



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

:: Present:: Smt. UDAYA GOURI

Monday the Twenty Second Day of April 2019

Appeal No. 38 of 2018

Preferred against Order dt:12.07.2018 of CGRF in
CG No. 118/2018-19 of Habsiguda Circle

Between

M/s. Janapriya Engineer Syndicate Ltd., represented by Sri. K. Goutham Reddy, J.P.Arcade Projects, Sy.No.9P,10,12 to 14,27,28P and 29, Mahadevpur, R.R.Dist. Cell: 9949556616.

... Appellant

AND

1. The ADE/OP/Sainikpuri/TSSPDCL/Medchal Dist.
2. The DE//OP/Sainikpuri/TSSPDCL/Medchal Dist.
3. The SAO/OP/Habsiguda Circle/TSSPDCL/Medchal Dist.
4. The SE/OP/Habsiguda Circle/TSSPDCL/Medchal Dist.

... Respondents

The above appeal filed on 04.08.2018, coming up for final hearing before the Vidyut Ombudsman, Telangana State on 20.02.2019 at Hyderabad in the presence of Sri. K. Goutham Reddy - on behalf of the Appellant company and Smt B. Mangamma - ADE/OP/Sainikpuri, Sri. K. Sreenu - DE/OP/Sainikpuri and Sri. P. Suchender - SAO/OP/Habsiguda circle for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

This is an Appeal filed against the orders of the CGRF Habsiguda Circle in CG No. 118 of 2018-19 dt.12.07.2018.

2. The averments in the Appeal are that the Appellant stated that he lodged a complaint before the CGRF/Habsiguda circle seeking for cancellation of back billing

amount on the service connection No. SC RRE-1528 (Now HBG-1528) and RRE-1904 (Now HBG-1904) and also challenging the change of category of the said service connections from Category HT-II to HT- Temporary Supply apart from seeking for refund of amount paid by them on the said services and that the learned CGRF rejected his complaint claiming that it does not have jurisdiction as the grievances fall under Section 126 of Electricity Act,2003 as per Clause 2.37 of Regulation No. 3 of 2015 of the Hon'ble TSERC. Hence, aggrieved by the same the present Appeal is filed.

3. The Appellant contended that the Appellant i.e. M/s. Janapriya Engineering Syndicate Ltd. at Sy No. 9P, 10, 12 to 14, 27 & 28P apart from 29 of Mahadevpur, Rangareddy District is provided with two service connections bearing Nos. RRE-1528 (Now HBG-1528) and RRE-1904 (Now HBG-1904) and that the said service connections has been changed from HT-II Category to HT - Temporary Tariff without their consent. Hence sought for cancellation of the back billing amount imposed by the Respondents after the changing the said category and also sought for revision of the bills from April,2012 under HT -II Category.

4. The Appellant in support of his contentions submitted the following written statement alleging that they have applied for new service connections got sanctioned vide Memo No. SE/OP/RRC(N)/Comml/D.No.791/07/D.No. 3036/07 dt 22.10.2017. Estimate was sanctioned for HT supply at 11 KV under HT Category II for a CMD of 207 KVA with connected load of 250 HP and thereafter the firm has deposited developmental and supervision charges of Rs 3,52,730/- vide PR No. 147978 dt.12.11.2007 and security deposit of Rs 2,07,000/- vide PR No. 13126 dt.12.02.2008 and on 29.02.2008 HT agreement was executed under construction of Residential Apartments under HT Category II. The service released on 07.05.2010 under HT Category II and billed accordingly until April, 2012.

That the project site was inspected by departmental staff on 08.02.2012, subsequently an amount of Rs 20,69,079/- was shown as arrears in the bill for the month of April,2012. On enquiry on the above said amount levied it was stated that there was no reply from the concerned department. The said arrears continued in the next month bill also and thereafter they have received an assessment notice dt.04.04.2012 based on the inspection on 08.02.2012 stating that the electricity supply is being used by the said firm for the purpose of construction only and that as per the tariff order terms and conditions w.e.f. 01.08.2010, the said category falls under HT TEMPORARY SUPPLY and was directed to pay an amount of Rs 21,40,583/- if agreeable

or to make a representation.

That they have represented vide letter dt.18.06.2012, wherein they have contended that they have never requested the APCPDCL for supply of electricity in temporary connection and that the back billing levied beyond 6 months is illegal and requested to withdraw the assessment notice. That they have deposited 1/6th of the assessed amount of Rs 3,44,847/- on 30.06.2012. There was no reply on the representation given against the back billing and on the threat of disconnection of power supply they approached the Hon'ble High Court in WP No. 22100 of 2012 challenging the action of the Respondents in changing the category and consequent assessment notice in Lr.No. ADE/SNKP/F.HT/MATS/Sl.No.57/12, dt.04.04.2012. The Hon'ble High Court was pleased to dispose the said Writ Petition permitting the Appellant to raise all the legally permissible pleas and directed not to disconnect the power supply till final orders were passed by the Respondents. Consequently the SE/OP issued the 15 days notice vide Lr.no.389 dt:22.01.2014, to the Appellant to file any objection on finalisation of back billing amount. In reply the Appellant requested for 15 days time for submitting the objections, thereafter the Appellant claimed that there was no information received in this regard.

Further it was stated that they have received another letter vide Lr.No. 967 dt.22.03.2016 on 31.03.2016 wherein the Respondents had requested to submit again the objections if any on the notice of back billing on or before dt.02.04.2016. Subsequently before the SE/OP/RRE circle, the Appellant submitted the following plea as follows:

- i. The purpose for which the connection was sanctioned vide sanction memo dt.05.02.2010 i.e. HT supply at 11 KV under category II for a CMD of 2017 KVA with a connected load of 250 HP, the same purpose is being carried out as on date by the said firm and said supply is not being used for any other purpose.

- ii. That after inspection of the site on 08.02.2012 no notice was issued to the said firm with respect to change of category from HT category to HT temporary supply category and said action of yours is unilateral and your action is not issuing prior notice before re categorisation is contrary to clause 3.4.1 of GTCS of 2006.

iii. That the firm has not used the HT supply category supply unauthorised for any other purpose other than for which it has been sanctioned so as to be assessed under section 126 of the Electricity Act 2003. Hence section 126 of the Electricity act 2003 is not at all applicable to the facts of the case.

iv. Without prejudice to the contentions it is submitted that the Tariff Order Terms and conditions issued by ERC (w.e.f 01.08.2010) came into force subsequent to the sanctions of electric supply to the said firm and thereafter applying the said conditions to the supply prior to coming into force of the said Tariff Orders terms and conditions is illegal.

v. Without prejudice to the above as the said Tariff Order terms and conditions came into force w.e.f 01.08.2010, the said terms and conditions have to be applied to the said firm from the date of passing of final orders of recategorization or atleast from the date on inspection i.e. 08.02.2012. Hence the applying the said tariff order from the date of coming into force of the said terms and conditions is illegal and arbitrary.

vi. Further even as per the clause 3.4.1 of GTCS, the consumer has to be informed through a notice of the proposed reclassification duly giving an opportunity to file any objection within a period of 15 days. Thereafter, after considering the objections if any has to be reclassifying the connection and suitable revise the bills if necessary even with retrospective effect of 3 months in the case of domestic and agricultural categories and 6 months in the case of other categories. Hence back billing form the date of disconnection is arbitrary, illegal and contrary to above said clause.

vii. Without prejudice to the if the alleged use of HT category by the said firm is one under section 126 i.e. unauthorised use of electricity, than the back billing cannot be for more than 6 months preceding the date of inspection i.e. 08.02.2012 as contemplated under section 126 (5) of the Electricity Act,2003. Hence back billing from 01.08.2010 is contrary to Section 126 (5) of the Electricity Act,2003.

5. The Appellant added that they received notice vide Lr.No. SE/OP/RRE/SAO/JAO(HT)/SA-II/D.No.1259/2016 dt.06.08.2016 stating that “presently availing temporary supply from TSSPDCL RR East circle, 12 months period expired on 01.08.2011 in respect your service. I these circumstances you are hereby requested to

furnish your consent for payment of twice the regular tariff if you are willing to continue to avail temporary supply. If you are not willing agreeable to the aforesaid condition, you are liberty to avail the regular supply by submitting the required approvals as per the clause 5.5 & 5.6 of GTCS and occupancy certificate issued by GHMC as per the G.O.Ms No. 86 dt.03.03.2006.”

Another notice issue Lr.No. SE/OP/HBG/SAO/AAO-HT-JAO/SA-1/HBG/D.No.2829 dt.23.11.2017 stating that “you are availing temporary supply from 07.05.2010, 24 months period expire on 06.05.2012 in respect of HT SC No. RRE 1528 (HBG 1528) of M/s. Janapriya Projects (Janapriya Lake Front) accordingly 15 days notice was already issued vide letter dt.06.08.2016, you continued to avail the supply without relying the said notice thus agreed to pay the twice the Tariff applicable.

In such circumstances, you are required to make payment charges twice the regular tariff to continue to supply under temporary tariff category up to 31.08.2017.

As per the statement showing back billing amount of Rs 40,11,882/- towards the twice tariff applicable within 15 days from the date of receipt of this notice as per Clause 3.4.1 of GTCS or else submit all the required approvals for availing regular supply subject to payment of all applicable charges.

In case you wish to be heard in person, please make it convenient to be present at SE office on 29.11.2017.

6. Subsequently the Appellant represented vide Letter dt.14.02.2018 stating that their said two services RRE 1528 & RRE 1904 of M/s. Janapriya Engineers Syndicate Pvt. Ltd. are comes under HT Category II and not under HT temporary supply category. We are using these power connections for construction purpose only and paying monthly power bills regularly and promptly as per the demand of the department.

That there have been no restrictions to avail permanent supply for construction purpose, and at the time there had been no compulsion to avail power supply for construction purpose under the HT Temporary supply. As per the GTCS and Tariff Order conditions sanction was accorded by the SE/O/RR North Circle for supply to our construction project under HT Category II with a CMD of 225 KVA. We have been utilising the supply for construction purpose from the date of release of supply under

HT Category II. But the department has abruptly changed the category from HT Category II to HT temporary supply with retrospective effect i.e. from 01.08.2010.

The instructions issued by the CGM (Commercial)/APCPDCL/Hyderabad dt.29.10.2011 after 25 months of issue of Tariff order 2010-11 which is detrimental to the interests of the consumers. But the same have been never communicated to the affected consumers before implementing, thus violating the law of natural justice and on that account the orders are eligible and qualified to be set aside. In fact these instructions are not in conformity with the Tariff Orders and no approval of the competent authority, APERC/TSERC was obtained for implementing.

As per the item 249 & 250 of Tariff Order 2010-11, APERC accorded permission for the construction project the temporary supply henceforth release. Hence, there is no provision in tariffs to back bill or convert the services already existing or already released services under HT Category II.

In similar case of back billing of HT service No. RRN 1563 and HDN 1432, Vidyut Ombudsman in Appeal No. 43 and Appeal No. 47 of 2012 set aside the order. Liberty is given to the Respondents to issue a notice as contemplated under 3.4.1 and after hearing pass appropriate order after considering the explanation/reply if any given to the party. The amount already paid shall be adjusted in the future bills. No order as to costs, ERC also finally concluded in OP No. 90 of 2015 dt.04.08.2016 that the parties shall comply with the directions of the Ombudsman and act accordingly.

Finally in RRN 1563 and HDN 1432 cases, TSSPDCL has issued instructions vide Memo No.CGM(Fin)/GM(Rev)/SAO(Rev)/AO-HT/D.No.42 dt. 13.07.2016 for revision of bills with HT category instead of HT temporary supply from 01.08.2010 to the date of inspection i.e. Nov,2011 in this case.

The Appellant held that their case is similar to the above said case, the Respondents are not withdrawing the back billing amount and continuing the billing under HT Temporary category which is arbitrary, unilateral and injustice to the consumer.

