VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA



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

:: Present:: Smt. UDAYA GOURI
Wednesday the Twenty Second Day of July 2020

Appeal No. 01 of 2020-21

Preferred against Order dt.29.02.2020 of CGRF in CG No. 567/2019-20 of Medchal Circle

Between

M/s. Srinivasa Coach Builders, Plot No.22, Sri. Venkateswara Co-Operative Industrial Estate, IDA, Jeedimetla, Hyderabad - 500 055.
Cell No.9246509878, 7799560807.

... Appellant

AND

- 1. The AE/Operation/Jeedimetla(IDA)/TSSPDCL/Hyderabad.
- 2. The ADE/OP/Jeedimetla/TSSPDCL/Hyderabad.
- 3. The AAO/ERO/Jeedimetla/TSSPDCL/Hyderabad.
- 4. The DE/OP/Jeedimetla/TSSPDCL/Hyderabad.
- 5. The SE/OP/Medchal Circle/TSSPDCL/Hyderabad.

... Respondents

The above appeal filed on 13.05.2020 coming up for final hearing before the Vidyut Ombudsman, Telangana State on 16.06.2020 at Hyderabad in the presence of Sri. K. Srinivas Rao - Appellant and Sri. M. Sairam - AAO/ERO/Jeedimetla and Sri. T.G.M. Raju - DE/OP/Jeedimetla for the Respondents and having considered the record and submissions of both parties, the Vidyut Ombudsman passed the following;

<u>AWARD</u>

M/s. Srinivasa Coach Builders, Plot No.22, Phase II, IDA Jeedimetla, Hyderabad - 500055 represented by proprietor K. Srinivasa Rao, submitted the following, has a service number 013201400, with a contracted load of 74 HP, sick for the past more than 12 to 14 years i.e. since 2008. I have been using the power only

for lighting purposes and paying electricity bills for about Rs 4000/- approximately per month which is the minimum charge for 74 HP.

There was a surprise inspection conducted at my premises on 03.03.2011 at 17.45 hrs by the DE/DPE/RR North. As the unit was having old machinery stored in the premises the inspecting authority had wrongfully added up the capacity of all the machines present and stated that we are connected to 115 HP and had penalised me to pay Rs 82,000/- (Rs 61,500/- as Development Charges and Rs 20,500/- as Security Deposit). Thereafter the power to my unit was disconnected as I had not paid the amount in protest for the first few months.

On the receipt of this notice, I had submitted a letter requesting for re-inspection of my unit dt.13.04.2011 in the office of the SE(DPE), RR North/Corporate Office/Mint Compound/Hyderabad on 13.04.2011 under acknowledgement.

I had also written a letter dt.22.03.2014 to the AE/OP/APCPDCL/Jeedimetla informing that my unit is sick and have been using minimum power and my contracted load of 74 HP is sufficient and requesting that I had no need for additional connected load and to limit the load to previous 74 HP only.

Since then I have been charged under LT Connection of 74 HP only and we have been paying all the bills at the same rate for the past 8 to 9 years.

In the period between April'2011 when the power was disconnected to my unit and until the payment of Rs 82,000/-(Consumption deposit and development charges) in the month of May'2014 was made, the power had been completely disconnected from which it can be inferred that the unit was really sick and closed as no industry can run for 3 years without power. I had paid the amount in protest and also as the area was infested with snakes, no watchman was willing to stay without even a single light for illumination purpose. I was surprised to receive a notice on 20.01.2020 from the AAO/ERO/Jeedimetla,TSSPDCL asking me to pay the fixed charges for additional load contracted of 115 HP against the actual contracted load of 75 HP for a sum of Rs 1,88,037/-.

As the unit has been sick from prior to the date of inspection till date, I was surprised to receive the notice. My unit being a small scale industry and a sick unit I will not be in a position to pay the penalty amount. I also wish to inform you

that as I have already informed the various offices of electricity board that 74 HP power was sufficient for my unit it is wrong on the part of the board to levy this amount due to no fault of mine They should have taken action on my request to limit our contracted load to 74 HP only which was not done..

On the above grievance complaint filed by us to the Hon'ble Chairperson, CGRF-II requesting for a relief, an order was passed on 29.02.2020 allowing a partial relief and asking us to pay fixed charges amount for 3 years on the service connection for the period from December'2016 to December'2019(36 months) for excess load of 41 HP and to collect the same within 15 days from the date of receipt of this order received on 13.03.2020.

I hereby plead and request you to kindly look into the following points not considered by the Hon'ble Chairperson as under:-

- 1. I had already requested for re-inspection on 13.04.2011 under acknowledgement and there was no response from the Electricity Department regarding the same.
- 2. I had written a letter requesting for deration of load to 74 HP only on 22.03.2014 under acknowledgement to which also there was no response from the department.
- 3. The unit has been sick and paying only the minimum charges for 74HP power for a period of more than 3 to 4 years prior to the inspection and subsequently upto the end of 2019 which also shows that the unit is sick and not working and therefore cannot be having a connected load of 115 HP.
- 4. I have been issued bills under LT Category (74HP only) right from the time of reconnection i.e. May'2014 till January'2020 which clearly shows that my connected load was 74HP only upto Jan'2020.
- 5. It has also been stated by the Hon'ble Chairperson (CGRF-2) in the last paragraph of point number 7 before the order, I quote "In this case the licensee through the Respondents are claiming fixed charges for the period April'2011 to December'2019 i.e. around 105 months but since there is a negligence on the part of the R3 to regularisation the additional load of 41 HP in the EBS."
- 6. But the R3 office has regularised the additional load of 41 HP over and above the contracted load of 74 HP by making a total load of 115 HP on 09.01.2020 which is unfair.

In view of the above stated facts, I hereby humbly plead your Hon'ble self to look into the same and do justice to use.

2. Reply of the Respondents

A case was booked against SC No. 0132 01400, M/s. Srinivasa Coach Builders, Plot No.22, Phase-II, Subhashnagar, IDA Jeedimetla for unauthorised utilisation of additional load and a Provisional Assessment Order was issued for payment of Development Charges, Security Deposit and Service Line charges, an amount of Rs 82,000/- for the regularisation of the load from 74HP to 115 HP and the payment was made by the consumer on 13.05.2014 but the load was not regularised.

Instructions were issued to regularise the unauthorised load immediately where 100% payments were already received and to raise the shortfall demand towards fixed charges and energy charges KVAH units for the period billing from the date of inspection to the date of regularisation of unauthorised loads. Hence a notice was issued to the consumer for payment of fixed charges from the date of inspection to October'2019 for Rs 1,84,347/- and requested to pay within 30 days from the date of receipt of the notice.

A final assessment order was issued by the DE/OP/Jeedimetla for finalising the Additional laid as 41 HP i.e. from 74HP to 115HP and the fixed charges were demand raised for Rs 1,88,037/- on 09.01.2020 as per Final Assessment Order a notice was issued to the consumer for payment.

That the consumer has initially complained before the Hon'ble CGRF vide CG No. 567/2019-20.

The Hon'ble CGRF has disposed off the case as "Respondents/Licensee are hereby directed to revise he fixed charges amount only for three (3) years on the service connection of the consumer bearing SC No. 013201400 i.e. for the period from December'2016 to December'2019 (36 months) for excess load of 41HP and collect the same(after revision) from the consumer."

Further, a letter was submitted to the CGM(Comml)/Corporate Office/TSSPDCL requesting to arrange to issue necessary instructions for implementation of the Hon'ble CGRF order and after receiving the instructions the Hon'ble CGRF order will be implemented.

The load was derated from 115 HP to 74 HP on 07.03.2020 and the consumer is not paying the bills since Feb'2020 the total amount of Rs 3,20,634/- is due for payment as on 28.05.2020.

3. Rejoinder of the Appellant

The address for service of all notices and processes on the above named petitioner is M/s. Srinivasa Coach Builders, Plot No.22, Sri. Venkateswara Co-Operative Industrial Estate, IDA, Jeedimetla, Hyderabad, Telangana - 500 055.

The Appellant begs to submit this Memorandum of Appeal against the order dt.29.02.2020 issued by the CGRF on the following among the other:-

- 1. This is an Appeal filed by M/s. Srinivasa Coach Builders represented by its Proprietor Sri. K. Srinivasa Rao, M/s. Srinivasa Coach Builders is an industrial unit with electricity SC No. 03201400 of Category 3A and situated at P.No.22, Phase-II, Jeedimetla, Hyderabad.
- 2. The unit of the above consumer became sick and was not functioning from January'2003 to July'2019 and it is an admitted fact that there was no electricity consumption during the said period and the consumer was paying only minimum consumption charges. TSSPDCL has not denied this.
- 3. While the unit of the consumer was sick and not functioning an inspection was said to be conducted by a Divisional Engineer and an allegation was made that while the contracted load in 74 HP, the connected load was 115HP and there was an excess load of 41HP. Surprisingly, on the basis of idle machinery which was actually scrap lying in the premises, the wrong calculation of excess load of 41 HP was done and notice dt.03.03.2011 was issued buy the ADE for payment of Development Charges Rs 61500/- and Security Deposit of Rs 20,500/- totally Rs 82,000/-.
- 4. The consumer paid the amount by 2014 under protest. After sleeping over the matter for about 9 years after the inspection dt.03.03.2011 on 09.01.2020 the AAO/ERO/Jeedimetla seems to have passed an order regularising the additional load of 41 HP and levied fixed charges of Rs 1,88,037/- for the period from April'2011 to December'2019.
- 5. Questioning the said demand of Rs 1,88,037/- the consumer approached the CGRF and the said Forum passed an order dt.29.02.2020 partly allowing the case of the consumer and made an award directing the TSSPDCL to revise the fixed charges

and levy them only from December'2016 to December'2019 for a period of 3 years for excess load of 41 HP.

- 6. Aggrieved by the said order dy.29.02.2020 of the CGRF, the instant appeal is filed before the Hon'ble Ombudsman on the following grounds;_
- a. That the Order of the CGRF dt.29.02.2020 directing TSSPDCL to refix the Fixed Charges for three years for the excess load of 41 HP is not in accordance with law and the CGRF ought to have allowed the case of the consumer completely and not partly and the demand of the TSSPDCL ought to have been held to be illegal.
- b. That the consumer unit was admittedly not functioning as on the date of inspection on 03.03.2011 and during the entire period from January'2003 to July'2019 the unit was closed down and was paying only minimum consumption charges.
- c. That the provisional assessment notice dt.03.03.2011 increasing the sanctioned load to 115 HP without actually regularising the sanctioned load and demanding Rss 82,000/- was itself illegal as it was based on idle machinery(scrap) lying in the premises but the consumer paid the amount under threat and coercion.
- d. That the consumer had already requested for re-inspection on 13.04.2011 under acknowledgement and there has been no response from the department regarding the same.
- e. That the consumer had already submitted a letter requesting for deration of load to 74 HP on 22.03.2014 under acknowledgement to which also there has been no response from the electricity department,
- f. That the order dt.09.01.2020 demanding the consumer to pay the fixed charges from April'2011 to December'2019 of an amount of Rs 1,88,037/0 is wholly illegal as the consumer was not consuming energy at all during the period as the unit was sick.
- g. That the order dt.09.01.2020 demanding Rs 1,88,037/- is barred by the law of limitation under the Electricity Act'2003 as the demand arose in April'2011 and after April'2013 not a single rupee can be collected.
- h. That according to Section 56 of the Electricity Act'2003 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 arrears of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

- i. That the maximum time allowed for demanding payments due under the Limitation Act,1963 under any article in the schedule is only 3 years from the date the amount becomes payable.
- j. That even according to the consumption bills raised by TSSPDCL regularly during the unit's sick period, there was no consumption of electricity by the machines except the general lighting meant for security.
- k. That after the consumer unit became functional again in 2020, TSSPDCL itself has derated the contracted load from 115 HP to 74 HP which reflects the reality.
- l. That once a demand is barred by the law of limitation, the entire demand has to be declared as illegal and cannot be calculated for the last three years.
- m. That the action of the department in issuing HT bills for the months of Jan'2020 and Feb'2020 is illegal as the request for deration vide consumer's letter dt.22.03.2014 was still active and not acted upon.
- n. That the consumer has been requesting the department to accept monthly payments under the LT Category bit the accounts department has refused to accept the same and demanded the full amount i.e. HT amounts for the months of January and February and hence the consumer was not able to pay the bills from January'2020 to May'2020.
- o. That the Hon'ble Ombudsman may permit the Appellant to raise any other grounds that may arise in the course of hearing.

For the said reasons and others to be urged at the time of hearing, it is humbly prayed that this Hon'ble Authority may be pleased to stay all further proceedings pursuant to Order dt.29.02.2020 of the CGRF and pass such other order or orders which are deemed fit in the facts and circumstances of the case.

Heard both sides

Issues

- 4. In the face of the averments by both sides, the following issues are framed:-
- 1. Whether the Fixed Charges levied of Rs 1,88,037/- is liable to be withdrawn?
- 2. To what relief?

Issue No.1

- 5. M/s. Srinivasa Coach builders is an industrial service bearing Service Connection SC No. 0132 01400 under LT Category III(A) at P.No.22, Phase-II, Jeedimetla, Hyderabad. The proprietor Sri. K. Srinivs Rao, pleaded for withdrawal of fixed charges levied through back billing of Rs 1,88,037/-. The said amount was levied on the backdrop of Additional load detected through inspection conducted on 03.03.2011, by the DE/DPE/RR North, wherein excess load of 41 HP was detected over the existing contracted load of 74 HP. Thus an amount of Rs 82000/-(Development charges Rs 61,500/- + Security Deposit Rs 20,500/-) was demanded through notice vide Lr.No.ADE/OP/JDML/F.No.THEFT/D.No.4102 dt.03.03.2011. The Appellant paid the amount of Rs 82,000/- in installments last been paid on 13.05.2014. Later the AAO/ERO/Jeedimetla vide Lr.No.AAO/ERO/JDML/JAO/Billing /D.No.2516/19-20 dt.17.01.2020, demanded payment of Rs 1,88,037/- which are the fixed charges based on the Tariff Orders which envisages Respondents to levy Fixed Charges on the Contracted load of the service. Thereby the Fixed charges were levied on the balance 41 HP load which was not regularised after realising the total amounts towards excess 41HP load.
- 6. The Appellant objected to the above said fixed charges stating that they have already opposed on levy of demand towards excess connected load of 41 HP vide their letters dt.13.04.2011 to the Superintending Engineer/DPE and further vide letter dt.22.03.2014 to the Assistant Engineer/Operation with a copy to DE/OP/Kukatpally. That their unit is sick, and have been using a minimum power supply for lighting purpose. Their initial contracted load of 74 HP is sufficient to cater their load requirement and had no need of Additional load requirement. That they are paying the bills regularly at the same rate for the past 8 to 9 years. That their

service connection was disconnected for want of payment of Rs 82,000/-, they have paid the amount under protest in the month of May'2014. Their unit was sick and closed for most, part of the time with no power supply. They are surprised to receive notice now on 20.01.2020 from AAO/ERO towards payment of fixed charges of Rs 1,88,037/-. Finally held that they have urged for re inspection of their connected load vide their letters dt.13.04.2011 and 22.03.2014 with no response from the Respondents. As their unit is sick, paid only minimum charges for 74 HP, hence cannot be continued for 115 HP connected load. Further not regularising the load previously and now on dt. 19.01.2020 raising the demand is injustice for them.

7. The Respondent No.3 AAO/ERO/Jeedimetla vide Lr.No.54 dt.27.05.2020 submitted his written submission in favour of the claim of fixed charges stating that the Appellant has regularised the contracted load from 74 HP to 115 HP by paying the amount on 13.05.2014, during that time the load was not regularised in the billing, as per the instructions issued by the CGM/Revenue, on dt.27.09.2019 and 24.10.2019, shortfall amount was raised in terms of Fixed charges against the services wherever the unauthorised load was regularised by 100% payment of amounts, from the date of inspection of excess connected load. Subsequently Fixed Charges of Rs 1,84,347/were levied from the date of inspection to October'2019 and issued notice for payment within 30 days. The DE/OP/Jeedimetla issued Final Assessment Order on 08.01.2020, confirming the Additional load of 41 HP from 74 HP to 115 HP and fixed charges were raised for Rs 1,88,037/- on 09.01.20202 as per the Final Assessment Order. That the load was derated from 115 HP to 74 HP on 07.03.2020, Appellant is not paying the bills since Feb'2020 and an amount of Rs 3,20,634/- is due for payment as on 28.05.020.

The details of Fixed charges for 41 HP are as follows:-

SC No.0132 01400 Fixed charges details for 41 HP (74 HP TO 115 HP)

Tariff Start Date	Tariff End Date	No.of months	Rate	Load	Charges
01.04.2011	31.03.2012	12	50	41	24600
01.04.2012	31.03.2013	12	50	41	24600
01.042013	31.03.2015	24	37.5	41	36900
01.04.2015	31.06.2016	15	39.75	41	24446.25
01.07.2016	31.12.2019	42	45	41	77490
Total					188036.25

- 8. The CGRF disposed the Appeal of the Appellant passing orders as following:-
- "As per the Electricity Act'2003, the limitation to recover the Licensee of any arrears from the consumer beyond (2) years is barred by limitation. However, by considering the general law of limitation under the limitation Act'1963, any person or any company is not entitled to recover the dues beyond (3) years."
- "The Respondents/Licensee are hereby directed to revise the Fixed Charges amount only for three (3) years i.e for the period from December'2016 to December'2019 (36 months) for excess load of 41 HP and collect the same (after revision) from the consumer within (15) days from the date of receipt of this order copy and shall file a compliance report along with the satisfactory letter of the consumer. The complaint is disposed of accordingly."

The above given orders are yet to be complied with by the Respondents. Notwithstanding the above, the Appellant preferred this Appeal for withdrawal of total amount of Rs 1,88,037/-.

- 9. A perusal of both rival contentions of the Appellants and Respondents shows that, the levy of amount of Rs 82,000/- towards excess connected load of 41 HP was constantly opposed by the Appellant, vide his letters dt.13.04.2011 and 22.03.2014, demanded for re-inspection, later consequent to disconnection, paid the demanded amount under protest in installments, last paid on 13.05.2014. The Respondents after realising the amount failed to regularise the load of 41 HP in the billing data and continued to levy fixed charges corresponding to 74 HP. The Tariff Orders mandate the levy of Fixed Charges based on the Contracted load as per the rates issued from time to time. Later discovering the revenue loss, the Respondents resorted to the back billing to recover the Fixed charges against the total load of 115 HP from the date of inspection to October'2019 for Rs 1,88,037/-. It is clear that the Respondents did not take steps on time towards regularisation of the load resulting in the present dispute. Right from the beginning the Appellant opposed the existence of excess connected load even sought for the re-inspection, but the Respondents failed to take any action.
- 10. For the consumers seeking to withdraw detected additional load, the Hon'ble Commission accorded amendment to the GTCS Clause 12.3.3 vide

proceedings No.APERC/Secy/01/2012 dt.07.03.2012, wherein the GTCS Clause 12.3.3.2(iii) was substituted namely:-

"12.3.3.2(iii):- one month notice shall be given to regularise the additional connected load or part of the additional load as per the requirement of the consumer or to remove the additional connected load. If the consumer desires to continue with the additional connected load, he shall pay the required service line charges, development charges and consumption deposit required for conversion of LT service into LT 3(B) or HT service depending upon the connected load. However if the consumer opts to remove the additional connected load and if the additional load is found connected during subsequent inspection, penal provisions shall be invoked as per the rules in vogue."

Here the Hon'ble Commission accorded option to the consumers to opt for removing excess load, the Appellant requested vide his letter dt.22.03.2014 that they have not utilised the load more than 74HP and there is no need for any additional load. As they are facing a bad recession due to lack of orders, but he was deprived with such option, even after having the provision to do so. The billing records also confirm the claim of the Appellant that they have utilised the RMD hardly more than 30 KVA and every bill issued during the assessment period is for minimum charges only not more than that, which also confirms the Appellant claim as it is a sick unit. The present load of the subject service is 25.7 HP as per the DE/OP/Jeedimetla Lr.No.3691 dt.29.02.2020, which is reproduced here under:-



It is pertinent to note that the notice given by the AAO/ERO vide Lr.No.2280 dt.18.10.2019 was issued prior to the Final Assessment Order. The claim of the AAO/ERO in his written submission that Rs 1,88,037/- towards Fixed charges was raised on 09.01.2020 as per FAO of DE/OP/Jeedimetla is not correct, when upto 18.10.2019 already Rs 1,84,347/- was demanded from the Appellant. This goes to show that the Respondents somehow rearranged the lapses and levy the fixed charges

- 11. That after 9 years of issue of PAO notice, issual of final assessment order confirming the excess connected load of 41 HP over existing contracted load 74 HP vide Order No.DE/OP/Division/DAT.D.No.3022 dt.08.01.2020 is quite unrealistic. The Final Assessment Orders of the DE/OP/Jeedimetla figure out that the Appellant has not appealed against the PAO notice of Additional load, when the Appellant has placed on record with acknowledgements of the SE/DPE office on letter dt.13.04.2011 and DE/OP/Kukatpally on letter dt.22.03.2014, which ought to have been addressed and reviewed the actual load in the premises, instead the Respondents resorted to coercive action to recover the amounts towards excess load. Moreover, there was negligence on the part of the Respondents, that even after receiving the payments, had not regularized the load in the billing data. Now, after so many years imposed back billing by levying the fixed charges sending the Appellant in despair, who is already suffering from the sick industry.
- 12. There is no doubt that as on the date of inspection and issue of PAO notice, the amended Clause 12.3.3 was not in force, which came into existence on 07.03.2012. Question may raise on eligibility of said clause to the present dispute, but the Appellant rightly questioned the excess detected load which could have been reviewed after approval of amendment of the Clause 12.3.3 by the Hon'ble Commission. Since the total payment of the demanded charges were not paid by the Appellant as on the date of amendment when the dispute remained unresolved.
- 13. The Appellant's present contracted load derated to 74 HP, also sums up with the version of the Appellant, that he was not having excess load over 74 HP. The dispute could have been resolved way back in 2014, when the Appellant opposed the levy of charges of excess connected load, but he was forced to pay the demanded charges without re-inspection resulting in the present dispute. Hence under the circumstances stated above and on the bases of the criteria that no action was taken to resolve the issue by the Respondents in ascertaining the total actual load of the

subject service connection mandated under Amended Clause 12.3.3.2(iii) of the GTCS. The Fixed Charges levied Rs 1,88,037/- is liable to be withdrawn.

Issue No.2

14. In the result the Appeal is allowed and the Respondents are directed to withdraw the back billing amount towards the fixed charges of Rs 1,88,037/-.

TYPED BY Office Executive cum Computer Operator, Corrected, Signed and Pronounced by me on this the 22nd day of July, 2020.

Sd/-

Vidyut Ombudsman

- M/s. Srinivasa Coach Builders, Plot No.22, Sri. Venkateswara Co-Operative Industrial Estate, IDA, Jeedimetla, Hyderabad - 500 055.
 Cell No.9246509878, 7799560807
- 2. The AE/Operation/Jeedimetla(IDA)/TSSPDCL/Hyderabad.
- 3. The ADE/OP/Jeedimetla/TSSPDCL/Hyderabad.
- 4. The AAO/ERO/Jeedimetla/TSSPDCL/Hyderabad.
- 5. The DE/OP/Jeedimetla/TSSPDCL/Hyderabad.
- 6. The SE/OP/Medchal Circle/TSSPDCL/Hyderabad.

Copy to:

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