VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA

First Floor 33/11 kV substation, Hyderabad Boats Club Lane
Lumbini Park, Hyderabad - 500 063

:: Present:: **R. DAMODAR**

Tuesday, the Twenty Ninth Day of November 2016

Appeal No. 55 of 2016

Preferred against Order Dt.21.06.2016 of CGRF in

CG.No:15/2016-17 of Medak Circle

Between

M/s Pamba Pure Drinking Water, represented by Sri. M. Krishna Reddy,
H.No. 6-212/2, Toopran(V), Opp: Devi Garden, Toopran - 502 334,
Medak Dist. Cell : 9490280425 & 8497958489.

…….. Appellant

AND

1. The AAE/OP/Toopran/TSSPDCL/Medak Dist.
2. The ADE/OP/Toopran/TSSPDCL/Medak Dist.
3. The AAO/ERO/Gajwel/TSSPDCL/Medak Dist.
4. The DE/OP/Toopran/TSSPDCL/Medak Dist.
5. The SE/OP/Medak Circle /TSSPDCL/Medak.

……. Respondents

The above appeal filed on 20.09.2016, came up for final hearing before the Vidyut Ombudsman, Telangana State on 25.10.2016 at Hyderabad in the presence of Sri. M. Krishna Reddy - Appellant and Sri. B.veera Reddy - ADE/OP/Toopran, Sri. A.Narasimha Reddy - JAO/ERO/Gajwel for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant has service connection No. 1212603818 under Category III and it is a R.O. water processing plant of 2005. The Appellant claimed that the AE/DPE had inspected the service and issued a back billing notice on the ground that the Appellant has been consuming energy for Water plant under the category -II and the 2nd Respondent, ADE/OP/Toopran thereafter issued a notice of back billing for an

amount of Rs 1,10,941/-. The Appellant sought waiving of the back billing amount and filed a complaint before CGRF.

2. The Respondent No.1/AAE/O/Toopran through a letter dt 27.5.2016 alleged that the Appellant had secured energy supply under category III for running the Plant and stated that the AE/DPE had inspected the service on 22.2.2016, found wrong categorization and proposed back billing for an amount of Rs 3,614/-, which the Appellant has paid vide PR No. 166217 dt.19.3.2016. He further stated that the AE/DPE has inspected the unit on 11.3.2016 and proposed back billing for an amount of Rs 1,10,949/-.

3. The 3rd Respondent AAO/ERO/Gajwel stated that the Appellant represented by Sri. M. Krishna Reddy filed a complaint dt.10.5.2016 at CGRF seeking withdrawal of the back billing assessment. He further stated that the supply has been used for commercial purpose under category II and therefore, the category III (Industrial) under which the service was released was changed to category II on 07.05.2016 in EBS (Electronic Billing System).

4. The Appellant sought withdrawal of the Assessment amount from 2012 to March,2016 on the ground that he is not able to pay the amount.

5. On consideration of the record and contentions, the CGRF passed the following without examining the merits and the procedure for conversion of category of service :

"The Respondents are directed to act as per official procedure in vogue and report compliance to the forum.

The complaint is disposed of accordingly."

through the impugned order.

6. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal seeking withdrawal of the assessment amount of Rs 1,10,949/- which was imposed after changing the Category III to Category II to the service.

7. The 2nd Respondent/ADE/OP/Toopran filed a reply dt.6.10.2016 stating that the Appellant secured power supply under category III for running a water plant on 16.12.2005 and that the AE/DPE had inspected the service on 22.2.2016 and proposed back billing for an amount of Rs 3,614/- on the ground of wrong categorization which was paid. Further the AE/DPE had inspected the service on

11.3.2016 and proposed back billing for an amount of Rs 1,10,949/-, relying on memo dt. 7.8.2012 of CGM/Comml vide reference CGM/Comml/SE/DPE/ADE(T) stating that "the water purifying /treatment plants should be released under LT Category II only."

8. Efforts at mediation have not succeeded and therefore, the matter is being disposed of on merits.

Arguments heard.

9. The points for determination are:

1. Whether the assessment of Revenue loss amounting to Rs 1,10,949/- is correct and legal?
2. Whether the back billing for the period from 7.8.2012 to 22.03.2016 is as per the rules?
3. Whether the change of Category from Category III to Category II is as per the terms of GTCS?
4. Whether the impugned orders are liable to be set aside?

