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

Second Day of September 2020

Appeal No. 06 of 2020-21

Preferred against Order dt.31.03.2020 of CGRF in
CG No. 53/2019-20 of Sangareddy Circle

Between

M/s. Sathavahana Castings, Through its Director Sri. G. Sambasiva Rao,
#11-149/2, Shanthinagar, Patancheru Mandal, Sangareddy Dist. - 502 319
Cell No. 9391040256.

... Appellant

AND

1. The ADE/OP/Patancheru/TSSPDCL/Sangareddy Dist.
2. The DE/OP/Patancheru/TSSPDCL/Sangareddy Dist.
3. The SAO/OP/Sangareddy/TSSPDCL/Sangareddy Dist.
4. The SE/OP/Sangareddy Circle/TSSPDCL/Sangareddy Dist.

... Respondents

The above appeal filed on 01.07.2020 coming up for final hearing before the Vidyut Ombudsman, Telangana State on 26.08.2020 at Hyderabad in the presence of Sri.G.Sambashiva Rao - Appellant and P.Marthaiah, AAO/HT/Sangareddy- for the Respondents and having considered the record and submissions of both parties, the Vidyut Ombudsman passed the following;

AWARD

The appellant is a consumer vide H.T.No MDK 941 as prescribed in sub section (15) of section 2 of the Electricity Act,2003. The Appellant filed the C.G.No 53 of 2019/20/sangareddy circle dated 22.1.2020 before Hon'ble CGRF I on the following issues:-

a. The Hon'ble member (Consumer Affairs) of Hon'ble CGRF I in its orders dated 31.12.2018 passed in C.G.No 560/2018-19 directed the respondents to revise

the R&C bills i.e, from September, 2012 to August, 2013 taking into consideration the difference of 19 minutes. But the respondents have not issued the revised bills till date.

b. The Complaint vide its letter dated 30.8.2013 issued the notice to the Respondent No. 5 to dismantle the service with immediate effect. In this regard clause 5.9.4.2 of GTCS is to be considered. The Respondents should terminate the HT Agreement and dismantle the service of the complainant as on 30.11.2013 as prescribed in clause 5.9.4.2 of GTCS and furnish the amounts payable as on 30.11.2013. But the Respondents have not complied the same.Hence, the Appellant prayed to this Hon'ble Forum to direct the respondents to give above said effect. The Hon'ble supreme court of india in its judgment dated 16.11.2000 given its finding that *"The Board to demand the minimum guaranteed charges, by the very terms of the language in the contract as well as the one used in the tariff notification is made enforceable depending upon a corresponding duty, impliedly undertaken to supply electricity energy at least to that extent and not otherwise. It is for this reason we find that the ultimate conclusion arrived at by the full bench of the high court does not call for any interference in these appeals."* Hence, the above said finding of the Hon'ble Supreme Court also to be considered.

The Hon'ble CGRF I vide its order dated 31.3.2020 in C.G.No 53/2019-20/Sangareddy circle rejected the complaint. The order dated 31.3.2020 is received by the Appellant on 8.6.2020 when he approached Hon'ble CGRF I personally. Hence, this appeal. The Hon'ble CGRF I failed to consider the following facts among others mentioned in the Annexure I before rejecting the C.G.No 53/2019-20:

The direction of the member (consumer Affairs) in its order dated 31.12.2018 of C.G.No. 560/2018-19 which was not implemented by the respondents. Hence, this appellant approached before Hoble CGRF I vide C.G.No 53/2019-20/sangareddy circle but the Hon'ble CGRF I failed to exercise its power conferred in clause 2.54 to 2.56 of regulation 3 of 2015 for implementation of its own direction; and

The Hon'ble CGRF I failed to consider the order dated 16.11.2000 passed by Hon'ble Supreme Court of india in which given its finding as "The Minimum Guarantee, thus appears to be not in terms of any fixed or stipulated amount but in terms of merely the energy to be consumed. The right, therefore, of the Board to

demand the minimum guaranteed charges, by the very terms of the language in the contract as well as the one used in the tariff notification is made enforceable depending upon a corresponding duty, impliedly undertaken to supply electricity energy at least to that extent, and not otherwise.

In view of the above stated facts, the Appellant pray to this Hon'ble Authority to pass an award/order directing the respondents:-

UNDER CLAUSE 3.35 OF REGULATION 3 OF 2015:

I. To set aside the order dated 31.3.2020 passed by Hon'ble CGRF I in CG.No 53/2019-20/sangareddy circle;
II. To issue revised bills of R&C period i.e from september,2012 to August,2013 duly taking consideration the difference of 19 minutes along with consumption details block wise as prescribed in R&c proceedings;
III. To dismantle the service connection of the complaint and furnish the due amount as on 31.8.2013; and
IV. Any such other order or orders may deem fit and proper by this Hon'ble Authority under the circumstances of the appeal in the interest of justice and fair play.

2. The Respondents submitted their reply through the Respondent No.5 vide Lr.No.SE/OP/SRD/SAO/AAO/JAO-HT/D.NO 133/2020 DATED.29/07/2020 stating as follows:-

The Appellant, M/s Sathavahana Casting, SGR-941, has entered in to a HT agreement on 26.7.2006 with a CMD of 252 KVA, Later,the Appellant approached TSSPDCL and requested for disconnection of power supply w.e.f 01.09.2013 vide representation dated 30.8.2013 stating that their unit was running in loss. Based on the request of the Appellant TSSPDCL has disconnected the power supply w.e.f 01.09.2013. Subsequently TSSPDCL raised minimum bills for 3 months following the date of disconnection as per clause 5.9.4.2 of general Terms and condition of supply(GTCS) and served bills on the Appellant.Later, the said HT Agreements was terminated w.e.f 01.12.2013 as per clause 5.9.4.2 of General Terms and Conditions of supply (GTCS).While on this, the Appellant in his present appeal stated that the raising of minimum bills for 3 months following the date of disconnection is not justified.

In this connection, the clause relating to termination of agreement laid down in General Terms and conditions of supply (GTCS) is placed below for perusal please.

5.9.4.2 "Deration of CMD or Termination of Agreement in respect of HT Supply: The consumer may seek reduction of contracted maximum demand or termination of HT Agreement after the expiry of the minimum period of the Agreement by giving not less than three months' notice in writing expressing his intention to do so. However, if for any reason the consumer chooses to derate the CMD or terminate the Agreement, before the expiry of the minimum 2 years period of Agreement, the CMD will be derated or the Agreement will be terminated with effect from the date of expiry of the initial 2 year period of the Agreement or after expiry of 3 months notice period whichever is later.The company can also terminate the HT Agreement, at any time giving 3 months' notice if the consumer violates the terms of the HT Agreement, or the GTCS or the provision of any law touching the Agreement including the Act and rules made there under AP Electricity Reforms Act, 1998. On termination of the HT Agreement the consumer shall pay all sums due under the Agreement as on the date of its termination."

As per the above clause GTCS provides for raising of minimum bills for 3 months Subsequent to the date of disconnection. Accordingly, TSSPDCL has raised minimum bills for 3 months following the date of disconnection.Hence the contention of the Appellant that raising of minimum bills for 3 months following the date of disconnection is not justified is not tenable.

Regarding the technical aspect of the meter running fast by 30 minutes during September 2012 during which period R&C measures were in force, it is submitted as per the records of TSSPDCL the old meter got replaced with a new meter on 28.5.2013 duly rectifying the discrepancies. Since, June 2013 the new meter was in existence and there was no problem with billing as contended by the Appellant.

Further, the issue of time in meters ahead of Indian Standard Time(IST) has been referred to the DE/M&P/Sangareddy. On the instructions of the DE/M&P/Sangareddy,the ADE/HT meters inspected the premises and found that the time in the meter was 10.36 IST whereas the actual time was 10.17 IST at the time of

his inspection.(A copy of the inspection report is enclosed for kind perusal please). Based on the inspection report, the DE/M&P/Sangareddy has verified the MRI dumps and confirmed that the meter was running ahead by 19 minutes during September 2012 to April 2013. Accordingly the bills have already been revised and the excess billed amount of Rs.2,83,174 during the above period has been credited to the Appellant in the month of April 2014.

It is further submitted that the meter was inspected thoroughly by the concerned officials of the respondents company and the error was rectified with effect from the date of its origin through the help of MRI dumps and the excess billed amount due to wrong display of time in the meter has been duly credited to the Appellant. Hence, the contention of the Appellant that **"the issue of meter running ahead by 30 minutes during R&C period has not been addressed"** is not tenable as the same has already been rectified.Further, the defect meter has been replaced in the month of may 2013 by the department.

It is further submitted that the FSA amount of Rs.657761 is payable by the Appellant along with CC arrears out of which and amount of 159030 is stayed by the Hon'ble High Court and the balance of Rs.498731 is payable by the Appellant together wit surcharge till the date of payments as applicable as per the judgment of Hon'ble Supreme Court in SLP(Civil) No.12398 of 2014 dated 05.7.2016. The FSA Stayed by the Hon'ble High Court is payable by the Appellant together with surcharge till the date of payment subject to the out of the case pending in the hon'ble High Court.

Further, it is submitted that the Appellant was served with FORM-A and FORM-B notices dated 28.02.2014 and 24.09.2014 fro payment of arrears of Rs 25,06,634-00 accrued as on the date of termination of agreement including surcharge there on.

It is submitted that the CGRF-I has thoroughly went through the case twice and passed the award as per the rules and regulation in vogue vide reference 4th and 9th cited. Further, the Hon'ble Vidyut Ombudsman vide ref 7th cited has examined the Appeal and upheld the award passed by the hon'ble CGRF-I ref.4th cited.

Further, it is submitted that the R&C bills in respect of the Appellant have already been revised and an amount of Rs 2,83,174-00 has already been credited to the Appellant in the month of April'2014 itself. Hence, the contention of the Appellant that the R&C bills have not been revised is not tenable. Further, the service

lines and the metering equipment of a consumer will be dismantled on receipt of payment as per the termination orders served on the consumer. In the instant case the Appellant has not paid the pending arrears on receipt of termination order.Hence his service lines couldn't be dismantled, pending receipt of the arrears from the Appellant.Hence, the contention of the Appellant that the service lines couldn't be dismantled is not correct.

In view of the above,it is submitted that the contention of the Appellant that the bills were raised wrongly by TSSPDCL is not tenable as the bills were raised in accordance with the provisions of GTCS only. Hence, the Appellant is liable to pay the arrears together with surcharge there on till the date of payment as per the rules in vogue.

3. The Appellant filed his rejoinder stating as follows:-

IN REPLY TO PARA NO 1 TO 4: The Respondents no 4 categorically admitted that the H.T.Agreement was terminated with effect from 1.12.2013 but the service was not dismantled and no dues position as on 1.12.2013 is issued to the appellant even though the clause 5.9.4.2 is specifically mentioned that *"on termination of HT Agreement the consumer shall pay all sum due under the Agreement as on the date of its termination"*.

IN REPLY TO PARA NO 5 TO 7: The Respondents no 4 categorically admitted that the bills from September,2012 to April,2013 have been revised based on the MRI dumps and Rs 2,83,174/- have been credited to the account of Appellant in the month of April,2014.But the respondents no 4 did not handover the copies of CC Charges bills from september,2012 to April,2013 along with copy of MRI dumps till date to the Appellant date in spite of the second prayer of the present appeal is for issue of said revised bill with copy of MRI dumps. The Respondents no 4 did not file the copy of revised bill from september, 2012 to April 2013 along with copy of MRI dumps before this Honbe Authority also along with present counter.

IN REPLY TO PARA NO 8: The Appellant has to pay the unpaid FSA amounts as per Hon'ble court orders subjects to reconciliation along with surcharge till the date of termination i.e., 1.12.2013 as prescribed under the clause 5.9.4.2 but not till the date of payment.

IN REPLY TO PARA NO 9: The Appellant dispute the claim of Respondents no 4 of form A and Form B.However, the same is not a subject matter of the present appeal.

IN REPLY TO PARA NO 10: The clause of Action of Order dated 31.12.2018 of C.G No 560/2018-19 and present appeal is different hence, cannot refer in the present appeal. Hence, the same may not be considered in the present appeal.

IN REPLY TO PARA NO 11: As per clause 5.9.6. Of GTCS ***"on the termination of the LT or HT Agreement. The company is entitled to dismantle the service line and recover the materials, meter,cut out ect."*** Even though the Respondents No 4 did not dismantle the HT service of the Appellant as on date of termination i.e., 1.12.2013 under the excess of pending arrears is in violation of said clause and not maintainable.

IN REPLY TO PARA NO 12: The Respondents No 4. Has not issued the revised bill along with copy of MRI dumps pertaining to the period from September,2012 to April,2013 to the Appellant nor filed the acknowledgement of the appellant before this Hon'ble Authority to establish the issue of revised bills of R&C period from september,2012 to April 2013 to the Appellant.

4. The Appellant filed his written arguments in the Appeal stating as follows:-

The present appeal is filed aggrieved by the non-issue of revised bills from September,2012 to August, 2013 duly taking into consideration the difference of 19 minutes along with consumption details block wise as prescribed in R&C proceedings.The difference of 19 minutes in the meter was admitted by the Respondents at every stage. The respondents also admitted that they have credited and amount of Rs 2,83,174/- to the account of the Appellant without furnishing any details of their calculation and without furnishing the revised bills along with MRI dumps. Non-issue of revised bill is a violation of clause 4.7.3 of Regulation 5 of 2004 dated 17.3.2004.The respondents have not filed any evidence of issued of revised bills of said period before this Hon'ble Authority.

The respondents categorically admitted in the counter that the HT Agreement was terminated with effect from 1.12.2103 but not dismantled the Ht services as on date which is a violation of clause 5.9.6 of GTCS.It is pertinent to note also that as per clause 5.9.6 of GTCS on the termination of the LT or HT Agreement, the company is entitled to dismantle the service line and remove the materials, meter,cut out etc.

Heard both sides.

Issues

5. In the face of the said contentions by both sides the following issues are framed:-

1. Is there a need for the issue of fresh revised R&C bills i.e from September'2012 to August'2013 taking into consideration of the difference of 19 minutes?

2. Is the Clause 5.9.6 of the GTCS mandates the non payment of the arrears and whether the Appellant is liable to pay the due amount as on 31.08.2013?

3. To what relief?

Issue No.1

6. M/s. Sathavahana Castings had an HT service Connection SGR - 941(Old MDK-941)- preferred to dismantle the HT service connection, subsequently given an representation dt.30.08.2013, surrendering the said service connection, Consequently the Respondents disconnected the supply on 01.09.2013, demanded the following charges to be paid for dismantling the service connection:-

TABLE-1

Particulars	Amount
Arrears on the date of termination (01.12.2013) including 3 months minimum charges from 01.09.2013 to 01.12.2013	21,42,805.00
FSA Raised from 2010-11 onwards	4,98,7331.00
Pending in Court cases (2008-09 and 2009-10)	1,59,030.00
	28,00,566.00
Less: Security Deposit	6,76,300.00
Payable after adjustment of SD	**21,24,266.00**
R&C Charges	
Total levied	14,21,596.00
Less: 50% withdrawn as per ERC Orders	**7,64,110.00**
	6,57,486.00
Less: 19 minutes delay in meter withdrawn	**2,83,174.00**
Total payable excluding surcharge	**24,98,578.00**

The amount of Rs 2,83,174/- was withdrawn consequent to the defect in the meter running 19 mins forward to the actual time and bills were raised to that effect. The matter stood so, the Appellant preferred an Appeal before the learned Vidyut Ombudsman in Appeal No. 02 of 2019-20 and raised issues mainly as follows:-

a. It was contended that the 19 minutes difference with actual ISI time is wrong, instead it is 30-45 minutes ahead in difference

b. Withdrawal of 3 months monthly minimum charges levied after the date of disconnection.

Based on the facts available the learned Vidyut Ombudsman rejected the appeal of the Appellant. Further directed to file fresh appeal over the issue of revised Month wise bills, since the subject was not dealt in the CGRF.

In view of the above, the Appellant again approached before the CGRF, but again contended the same issues as was disposed by the learned Vidyut Ombudsman in Appeal No. 02 of 2019-20. The CGRF again after going through the facts dismissed the Appeal of the Appellant. Notwithstanding the above, the Appellant preferred the Appeal with issues as given below:-

1. To issue revised bills of R&C period i.e. from September'2012 to Agugust'2013 duly taking into consideration the difference of 19 minutes along with consumption details block wise as prescribed in the R&C proceedings.

2. To dismantle the service connection of the Appellant and furnish the due amount as on 31.08.2013.

7. An examination of the question raised over the demand of the Appellant to issue the revised bills considering 19 minutes difference the following are the revised bills produced by the Respondents as placed below:-

TABLE-2

Month	**OLD R&C Bill amount**	**Revised R&C Bill amount**	**Difference to be withdrawn/raised**
09/12	1859	44423	42564
10/12	77070	75905	-1165
11/12	68840	23440	-45400
12/12	208471	174350	-34121

01/13	108615	-70878	-179493
02/13	79200	79200	0
03/13	62215	39915	-22300
04/13	89202	45943	-43259
Total			-283174

The CGRF records show that the Respondents has submitted the MRI data - Day wise load from the date 21.08.2012 to 18.05.2013.

The other demand raised by the Appellant is to dismantle the said HT service connection as per the Clause 5.9.6 of the GTCS, wherein it is mandated that the service line is to be dismantled and the materials, meter, cut out etc. are to be removed. That the Respondents did not dismantle the HT service as on date of termination 01.12.2013 under the excuse of pending arrears, is in violation of the said clause. It is held that as per the clause 5.9.4.2 of GTCS, on termination of the HT agreements the consumer shall pay all sum due under the agreement as on the date of termination. No dues position was issued to the Appellant as on 01.12.2013.

8. It is appearrant to note that time and again appellant raised the issues which are already addressed by the CGRF in CG No. 560/2018-19 and Vidyut Ombudsman in Appeal No. 02 of 2019-20.

(a) Dispute in regard to the difference in time of the meter whether it is 19 minutes or 30 minutes.

From all the written submissions given by the Appellant in the present Appeal or in the Appeal 02 of 2019-20, there is no material shown by the Appellant that the meter is running 30 minutes ahead of the actual time. On what basis the said difference is to be admitted and how he has arrived at such a conclusion. On the other hand the ADE/HT Meter specifically recorded the time during the inspection dt.02.05.2013, in his inspection report with time in the meter as 10:36 when compared with actual IST Time was 10:17, showing 19 minutes ahead. The Appellant did not accept the difference, but neither given any grounds to reject or to accept the 30 minutes difference in time. The DE/Meters and protection produced MRI data giving the day wise load survey duly certifying the 19 minutes

difference in time of IST. Hence there is nothing much to add on this, moreover this issue was already addressed in Appeal No. 02 of 2019-20.

(b) The Appellant relied on the Clause 5.9.4.2 of the GTCS, that "on termination of the HT agreement the consumer shall pay all sums due under the agreement as on the date of its termination."

With the above reference, the Appellant claimed that the Appellant is liable to pay sum due as on the date of termination of HT agreement only. That as the HT agreement was terminated on 01.12.2013 and claimed that there were no dues as on 01.12.2013. The demand claimed as per the table 1 above is not liable to be paid and also on the fact that Respondents not dismantled the line and materials from the premises as required under Clause 5.9.6 of the GTCS.

9. The Appellant on the pretext of several reasons wanted to avoid the 3 months minimum charges after the date of disconnection i.e. 01.09.2013. In the Appeal 02 of 2019-20, the Appellant initially relied on the Clause para (g) Page No,11 of Proceedings of APERC/Secy/16/2012-13 dt.01.11.2012 towards restriction and control period which was addressed in the said appeal vide Para No.12 of the Order and also relied on the GTCS Clause 5.9.4.2 which was already addressed vide Para No.13 of the Order and rejected the plea.

