



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

Monday, the Twenty Eighth Day of January 2016

Appeal No. 48 of 2015

(Old Appeal No. 15/2013)

Preferred against Order Dt. 03 -12-2012 of CGRF In
CG.No: 594 /2012-13 of Hyderabad Central Circle

Between

Sri. Vasavi Arya Vysya Hostel Trust, 1-4-888, Bakaram, Musheerabad,
Hyderabad. 500 020.

... Appellant

AND

1. The AEE/Operation/Gandhi Nagar/TSSPDCL/Hyderabad.
2. The ADE/Operation/Indira park/TSSPDCL/Hyderabad.
3. The DE/Operation/Saifabad/TSSPDCL/Hyderabad.
4. The AAO/ERO/Indira Park/TSSPDCL/Hyderabad.
5. The SE/Operation/TSSPDCL/Central Circle/Hyderabad.
6. The C.G.M (Comml. & RAC)/TSSPDCL/Corporate Office/Hyderabad.

... Respondents

The above appeal filed on 27.12.2012 and restored and reopened on 3.2.2016 as per the directions of the Hon'ble High Court dt. 21.12.2015 in WP.No. 5963 of 2013, coming up for hearing before the Vidyut Ombudsman, Telangana State on 16.03.2016 at Hyderabad in the presence of Sri. G. Veda Kumar - On behalf of the Appellant and Sri. Parlapalli Raju. - AAE/OP/Gandhi Nagar, Sri. MD. Anwar Pasha - ADE/OP/Indira Park, Sri. M. Janardhan - AAO/ERO/Indira Park, Sri. P. Krishnaiah - SE/OP/Central and K. Lingaiah - DE/COMML/TSSPDCL on behalf of C.G.M.(Commercial) for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

This Appeal has been restored to file and reopened as per the orders dt. 21.12.2015 of the Hon'ble High Court in W.P.No. 5963 of 2013 and taken up for disposal.

2. The Appellant claimed that it is a registered trust, a service institution running on no profit basis and therefore, the trust falls under the Category VII mentioned in the Tariff Order issued by the APERC. The Appellant has SC No. F4032874 under Category VII and claimed that it is a recognised charitable institution. It is claimed that the AAO/ERO/VII by letters dt.18.4.2012 and 3.5.2012 informed the Appellant that its Service Connection shall be billed under Category II as per the Tariff Order 2011-12 w.e.f. May,2011 and demanded payment of Rs 12,59,000/- representing the back billing amount. The AAO further informed the Appellant that since the connected load of the Appellant was 56 KW, as per the Tariff Orders, the service connection has to be billed under HT with additional 3% energy charges towards line losses as per Tariff Order 2012-13. The AAO failed to consider the request of the Appellant to continue the billing under Category VII, quoting the letter dt.2.7.2012 of the 6th respondent CGM/COMMERCIAL.

3. The Appellant claimed that it is a charitable trust running a hostel for the poor and needy students of the state pursuing their studies in Hyderabad accommodating 360 students in 120 rooms and that the trust secured exemption from the Income Tax department under Sec 80G and that it is being maintained with the help of donors all over the country.

4. Before the CGRF, the Appellant claimed that it is a public charitable trust, for considering the billing under LT Category VII. The Respondent No.3 DEE/OP/Saifabad claimed that as per the Tariff Orders FY 2012-13, the student hostels run by Government Agencies only are covered under the LT Category VII A and the Appellant hostel does not come under LT Category VII. There is a memo dt.24.3.2012 from CGM/Commercial that all existing LT Category VII services of student hostels run by charitable institutions or societies should be converted from LT category VII to LT Category II(mentioned in the impugned orders).

5. The CGRF observed that as per the Tariff Orders, LT Category VII is applicable to the educational institutions run by charitable institutions(public charitable trusts and societies registered under the Societies Registration Act running educational and

medical institutions running on no profit basis). The CGRF further observed that the Appellant is running a hostel, but not any educational or medical institutions. Further, the CGRF observed that only hostels run by the Government agencies are eligible to be billed under LT Category VII. By observing that as per Clause 213.1.7.1 of Tariff Order FY 2012-13, the billing under LT Category VII (A) would be applicable to the government educational institutions and student hostels run by Government agencies, charitable instituitons i.e public charitable tursts and socities registered under the Societies Registration Act running educational and medical institutions on a no profit basis and that the hostel being run by the Appellant cannot be considered, in view of the fact that the Appellant has been collecting fees under vaious heads like accomodation fee, late fee, computer usage charge and Registration fee etc, opining that the collection of fee makes the activity as commercial in nature in terms of Tariff Orders and the service does not fall under the category of the Charitable institution, rejected the request of the Appellant to change its category from LT II to LT VII through the impugned orders.

6. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal originally numbered as Appeal No. 15 of 2013. The file was renumbered as Appeal No. 48/2015 after it was transferred from the office of the Vidyut Ombudsman, Andhra Pradesh to this office. When it is found that the W.P.NO. 5963 of 2013 was pending resolution, the Appeal was closed on 21.5.2015. After disposal of the writ petition by orders dt.21.15.2015, the Appeal has been restored to file for disposal.

7. In this Appeal, the 5th Respondent filed a reply stating that as per Clause 3.4 of GTCS, action was taken by the 4th Respondent proposing change in the LT Category from VII to II. Later the Senior Audit Officer, Commercial Audit(power companies) through a letter dt.4.6.2011, while reviewing the orders of the ERO observed that as per the Tariff Orders, LT category VII(A) is applicable to the educational institutions run by public charitable institutions and that the Appellant being a private trust was placed under Category VII instead of Category II, which resulted in short billing of Rs 12,58,908/- from 01/2008 to 05/2011. The 5th respondent pleaded for dismissal of the Appeal also on the ground that notice was infact issued to the Appellant prior to change of the Category.

8. The 5th Respondent annexed a letter of the Senior Audit Officer dt.4.7.2011 regarding short billing amounting to Rs 12,58,898. Letters addressed by AAO/ERO 7 to the Appellant dt.16.7.2012 regarding shortfall amount and reclassification of the

consumer category, Memo dt. 24.3.2012 of CGM commercial stating that as per the retail supply Tariff Order 2011-12, the Appellants service has to be billed under LT category II intended for non domestic/commercial entities, letter of CGM/Commercial dt.2.7.2012 addressed to the Appellant stating that LT category VII(A) is applicable only for student hostels run by Govt.Agencies, similar letter addressed to the Appellant dt.31.07.2012 along with copy of legal advice rendered by the standing counsel for CPDCL.

9. The Appellant submitted a reply to the counter reproducing the relevant entry of the Tariff Order 2011-12. The entry regarding LT VII A general purpose is as follows:

“Applicable for supply of energy to places of worship like Churches, Temples, Mosques, Gurudwaras, Crematoriums, Government Educational Institutions and Student Hostels run by Government agencies, and Educational Institutions run by charitable Institutions (Public charitable trusts and societies registered under the Societies Registration Act running educational and medical institutions on a no profit basis), recognised service institutions and old age homes run by recognized service institutions.

10. The Appellant further reproduced the relevant entry regarding LT Category VII A

of Tariff Order 2012-13 which is as follows:

General purpose:

“Applicable for supply of energy to places of worship like Churches, Temples, Mosques, Gurudwaras, Crematoriums, Government Educational Institutions and Student Hostels run by Government agencies, Charitable Institutions i.e., Public charitable trusts and societies registered under the Societies Registration Act running educational and medical institutions on a no profit basis, recognized service institutions and registered old age homes.

11. The Appellant pointed out the change in the Tariff Order 2012 -13 showing removal of the words “and educational institutions run by” stating that an ambiguity has been removed allowing the concessional tariffs to educational institutions and hostels run by both Govt agencies and charitable institutions. The Appellant pleaded that the CGRF has failed to take note of the intention of the definition given in the Tariff Order regarding the applicability of the Tariff category VIIA to all recognised charitable institutions.

12. The Appellant claimed that it has been collecting fees from the students for creating infrastructure like buildings, furniture, library with the help of donations collected and further in order to maintain the premises, nominal amounts are being collected from the students having the capacity to pay and these amounts are being used for the maintenance of the infrastructure. It is further stated that the payment of fee is not compulsory and waived based on the economic status of the students. The fee was waived for about 50 students out of total strength of 320 students during the FY 2015-16 and the level of fee and intake of extremely poor students free of all charges are decided by the trustees. The Appellant contended that the CGRF has not considered these facts and that it has also not considered Clause 3.4.1 of GTCS which stipulates 3 months in case of domestic and agriculture and 6 months in case of others for revision of bills with retrospective effect(back billing). The Appellant lastly sought extension of electricity supply under the category VII.

13. The efforts at mediation have not succeeded, because of the respective stand of the parties. Hence the matter is being disposed of on merits.

Arguments heard.

14. Based on the record, the following issues arise for determination:

- i. Whether the Appellant is entitled to electricity supply under LT category VII A and not under Category II?
- ii. Whether the back billing amount of Rs 12.59 Lakhs raised by the Senior Audit Officer is valid and legal?
- iii. Whether the impugned orders are liable to be set aside?

Issues 1 & 2

15. The Appellant claimed that it is a public charitable institution running a hostel for the poor and needy students pursuing their studies in Hyderabad. It is exempted from the Income Tax under Section 80 G. It has been running the trust with the help of donors and accommodating about 360 students in 120 rooms. The Appellant claimed that it has to be considered for billing under LT category VII and not under LT Category II even as per the tariff Orders. The Respondents claimed that the Appellant does not come within the ambit of LT Category II on the ground that it is a registered public trust, though collecting fee from the students, it is also giving free accommodation to 50 poor students. The Appellant claimed that it is collecting

nominal fee from the students for accommodation and boarding, to maintain staff and upkeep, apart from boarding expenses. The Appellant has been collecting only expenses in such a way that it does not incur any loss. The Respondents merely took into consideration the collection of fee and changed the Category from LT VII A to Category II. If the concessional fare is charged, whatever amount is saved could be used to help the poor students with accommodation and boarding.

16. The Respondents on the other hand claimed that as per the Tariff Orders, the service of the Appellant would not fall under the Category VII(A). For any trust to get this beneficial tariff, they claimed that it has to be run by the Government agency and it should not collect any fee and the services rendered by the trust or hostel to the students should be free of cost and only then, the beneficial tariff under Category VIIA can be extended to the Appellant. The Respondents claimed that once the Appellant trust collects fee, it would not be then a charitable trust.

17. In the Tariff Order FY 2011-12 the hotels, hostels, choultries etc, educational institutions run by individuals, Non Governmental Organisations or private trusts and their student hostels are also placed under LT Category II and whereas, the student hostels run by government agencies, religious places like temples mosques, churches, government educational institutions and student hostels run by government agencies and educational institutions run by charitable institutions are placed under category VIIA.

18. The Tariff Order enumerates the charitable institutions (Public charitable trusts and societies registered under the Societies Registration Act running educational and medical institutions on a no profit basis), recognised service institutions and old age homes run by recognized service institutions. A perusal of Tariff Orders shows that a note is appended to HT Category II which ought to have been placed also under LT category VII under Clause 213.5.2 of Tariff Order FY 2012-13, which is as follows:

Note:

In respect of Government controlled Auditoriums and Theatres run by public charitable institutions for purpose of propagation of art and culture which are not let out with a profit motive and in respect of other Public Charitable Institutions rendering totally free service to the general public the overall kVAh rate (including customer charges) may be limited to the tariff rates

under L.T. Category-VII General purpose in specific cases as decided by the Licensee.

19. The Category of public charitable institutions which are entitled to beneficial tariff under Category VIIA is clearly explained in the above note. The Respondents contention that the Appellant is not rendering totally free service to the general public or targeted persons in the present case i.e. students and therefore, the Appellant is liable to be charged under LT Category II has substance. The Appellant is not rendering service to the students free of charge, may be they are collecting only maintenance expenses, which cannot be considered as totally free service. Therefore, the claim of the Appellant that it is entitled to beneficial tariff under LT category VIIA cannot be accepted as correct. Further the Appellant is not a Government educational institution or a government run student hostel as mentioned in Clause 213.1.7.1 of the Tariff Order 2012-13, which is not applicable to the Appellant, on the ground that it is not rendering all services free of cost, though they may be running it on no profit basis.

20. The Appellant claimed that the 4th Respondent/AAO/ERO VII/Indira Park addressed a letter dt. 18.4.2012 to inform that as per the Tariff Order 2011-12, the service is not covered under Category VII, but it is covered under Category II, which was stated to have been discovered in the AG Audit of 2011, demanding the shortfall amount of Rs 12.59 Lakhs w.e.f May, 2011. There is another letter from the same AAO (mentioned in the impugned order) addressing the Appellant informing that the connected load of the service connection was 56 KW and that as per the Tariff Order 2012-13, the service should be billed with HT tariff with additional 3% energy charges towards line losses. Later a letter dt. 16.7.2012 was addressed by the 1st Respondent to the Appellant demanding payment, otherwise threatening disconnection. The Appellant through a reply dt. Nil addressed the 5th Respondent/SE/OP/Central Circle informing that it is a trust exempted under Section 80G of the Income Tax act and that the trust has been accommodating about 360 students in 120 rooms and running the institution on no profit basis, requesting continuation of the service under LT Category VII.