Issues 1 to 4

10. The Appellant is a water plant unit utilising power supply under Category -III starting from 7.8.2012. The AE/DPE inspected the service on 22.2.2016 and proposed back billing for an amount of Rs 3614/-, which the Appellant has paid. Further, the AE/DPE has inspected the same unit on 11.3.2016 and proposed back billing for an amount of Rs 1,10,949/- for the service, in view of the wrong categorisation contrary to the instructions of the CGM/Comml. In memo Dt.7.8.2012. Pursuant to this inspection, back billing was proposed from 7.8.2012 to 22.3.2016 which the Appellant has been contesting on the ground that the Respondents have no authority to demand back billing since the beginning, the power was released under LT -III industrial category and the bills were being issued as such. He asserted that the unit is a small scale industry. The Respondents, on the other hand are contesting the claim and supporting the authority of the DISCOM to collect the back billing charges.

11. In the first instance, the memo of CGM commercial dt 7.08.2012 classifying water purifying plants as commercial units, which should be brought under LT Category II only, without any guidance from the Tariff Orders or from the ERC, cannot stand the scrutiny of the law. Section 62(3) of Electricity Act 2003 authorises ERC to classify the consumers to various categories and not the distribution company or its employees to classify the consumers into various categories. In Tariff order 2015-16 dt

27-3-2015, there was a query to the ERC regarding the suitable category for water purifying units and the response of ERC has been as follows:

> **Query No. 4.4.26 A) Objections regarding water purifying plant to be considered as industry & not as a commercial activity:** Palamoor R.O water plants Association stated that, water purifying plant is a industry of processing the water and the same shall not come under the commercial activity. Hence the billing retrospectively for the past period against the water plant service connections is not proper and is not liable to pay the same. They also requested the commission to direct the ADE/OP/Mahaboobnagaar Town. TSSPDCL not to change the service connections of water purifying plants from Category III to Category II.
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> **B) Licensee's Response:** As per the Tariff Order, Industrial purpose shall mean, supply for purpose of manufacturing, processing and/or preserving goods for sale, but shall not include shops, business houses, offices, public buildings, hospitals, hotels, hostels, choultries, restaurants, clubs, theatres, cinemas, bus stations, railway stations and other similar premises, notwithstanding any manufacturing, processing or preserving goods for sale. As per this definition R.O. Plant does not come under Industry as there is no manufacturing activity and the water is being sold at higher prices and thus they are being categorized under Non-Domestic category. However the categorization of any activity is under the purview of the Hon'ble Commission.
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> **C) Commission's View:** The Commission agrees with the views of Discoms on this issue.

12. It is clear from the above clarification of TSERC that the Appellant unit which is a Reverse Osmosis plant/water processing plant does not come within the purview of the term industry, as no manufacturing activity was involved and therefore, the Appellant unit falls within the LT Category II and not LT Category III. Thus the claim of Appellant that the unit is a manufacturing unit and that it was rightly categorized as LT Category III (Industry) is untenable. On the other hand, the claim of the Respondents that the Appellant unit does not fall within the term 'Industry' and therefore, the unit has to be considered as a consumer of LT Category

II(Commercial) and accordingly, the unit has been billed is legal and as per the statutory provision has to be upheld.

13. The next question that arises is whether the back billing initiated on the basis of change of Category LT III (industry) to Category II (commercial) of the Appellant unit is sustainable?

14. Originally under clause 3.4.1 of GTCS, in the case of reclassification of the consumer category, the backbilling was permitted for 3 months in the case of domestic and agricultural categories and 6 months in the case of other categories. This clause 3.4.1 of GTCS has been amended by the APERC vide proceedings No. APERC/SECY/96/2014 dt. 31.5.2014 and the amended provision is as follows:

> For Clause 3.4.1 of GTCS, the following clause shall be substituted, namely:-
>
> "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.**"

15. The above provision makes it very clear that the reclassification shall be effective with retrospective effect and the assessment shall be made for the entire period during which such reclassification is made. It is also clear that if the period of reclassification cannot be ascertained, such period shall be limited to the period of twelve months immediately preceding the date of inspection.

16. In the present case, for the period during reclassification, back billing is permitted for the entire period and not merely for 12 months immediately

preceding the date of inspection. Thus the contention of the Appellant that back billing is not legal, is not tenable. The clarification of ERC in tariff order 2015-16 entitles the DISCOM to categorise the unit of the Appellant as Category II (commercial) unit and collect energy charges accordingly.

17. The Appellant obviously had not concealed the activity of processing water and it was only subsequently in the Tariff Order 2015-16 dt. 27.3.2015, a statutory clarification was given by the ERC on the point which is binding. The Appellant is found not at fault and therefore, directing him to pay the back billing amount in a lump sum at one time would work out hardship warranting grant of installments. Regulation No 7/2013 amended the Regulation No 5/2004 and substituted clause 4.6.1 limiting instalments to 12 in any case and reducing interest to 18% (PA). No additional charges for delayed payment are permitted under their clause.

18. The Appellant pleads that even the 12 EMIs is a heavy burden on him to pay the back billing amount, even though he was not at fault and pleaded to set aside the back billing order. The request of the Appellant to set aside the back billing amount cannot be granted in view of the reasons supra.

19. There is one significant omission regarding reclassification under clause 3.4.1 of GTCS which mandates a notice to the consumer on proposed reclassification, an opportunity to file an objection and after due consideration of reply, the DISCOM may alter the classification and revise the bills if necessary, with retrospective effect. This procedure is not at all followed prior to issue of back billing notice dt 22.3.2016. Even afterwards, the clause of GTCS was not complied with.

20. Even clause 8 of the Regulation 7/2000 mandates the Licensee to notify the consumer it intend to reclassify that the consumer must execute a fresh agreement on the basis of the altered classification, else the licensee may state that it may disconnect the supply of power if the consumer does not take the required steps.

21. Keeping in view the infraction of Clause 3.4.1 of GTCS, violation of right of the consumer to be heard before reclassification, it is found necessary to direct the DISCOM not to levy additional charges for the delayed payment on the outstanding amount as per the clause 9 of Regulation 7 of 2013 and interest charges on the back billing amount at all and collect this amount from those officials found responsible

for the present issue after conducting due enquiry.

22. The Appellant contended that any back billing for a period of more than two years is barred by Section 56(2) of the Electricity Act,2003. It is necessary then to reproduce Section 56(2) of Electricity act which is follows:

Disconnection of supply and default of payment:

" Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section 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 as recoverable as arrear of charges for electricity supplied and the Licensee shall not cut off the supply of the electricity."

23. A perusal of the provisional assessment order dt.31.3.2016 shows that the assessment has been made w.e.f. 7.8.2012 to 11.3.2016 which is more than for a period of 3 years. Section 56(2) of Electricity act mentioned above clearly shows that the section is applicable only when disconnection is sought for non payment of energy charges. The present demand is specifically for collection of back billing charges/due amount not on threat of disconnection and therefore, the contention of the appellant that section 56(2) is applicable to the present matter is untenable. The issue is answered accordingly.

24. In the result the Appeal is disposed of holding that :

1. The Appellant unit is correctly categorised as LT- Category II (Commercial) consumer. The provisional assessment notice of ADE/Toopran dt.31.3.2016 for Rs 1,10,949/- is found valid and the Appellant is found liable to pay this amount to the DISCOM.

2. The Appellant shall pay the back billing amount of Rs 1,10,949/- minus amount already paid if any, in 12 equal installments starting from the Month of Jan,2017. Failure to pay any one installment shall make the entire amount falling due with all the attendant consequences.

3. In view of the violation of the right of the consumer to be given notice and be heard before reclassification, there shall be a direction to the DISCOM **not to levy additional charges for the delayed payment** on the outstanding amount as per clause 9 of Regulation 7 of 2013, **and also interest charges on the back billing amount** and collect this amount from those officials found

responsible for the present issue after conducting due enquiry.

4. The recovery of the assessment amount is not hit by Section 56(2) of Electricity act,2003.

5. The impugned orders are found unsustainable for want of reasons and accordingly set aside.

25. The licensee shall comply with and implement this order within 15 days for the date of receipt of this order under clause 3.38 of the Regulation 3 of 2015 of TSERC.

Corrected, Signed & Pronounced on this the 29th day of November, 2016.

Sd/-

VIDYUT OMBUDSMAN

1. M/s Pamba Pure Drinking Water, represented by Sri. M. Krishna Reddy, H.No. 6-212/2, Toopran(V), Opp: Devi Garden, Toopran - 502 334, Medak Dist. Cell : 9490280425 & 8497958489.
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6. The SE/OP/Medak Circle /TSSPDCL/Medak.

Copy to:

7. The Chairperson, CGRF - 1, TSSPDCL, Vengal Rao Nagar Colony, Erragadda, Hyderabad.
8. The Secretary, TSERC, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad.