



BEFORE THE VIDYUT 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
VIDYUT OMBUDSMAN**

FRIDAY THE SIXTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO

Appeal No. 45 of 2021-22

Between

Sri Mateti Kamalakar Rao, s/o Late Venkata Appa Rao, M/s. Mateti Venkata
Shiva Prasad, H.No.11-2-82 & 83, Balaji Nagar, Khammam -02.
Cell.8977441288.

.....**Appellant**

AND

1. The Assistant Divisional Engineer / Operation / Khammam-Town1/
9440811529.
2. The Divisional Engineer / Operation / Khammam - 9440811506.
3. The Senior Accounts Officer / Circle Office / Khammam - 9440811567.
4. The Superintending Engineer / Operation / Khammam - 9440811505.

..... **Respondents**

This appeal is coming on before me for final hearing on 11.11.2022
in the presence of Sri Vinod Kathepally - authorised representative of the
appellant and Sri G.Sridhar - SAO/CO/Khammam, Sri N. Ramarao -
DE/OP/Khammam and Sri Ch. Nagarjuna - ADE/OP/Khammam 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, Warangal (in short 'the Forum') of
Telangana State Northern Power Distribution Company Limited (in short
'TSNPDCL') in C.G.No.96/2021-22 dt.24.12.2021, Khammam Circle closing
the complaint.

CASE OF THE APPELLANT BEFORE THE FORUM

2. The case of the appellant is that the respondents have released Service Connection No. KMM-946 for the building H.No.11-2-82 and 83 in the name of M/s. Mateti Venkata Shiva Prasad on 15.02.2017 under H.T.Category-II with a contracted load of 130 KVA. The agreement executed in January 2017 is between one Sri Mateti Venkata Shiva Prasad and the respondents for release of power supply under commercial purpose. But the appellant who is representing the said Mateti Venkata Shiva Prasad alone signed on it. One Sri Naveen was the tenant where the subject Service Connection was installed. He was running a diagnostic centre. He committed suicide. The Service Connection was disconnected in October 2018 due to non-payment of arrears of electricity bill. The appellant paid Rs.5,00,000/- keeping the balance of Rs.2,15,417/-. The said amount was increased to Rs.25,98,613/-. On 10.05.2021, the consumer was granted (4) instalments to pay the arrears with interest. But only (3) instalments and part of the 4th instalment were paid. The respondents have not followed the relevant Rules and law. It is accordingly prayed to refund Rs.25,98,613/- with interest @24% which was charged through void agreement, to direct the respondents to execute a legally enforceable agreement bilaterally, to direct the respondents to pay Rs.7,15,417/- as compensation and to direct the respondents to refund Rs.2,49,750/-, with costs etc.

REPLY OF THE RESPONDENTS BEFORE THE FORUM

3. In the written reply submitted by respondent No.3, it is stated that the subject Service Connection was released in favour of M/s. Mateti Venkata Shiva Prasad in H.T.Category-II with contracted load of 130 KVA on 15.02.2017. The consumer is liable to pay the electricity bill. The service was disconnected on 21.11.2018 for non-payment of arrears of electricity bill. On representation, (3) instalments were granted to the consumer to pay the arrears. He paid only Rs.5,41,820/- on 05.03.2020. Hence again the service was disconnected in May 2020. Thereafter again (4) instalments were granted to pay the arrears of electricity bills. But (3) instalments and part of the 4th instalment were paid. As on 27.10.2021 a sum of Rs.2,60,258/- was due by the consumer. Therefore it was prayed to dismiss the complaint.

AWARD OF THE FORUM

4. After considering the material on record and after hearing both sides, the learned Forum has closed the complaint by holding that the consumer has to pay the necessary charges and the waiving of monthly minimum charges was not within the purview of the Forum.

5. Aggrieved by the Award passed by the learned Forum, the present appeal is preferred, contending among other things, that the learned Forum has erred in closing the complaint and it has not considered the material on record properly.

GROUND OF THE APPEAL

6. In the grounds of the appeal, it is, inter-alia, submitted that the subject agreement is compulsorily registrable document which is not registered; that the learned Forum has failed to see that the agreement was designed with the duties and liabilities of the appellant but not the respondents duties and that the learned Forum has failed to see the provisions of the Indian Contract Act and that the huge arrears of Rs.25,98,613/- is due to mistake of the respondents. It is accordingly prayed to set aside the impugned Award, to declare the subject agreement as null and void, to refund Rs.25,98,613/- with interest @24% p.a, to direct the respondents to execute a legally enforceable bilateral agreement, to direct the respondents to pay Rs.7,15,417/- as compensation, to stay the demand of partial 4th instalment and to direct the respondents to refund Rs.2,49,750/- collected towards additional security amount with costs etc.

WRITTEN SUBMISSION OF THE RESPONDENTS

7. In the written submissions of respondent No.4 before this Authority, it is, inter-alia, stated that as per Clause 8.3.1 of the General Terms and Conditions of Supply (in short 'GTCS') if any consumer fails to pay the electricity charges such Service Connection will be disconnected. Accordingly the subject Service Connection was disconnected on 21.11.2018 due to accumulation of arrears. The appellant has failed to pay the arrears even in instalments. As on 10.08.2022, the consumer has to pay Rs.2,79,217/- to the

respondents-Licensee. It is accordingly prayed to dismiss the appeal.

ARGUMENTS

8. The learned counsel for the appellant has submitted the written arguments, contending among other things, that the appellant has entered into an agreement for HT Service Connection with the respondents vide Service Connection No. KMM 946; that at that time the respondents have not followed the mandatory Rules and guidelines of the Electricity Act 2003, Indian Registration Act, Indian Stamp Act and also the provisions of the Indian Contract Act; that the respondents have not followed the Clauses under GTCS; that the respondents have colluded with the tenant of the consumer and that due to the mistake of the respondents the huge arrears of electricity charges accumulated to Rs.17,32,514/- from Rs.7,15,417/- and that the consumer paid the electricity bills amount by borrowing money. Hence it is prayed to declare the HT agreement in this case as null and void, refund Rs.25,98,613/- with interest @ 24% p.a., direct the respondents to pay Rs. 7,15,417/- as compensation to the appellant, to refund Rs.2,49,750/- collected as additional Security Deposit and also to direct the respondents to execute a bilateral agreement with costs etc.

9. On the other hand, it is argued on behalf of the respondents, that the respondents have acted as per law and they have supported the Award passed by the learned Forum. It is accordingly prayed to reject the appeal.

POINTS

10. The points that arise for consideration are:-

- i) Whether the appellant is entitled for refund of Rs. 25,98,613/- with interest @24% p.a. from the respondents?
- ii) Whether the appellant is entitled for compensation of 7,15,417/- from the respondents?
- iii) Whether the appellant is entitled for refund of Rs.2,49,750/- collected as additional security deposit from the respondents?
- iv) Whether the fresh bilateral agreement is required to be executed?
- v) Whether the impugned Award of the learned Forum is liable to be set aside? and
- vi) To what relief?

POINT No. (i) to (v)

ADMITTED FACTS

11. It is an admitted fact that the respondents have released the subject Service Connection No. KMM 946 in the name of M/s. Mateti Venkata Shiva Praasd on 15.02.2017 under Category-II in HT Tariff with contracted load of 130 KVA. It appears that the appellant is the close relative of one Mateti Venkata Shiva Prasad. It is also an admitted fact that the tenant of the consumer who utilised the electricity of subject Service Connection has committed suicide.

SETTLEMENT BY MUTUAL AGREEMENT

12. 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

13. 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.

CRUX OF THE MATTER

14. The present dispute is in regard to waiver of electricity dues pending against H.T. Service Connection No. KMM 946 - M/s. Mateti Venkata Shiva Prasad, commercial building located at H.No.11-2-82 and 83, Balaji Nagar, Khammam apart from other reliefs. Initially the service was released on 15.02.2017 under H.T.Category-II with a Contracted Maximum Demand (in short 'CMD') of 130 KVA. As required under Clause 5.9.1.2 of GTCS, an H.T. agreement was signed by the consumer. The clause 5.9.1.2 of GTCS is reproduced here-under:-

“All applicants for H.T. Categories are required to fill in and sign the HT agreement, as provided in Appendix IIA herein. This HT agreement shall govern the supply of electricity by the Company for HT consumers.”

After execution of the agreement, the respondents shall release the HT supply as mandated under Clause 5.9.2.1 which is reproduced here-under:-

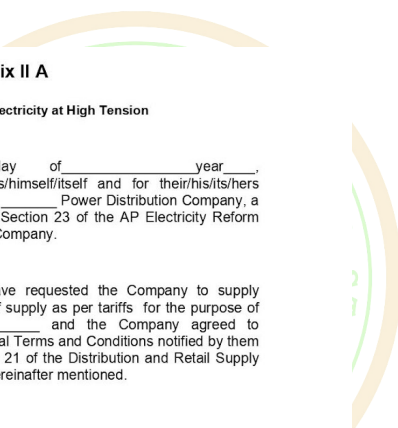
“The Company shall, after the consumer has completed all the pre-requisite formalities in respect of execution of Agreement and security deposit, etc., make arrangements to supply electricity in the manner prescribed.....xxxxx”

15. The available record goes to show that the Service Connection was disconnected on 21.11.2018 due to accumulation of arrears. Later a representation was made on 28.02.2020 to accord instalments for payment of pending dues. Subsequently (3) instalments were sanctioned out of which only (1) instalment was paid of Rs. 5,41,820/- on 05.03.2020. Thereafter the service was again disconnected during May 2020, consequent to non-payment of the remaining instalments. The record shows that the premises of the subject HT Service Connection was given on lease/rent to a tenant Sri Naveen. As already stated he has committed suicide. During the course of time the owner of the premises Sri Mateti Venkata Shiva Prasad again represented on 22.04.2021 for sanction of instalments to clear the dues. The CMD/TSNPDCL has sanctioned (4) instalments for payment of Rs.25,98,613/- vide Lr.No.CGM(Fin.)/TSNPDCL/GM(R)/D.No.191/21 dt.01.05.2021 as follows:-

	C.C	Due date
1st Instalment	Rs.6,49,654/-	Immediate
2nd Instalment	Rs.6,49,653/-	On 01.06.2021
3rd Instalment	Rs.6,49,653/-	On 01.07.2021
4th Instalment	Rs.6,49,653/-	On 01.08.2021
Total	Rs.25,98,613/-	

After paying (3) monthly instalments, the appellant preferred to give a legal notice to the respondents towards withdrawal of all the amounts paid till then and alleged that Rs.25,98,613/- was increased from the initial meagre amount, though power was not used and though the building was under lock in view of pandemic situation.

16. As regards the HT agreement, as notified in the GTCS, is as under:-



Appendix II A

Agreement for Supply of Electricity at High Tension

Agreement executed this day of _____ year, by _____ for themselves/himself/itself and for their/his/its/hers assigns and successors in favour of the _____ Power Distribution Company, a statutory corporation constituted under Section 23 of the AP Electricity Reform Act, 1998 henceforth referred to as the Company.

- 1 **Supply of Power**
I/We the above mentioned have requested the Company to supply electricity at specified voltage of supply as per tariffs for the purpose of _____ and the Company agreed to afford such supply on the General Terms and Conditions notified by them from time to time under Section 21 of the Distribution and Retail Supply License Conditions and those hereinafter mentioned.
- 2 **Load/Maximum Demand**
I/We agree to take from the Company, electric power for a Maximum Load not exceeding _____ kVA which shall be taken to be my/our Contracted Demand for our exclusive use for the purpose above mentioned, at our Mills/Factory/Premises situated at _____. My/Our contracted load shall be _____ HP and/ or _____ kW. I/We shall not effect any change in the Maximum Demand or Contracted Load without prior intimation to the Company.
- 3 **Re-Sale of Electric Power**
I/We undertake that I/We shall not sell electrical energy obtained under this Agreement without the sanction in writing of the Company.
- 4 **Obligation to comply with Requirements of Act, and General Terms And Conditions of Supply**
I/We further undertake to comply with all the requirements of the Electricity Act, 2003, the Rules and Regulations framed thereunder, provisions of the tariffs scale of Miscellaneous and General Charges and the General Terms and Conditions of Supply prescribed by the Company with approval of the AP Electricity Regulatory Commission herein after called as Commission from time to time and agree not to dispute the same.
- 5 **Date of coming into force of the Agreement**
I/We shall begin/take electrical energy from the Company under the conditions of this Agreement within three months, from the date of issue of intimation in writing to me/us by the Designated Officer of the Company that supply of electrical energy is available. The

* Modified as per proceedings No. Secy/02/2006 dated:27-02-06
General Terms & Conditions of Supply

provisions of this Agreement shall be deemed to come into force from the date of commencement of supply of energy or the date of expiry of three months notice above referred to, whichever is earlier.

6 Period of Agreement

I/We undertake to avail supply for a minimum period of 2 years from the date this Agreement comes into force.

7 Determination of the Agreement

I/We shall be at liberty to determine the Agreement by giving in writing three months notice expressing such intention at any time after the period of two years. If for any reason, I/We choose the three months to derate/terminate the agreement before the expiry of the minimum two year period of the Agreement, the deration/termination will be done with effect from the date of expiry of the three months notice period or expiry of the initial two year period whichever is later. I/We agree that the Company may terminate this Agreement at any time giving three months notice, if, I/We violate the terms of this Agreement or the General Terms and Conditions of Supply notified by the company with the approval of the Commission from time to time or the provisions of any law touching this Agreement including the Electricity Act, 2003, the Rules and Regulations framed thereunder. This Agreement shall remain in force until it is terminated as above indicated. In computing the periods of 2 years referred to above the period or periods for which the annual minimum guarantee has or have been waived or reduced shall be excluded.

8 Obligation of Consumer to pay all charges levied by Company

From the date this Agreement comes into force I/We shall be bound by and shall pay the Company Maximum Demand charges, energy charges, surcharges, meter rents and other charges, if any, in accordance with the tariffs applicable and the General Terms and Conditions of Supply prescribed by the Company from time to time for the particular class of Consumers to which I/we belong.

9 Company's Right to Vary Terms of Agreement

I/We agree that the Company 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 exigencies.

10 Monthly Minimum Charges

I/We shall pay minimum charges every month as prescribed in tariff, and the General Terms and Conditions of Supply even if no electricity is consumed for any reason whatsoever and also if the charges for electricity actually consumed are less than the minimum charges. The minimum charges shall also be payable by me/us even if electricity is not consumed because supply has been disconnected by the Company because of non-payment of electricity charges, Theft of Electricity or Unauthorised Use of Electricity or for any other valid reason.

11 **Special Annual Minimum Guarantee**

In consideration of the Company making arrangements for supplying electrical energy to me/us, I/We agree with effect from the date of commencement of this Agreement for the period of _____ years to guarantee a minimum payment Rs _____ (Rupees _____) every year towards Demand and energy charges only, exclusive of payments towards surcharge, or other payments by whatever name they may be called. If the amounts actually paid towards Demand energy charges during any year fall short of the guaranteed minimum, the amount of deficit shall be deemed to be arrears of electricity charges and recovered accordingly.

12. I/We hereby agree that if I/We, am/are found indulging in Theft of Electricity or Unauthorised Use of Electricity in respect of use of electrical energy, I/We shall pay additional charges as may be levied by the Company. I/We also agree that in such an event the Company shall in addition to levy of the additional charges have right to disconnect supply of electricity to my/our Premises for such period as may be decided by the Company.

13. I/We requested the company to provide the meter for measuring the electricity supplied to me and the company has agreed for the same. Accordingly, I/We agree to pay the monthly meter rentals, as may be fixed by the Commission from time to time.

Signature of the Consumer
Date: _____

Signed by the applicant in my presence:

Witness 1	Witness 2
Signature:	Signature:
Name and Address:	Name and Address:
Date:	Date:

SIGNIFICANCE OF GTCS

17. After consultations and comments/suggestions of the various Organisations/State Advisory Committee/Commission staff and response of the Distribution Licensee, the erstwhile Andhra Pradesh Electricity Regulatory Commission (in short 'APERC') approved the General Terms and Conditions of Supply in proceeding No. Secy/01/2006 dt.06.01.2006 and amended upto 26.10.2016, adopted by the Hon'ble Telangana State Electricity Regulatory Commission (in short 'the Commission') vide Regulation 1 of 2014. The document under Appendix II A HT agreement is the extract of the GTCS approved by the Commission only after placing it before the public domain. The consumers have to enter into agreements on specified terms with the Licensee for the use of any electric lines, electrical plant or plants and associated equipment operated by the licensee and to comply with any direction given by the Commission. Hence, there is no force in the argument that the HT agreement was designed to favour the Licensee. On the other hand, the Hon'ble Commission, reviews the standards of performance from time to time and also decides to prescribe the compensation payable to consumers for non-compliance of the standards of performance of Licensee in terms of provisions of Sec.57 of the Electricity Act 2003 to protect the interests of the consumers. The principal Regulation No. 7 of 2004 amended from time to time provides the consumers to avail the services from the Licensee notified under

“Standards of Performance”. Hence, the GTCS is not unilateral and HT agreement is not designed against the consumer.

18. **Clause 5.9.5** of General Terms and Conditions of Supply provides the necessity of concluding the agreements on release of supply which is reproduced here-under:-

“On release of supply, all agreements under HT categories and LT categories III and IV shall be signed by the Designated officers of the Licensee and a copy of the same shall be sent to the consumer along with a copy of the test report. Similarly a copy of the LT application containing the undertaking shall be signed and sent to the consumers of other LT categories along with the test report.”

In the present case, the respondents did not follow the above given Clause. The record shows that the HT agreement was not signed by the Designated Officers of the Licensee and the copy of the same was not sent to the appellant. The respondents ought to have complied with the said clause. But this does not dis-entitle the respondents to recover the electricity dues pending. Further from the beginning the appellant has been admitting the execution of the HT agreement and also acting upon the said agreement. That being so, now the appellant, cannot be permitted to question the agreement. Under Clause 2.2.4 of GTCS the “Occupier” which is defined as follows:-

“Occupier” means the owner or person in occupation of the premises where energy is used or proposed to be used.

The subject Service Connection being registered in the name of M/s. Mateti Venkata Shiva Prasad, concluded the HT agreement. The appellant signed the said agreement. Under Clause 8 of the agreement the consumer (appellant) has

the obligation to pay all the charges levied by the Licensee in accordance with the Tariff Orders. Therefore the tenant alone cannot be blamed for keeping the arrears due. The Regulation 7 of 2013 under Clause 9 envisages the Licensee to grant instalments to pay the arrears amount. Under such Regulation the respondents are liable to allow partial amounts as such it cannot be contended that the respondents are at fault in allowing part payment by the tenant. The appellant is independent to lease out his premises to other person/persons under separate lease agreement. The Licensee is not the party under such an agreement and hence the responsibility of the consumed energy lies upon the appellant and not on the Licensee, thereby the allegation that the respondents have allowed the tenant to keep the arrears and monthly CC charges without the consent of the owner i.e. the appellant has no legal sanctity.

