



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

Saturday the Twenty First Day of March 2020

Appeal No. 41 of 2019-20

Preferred against Order dt.17.12.2019 of CGRF
in CG No.98/2019 of Nirmal Circle

Between

Sri. Abdul Hakim Prop, M/s. Aziziya Stone Crusher, H.No.2-5-96, Khaji Gally,
Bhainsa (M), Nirmal Dist. Cell: 9553682627, 9440372708.

... Appellant

AND

1. The ADE/OP/Bhainsa - 9440911688.
2. The DE/OP/Bhainsa - 7901094501.
3. The SAO/OP/Nirmal - 7901093931
4. The SE/OP/Nirmal - 7901093952.

... Respondents

The above appeal filed on 14.02.2020, coming up for final hearing before the Viduyut Ombudsman, Telangana State on 11.03.2020 at Hyderabad in the presence of Sri. Sashidhar Kasireddy - Advocate, on behalf of the Appellant and Sri. S.V.Srinivas Reddy - DE/OP/Bhainsa and Sri. J. Eshwar - SAO/OP/Nirmal for the Respondents and having considered the record and submissions of both parties, the Viduyut Ombudsman passed the following;

AWARD

This is an Appeal against the orders of the CGRF in CG No. 98/2019 dt.17.12.2019.

2. The Appellant contended that he filed a complaint before the CGRF/Nirmal vide CG No. 98/2019 seeking for reassessing the bills pertaining to his service connection bearing No. 150600172 for the months of November'2018, December'2018 and January'2019 with normal rate i.e. Rs 80/- per KVA for 120 KVA and not Rs 390/- per KVA and that the excess billing was entirely due to the

defective transformer not being replaced with a fresh transformer in working condition and that the learned CGRF though directed the Respondents to reassess the bills under HT Category I (Optional) instead of HT Category I (General), gave a finding that fixing of the transformer is the responsibility of the consumer i.e. the Appellant herein. As such aggrieved by the same the present Appeal is filed.

3. The Appellant averred in the present Appeal that he has an electricity connection vide SC No. 150600172 and he is paying the electricity charges regularly as per the bill issued by the Respondents without any default and that the Appellant had a low tension connection previously but in the month of September, he has taken a new meter with High Tension connection of below 150 KVA by investing seven lakhs. The Appellant further stated that the Respondents have not issued any bills for the months of October and November'2018 and in the month of December'2018 they have issued the electricity bills for the month of Nov'2018 showing an amount of Rs 4,83,846/-.

That normal rate below 150 KV was fixed @ Rs 80/- whereas the bill shows that the normal rate @ Rs 390/-. It is further submitted that though the Appellant has converted his electricity connection from LT to HT there was no change in the utility of the power consumption by the Appellant. It is further submitted that regularly every month the bill used to be not above Rs 1 Lakh but contrary to the same the bill for the month of November'2018 has been issued three times higher as per the usual billing.

Aggrieved by the above mentioned facts, the Appellant here in under the grave threat that the Respondents would disconnect the power supply without following due process of law and inaction on the representation made by the Appellant on 22.12.2018 to the Respondents, filed a WP No. 2155/2019 before the Hon'ble High Court. After considering the facts on record, the Hon'ble High Court was pleased to direct the Respondents not to disconnect the power supply and also directed the Chief Engineer (Commercial) of the Respondents to consider the representation made by the Appellant on 22.12.2018.

That the representation of the undersigned appellant the Divisional Engineer, Nirmal has sent a letter showing the optional tariff per unit for category from General to optional is also not correct, where as it is evident from the agreement dt.19.09.2018 that the agreement for HT-1 is optional and not general as

claimed by the SE/OP/Nirmal that the category of the SC No. NML130 has been changed from 150 KVA to 120 KVA is also not correct.