21. The 5th Respondent SE/OP/TSSPDCL/Central Circle in his reply disclosed that the senior Audit officer/commercial audit(Power companies) Vidyut Soudha reviewed the records of the ERO/Indira Park and observed that "as per Tariff Order, LT Category VII (A) is applicable to the educational institutions run by public charitable

institutions. On a review of records, it was noticed that M/s Vasavi Arya Vysya Student Hostel (SC.No. F4032874) run by a private trust was categorised under category VII instead of Category II, which resulted in short assessment of Rs 12,58,908/- from 01/2008 to 05/2011".

22. Based on the above observation of the Senior Audit Officer, the present dispute in question started. Regarding the category under which the Appellant falls for collecting consumption charges under Category II is settled. The entitlement of the Respondents to collect the shortfall amount from Jan, 2008 to May, 2011 is in question. The CGRF has not given any reasoning upholding this back billing charges from 2008 to 2011. By the time of back billing by May, 2011 the relevant clause 3.4.1 of GTCS (prior to amendment of 2014) was as follows:

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, of 3 months in the case of domestic and agricultural categories and 6 months in the case of other categories.

23. The GTCS clause 3.4.1 provides for altering the classification and revision of bills if necessary even with retrospective effect. The back billing is stated to be necessary even with retrospective effect of 3 months in the case of domestic and agriculture categories and 6 months in the case of other categories. Since the Appellant does not fall within the category of domestic and agricultural categories, it should fall within the other categories. This other category can be billed with retrospective effect as per Clause 3.4.1 for 6 months only. Clause 3.4.1 is clearly applicable to the present case, because the Appellant was wrongly classified under Category VIIA instead of Category II. Then this back billing for 6 months only should have been resorted to by the Respondents.

24. The back billing proposed by the Respondents was through letter dt.18.4.2012 w.e.f. 01/2008 to 05/2011. The back billing for the period from 01/2008 to

May, 2011 cannot be sustained in view of the fact that Clause 3.4.1 under the caption “Reclassification of consumer category” the DISCOM is entitled to back billing for a period of 6 months only, until this provision has been substituted/amended vide proceedings of the APERC dt.31.5.2014. Thus the Respondents/DISCOM is entitled to back billing for a period of 6 months only from May,2011.

25. Issues 1 & 2 are answered accordingly. The CGRF has not examined the issue of validity of back billing and how the back billing came to be made and passed the impugned order, which is not valid.

Issue 1 to 3 are answered accordingly as follows;

- a. The Appellant trust has been correctly classified as falling under LT Category II by the Respondents.
- b. The Respondents shall implement the Clause 3.4.1 of GTCS and rectify the back billing by issuing a fresh demand for a period of 6 months prior to May,2011, which the Appellant shall pay.
- c. The impugned orders are set aside in view of the aforementioned findings.

26. This award shall be implemented within 15 days of its receipt at the risk of penalties as indicated in clauses 3.38, 3.39, and 3.42 of the Regulation No. 3/2015 of TSERC.

Typed by CCO, Corrected, Signed and Pronounced by me on this the 28th day of March, 2016.

Sd/-

VIDYUT OMBUDSMAN

1. Sri. Vasavi Arya Vysya Hostel Trust, 1-4-888, Bakaram, Musheerabad, Hyderabad. 500 020.
2. The AEE/Operation/Gandhi Nagar/TSSPDCL/Hyderabad.
3. The ADE/Operation/Indira park/TSSPDCL/Hyderabad.
4. The DE/Operation/Saifabad/TSSPDCL/Hyderabad.
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6. The SE/Operation/TSSPDCL/Central Circle/Hyderabad.
7. The C.G.M (Comml. & RAC)/TSSPDCL/Corporate Office/Hyderabad.

Copy to:

8. The Chairperson, CGRF(Greater Hyderabad Area, TSSPDCL, GTS Colony, Vengal Rao Nagar, Erragadda, Hyderabad.
9. The Secretary, TSERC, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad.