132 HP in May 2021. In October 2021, a short billing case was booked for Rs. 17,23,005/-. On 27.11.2021 Final Assessment Order was issued for an amount of Rs. 11,27,089/-.

10. In the reply filed by the appellant it is submitted that the appellant has not received any notice about the Development Charges case in May 2011.

ARGUMENTS

11. In the written arguments on behalf of the appellant it is submitted that the present claim amounts to change of Category and as such compliance of Clause 3.4 of the GTCS is mandatory which is not complied with. Further Clauses 7.5.1.1, 7.5.1.2 and 7.5.1.3 of GTCS are not complied with. Hence it is prayed to allow the appeal and to set aside the entire claim of the respondents.

12. On the other hand, it is argued on behalf of the respondents, that the Final Assessment Order is passed properly. Hence it is prayed to reject the appeal.

POINTS

13. The points that arise for consideration are:-

i) Whether the claim of the respondents is not correct?

ii) Whether the impugned Award of the learned Forum is liable to be set aside? and

iii) To what relief?

POINT No. (i) and (ii)

SETTLEMENT BY MUTUAL AGREEMENT

14. Both the parties have appeared before this Authority on different dates. 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

15. Since I took charge as Vidyut Ombudsman on 01.07.2022 and since there was no regular Vidyut Ombudsman earlier, the appeal was not disposed of within the prescribed period.

ADMITTED FACTS

16. It is an admitted fact that the appellant is a consumer of the respondents vide LT-III Commercial Service Connection No. 3404 03272 for supply of energy of less than 99 HP.

17. The Forum has rejected the complaint in terms of Clause 2.37 of the Regulation on the ground of pendency of the case before respondent No.3. Now it is necessary to refer to Clause 2.37 of the Regulation which reads as under:-

> "The Forum may reject the grievance at any stage under the following circumstances:
>
> a) Where proceedings in respect of the same matter or issue between the same Complainant and the Licensee are pending before any court, tribunal, arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority as the case may be;
>
> xxxxx
>
> xxxxx

> Provided that no grievance shall be rejected in writing unless the Complainant or Association of persons has been given an opportunity of being heard."

As per Clause 2.37(a) of the Regulation, the Forum may reject the complaint if the proceedings in respect of the same matter or issue between the same parties is pending before any Court, Tribunal, Arbitrator and any other authority etc., Admittedly no proceedings is pending before any Court or Tribunal etc., except the proceedings before respondent No.3. Here it is necessary to mention that a consumer of electricity has three options to redress his grievance, mentioned below:-

1. To approach mechanism available in the respondent-department.
2. To approach the general Consumer Forum.
3. To approach the Forum (Consumer Grievance Redressal Forum).

The pendency of grievance before respondent No.3, does not come under "or any authority" as mentioned in Clause 2.37(a) of the Regulation. Therefore the appellant has liberty to approach the Forum in spite of pendency of its grievance (proceedings) before respondent No.3. Thus Clause 2.37 of the Regulation has no application in this case. Therefore the learned Forum has erred in applying Clause 2.37 of the Regulation.

CRUX OF THE CASE

18. The grievance of the appellant is against the assessment notice No. ADE/OP/Gaganpahad/D.No.1390/21 dt.18.10.2021, levying an amount of Rs. 17,23,005/- for the period from May 2013 to November 2020. The available

record unfolds that there was an inspection on 21.05.2011, wherein the load of 30 HP was found excess over the contracted load of 100 HP resulting in total load of 130 HP. Accordingly the appellant paid the relevant charges towards such excess load. The Tariff Order envisages HT tariff rates to the consumers having contracted load above 100 HP. Relevant Clause of the Tariff Order 2013-14 is reproduced hereunder:-

> "**Clause 3.3(iv):**- If the recorded demand of any service connection under this category exceeds the 75 kVA (1 kVA = 1 kW), such excess demand shall be billed at the demand charge prescribed under HT Category–I (11 kV supply)."

19. Adverting to the above a Provisional Assessment Notice (in short 'PAO') dt. 18.10.2021, towards short billing was issued for an amount of Rs. 17,23,005/- levying HT tariff rates under HT Category-I instead of LT Category-III billed. The short billing was covered for those months where LT-Category-III tariff was applied i.e. for the following months:-

05/2013 to 04/2015,

05/2016 to 07/2016,

10/2017 to 12/2017,

02/2018 to 11/2018,

02/2019 to 11/2019,

07/2020 to 11/2020,

The provisional assessed amount of Rs.17,23,005/- was revised by way of Final Assessment Order issued by the DE/OP vide Order No.

DEE/OP/RJNR/F.No.FAO/21/D.No.3098/21 dt.27.11.2021. The provisional assessed amount was arrived at by converting LT-III to HT-I tariff rates, taking monthly consumed KVAH units, splitting into 50% consumed units at peak hours rates and 50% consumed units at off-peak hours rates. This was further revised by taking peak hours, Time of Day tariffs (in short 'TOD') rates to the 1/6th of the monthly consumption (24 hrs consumption (÷) 4 hrs TOD time period) in view of 4 hours peak hours (TOD) applicable from 18.00 hrs to 22.00 hrs which was introduced by the Hon'ble Commission during the Tariff Order for the FY 2010-11. The peak hours duration was subsequently changed in the Tariff Order for the FY 2016-17, under Clause 9.88 as following:-

TOD

The energy charges applicable (for this category other than Poultry farms) during the peak hours and nighttime hours is shown below:-

Category	Demand Charge		Energy Charge (INR/kVAh)
	Unit	Rate	
HT I: Time of Day Tariff (6 PM to 10 PM)			
11 KV			**7.65**
33 KV			7.15
132 KV and above			6.65
HT I: Time of Day Tariff (6 AM to 10 AM)			
11 KV			**7.65**
32 KV			7.15

132 KV and above			6.65
HT I: Time of Day Tariff (10 PM to 6 AM)			
11 KV			**5.65**
32 KV			5.15
132 KV and above			4.65

The normal energy charges under 11 KV per unit is Rs. **6.65.** The Final Assessment Order was issued revising provisionally assessed amount, taking into account 4 hours (6 PM to 10 PM) TOD tariff from May 2013 to June 2016 as per the corresponding Tariff Orders and the assessed amount was further revised to Rs. 11,27,089/- from Rs. 17,23.005/-.

20. A perusal of the record shows that the excess load of 30 HP over 100 HP case was booked on 21.05.2011 and subsequently the appellant paid the amount of Rs.60.000/-, admitting that it has excess load over 100 HP. It took almost 10 years to the respondents to bill the Service Connection as per the consequent tariff rates i.e. HT tariffs. In the year 2021, the respondents issued notice by way of short billing. The ideal situation would have been that as soon as the payment was received towards additional connected load of 30 HP in excess of the threshold limit of 100 HP, which automatically qualifies under HT tariff rates.

21. The respondents should have billed the subject Service Connection under prescribed HT Category-I tariff rates which was not done resulting in the present dispute where short billing was done to recover the revenue as per the above given Clause at a time, in lump sum. There is another important factor with respect to the assessment that the TOD period consumption was not available. The existing meter is LT energy meter as such it is not having the features to record TOD units or there is no provision to retrieve actual TOD consumption. Thereby it is assumed that the TOD units are 1/6th of the total consumption of the month (24 hrs consumption (÷) 4 hrs TOD time period) 6 PM to 10 PM, for the period from May 2013 to June 2016 and for the period from June 2016 to September 2021, 50% of the monthly consumption towards peak hours tariff rates and off peak hours tariff rates were taken. It is pertinent to note that from the year 2016-17, the Hon'ble Commission has provided INR 1.00 per unit night time rebate to promote off peak usage i.e. Rs.1.00 shall be deducted from the normal tariff rate. This was not incorporated in the Final Assessment Order. Only the applicable higher tariff towards TOD period charging INR 1.00 per unit excess over normal tariff rates was imposed. When there is uncertainty in arriving the TOD units in view of not having the TOD period consumption, only taking TOD tariff rates for assessment on higher side during peak hours i.e. INR 1.00 excess of normal tariff rates of Rs. 6.65/- and leaving aside the rebate applicable is not even and unbalanced, especially when there is no scope of having actual TOD consumption. Hence the Final Assessment Order shall be

revised further taking into account a Rs 1.00/- rebate as per the Tariff Order 2016-17. Hence, the back billing holds good subject to revision of the Final Assessment Order above.

22. The Clause 7.5.1 of the GTCS contemplates the provisions set out when the meter goes defective. It is beyond doubt that in the present case the meter is not defective. The short billing is resorted to recover the revenue lost consequent to not billing the actual tariff rates when a consumer load is beyond 100 HP. It is correct that the Clause 7.5.1 quoted in Provisional Assessment Notice is not appropriate, but this will not restrain the entitlement of revenue recovery of the respondents.

23. The present case does not fall under the ambit of the GTCS Clause 3.4.1 wherein the procedures were set out to classify the category subject to the condition that at the time of release of supply only if the category was wrongly classified (with unaltered conditions of usage of supply). In the present case the conditions were altered by the consumer and excess load of 30 HP was connected upon the declared contracted load of 100 HP at the time of release breaching the LT agreement between the parties.

24. The present case is not hit by the Sec.56(2) since the notice was issued towards recovery of revenue lost and not billing under correct tariff rates,

when the consumer altered the contracted load of 100 HP. Sec.56(2) of the Act relates to the recovery of arrears, such is not the present case.

25. The learned Authorised representative of the appellant has relied upon the judgement of the Hon'ble High Court of Andhra Pradesh in W.P.No.14893 of 2011 dt.21.11.2011 (M/s. SRI VENKATESHWARA RICE MILL v. The AAO/ERO-APDCAPL), W.P.No. 21179 of 2012 dt.26.09.2012 (RAJANI GINNING and PRESSING FACTORY v. The SE/NPDCL) wherein the Hon'ble High Court has held that under Sec.56(2) of the Act no sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously recoverable as arrears of charge for the electricity supplied. There is no dispute about the said proposition. But in the present case the subject matter is back billing. The facts in those cases and the facts in the present case are different, therefore these judgements are not applicable.

26. The learned Authorised representative of the appellant has relied upon the judgement of the Hon'ble Supreme Court in Civil Appeal No. 6036 of 2012 dt.16.10.2015 (A.P. POWER COORDINATION COMMITTEE & ors. V. M/s. LANCO KONDAPALLI POWER LTD., & ORS.). The said judgement dealt with the claim of Minimum Alternate Tax (MAT).Considering those facts the Hon'ble Supreme Court has held in favour of the consumer. Since the facts in

the said case and the facts in the present appeal are distinct, the judgement is not helpful to the appellant.

27. The learned Authorised representative of the Hon'ble High Court of Andhra Pradesh in W.P.No. 6493 of 2016 dt.29.02.2016, wherein it was held that prior notice is mandatory when there is change in the Category of the electricity consumer. There is no dispute about the said proposition. But in the present case it is not the case of change of Category. Further the respondents have issued impugned assessment notice giving an opportunity to the appellant and the appellant has also responded to the said notice. Therefore this judgement is also not helpful to the appellant. More-over the electricity energy charges are statutory dues and as such they cannot be waived. Further, if there is a mistake in calculation of electricity charges, no limitation applies. Similarly in the case on hand it is only, at the most, is a mistake in calculating the electricity charges and the respondents by way of impugned notice claimed the said amount.

28. The learned Authorised representative has relied on the Award of this Authority in Appeal No. 17 of 2020-21 dt.15.01.2021. The appeal is in respect of change of Category. Therefore this Award is not helpful to the appellant.

29. In view of the above discussion, I hold that the claim of the respondents is not fully correct. The Award of the learned Forum is not correct in rejecting the complaint under Clause 2.37 of the Regulation. These points are

accordingly decided partly in favour of the appellant and partly in favour of the respondents.

POINT No. (iii)

30. In view of the findings on point No. (i) and (ii), the appeal is liable to be allowed in part.

RESULT

31. In the result, the appeal is allowed in part. The respondents are directed to revise the final assessment taking into account of Rs.1.00 rebate applicable for off-peak hours as per the corresponding tariff orders from the financial year 2016-17. The back-billing holds good subject to the revision of the final assessment amount as stated above. Till such time, the interim order shall continue.

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 this the 5th day of November 2022.

Sd/-
Vidyut Ombudsman

1. M/s. Allwyn Food Products, Plot No.42, Sy No.53, 55-60, IDA Kattedan, M.D.Pally, Ranga Reddy District, represented by its Proprietor Mr.Raghupathy, Contact: 9533318969 & 7036205211.

2. The Assistant Engineer / Operation / M.D.Pally / TSSPDCL / Hyderabad.

3. The Assistant Divisional Engineer / Operation / Gaganpahad / TSSPDCL / Hyderabad.

4. The Assistant Accounts Officer / ERO / Gaganpahad / TSSPDCL/ Hyderabad.

5. The Divisional Engineer / Operation / Rajendra Nagar / TSSPDCL / Hyderabad.

6. The Superintending Engineer / Operation / Rajendra Nagar Circle / TSSPDCL / Hyderabad.

Copy to

7. 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.