7. In the end the Appellant preferred an Appeal with following pleas in the CGRF:

- i. To set aside the re categorisation of the category of their services with effect from 01.08.2010 as the same has been done without serving a prior notice as per

the provisions under Clause 3.4.1 of GTCS and in result the claim of Rs 20,69,079/- is also to be set aside.

ii. Issue instructions to SE/SAO to revise the bills from April,2012 onwards with the original HT Category II and excess amount claimed and collected shall be refunded with interest by adjusting in the immediately bills of their service.

iii. The deposit of 1/6th of the assessed amount of Rs 3,44,847/- paid on 30.06.2012 should be refunded with interest with 18% per annum in cash.

iv. Issue instructions to SE/SAO to set aside or drop the notice issued by the ADE/OP/Sainikpuri for the amount of Rs 20,69,079/- for the purpose of back billing.

8. The Appellant filed an additional rejoinder dt.30.01.2019 wherein they have reiterated the earlier written submissions with a new plea to revise the bills from April,2012 onwards with HT Category II and refund the excess amount collected with interest by adjustment in the immediate bills.

9. **Written submissions of the Respondents**

The SE/OP/Habsiguda (earlier RR East) submitted their written submissions against the petition of the Appellant vide Lr.No. 876 dt. 01.09.2018 as following:

The consumer M/s. Janapriya Engineer Syndicate Ltd is having two number HT services in Habsiguda Circle bearing SC No. RRE1528 (Now HBG 1528) M/s. Janapriya Engineers Syndicate at H.No. 3-6-115, Street No. 18, Himayatnagar, Hyderabad - 029 and RRE 1904 (Now HBG 1904) M/s. Janapriya Project (Janapriya Lake Front) at Sy No. 663(p), 667, 668 and 671(p), Kapra (V), Keesara (M) RR Dist. The detail para wise remarks are herewith submitted to the petition made by the M/s. Janapriya Engineer Syndicate in the Appeal No. 38 of 2018.

That the HBG 1528 M/s. Janapriya Engineers Syndicate at H.No. 3-6-115, Street No. 18, Himayatnagar, Hyderabad - 029 was released on 26.03.2008 with 207 KVA under HT category II and the HBG 1904 M/s. Janapriya Project (Janapriya Lake Front) at Sy No. 663(p), 667, 668 and 671(p), Kapra (V), Keesara (M) RR Dist. was released on 07.05.2010 with 225 KVA under HT Category II.

That the HT supply is being utilised for the construction purpose by the petitioner. As per the Tariff Order for the year 2010-11 (w.e.f 01.08.2010) the category of the above services falls under the HT Temporary supply. The ADE/DPE/HT-1 K.Ramesh made the inspection of the above services on 08.02.2010 at 14.08 hrs (RRE 1528) and 15.20 hrs (RRE 1904) and proposed for back billing as per the instructions issued vide Memo No CGM (Comml)/SE/DPE/ADE(T)/D.No.1340/11 dt.29.10.2011 to the RRE1528 (HBG) for Rs 20,69,079/- for the period 01.08.2010 to 18.02.2012 and to the RRE 1904 (HBG) for Rs 21,40,583/- for the period 01.08.2010 to 17.02.2012.

The ADE/Sainikpuri issued the provisional notices for short billing for the above mentioned periods vide Lr.No.ADE/SKNP/F.HT MATS/D.No57/12 dt.04.04.2012 to the RRE 1528 for Rs 20,69,079/- and vide D.No.5612 dt.04.04.2012 to the RRE 1904 for Rs 21,40,583/- and requested to make the payment within 15 days if agreeable or if not agreeable make a representation. And as per the ADE/SKP report the category of the services changed from Category II to Temporary from April billing cycle of 2012.

That after completion of the notice period the said amounts were included in the bills. The consumer paid an amount of Rs 3,44,847/- against the service RRE 1528 on 30/06/2012 and Rs 3,56,746/- against the service RRE 1904 on 30/06/2012. Consumer thereafter appealed to the court of law on 19/07/2012 and the court has disposed the case W.P.No.22076 & 22100 of 2012 Dated 20th July,2012 stating that "Therefore I am of the opinion that the said assessment is only provisional and not final. Indeed on the petitioners own showing it has submitted its representations, dated 16.06.2012 which are stated to be under consideration of respondent No.3(ADE/ OP/SKNP). In view of the submission of the learned standing counsel for APCPDCL that a final assessment after due enquiry will be made by respondents No.3(ADE/OP/SNKP). I am of not inclined to interfere with these notices at this stage. In as much as the enquiry is pending the respondents shall not disconnect the power supply to the petitioner service connections till a final order is passed in pursuance of the impugned notices. The petitioner shall be free to raise all the legally permissible pleas including the one that its case does not fall under section 126 of the act and that it may **fall under reclassification category**".

That in pursuance of the Final Order, a notice was given to the customer Vide the Lr.No. SE/OP /SAO/JAO-HT/D.NO .389/14Dtl 9.12.2014 to put forth objections or contentions if any within 15 days of the notice to finalize the back billing amount proposed by the ADE/DPE/HT-I. In reply, to the above notice the consumer has

requested 15 days more time as the records were misplaced at the time of filing the Writ Petition in the Hon'ble High Court.

That another notice was issued to the consumer vide Lr.No. SE/OP/RRE/SAO/JAO/SA2-HT/D.NO.967,Dt 22.03.2016 to put forth the objections/contention if any for finalization of Assessment Notice issued . In reply to the notice issued the consumer submitted the contention/objection vide the ref 7th cited requesting to withdraw the assessment notices for back billing and restrict to six months period.

That as assessment notices are issued as per the CGM/Comml instructions, the contention/objections of the consumer M is. Janapriya Engineers Syndicate are submitted to the TSSPDCL/Corporate Office to issue necessary instructions for finalization of the Back Billing cases, as the consumer is finally requesting to restrict the back billing period to six months.

In this regard it was instructed to file an appeal as instructed in the ref 9th cited in similar case of HT. SC.No.RRN1563 of Ms Lodha Healthy constructions & Developers (p) Ltd .,

Another notice was issued to the consumer to make convenient to be present at the chambers of SE/OP/Habsiguda Office at 11.00 a.m. on 29. 11.2017 vide Lr.No .SE /OP/HBG/SAO/ AAO-HT/JAO/D.no.2631 dt 27. 11.2017 to finalize the assessment notices issued by the DPE wing on the above services.

In reply to the above consumer made another representation stating that the "we are humbly submitting that we are having two services under HT Cat-II and not under HT 'temporary Category. we are using the power connections for the construction purpose only and paying the monthly bills regularly and promptly as per the demand of the department. Whenever the Department seeks our support we are helping the Department by providing the costly lands for construction of Substation i.e., Janapriya Metropolis at Erragadda (Moti Nagar), Janapriya Nile Valley at Ameenpur, and Janapriya lakeFront at Sainikpuri. And further requested for cancellation of Back Billing case, as done in similar cases of RRN 1563 M/s. Lodha Healthy constructions Developers Pvt Ltd.

The above request of the consumer was appraised to the corporate office for consideration of case and for withdrawal of back billing amounts from 01.08.2010 to

the date of inspection as done in the cases of M/s. Lodha Healthy Constructions (RRN 1563) of RR North Circle (Now Medchal circle) and M/s. Sanath Nagar Enterprises (HDN 1432) of Hyderabad North Circle.

The corporate office/TSSPDCL has not considered the case for withdrawal of the back billing case amounts against the services RRE 1528 and RRE 1904 (NOW HBG) as there are so many cases pending before the Hon'ble High Court on the same subject matter and instructed to take action as per the rules in vogue.

Notices issued vide Lr. Nos SE/OP/RRE/SAO/JAO-HT/SA1/D.No.1259/16 dt.06.08.2016 against the service RRE 1528 and notice issued against the service RRE 1904 vide D.No. 1260/16 dt.06.08.2016 are different and are issued as per clause 3.4.1 of GTCS where as per the Tariff conditions of 2016-17 the supply can be extended to 12 months under temp supply. After the expiry off the 12 months period the consumer is at liberty to seek further extension provided the consumer pays twice the regular supply or to regularise the service by submitting the occupancy certificate as per GO Ms. 86 dt.03.03.2006.

The above cases are finalised were Rs 12,49,623/- against the service HBG 1528 and Rs 7,03,079/- against the service HBG 1904 as per the corporate office instructions issued vide Memo No.CGM(Comml)/SE(C)/DE(C)/ADE-I/D.No.3949/17-18, dt.10.02.2018 to levy twice the tariff applicable with tariff rate of corresponding category ie. Category II after expiry of one year period for the HT temporary services from July 1st 2016 to August 31st 2017 and the same is communicated to the consumers to pay the same.

The above cases are different from the back billing cases booked by the DPE wing as per the Tariff Order 2010-11.

Finally, as many cases are pending in Hon'ble High Court on the same subject corporate office instructed to take action accordingly duly following the departmental rules in vogue. Based on the above instruction, FAO's are issued, to the HBG1528 vide order No.SE/OP/HBG/D.No.301/18-19 dt.29.05.2018 for Rs 20,69,079/- and for HBG1904 vide D.No.3012/18-19 dt.29.05.2018 for Rs 21,40583/- to pay the amounts or appeal to the chief general manager (Medchal Zone) by paying the half of the Final Assessment Order accompanied by the Appeal fees.

The consumer instead of appealing to the CGM(Medchal) appealed to the CGRF where the complaints filed by the consumer were rejected for want of jurisdiction for the forum as the grievances which falls under 126 of the Electricity Act,2003 as per Clause 2.3.7 of Regulation No. 3 of 2015 of the Hon'ble TSERC. Hence the forum has no jurisdiction to entertain such type of grievances of the consumers and disposed off the complaints.

10. The SE/OP/Habsiguda filed an additional rejoinder vide Lr.No.1344 dt.04.12.2018, the relevant submission to the subject is stated that as per the HT Agreement concluded by the HT consumer M/s. Janapriya Engineers Syndicate RRN-1528 (Now HBG 1528) vide Lr.No.DEE/OP/MDCL/Comml/F.HT/D.No.5929/07 Dt.29.02.2008 it is clearly mentioned vide the point 8 as follows:

CPDC of AP Ltd. Right to vary Terms of Agreement: //We agree that the APDC of AP Ltd., shall have the unilateral right to vary from time to time, Tariffs, Scale of general and miscellaneous charges and the General terms and conditions of supply under this agreement by special or general proceedings. In particular the company shall have the right to enhance the rates chargeable for supply of electricity according to the exigencies.

Similarly same clause as above was referred in the HT Agreement for the HT SC No. HBG 1904.

11. In the face of the said contentions by both sides the following issues are framed:-

1. Whether the Respondents are justified in changing the category of the Appellant's service connections from HT-II to Category HT-Temporary Tariff unilaterally and imposing back billing amount as alleged by the Appellant? and
2. Whether the Appellants are entitled for revision of bills from April,2012 under HT-II Category?
3. To what relief?

Heard both sides

Issues 1 & 2

12. A perusal of the averments made by both sides, both written and oral shows that the Appellant M/s. Janapriya Engineering Syndicate Ltd. has two HT

services in Habsiguda Circle bearing SC No. RRE-1528 (Now HBG-1528) under M/s. Janapriya Arcade at Sy No. 9P, 10 to 13, 14P to 21, 27,28 & 29P at Mahadevpur Village, Kowkooor Mandal and RRE-1904 (Now HBG-1904) under M/s. Janapriya Projects (Janapriya Lakefront) AT Sy. No. 663p, 667, 668 & 671, Kapra Village, Keesara Mandal, RR Dist. SC RRE-1528 was released on 26.03.2008 with 207 KVA under HT Category II and RRE- 1904 was released on 07.05.2010 with KVA under HT category II respectively.

The purpose of utilisation of supply was for construction projects. The ADE/DPE/HT-1, made an inspection of the above services on 08.02.2012 at 14.08 hrs (RRE 1528) and 15.20 hrs (RRE 1904). Based on the Circular vide Memo No CGM (Comml)/SE/DPE/ADE(T)/D.No.1340/11 dt.29.10.2011 and the Clause 7 of GENERAL CONDITIONS OF H.T. SUPPLY, Tariff Order 2010-11 (w.e.f 01.08.2010), he proposed back billing over wrong categorization under HT Category II instead of HT Temporary tariff against the service connections RRE 1528(HBG) for Rs 20,69,079/- for the period 01.08.2010 to 18.02.2012 and RRE 1904 (HBG) for Rs 21,40,583/- for the period 01.08.2010 to 17.02.2012.

That after the inspection of departmental staff on 08.02.2012, an amount of Rs 20,69,079/- was shown as arrears in the bill for the month of April,2012, without any prior notice. And continued to issue subsequent bills showing the arrears repeatedly. The Appellant received assessment notices on 12.6.2012 vide Lr.No.ADE/SKNP/F.HT MATS/D.No 57/12 dt.04.04.2012 against RRE 1528 for Rs 20,69,079/- and vide D.No.56/12 dt.04.04.2012 against RRE 1904 for Rs 21,40,583/- and was requested to make the payment within 15 days if agreeable or if not agreeable make a representation. Subsequently the Appellant represented vide letter dt.18.06.2012 (In the High Court order the date mentioned was 16.6.2012), and contended that they have never requested the erstwhile APCPDCL for supply of electricity in temporary connection and that the back billing levied beyond 6 months is illegal and requested to withdraw the assessment notice. That they have deposited 1/6th of the assessed amount of Rs 3,44,847/- against service RRE 1528 and Rs 3,56,756/- against the service RRE 1904 on 30.06.2012. Since there was the threat of disconnection, the Appellant filed appeal before the Hon'ble High Court, vide WP No. 22076 and 22100 of 2012, against the back billing. The Hon'ble High Court disposed the above said Writ Petitions on dt: 20.07.2012, with following directions:

"Therefore I am of the opinion that the said assessment is only provisional and not final. Indeed on the petitioners own showing it has

submitted its representations, dated 16.06.2012 which are stated to be under consideration of respondent No.3(ADE/ OP/SKNP). In view of the submission of the learned standing counsel for APCPDCL that a final assessment after due enquiry will be made by respondents No.3(ADE/OP/SNKP). I am not inclined to interfere with these notices at this stage. In as much as the enquiry is pending the respondents shall not disconnect the power supply to the petitioner service connections till a final order is passed in pursuance of the impugned notices. The petitioner shall be free to raise all the legally permissible pleas including the one that its case does not fall under section 126 of the act and that it may fall under reclassification category".

Pursuance to the above given court orders, the Respondents, Vide Lr.No. SE/OP/SAO/JAO-HT/D.NO .389/14 Dt 9.12.2014, requested the Appellant to submit their objections within 15 days. In reply the Appellant had requested for 15 days more time to represent, but the Appellant not given any representation. Again the Respondents vide Lr.No. SE/OP/RRE/SAO/JAO-HT/SA-II HT/ D.NO.967/16 Dt 22.03.2016, given the opportunity to submit objection on the impugned notices. Further the Appellant was again provided with another opportunity to file their objections against the impugned notices by the Respondents, vide Lr.No. 2631 dt.27.11.2017, to attend the personal hearing on 29.11.2017 for issue of Final Assessment Order.

The Appellant preferred to represent and objected against the impugned notices, after considering the objections of the Appellant represented vide letter dt 25.06.2012 and 14.02.2018, the designated final assessment officer for HT Services, the Superintending Engineer/ Operation/Habsiguda, issued final assessment orders vide order Nos.301 & 302 dt.29.05.2018, on the impugned notices confirming the liability for payment of Electricity Charges against SC No. RRE 1528 for an amount of Rs 20,69,079/- and SC No. RRE 1904 for an amount of Rs 21,40,583/-.

It is pertinent to mention here that the final orders of the the Superintending Engineer/ Operation/Habsiguda confirming the impugned notices towards back billing was based on the Clause 7.5.1 of GTCS and is not the correct provision, which is actually related to "defective meters" and not to the present dispute. Instead Clause 3.4.1 of the GTCS is the mandatory provision for reclassifying the category. However the conditions with respect to the clause 3.4.1 of the GTCS of giving opportunity to

file objections by the appellant and the directions of the Hon'ble court to exhaust the the appeal towards final orders, was fulfilled by the Respondents.

During the above course of action, the SE/OP/Habsiguda preferred an clarification to the CGM/Commercial/Corporate Office, to issue necessary instructions for finalisation of the back billing case. In turn vide Lr.No.4473 dt.29.03.2018, the CGM/Commercial directed that the back billing amounts cannot be withdrawn against the HT SC No. HBG 1528 and HBG 1904, as there are so many Court cases pending before the Hon'ble High Court on the same subject matter.

Aggrieved on the above, the Appellant approached the CGRF in CG No. 118/2018-19/Habsiguda Circle. The CGRF finally disposed the Appeal with following remarks:

“Therefore the Grievances filed by the consumers of RRE 1528 (Now HBG 1528) and RRE - 1904 (Now HBG 1904) are liable to rejected for want of Jurisdiction for this Forum as the grievances which are falls under 126 of Electricity Act,2003 as per the Clause 2.3.7 of Regulation No.3 of 2015 of the Hon'ble TSERC. Hence the Forum has no jurisdiction to entertain such types of grievances of the consumers.”

Aggrieved on the CGRF direction, the Appellant preferred the present Appeal against the orders of the CGRF against the back billing amount levied on SC No. RRE 1528 (Now HBG 1528) and RRE 1904 (Now HBG 1904) towards change in category from HT -II to HT temporary supply and revising the bills from April-2012.

The Hon'ble High Court in their directions in W.P.No 22076 & 22100 of 2012 specifically made clear that the dispute does not fall under the ambit of section 126 of the Electricity Act,2003, but relates to reclassification of the Category. On contrary the CGRF has taken the reason for rejection contending that the said grievance falls under section 126 of the Electricity Act,2003. The said back billing cases are towards reclassification of billing category and assessment of amount is towards differential billing charges between HT-II category and HT - Temporary tariff. The impugned provisional assessment notices nor the final assessment order was based the section 126 of the Act, amount assessed was towards back billing. Hence, the rejection of the appeal on the grounds of no jurisdiction is not correct.

13. The main dispute relates to relevant billing category to the two subject service connections. There is no dispute on the usage of supply where both the parties

agreed that the supply is being utilised for the construction project. In general the billing category of a consumer shall be based on the Tariff Orders approved by the Commission. At the time of release the Appellant applied for HT Service connection seeking supply for the construction of the residential apartments. The Respondents initially categorised the service under HT Category II. As per the Tariff Order the HT-II category is meant for the purposes not covered by any other HT Category. Subsequently concluded HT agreements for both the services, vide Lr.No.DE/OP/MDCL/Comml/F.HT/D.No.5929/07 dt.29.02.2008 for the HT service RRN 1528 and vide Lr.No.DE/OP/MDCL/Comml/F.HT/D.No.275/10 dt.04.05.2010, for the HT service RRN 1904, usage of supply was construction purpose. The billing category was continued under HT-II until the release of Tariff Order 2010-11, where the Respondents interpreted the construction activity of the subject services falls under temporary supply. The CGM/ Commercial issued circular, vide D.No.1340/11 dt.29.10.2011, stating that that the HT services are being released wrongly under HT Category - II for construction purpose. That as per the schedule of retail tariff rates w.e.f. 01.08.2010, for construction purpose the supply at high tension shall be given under category of temporary supply only. Based on the above circular, back billing cases were booked against the subject service connections.

The impugned notices towards back billing was based on

- a) **The tariff order 2010-11, Clause 7, GENERAL CONDITIONS OF H.T. SUPPLY.**
- b) **The circular memo of the CGM/Comml vide Memo No CGM (Comml)/SE/DPE/ADE(T)/D.No.1340/11 dt.29.10.2011.**

(a) The relevant portion of the Tariff Order 2010-11 is extracted here under:

(7) TEMPORARY SUPPLY AT HT

(i) For new connections: Temporary supply at High Tension may be made available by the Licensee to a consumer, on his request subject to the conditions set out herein-after as also in Part-C. Temporary supply shall not ordinarily be given for a period exceeding 6(six) months. In case of construction projects, temporary supply can be extended for a period of 3 years. The electricity supplied to such consumer shall be charged for, at rates 50% in excess of the rates set out in the H.T. Tariffs applicable subject to, however, that the billing demand for temporary supply shall be

the contracted demand or the recorded maximum demand registered during the month whichever is higher.

The present dispute rose in view of the interpretation of the above given Clause of the Tariff Order 2010-11. The Respondents took it as a mandatory provisions for billing the construction projects service connections under HT Temporary supply and back billed accordingly. The similar subject came into evaluation in the petition filed in the OP No. 90 of 2015, dt.04.08.2016, by M/s. Lodha Healthy Constructions and Developers Pvt. Ltd. The Hon'ble Commission interpreted the above given clause and explained it clearly which is reproduced here under:

“While the provision in the GTCS consciously puts the back billing of the service connection for a period of 6 monthly as noticed supra thus the present letter could not have issued for a period of 14 months from 01.08.2010 to 29.10.2011. We can safely state that any order passed by the erstwhile APERC or this commission at present cannot be retrospective in nature unless such order specifically says so. Thus the notice in terms of the tariff order 2010 - 2011 could not have been applied to the connection released in the year 2008 where the consumer has not changed the usage of the supply.”

“We notice from the provision extracted in the tariff order for the year FY 2010 - 2011 that the stipulation of providing temporary connection is inserted, but a subtle distinction is made about the type of consumers and nature of use. The temporary connection has to be given on the request of the consumer only in any of the existing categories that is HT I to HT VI but not at the discretion of the licensee, as the tariff is determined by the Commission. The construction activity connection cannot be said as temporary connection and no where it is defined in the Tariff order. Further, while giving supply to the petitioner, the licensee has collected development charges whereas for giving temporary supply connection such clause is not provided in the Tariff order / Regulation. The licensee can give the supply for construction activity under HT Cat-II which is in order at that point of time”.

“It is clear from the above letter that the on the application made by the consumer the supply is released for construction activity under particular category. Having done so, the licensee after 3 years of period has lapsed cannot apply a subsequent order to correct its mistake, even if purported to have been done, under the garb new tariff order. Therefore, rightly the Ombudsman has directed proper action in the matter in view of the above two aspects, though not recorded therein”.

The above given observations of the Hon’ble Commission given supra, categorically confirms that the provisions of the Tariff Order 2010-11, relied by the Respondents, does not confer right to back bill the subject service connections, since any order passed by the commission cannot be retrospective in nature unless such order specifically says so. Thus the notice in terms of the tariff order 2010 - 2011 cannot be applied to the connection released in the year 2008, (where the consumer has not changed the usage of the supply) and back bill by reclassifying the category in such manner. Most importantly the Hon’ble commission more specifically confirmed that the construction activity connection cannot be said as temporary connection and no where it is defined in the Tariff order. That the Licensee can give the supply for construction activity under HT-II category.

There are certain provisions to reclassify the billing category whenever found to be wrongly classified after wards under Clause 3.4.1 of the GTCS that is reproduced here 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.”

The plea taken by the Respondents is that the Tariff Order 2010-11, enable them to reclassify the category of the subject services under the above given provisions. Whereas the above clause mandates that when a service was wrongly classified under a particular category, subsequently can be rectified. The said tariff order do not mandate to bill the said services under Temporary tariff and it is not wrongly classified, the Respondents cannot resort to back billing, that is what the Hon'ble Commission specified in the OP No. 90 of 2015, dt.04.08.2016, of M/s. Lodha Healthy Constructions and Developers Pvt. Ltd. Moreover, it was stated that as per the Tariff Order 2010-11, the temporary connection has to be given on the request of the consumer only in any of the existing category that is HT-I to HT-VI. The Appellant held that they have not placed any such request for temporary connection.

(b) The CGM/Commercial has issued a notice circular vide Memo No CGM (Comml)/SE/DPE/ADE(T)/D.No.1340/11 dt.29.10.2011, which reads as follows:

It is noticed that the HT services are being released wrongly under HT Category - II for construction purpose. As per the schedule of retail tariff rates w.e.f. 01.08.2010, for construction purpose the supply at high tension shall be given under category of temporary supply only. As the Superintending Engineers/Op are designated officers for entering the agreement of HT supply as per GTCS vide designated officers notification amended up to dated. 27.02.2006, they are responsible for any wrong categorization of HT supply.

Further to the above, all the existing HT services released/running under HT Cat-II for any construction purpose on or after 01.08.2010 should be billed under HT temporary supply only. Necessary back billing should be done for the period from the date 01.08.2010 under HT temporary supply tariff. If any deviation is noticed in the above instructions will be viewed seriously and action will be initiated against the concerned.

Hence all the Superintending Engineers/Operation are requested to issue instructions to field for releasing of HT services for construction purpose under HT temporary category as per rules in vogue. The Superintending Engineers/Operation are requested to furnish the list of

HT services release/running under HT cat-II for any construction purpose on or after 01.08.2010 immediately for taking necessary action.

It is evident that the above given circular is based on the Clause 7- GENERAL CONDITIONS OF H.T. SUPPLY, of the Tariff Order 2010-11. The similar dispute was discussed in the orders of the Vidyut Ombudsman, **In the Appeal No. 43 of 2012 of M/s. Lodha Healthy Constructions and Developers Pvt. Ltd. and Appeal no 47 of 2012, M/s. Sanathnagar Enterprises Pvt Ltd.**, The Vidyut Ombudsman observed the following, in regard to the above given circular memo of CGM/Commercial and Clause 7 of 2010-11 Tariff Order which is reproduced here under:

“ It is apparent from the very said tariff order that it is applicable for new connections. It is also to be given on the request made by the consumer. Here in this case, it is neither a new connection, nor a request is made by the Appellant to give H.T. temporary supply. So the above said circular issued by the CGM/Commercial and RAC is not applicable to the case on hand i.e. the Appellant herein.”

The above given Vidyut Ombudsman order clearly speaks that the provisions of the Tariff Order 2010-11 is wrongly interpreted in the circular issued by the CGM/Commercial and the back billing resorted by the Respondents from HT-Category II to HT Temporary is not correct, since the Clause 7 - GENERAL CONDITIONS OF H.T. SUPPLY of the Tariff Order 2010-11 is applicable only for the new connections released thereafter or on the request made by the Appellant to give HT temporary supply, the present case is neither of the above.

On non implementation of the directions given by the Vidyut Ombudsman in the Appeal no 43 of 2012, M/S. Lodha Healthy constructions and Developers Pvt. Ltd., and also in Appeal no 47 of 2012, M/s. Sanathnagar Enterprises Pvt Ltd., The Hon'ble Commission vide orders in O.P No. 90 of 2015 and O.P No. 91 of 2015 respectively, directed the Respondents to comply with the directions of the Vidyut Ombudsman, subsequently the TSSPDCL decided to implement the orders, accordingly the CGM/Finance vide Memo. no.CGM(Fin)/GM(Rev)/SAO(R)/AO.HT/D.no 42/Dt:8.07.2016, given instructions to the concerned SE to withdraw the back billing amount so levied towards category change from HT-II to HT Temporary and further directed to revise the CC bills in respect of the said both the consumers HT II tariff instead of HT Temporary till the date of Ombudsman Orders, duly intimating to the TSERC. In addition it was

directed to issue separate notices for payment of difference amounts between HT Temporary tariff and HT-II in accordance with the GTCS clause 3.4.1 from 01.09.2012.

14. It is evident from the above discussions that the circular memo issued by CGM/Comml, dt.29.10.2011 and the tariff order 2010-11 does not provide the respondents to levy back billing on the subject services HBG 1528 & HBG 1904.

The other reason the Respondents relied upon for not withdrawing the back billing cases was on many cases pending in the Hon'ble High Court on the same subject. In view of this the Respondents were requested to submit orders of such cases pending or final orders. The CGM/Commercial vide Lr.No.2191 dt.17.12.2018 submitted the copies of the orders by Hon'ble High Court in the similar cases as following:

Sl.No	Name of the consumer	Writ Petition No.
1.	M/s. S&S Green Projects Private Limited	13545/2012
2.	M/s. Sanath Nagar Enterprises Ltd.	13667/2013
3.	M/s. Aditya Homes Pvt. Ltd.	3534/2013

The following are the respective orders of the above given writ petitions:

1. M/s. S&S Green Projects Private Limited - WP No. 13545/2012

The Writ Petition is accordingly allowed setting aside the impugned letter dt.09.12.2011 and the consequential assessment for short billing dt.28.12.2011. The APCPDCL shall give due notice and opportunity of hearing of the petitioner company as to the proposed change of the category in view of the tariff order passed by the Electricity Regulatory Commission with effect from 01.08.2010. The amount deposited by the petitioner company pursuant to the interim order of this court shall abide by the consideration of the matter by the APCPDCL and the order that it may ultimately pass in the matter. This exercise shall be completed expeditiously and in any event, not later than eight weeks from the date of receipt of a copy of this order WPMP No. 16996 of 2012 and W.V.M.P.No.3330 of 2012 shall stand closed in the light of this final order. No order as to costs.

2. M/s. Sanath Nagar Enterprises Ltd. W.P.No. 13667/2013

As the APCPDCL has not taken steps for conversion of the category in accordance with the order dt.31.08.2012 passed by the Vidyut Ombudsman, Hyderabad in Appeal No.47 of 2012, the APCPDCL shall continue to bill the petitioner under H.T.Category-II in respect of its service connection No. 1432 till such time it initiates steps in this regard and conversion of the category is effected.

3. M/s. Aditya Homes Pvt. Ltd. W.P.No. 3534/2013

The Respondents are directed to issue bills to the petitioner by treating the supply to the petitioner under HT Supply Category II (Non Industrial) Commercial purpose. However, if the petitioner is consuming electricity for any other purpose other than permitted, this order will not preclude the respondents to issue notice to the petitioner and to take steps for change of category by conducting enquiry on the allegations. It is made clear that if any bill amounts are collected from the petitioner by treating the service connection provided to it as HT Supply Category II (Temporary), the petitioner is permitted to make a representation to adjust such bills in which event, the Respondents shall examine the same and take steps for adjusting such bills.

Subject to the above directions, the Writ Petition is disposed of Miscellaneous Petitions, if any pending this Writ Petition shall stand closed. No costs.

15. The Appellant further requested to revise the bills from April,2012 under HT Category II, which was continued to be billed under temporary supply at HT based on the Clause 7 - GENERAL CONDITIONS OF H.T. SUPPLY of the Tariff Order 2010-11. The DISCOMs preferred to bring the construction projects under the ambit of temporary supply during the determination of Retail Supply Tariff- FY 2016-17, they proposed before the Hon'ble Commission towards inclusion of Construction activities under the purview of Temporary service. The Commission though approved the Separate tariff rate for the temporary supply as HT-VII Temporary supply category, for the consumers availing the temporary supply under HT voltage, but not made it a mandatory provision. The relevant clause of the Tariff Order 2016-17 is extracted over here:-

Tariff Order 2016-17

7.19 HT-VII Temporary service: The licensees have proposed a separate tariff for consumers availing of temporary supply under HT voltage which was charged earlier at

the rate of 1.5 times of the tariff for respective categories. The Commission accepted the proposal to introduce a separate tariff rate for the category.

HT-VII: Temporary supply

Category	Demand Charge (INR/Month)		Energy Charge (INR/kVAh)
	Unit	Rate	
HT VII: Temporary			
11 kV	KVA	500	10.80
33 kV	KVA	500	10.00
132 kV and above	KVA	500	9.80
<ul style="list-style-type: none"> • Demand charge is calculated at INR/kVA/month of the billing demand 			

HT-VII: Temporary supply

9.138 (a) Temporary supply can be given **on the request of a consumer** initially for a period up to 6 months as per the tariff applicable under the Temporary supply category. In case, the consumer requests for further extension, the same can be extended for another 6 months with the same tariff as applicable to Temporary supply category. After the expiry of 12 months, the consumer is at liberty to seek further extension provided, the consumer pays twice the regular tariff or the consumer has the choice of availing of regular supply. (b) The billing demand for Temporary supply shall be contracted demand or recorded maximum demand registered during the month whichever is higher.

As per the above given clauses though separate category under HT-VII Temporary supply was introduced but the preference of taking the temporary supply was continued to be made optional to the consumers and the construction projects were not made as a mandatory provision for availing temporary supply.

The DISCOMs have proposed few changes to the terms and conditions of tariff for certain consumer categories during the determination of tariff for FY-2017-18. On the proposals of the DISCOMs the Hon'ble Commission approved the following changes in the Tariff Order 2017-18 as following

Tariff Order 2017-18

6.9.4 Owing to the nature of activity carried on during the phase of construction the Commission accepts the proposal to consider the construction activities like construction of all types of structures/ infrastructure such as residential /commercial buildings (height of 10 meters and above), bridges, fly-overs, dams, power stations, roads, aerodromes, tunnels for laying pipelines, etc. The relevant tariff for temporary supply shall be applicable during the phase of construction.

6.9.9 Temporary supply is applicable to:

Construction activities like construction of all types of structures/ infrastructure such as residential or commercial buildings (height of 10 metres and above), bridges, fly-overs, dams, power stations, roads, aerodromes, tunnels for laying of pipelines, etc. The relevant tariff for temporary supply shall be applicable during the phase of construction.

Hence from the year 2017-18, the construction activity was brought under the mandatory provision under Temporary supply with certain conditions stated above. In view of the above, the Appellants subject service connections are found liable to be billed under HT-II category until the date of effect of the tariff order 2017-18 and subsequently shall be billed under HT VII- Temporary Supply at the rates notified in the Tariff Order 2017-18. The bills are liable to be revised from April-2012 under HT-II category.

The Respondents has taken another plea in the additional rejoinder submitted vide Lr.No.1344 dt.04.12.2018. Wherein they have relied on the Clause 8 and 9 of the respective HT Agreements of both the HT services. The relevant clause is reproduced here under:

CPDC of AP Ltd. Right to vary Terms of Agreement: I/We agree that the APDC of AP Ltd., shall have the unilateral right to vary from time to time, Tariffs, Scale of general and miscellaneous charges and the General terms and conditions of supply under this agreement by special or

general proceedings. In particular the company shall have the right to enhance the rates chargeable for supply of electricity according to the exigencies.

The unilateral right claimed by the Respondents to vary from time to time in regard to tariffs, under the said agreement and in particular the claim that the company shall have the right to enhance the rates chargeable for supply of electricity is against the provisions of the Electricity Act,2003. The section 86 of the Electricity Act,2003 confers the State Commission under Sub Clause (a) to determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail as the case may be within the state. And it is incumbent upon the distribution licensee to make an application to the Commission to determine the tariff in such manner and terms as may be specified by the Regulations framed by the Commission in accordance with the provisions of section 64 of the act. The Respondents do not have the right to claim to vary the tariff on their own, as specified in the Clause mentioned in the HT Agreements. Hence decides these issues against the Respondents.

Issue No.3

16. In the result The impugned notices vide Lr.No.ADE/SNKP/F.HT/MATS/Sl.No.56/12,dt.04.04.12 and Lr.No. ADE/SNKP/F.HT/MATS/Sl.No.57/12, dt.04.04.2012. issued towards back billing is set aside. Further the amount paid by the appellant of Rs 3,44,847/- against service connection RRE 1528 and Rs 3,56,756/- against the service connection RRE 1904 shall be adjusted in the future bills of the two services and further the Respondents are directed to revise the bills from HT Temporary to HT-II Category till the date of effect of the Tariff Order 2017-18 from the month of April,2012. Accordingly the matter is allowed.

TYPED BY Office Executive cum Computer Operator, Corrected, Signed and Pronounced by me on this the 22nd day of April, 2019.

Sd/-
Vidyut Ombudsman

1. M/s. Janapriya Engineer Syndicate Ltd., represented by Sri. K. Goutham Reddy, J.P.Arcade Projects, Sy.No.9P,10,12 to 14,27,28P and 29, Mahadevpur, R.R.Dist. Cell: 9949556616.
2. The ADE//OP/Sainikpuri/TSSPDCL/Medchal Dist.
3. The DE//OP/Sainikpuri/TSSPDCL/Medchal Dist.
4. The SAO//OP/Habsiguda Circle/TSSPDCL/Medchal Dist.
5. The SE//OP/Habsiguda Circle/TSSPDCL/Medchal Dist.

Copy to :

6. The Chairperson, CGRF-GHA,TSSPDCL,GTS Colony, Vengal Rao Nagar, Hyderabad.
7. The Secretary, TSERC, 5th Floor Singareni Bhavan, Red Hills, Lakdikapul,Hyd.