And now in the CGRF in CG No. 53/2019-120/Sangareddy circle, again raised the same issue stating that the Clause 5.9.4.2 is to be implemented, the Respondents should terminate the HT Agreement and dismantle the service as on 30.11.2013 and furnish the amounts as on 30.11.2013. Further referred the Hon'ble Supreme Court orders in its Judgement dt.16.11.2000, is reproduced below

"The Board to demand the minimum guaranteed charges, by the very terms of the language in the contract as well as the one used in the tariff notification is made enforceable depending upon a corresponding duty, impliedly undertaken to supply electricity energy at least to that extent and not otherwise. It is for this reason we find that the ultimate conclusion arrived at by the full bench of the high court does not call for any interference in these appeals."

The referred judgements were based on the statutes available during the period earlier to the year 2000. There were a lot of changes that came into existence, a new Electricity Act in the year 2003 and GTCS in the year 2006 was

introduced, along with Tariff Orders every year from time to time. The Tariff Orders mandates the levy of Monthly minimum Charges which is reproduced

7. Monthly Minimum Charges 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 to cover the cost of a part of the fixed charges of the Licensee

The GTCS Clause 5.9.4.2 invariably mandates for expiry of 3 months notice period, the said clause speaks clearly in case of termination of agreement and levy of 3 months monthly minimum charges beyond doubt, Hence the plea for withdrawal of 3 months minimum charges cannot be considered.

In the present Appeal the reason for withdrawal of the minimum charges was reckoned on the basis of the Clause 5.9.6 of the GTCS wherein it is mandated to dismantle the line and to remove the meters, Cut-outs etc after termination of the Agreement, which is reproduced here under:-

> *"Clause 5.9.6: Dismantlement of service line after termination of agreement:- On the termination of the LT or HT agreement, the company is entitled to dismantle the service line and remove the materials, meter, cut out etc. After termination of the agreement, the consumer shall be treated as a fresh applicant for the purpose of giving supply to the same premises when applied for by him provided there are no dues against the previous service connection."*

The above clause speaks about treating the fresh applicants for the purpose of giving supply to the premises and dismantlement after termination of HT agreement. Nowhere in the said clause it is mentioned on the 3 months monthly minimum charges or against the payment of arrears.The Respondents are entitled to dismantle the materials as stated above, but taking cue of this there is no where it is mentioned for the Appellant to deliberately ignore dues pending.

10. Now the fresh appeal presented by the Appellant is that of fresh revised R&C bills i.e from September'2012 to August'2013 taking into consideration 19 minutes of difference. The revised bills showing old bills and revised bills are shown in the Table-2 above. The DE/Meters and protection produced MRI data giving the day wise load survey duly certifying the 19 minutes difference in time of IST. The

revised bills withdrawing the amount of Rs. 2,83,174 is consequent to 19mnts difference which is deducted from the total arrears to be paid as given at Table-1 above. The Appellant has not given any reasons as to why the said revised bills are not to be considered. Further there is nothing much to be added.

Issue No.2:

11. In an another issue Appellant preferred to dismantle the service connection and furnish the due amount as on 31.08.2013. The Clause 5.9.6 entitles the Respondents to dismantle the materials, but does not give right to the Appellant to ignore the pending dues. The Table-1 based on the Clause 5.9.4.2 shows beyond doubt that the payments are liable to be paid by the Appellant. There is no merit on the claim of the Appellant that he is not liable to pay the due amount of Rs 24,98,576/- and pay the dues as on 31.08.2013. It is to be noted that the said amount is shown excluding surcharges, which are payable as per the Tariff Orders. Hence, there is no substance in the Appeal to be admitted.

Hence these issues are decided against the Appellant.

Issue no 3:

12. In the result the Appeal is dismissed.

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

Sd/-

Vidyut Ombudsman

1. M/s. Sathavahana Castings, Through its Director Sri. G. Sambasiva Rao, #11-149/2, Shanthinagar, Patancheru Mandal, Sangareddy Dist. - 502 319 Cell No. 9391040256.
2. The ADE/OP/Patancheru/TSSPDCL/Sangareddy Dist.
3. The DE/OP/Patancheru/TSSPDCL/Sangareddy Dist.
4. The SAO/OP/Sangareddy/TSSPDCL/Sangareddy Dist.
5. The SE/OP/Sangareddy Circle/TSSPDCL/Sangareddy Dist.

Copy to :

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