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**

Thursday the Ninth Day of August 2018

Appeal No. 24 of 2018

Preferred against Order Dt. 24.01.2018 of CGRF in
C.G.No.284/2017-18/Hyderabad South Circle

Between

Sri. Mohammed Jaffar, H.No.17-3-118/1, Imambada, Yakutpura,
Hyderabad - 500 023. Cell: 9246156261..

... Appellant

AND

1. The ADE/OP/Santosh Nagar/TSSPDCL/Hyderabad.
2. The AAO/ERO/Chanchalguda/TSSPDCL/Hyderabad.
3. The DE/OP/Asmanghad/TSSPDCL/Hyderabad.
4. The SE/OP/Hyd. South Circle/TSSPDCL/Hyderabad.

... Respondents

The above appeal filed on 07.04.2018, coming up for final hearing before the Vidyut Ombudsman, Telangana State on 18.07.2018 at Hyderabad in the presence of Sri. M.M.Asim - Advocate - on behalf of the Appellant and Sri. M. Vinod Reddy - ADE/OP/Santosh Nagar, Sri. J. Nanda - AAO/ERO/Chanchalguda for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

This is an Appeal filed against the orders of the CGRF in CG No. 284/2017-18 Hyderabad South Circle dt.24.01.2018. The Appellant contended that he has filed a complaint before the CGRF seeking for the withdrawal of the back billing charges levied b y the Respondents from 13.08.2012 to 30.06.2016 against his SC No. R2071618 having wrongly changed their service connection from Category III to Category II and prayed that the said category be reverted and that the learned CGRF closed the said complaint stating that the grievances raised by the complainant have already been addressed by the Respondents and an amount of Rs 4894/- was withdrawn and as such aggrieved by the same the present Appeal is filed on the following grounds.

2. The Appellant contended that the back billing of Rs 1,45,226/- has done by the Respondents is against the provisions of the Electricity Act, GTCS and the Tariff Orders of the Regulatory Commission and hence required to be set aside. They pointed out that Section 56(2) of the Electricity Act,2003 provides that **"No sum from any consumer, under this section shall be recoverable after the period if two years from the date of when such sum became first due unless 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."** and claimed that as per Clause 8 of Regulation 7 of 2000 dt.4.9.2000 the Licensee shall notify for reclassification of the consumer before the change of the Category as it mentions:-

> **"1. The licensee shall notify any consumer it intends to re classify that the consumer must execute a fresh agreement on the basis of altered classification.**
>
> **2. The notice shall state that the licensee may disconnect the supply of power if the consumer does not take the required steps within the period specified by the notice."**

The Appellant further contended through his rejoinder that Clause 3.4.1 of GTCS mentions:-

> **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, of 33 months in the case of domestic and agricultural categories and 6 months in the case of other categories."**

and contended that the Respondents have not followed the above procedure and as such the process of reclassification is not completed and hence the back billing cannot be done for more than 6 months from the date of reclassification. The

Appellant further contended that Hon'ble High Court in the Writ Petition No. 6493/2016 held that **"in order to determine this question, a prior notice is very much necessary. If after such notice, the petitioner is unable to show that he is carrying on manufacturing activity and that he is involved only in printing on the plastic PVC/NEC articles, the Respondents will be entitled to change the petitioner's service connection from LT Category IIIA to LT Category II. As this procedure is not followed by the Respondents, the impugned bills are set aside."**

3. The Appellant further filed a rejoinder on 19.06.2018 and stated that In the Tariff Orders, Regulations or GTCS it is not mentioned that the RO plant is falls under Category LT II (Commercial) whereas in the Tariff Orders dt.22.07.2010 of FY 2010-11 at Page No. 184 mentioned that **"Industry purpose shall mean supply purpose of manufacturing, processing and /or preserving goods for sale."** Also mentioned at Page No. 186 **'This tariff (Industrial) is applicable to small scale industrial units which have been licensed by the industries department as bona fide small scale industries and given registration No. under SSI Registration Scheme."** and pointed that he is a manufacturer of mineral water and hence claimed that the change of category from LT-III(Industry) to LT-II(Commercial) based on the Memo No. CGM(Comml.)/SE/DPEADE(T)/D.No.726/12 dt.07.08.2012 for the period from August,2012 to June,2016 is in violation of above said provision of Tariff Order and illegal, hence prayed that the Appeal may be allowed as prayed for and set aside the claim of Rs 1,45,226/- towards back billing.

4. The Respondent No.1 on behalf of the Respondents on the other hand filed his written submission on 24.04.2018 vide his letter No. 202/2018 stating that :

a. The service bearing SC No. R2071618 was released on the name of Sri. Mohammed Jaffar, H.No.17-3-118/1, in Madannapet Section on 21.06.2010 under Category II as per Tariff Order with the following meter particulars vide CSC registration No. CN1208663, dt.17.06.2010, Meter No. 931477, Make: HPL, Capacity: 3-20A and the consumer service was utilised power supply under Category II upto February,2011. The service category was changed from Category II to Category III in March,2011. Then after the service was billed under Category-III upto June,2017.

b. The service was inspected by AE/DPE/Hyderabad South Circle on 13.03.2017 with following incriminating points:

"As per Tariff Order of FY 2016-2017 the water plant comes under Category III before that the water plant comes under non domestic(Category II). As per order memo No.CGM/Comml/SE/DPE/Hyd/F.No.D.No.1355/14, dt.16.01.2015, the RO plants comes under Category II.

Hence back billing is proposed for the period before 30.06.2016 from Category III to Category II."

Based on the above inspection an amount of Rs 1,45,226/- was levied. The DE/OP/Asmangadh, designated officer for issuing final assessment in case of back billing issued the Final Assessment Orders vide DE/OP/Asmangadh/C8/BB.FAO/D.No.736 dt.19.08.2017 confirmed the liability to Rs 1,45,226/-.

c. That as per the Memo No.CGM(Comml.)/SE/DPE/ADE(T)/D.No.726/12 dt.07.08.2012 clarifies that water purifying/ treatment plants should be released under LT Category II only and later the Tariff Order for FY 2016-17 w.e.f. 01.07.2016 mandates the drinking water filtering points using supply RO process falls under LT Category III (Industry).

Further the ADE/OP/Asmangadh requested SE/OP/Hyderabad South to give clarification on the CGRF-II order and requested this authority to give some more time to get the clarification from the higher authorities, which was not produced at any time.

5. On the basis of the said averments of both sides the following issues are framed:

Issues

1. Whether the Respondents have not followed the procedure prescribed for changing the categorisation of the service connection of the Appellant and hence the back billing amount of Rs 1,45,226/- levied from August,2012 to June,2016 is liable to be set aside? and

2. To what relief?

Issue No.1

6. The averments of both sides admittedly show that SC No. 2071618 was released in the name of the Appellant on 21.06.2010 under Category II as per the Tariff Order and at later the same was changed to Category III in March,2011 and the service was being billed under Category III upto June,2017 while the inspection by

AE/DPE/Hyd South Circle was done on 13.03.2017 and at that time the water plant was covered under Category III as per the Tariff Orders of FY 2016-17 and earlier to the date of inspection i.e. on 07.08.2012 the CGM/Commercial/SE DPE/ADE (ST D.No.726/12) issued a Memo clarifying that water purifying/ treatment plants should be released under Category II and later the Tariff Order for the FY 2016-17 mandated the drinking water filtering points using supply RO process falls under LT Category III i.e. Industry w.e.f 01.07.2016.

7. In the background of the above wherein both the parties have relied on various clauses of GTCS, Tariff Orders and guidelines of the CGM/Commercial. Let us go through the discussions with regarding to the RO water plants in the Tariff Order for 2015-16 wherein the Palamoor R.O Water Plants Association sought for treating the water purifying plant as industry and not as commercial activity. The water plants association of Palamoor R.O. contention was 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/MahaboobNagar Town TSSPDCL not to change the service connections of water purifying plants from Category III to category II." while the Respondents i.e. Licensees contended that 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, theaters, 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."

8. Having heard the contentions of both the Water Plants Association and the Licensee Respondents the Commission agreed with the views of the Licensees/Discoms on the said issue. Thus the confusion over the relevant category of R.O. Water plants before 01.07.2016 and later is cleared by the Commission. Thus the said discussion clearly negativates the claim of the Appellant that the billing category of the subject service connection No. 2071618 is LT -III (Industry) and not LT

- II (Commercial) as the Tariff Order of 2016-17 categorises the RO water plant under LT-III (Industry) w.e.f. 01.07.2016. Hence on the date of inspection i.e. on 13.03.2017 the appropriate category of the Appellant service connection as per the Tariff Order in vogue (2016-17) is LT-III (Industry). As such this Office finds that there is no irregularity in billing on the date of inspection and the billing of the subject service connection as it was under proper categorisation.

9. Hence in the above mentioned circumstances the question arises is whether the Respondents have the option to reclassify the category when subsequently found that the classification is not correct. In order to answer the same this Office perused Clause 3.4.1 of GTCS that was amended by the Hon'ble Commission vide proceedings No. APERC/Secy/96/2016 dt.31.05.2014 which is reproduced as under:

> **"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."**

A perusal of the above Clause 3.4.1 of GTCS clearly goes to show that the Respondent/Licensee is empowered to reclassify even with retrospective effect beyond one year, since the subject service connection was billed under LT-III(Industry) prior to 01.07.2016 which actually ought to have billed under LT-II Category. As such this Office finds that the back billing as done by the Respondents is in accordance with the Clauses provided under GTCS as referred above.

10. The contention of the Appellant that the back billing notice violates Section 56(2) of the Electricity Act is substantiated by the Appellant as the said notice

shows the billing for the first due amount from the month of March,2018 and as such it has not gone beyond the period of 2 years from the date on which the billing was due for the first time. And the written submission by both sides show that the before finalisation of the Provisional Assessment amount of Rs 1,45,226/- was fixed an opportunity was given to the Appellant under Clause 5.2 of the GTCS vide a Provisional Assessment notice bearing Lr.No. 511/2017 dt.15.06.2017 to make an appropriate representation to the DE/OP/Azamabad (designated officer for Appeal) within 15 days from the date of service of the notice, but it is the Appellant who did not used to utilise the same. As such, as there was no representation from the Appellant, the DE/OP/Azamabad confirmed the loss of revenue based on the available records as Rs 1,45,226/- vide Final Assessment Order No. 736 dt. 19.08.2017. The records further show that the Appellant has also not preferred an Appeal before the SE/OP/Hyd South within 30 days from the date of receipt of the order but approached the CGRF. As such concludes that the Respondents have followed the required procedure. Hence decides this issue against the Appellant.

Issue No.2

11. In the result the Appeal is dismissed.

TYPED BY Office Executive cum Computer Operator, Corrected, Signed and Pronounced by me on this the 09th day of August, 2018.

Sd/-

Vidyut Ombudsman

1. Sri. Mohammed Jaffar, H.No.17-3-118/1, Imambada, Yakutpura, Hyderabad - 500 023. Cell: 9246156261.
2. The ADE/OP/Santosh Nagar/TSSPDCL/Hyderabad.
3. The AAO/ERO/Chanchalguda/TSSPDCL/Hyderabad.
4. The DE/OP/Asmanghad/TSSPDCL/Hyderabad.
5. The SE/OP/Hyd. South Circle/TSSPDCL/Hyderabad.

Copy to :

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