



BEFORE THE VIDUYUT 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
VIDUYUT OMBUDSMAN**

MONDAY THE FIFTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO

Appeal No. 51 of 2021-22

Between

Sri Habeebullah Khan, Sy No.62, M.D.Pally, Gaganpahad, Hyderabad -
500 077. Cell: 9848185853 & 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 01.11.2022 in the presence of Kumari Nishtha, authorised representative of the appellant and Sri K. Eshwar Prasad - ADE/OP/Gaganpahad and Sri M.Ravinder - JAO/ERO/Gaganpahad representing the respondents and having stood over for consideration till this day, this Viduyut Ombudsman passed the following:-

AWARD

This appeal is preferred aggrieved by the Award/Order 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-II/ TSSPDCL/C.G.No.734/21-22 dt.02.03.2022, rejecting the complaint on the ground that the appellant has not preferred an appeal before respondent No.5 aggrieved by the Final Assessment Order (in short 'FAO') passed by respondent No.4, for Rs.16,59,234/- and directing him to prefer further appeal.

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 B Service Connection No.3404 06867 for supply of energy of 99 HP. The second respondent vide his Lr.No.ADE/OP/Gaganpahad/F.DC/D.No.1697/21 dt.16.11.2021 has issued assessment notice for short billing of Rs. 19,11,639/- pertaining to the period from May 2013 to June 2020. The claim is in violation of Sec.56(2) of the Electricity Act (in short 'the Act'). Since the meter is healthy, such a notice cannot be issued. 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.16,59,234/- passed under FAO.

AWARD OF THE FORUM

3. After considering the material on record filed by the appellant the learned Forum has returned the complaint directing the appellant to prefer further appeal before respondent No.5.

4. Aggrieved by the Award/Order 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.

GROUND OF THE APPEAL

5. In the grounds of the appeal, it is, inter-alia, submitted that the Final Assessment Order for Rs.16,59,234/- against Provisional Assessment Order for Rs.19,11,639/- pertaining to the period from May 2013 to June 2020 was passed without applying legal mind; that the claim is barred by limitation under Sec.56(2) of the Act and that the Clause 3.4.1 of General Terms and Conditions of Supply (in short 'GTCS') is not complied with.

WRITTEN SUBMISSION OF THE RESPONDENTS

6. In the written submissions of the Assistant Accounts Officer /respondent No.3, it is, inter-alia, submitted that in April 2011, a Development Charges case was booked for Rs 60,000/- for regularisation of load from 100 HP to 130 HP and the appellant has not paid the said amount. On the request of the appellant the load deration from 129 HP to 100 HP was

approved on 02.01.2020. In November 2021, a short billing case was booked for Rs. 19,11,639/-. On 26.02.2022 Final Assessment Order was passed for an amount of Rs. 16,59,234/-.

7. In the reply filed by the appellant it is submitted that the respondents are not entitled to claim short billing amount. Hence it is prayed to allow the appeal.

ARGUMENTS

8. 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. More-over the claim is barred by limitation under Sec.56(2) of the Act. Hence it is prayed to allow the appeal and to set aside the entire claim of the respondents.

9. 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

10. The points that arise for consideration are:-

- i) Whether the claim of the respondents is not correct?
- ii) Whether the impugned Award/Order of the learned Forum is liable to be set aside? and
- iii) To what relief?

POINT No. (i) and (ii)

SETTLEMENT BY MUTUAL AGREEMENT

11. 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

12. 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

13. It is an admitted fact that the appellant is a consumer of the respondents vide LT-III B Service Connection No. 3404 06867 for supply of energy of less than 100 HP initially. A Development Charges case was booked for Rs.60,000/- for regularisation of load from 100 HP to 130 HP in November 2019. The load deration was effected from 130 HP to 100 HP on 02.02.2020.

14. The Forum has rejected the complaint on the ground that the appellant has not preferred further appeal to respondent No.5. Now it is necessary to refer to Clause 2.37 of the Regulation 3 of 2015 of the Hon'ble

Telangana State Regulatory Commission (in short '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., 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).

Therefore the learned Forum is not correct in directing the appellant to appeal respondent No.5. It is the option of the appellant to prefer further appeal or to approach the learned Forum. Further even if the opportunity of being heard is to be given the consumer, which was not given in this case.

CRUX OF THE CASE

15. The grievance of the appellant is against the assessment notice No. ADE/OP/Gaganpahad/F.DC/D.No.1697/21 dt.16.11.2021, demanding an amount of Rs. 19,11,639/- for the period from May 2013 to June 2020. The available record unfolds that there was an inspection on 30.05.2011, wherein the load of 30 HP was found excess over the contracted load of 100 HP in the subject premises resulting in total load of 130 HP. Accordingly the appellant paid the relevant charges towards regularisation of excess load of 30 HP. The tariff rates are governed by the Tariff Orders issued by the Hon'ble Telangana State Electricity Regulatory Commission (in short 'the Commission'). 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)."