19. **The Meter Reading Instrument (in short 'MRI') Machine damage:-**

It is alleged that due to power failure a blast took place in the MRI machine which requires continuous supply and hence the Licensee shall pay the damages causing the blast damaging the MRI machine. He has relied on the Clause 5.9.4.3 of GTCS stating that as per this Clause, Licensee has the power to disconnect the service on non-payment of (3) months CC charges. However at the same time, it is the responsibility of the Licensee to safeguard the Customer from any dangers/damages/reciprocals while disconnecting the service. The interpretation of the Clause 5.9.4.3 stated by the appellant is not correct. The Clause 5.9.4.3 is reproduced hereunder:-

“Termination of LT Agreement and HT Agreement on account of disconnection: Where any consumer, whose supply is disconnected for nonpayment of any amount due to the Company on any account, fails to pay such dues and regularise his account within three Months from the date of disconnection, the Company shall after completion of 3 months period, issue one Month notice for termination of the LT or HT Agreement, as the case may be. If the consumer still fails to regularise the account, the Company shall terminate the Agreement with effect from the date of expiry of the said one-Month notice. Such termination shall be without prejudice to the rights and obligations incurred or accrued prior to such termination. “

XXXXX
XXXXX

The given Clause relates to the conditions laid down when the consumer's supply is disconnected for non-payment of any amount due to the Licensee. The (3) months completion notice period is for the termination of the agreement. The allegation of damaging the MRI machine due to power failure has no relevance. The power supply failure is the general phenomenon to all the consumers, it may be due to maintenance or breakdown and that will not be construed as a reason for the blast of the MRI machine.

20. Refund of ACD Amount of Rs. 2,49,750/-:- The appellant alleged that the Additional Consumption Deposit amount of Rs.2,49,750/- was claimed by showing wrong calculation without consuming the power. As per the principal Regulation 6 of 2004, Security Deposit amount shall be (2) months charges in case of monthly billing and annual review will be done and additional Security Deposit will be demanded in case of shortfall and refund will be made in case of excess. The relevant Clause 4(2) of the Regulation is reproduced here-under:-

“The HT consumers shall at all times maintain with the licensee an amount equivalent to consumption charges (i.e. demand charges and energy charges etc., as applicable) of two months as security during the period the agreement for supply of energy to such HT consumers is in force.”

In the present case the review of Additional Consumption Deposit for the years 2019-20 i.e. for the period is from 04/2018 to 03/2019. The total recorded consumption was 1,57,708 KVAH units.

The (2) months consumption charges - Rs.4,29,749/-

The available deposit (less) - Rs 1,80,000/-

Payable ACD amount - Rs 2,49,750/-

The given calculation is in line with the Regulation 6 of 2004. The appellant has failed to prove the wrong calculation of the ACD amount and hence it is liable to be paid.

21. Refund of Rs.25,98,613/- :- The appellant claimed that the due amount was piled up from Rs.7,15,417/- as on November 2018 to Rs 17,32,513/- by January 2020 without consumption of the electricity and in spite of payment of Rs.5,41,820/- during the month of February 2020 against the due amount of Rs 17,32,513/- the arrears rose to an amount of Rs 22,01,422/- again without using any electricity during the Covid-19 period (national lockdown) which is a 'force majeure event'.

22. Monthly Minimum Charges:- The Tariff Order FY 2018-19 under Clause 7.122 defines the requirement of monthly minimum charges which is reproduced here-under:-

“Every consumer whether he consumes energy or not shall pay monthly minimum charges calculated on the billing demand plus energy charges specified for each category in this Part (B) to cover the cost of a part of the fixed charges of the Licensee”.

Initially when the service was first disconnected on 21.11.2018 the arrears were Rs. 7,15,417/- as on the month of November 2018 and the supply remained disconnected till February 2020. The supply was restored based on the representation of the consumer towards sanction of instalments for clearing the dues Rs.5,41,820/- was paid during the month of February 2020 and monthly minimum charges were raised from November 2018 to February 2020. As per the Clause 7.122 of the Tariff Order FY 2018-19 were raised and the arrears were accumulated to Rs 17,32,513/-.

23. The Clause 7.121 of billing demand mandates the maximum demand during the month of **80% of the Contracted Maximum Demand** even in the case of non-consumption of the power supply. The contracted demand of the subject Service Connection is 130 KVA and 80% of the contracted demand is 104 KVA which shall be invariably billed for each month. The **Clause 7.142** mandates the energy charges which shall be billed on the basis of actual energy consumption or **25 kVAh per kVA of Billing Demand**, whichever is higher even though the power supply was not utilised. On account of monthly billing demand against the 80% of the CMD i.e. 104 KVA Rs.40,560/- towards energy charges

Rs. 20,280/- was raised per month during the non utilisation of power supply i.e. the period under which the supply was disconnected.

24. Here it is pertinent to mention the Clause 7.1.2.5 of GTCS which is reproduced here-under:-

Additional charges for belated payment of charges:-

“The Licensees shall charge the Delayed Payment Surcharge (DPS) per month on the bill amount at the rate of 5 paise/ Rs. 100/ day or Rs. 550 whichever is higher. In case of grant of instalments, the Licensee shall levy interest at the rate of 18% per annum on the outstanding amounts, compounded annually and the two charges shall not be levied at the same time.”

The above given Clause envisages the Licensee to charge Delayed Payment Surcharge (in short ‘DPS’) per month on the bill amount @ 5 paise/Rs.100/day or Rs 550/- whichever is higher. In view of non-payment of arrears since September 2018 the Delayed Payment Surcharges were levied which resulted in accumulation of delayed payment charges. Over-all, in view of the aforementioned factors the electricity bill was accumulated from Rs. 7,15,417/- to Rs 25,98,613/-. Hence the refund of Rs.25,98,613/- is not tenable.

25. **Force majeure:-** The Hon’ble Commission vide its Order O.P.No.17 of 2020 dt.29.04.2020 addressed the situation of Covid-19 pandemic occurred in the country.

The Clause (4) of the Order is reproduced here-under:-

“The Commission acknowledges that the prevalent situation due to outbreak of COVID-19 has led to shutdown of a number of industrial and commercial establishments on account of the lockdown enforced by the government (except essential services). The Commission recognising the gravity and unprecedented nature of the current

situation, consider it necessary and appropriate to address the hardships being faced by the electricity consumers at this juncture”

The Clause (8) of the Order is reproduced here-under :-

The Commission is of the view that due to lockdown these conditions do have onerous impact on the electricity consumers. Since the HT consumers may not be availing the entire load contracted for during the lockdown and at present this situation having started on 22.03.2020 and now stands extended up to 07.05.2020, it may be appropriate to allow reduction of the load temporarily. However, it has to be stated that while allowing the deration of the load, it is not worth to insist on compliance of the GTCS conditions or clauses in SOP regulation. Therefore, the Commission considers it appropriate to relax the same for the lockdown period upto 07.05.2020 or such further extended period. The provisions of GTCS and SOP Regulations are relaxed to the following effects:

- i) A consumer, if it so desires to avail deration of the contracted load may apply to the licensee and is permitted to exercise clause 5.9.4.2 of GTCS irrespective of the criteria of completion of minimum period of the agreement as stipulated in GTCS.
- ii) The distribution licensee shall upon such request by the consumers, give effect to the request of the consumer, who has exercised clause 5.9.4.2 of GTCS, within five (5) days on receipt of the application from such consumer.
- iii) The above relaxations shall be applicable only during the lockdown 4 period.

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It is crystal clear that there were certain relaxations given on account of Covid-19 pandemic considering the nature of difficulties faced by the consumers on account of national lockdown. No-where it was declared as force majeure and hence the claim of the appellant is not tenable.

26. Registration of the HT agreement under Sec.17 of the Indian Registration Act and Indian Stamp Act.

The argument of the learned counsel for the appellant is that the HT agreement in this case is an un-registered one as such it is void. This argument cannot be accepted because under Sec.17(1) of the Registration Act certain documents are compulsorily registrable. In those documents the HT agreement is not mentioned. Further under Sec 17(2)(v) of the said Act where the worth of the immoveable property is one hundred rupees or upwards registration is mandatory. It is in respect of immovable property. At this stage it is necessary to refer to Sec. 3(36) of the General Clauses Act 1897, which reads as under:-

“Sec.3(36):- Movable property shall mean property of every description except immovable property.”

Thus it is crystal clear that electricity is movable property within the meaning of Sec 3(36) of the General Clauses Act 1897 for which registration of the agreement is not mandatory. The HT agreement in this case was executed by the consumer on a non-judicial stamp paper worth of Rs.100/-. In view of this there cannot be any objection in respect of the provisions of the Indian Stamp Act.

27. The learned counsel for the appellant has relied upon the judgement of the Hon'ble High Court of Delhi reported in EMMSONS INTERNATIONAL LTD., v. METAL DISTRIBUTORS (UK) & ANR¹, wherein it is held that unilateral option Clause is void which restrains a party recourse to legal proceedings in

¹ 2005 (80) DRJ-256

contravention under Sec.28 of the Indian Contract Act. The facts in the said case are that an international contract was executed. The suit was filed for recovery of money. The plaintiff from India purchased certain copper wire rods from the United Kingdom. When the dispute arose, a suit for recovery of money was filed in India. The defendant, seller of the property, filed a petition to reject the plaint or return the plaint under Order VII Rule II read with Sec.151 CPC on the ground that the English Courts have jurisdiction. The Hon'ble High Court of Delhi while considering Clause (13) of the agreement held that unilateral option Clause as void under Sec 28 of the Indian Contract Act. There is no dispute about the said proposition. The facts in the said case and the facts in the instant case are different. The agreement in this case is basing on the Clauses in the GTCS. Therefore this judgement is not helpful to the appellant. Entire mechanism to deal with the consumer is mentioned under GTCS. Therefore, the provisions of Contract Act strictly are also not applicable to this case. As per Clause 5.9.3.2 of GTCS, even if the agreement is for two years it extends automatically. Since, as already stated, the appellant has admitted about the execution of the HT agreement and acted upon, no fresh bilateral agreement is required to be executed. In view of the above discussion, I hold that the appellant is not entitled for refund of Rs. 25,98,613/- with interest @24% p.a. from the respondents; the appellant is not entitled for compensation of 7,15,417/- from the respondents; the appellant is not entitled for refund of Rs.2,49,750/- collected as additional Security Deposit from the respondents as

prayed for. Thus the Award of the learned Forum is not liable to be set aside. These points are accordingly decided against the appellant and in favour of the respondents.

POINT No. (vi)

28. In view of the findings on point No. (i) to (v), the appeal is liable to be rejected.

RESULT

29. In the result, the appeal is rejected, without costs, confirming the Award passed by the learned Forum. The interim order dt.15.02.2022 is vacated.

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 16th day of December 2022.

Sd/-

Vidyut Ombudsman

1. Sri Mateti Kamalakar Rao, s/o Late Venkata Appa Rao, M/s. Mateti Venkata Shiva Prasad, H.No.11-2-82 & 83, Balaji Nagar, Khammam -02. Cell.8977441288.
2. The Assistant Divisional Engineer / Operation / Khammam-Town1/ 9440811529.
3. The Divisional Engineer / Operation / Khammam - 9440811506.
4. The Senior Accounts Officer / Circle Office / Khammam - 9440811567.
5. The Superintending Engineer / Operation / Khammam - 9440811505.

Copy to

6. The Chairperson, Consumer Grievances Redressal Forum-I, TSNPDCL, Warangal, H.No.2-5-58, Opp: Head Post Office, Nakkalagutta, Hanamkonda, Warangal District - 506 001.