The Clause 12.3.3 of GTCS specifies the guidelines where additional connected loads are detected in LT services. The relevant Clause 12.3.3.2 of GTCS is reproduced here under:-

“12.3.3.2.(i) Cases where the total Connected Load is above 75 HP/56 kW or

i) These services shall be billed at the respective HT tariff rates from consumption month in which the unauthorised additional load is detected. For this purpose, 80% of Connected Load shall be taken as billing demand. The quantity of electricity consumed in any month shall be computed by adding 3% extra on account of transformation losses to the energy recorded in LT meter.”

16. Adverting to the above, a Provisional Assessment Notice (in short 'PAO') dt. 16.11.2021, towards short billing was issued for an amount of Rs. 19,11,639/- levying HT tariff rates under HT Category-I instead of LT Category-III. The provisional assessed amount of Rs.19,11,639/- 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.4542/21 dt.28.02.2022. The provisional assessed amount was arrived at by converting LT-III to HT-I tariff rates, taking monthly consumed KVAH units for the period from 05/2013 to 06/2020, splitting into 50% consumed units at peak hours rates and 50% consumed units at off-peak hours rates. The off peak hour tariff is Rs.6.65 and peak hour tariff, Time of Day tariffs (in short 'TOD') rates (from 18.00 hrs to 22.00 hrs) is 7.65 as per the Tariff Order. This was further revised in the Final Assessment Order dt.28.02.2022, by taking peak hours into 1/6th (instead of 50%) of the monthly consumption, in view of 4 slots of peak/off-peak hours (TOD). The Hon'ble

Commission introduced new time slots under TOD from the Tariff Order FY

2016-17 as under:-

Morning peak hours 6.00 AM to 10.00 AM,
 Off-peak hours 10.00 PM to 6.00 AM,
 Evening peak hours 6.00 PM to 10.00 PM,
 Other off-peak hours 10-00 AM to 6.00 PM.

The Tariff Order for the FY 2016-17, under Clause 9.88 as follows:-

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 Final Assessment Order was passed revising provisionally assessed amount, taking into account the changes applied towards TOD tariff and the assessed amount was further revised from Rs. 19,11,639/- to Rs. 16,59,234/-

17. A perusal of the record shows that the excess load of 30 HP over 100 HP case was booked on 30.05.2011 and subsequently the appellant paid the amount of Rs.60,000/- on 31.07.2014, admitting that he 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 have issued notice by way of short billing. The ideal situation would have been that as soon as the payment was received towards an additional connected load of 30 HP in excess of the threshold limit of 100 HP, the respondents should have initiated billing under HT tariff rates as per the Clause 12.3.3.2(i) of GTCS, 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.

18. . 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 may not have 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 (from Tariff Order 2016-17) 50% of the monthly consumption towards peak hours tariff rates and off peak hours tariff rates were taken. From the year 2016-17, the Hon'ble Commission has provided INR 1.00 per unit as a 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.

19. The appellant relied on Clause 7.5.1 of the GTCS which 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.

20. The appellant further relied on Clause 3.4.1 of GTCS. 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.

21. The present case is not hit by the Sec.56(2) of the Act since the notice was issued towards recovery of revenue lost towards 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.

22. 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.

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

24. 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 also not correct in rejecting the complaint and the Award/Order of the learned Forum is liable to be set aside. These points are accordingly decided partly in favour of the appellant and partly in favour of the respondents.

POINT No. (iii)

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

RESULT

26. In the result, the appeal is allowed in part. The respondents are directed to revise the final assessment taking into account the 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 dt.22.06.2022 shall continue. However, in view of the hardship faced by the appellant he is entitled for payment of revised amount in (10) equal monthly instalments, starting from the month of January 2023, failure to pay any single instalment would make the entire balance due recoverable in a lump sum.

A copy of this Award is made available at <https://vidyutombudsman-tserc.gov.in>.

Typed to my dictation by Office Executive-cum-Computer Operator, corrected and pronounced by me on this the 5th day of December 2022.

Sd/-
Vidyut Ombudsman

1. M/s. Sri Habeebullah Khan, Sy No.62, M.D.Pally, Gaganpahad, Hyderabad - 500 077. Cell: 9848185853 & 7036205211.
 2. The Assistant Engineer / Operation / M.D.Pally / TSSPDCL / Hyderabad.
 3. The Assistant Divisional Engineer / Operation / Gaganpahad / TSSPDCL / Hyderabad.
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 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.