That aggrieved by the excess billing amount, the Appellant approached the CGRF, Nirmal praying to direct the Respondents to reassess the bills for the months of November'2018, December'2018 and January'2019 with normal rate @ 80 per KVA for 120 KVA. Aggrieved by the inflated bills generated by the Respondents every consecutive month, in spite of the representation given to the authorities that the transformer is defective, the Respondents did not rectify the defect, the Appellant with the impending threat of disconnection of power supply approached the Hon'ble Court and filed WP No. 4342 of 2019. After considering all the material facts on record the Hon'ble High Court was pleased to direct the CGRF, Nirmal to consider the Application filed by the Appellant on 12.02.2019 and 13.02.2019 as expeditiously as possible, preferably within a period of three weeks and that the Respondent company shall not disconnect the power supply subject to the petitioner depositing 50% of the amount demanded as of now within two weeks.

That the Hon'ble CGRF Nirmal heard both sides on 29.04.2019 and 26.05.2019 and after considering the material facts on record was pleased to pass the order stating that "the licensee shall levy the tariff as per tariff order, but the licensee in the instant case did not implement clause 7.89 mentioned in the tariff order and collected the fixed charges under HT Category I General Tariff from the petitioner, which was quite unreasonable and amount to have collected excess amount from Nov'2018 to Jan'2019. The subsequent execution of the new agreement was not necessary. So if the Respondents imposed fixed charges from date of release to December'2018 @ Rs 390/- per KVA, it is to be reduced as per tariff order Clause 7.89 whatever the excess amount collected is to be withdrawn.

This point is accordingly decided in favour of the Appellant.

That the Appellant further prayed that the defective transformer has to be tested and rectified. In reply the Respondents submitted DTR and meter test result and stated that "Hence the transformer may be defective further that the service is under HT Category, the meter is on HT side and distribution transformer owned and maintained by the Appellant only. Whatever problems arise, after metering due to faulty equipment, the Appellant is responsible." Hence the complaint has been dismissed.

That the Appellant has taken new connection, whereas in October'2018 and November'2018 bill was not generated and the inflated and excess bill was given only in December'2018. Had the bill been generated in September, this issue would not have arisen. This is a blunder committed by the Respondents. Faulty transformer has been installed by the Respondents the transformer defect was not acknowledged.. New transformer was not installed even after representation. The Appellant has purchased a new transformer, but it was not installed after repeated requests and representations. Due to this irresponsible act of the Respondents, Appellant was put to suffer grave and irreparable loss and damage. Aggrieved by the inaction of the Respondents in installation of the new transformer purchased by the petitioner by replacing the faulty transformer at the Appellant's stone crusher, the Appellant has filed Writ petition WP No. 2155 of 2020 before the Hon'ble High Court. On 03.02.2020 the Hon'ble High Court having heard both sides and after considering the material facts on record, directed the Respondents to take action to enable the Appellant to get installed the transformer through a licensed contractor.

That the Appellant has approached the Respondent No. 2 and requested for the copy of DTR and meter report that has been submitted to the CGRF-II, NPDCL, Nirmal in CG No. 98 of 2019, so as to enable the Appellant to prefer an Appeal before the Vidyut Ombudsman as per the order issued. The DTR and meter report was received by the Appellant on 11.02.2020.

That in view of the facts stated above there has occurred a delay of 4 days in preferring the Appeal,, which delay is neither wilful nor wanton but was caused in the circumstances stated above. Unless the said delay is condoned the Appellant would suffer irreparable loss and injury. It is therefore prayed that the Hon'ble Vidyut Ombudsman may be pleased to condone the delay of 4 days in preferring the Appeal.

Aggrieved by the order of CGRF, Nirmal. As per Clause 9(1) of Regulation 1 of 2004 of APERC adopted by TSERC appeal before Vidyut Ombudsman is preferred by the Appellant. Hence it is prayed that your kind authority may be pleased to set aside the said order and consequently declare the action of the Respondents in issuing improper, illegal and inflated billing in respect of the Appellant's service connections bearing No. 15 06 00172 as illegal. Arbitrary contrary to law and unconstitutional and further it is prayed that your kind authority may be pleased to set aside the demand bill/notice for the month of December'2018 showing an amount of Rs 3,58,525/- and arrears of Rs 4,83,346/- total aggregating to Rs 8,42,371/- and month of January 2019,

showing an amount of Rs 1,53,700/- and arrears of Rs 8,42,371/- total aggregating to Rs 9,96,071/- and consequently direct the Respondents to re assess the bills for the months of November'2018, December'2018 and January 2019 pertaining to service connection No. NML 130 (15 06 00172) and pass such other orders as this Hon'ble Ombudsman may deem fit and proper in the circumstances of the case.

4. Reply of the Respondents

M/s. Abdul Hakeem (Azizia Stone Crusher) SC No. 150600172 applied for load enhancement in TS IPass from 77 KVA (98HP) to 150 KVA (Additional load 73 KVA) from LT Category III to HT Category I. The sanction was accorded vide reference 2nd cited above, for enhancement of load from 77 KVA to 150 KVA to existing SC No. 150600172 duly changing of category from LT-III to HT-I to M/s. Azizia Stone Crusher at Chintalbori Village in Bhainsa Rural Section of Bhainsa Division.

The consumer has paid required amounts on 19.07.2018. The department side work was completed. The consumer has submitted the CEIG approval copy on 14.09.2019. A specific Release Order letter was addressed on 16.09.2018 to DE/MRT/Nirmal to release the service. The MRT wing has inspected and released service on 19.09.2018 under HT-I (General Category).

The D/OP/Bhainsa has submitted the agreement concluded by the M/s. Azeziya Stone Crusher, Chintal Bori, Bhainsa (Rural) and requested to change the service No. 150600172 Category III into HT Category 1. The HT-NML 130 service was released and he bills are being issuing in HT category-I(General) category with demand charges Rs 390/- per KVA and energy charges Rs 6.65 per unit (KVAh) as per the Tariff Order upto 12/2018 the agreement entered by M/s. Aziziya Stone Crusher, Chintalbori, Bhainsa (Rural) with TSNPDCL.

A letter was addressed by the consumer to the CGM/TSNPDCCL, Warangal with a copy marked to this office to reduce the charges as under into HT (Optional) category.

The DE/OP/Bhainsa has submitted a Revised Agreement and requested to change the category HT-II (General) to HT Category (Optional) as per the revised agreement the bills are being issued in HT Category I(Optional) from January'2019 onwards.

The consumer has represented that the idle Transformer is consuming more energy and also represented to DE/MRT/Nirmal for inspection of meter and transformer for its healthiness. The DE/MRT/Nirmal for inspection of meter and transformer for its healthiness. The DE/MRT has submitted the following observations:-

i) DTR Capacity - 160 KVA

ii) Capacitors installed:-

25KVAR*3 = 75 KVAR, 15KVAR*1=15KVAR, 10 KVAR*7=70KVAR, 17.6KVAR*2 = 35.2KVAR.

iii) One of the 25 KVAR capacitors is connected for compensating DTR reactive load. The full load meter was tested and found satisfactorily.

iv) From the consumption pattern it is observed that the PF of this service is 0.25 for the month of Nov'18 0.16 for the month of Dec'2018, 0.46 for Jan/19 and 0.49 for the month of Feb'2019. Due to non maintenance of the capacitor bank the consumer has got low PF during the period of Nov'2018 to Jan'2019 and suggested the consumer to install one more 5KVAR capacitor bank for compensating the DTR reactive power. Hence the bills for the months of 10/2018, 11/2018 are high due power factor and high KVAH consumption.

Further it is to submit that the month wise bills details i.e. 11/2018,12/2018 and 01/2019 of Rs 4,83,846/-, Rs 3,58,525/- and Rs 1,53,700/- respectively.

The consumer has approached the Hon'ble High Court and filed a Writ Petition vide WP No.4342 of 2019 in view of the above, Hon'ble High Court was issued order and disposed the writ petition WP No. 4342 of 2019 on 15.03.2019 directed to the consumer deposit the 50% of bill amount within two weeks. The consumer has paid the 50% deposit amount as per the Hon'ble Court directions vide PR No.20179 dt: 29.03.2019, Rs 2,50,000/- vide PR No. 20185/04.04.2019, Rs 2,49,000/- dt: 04.04.2019.

The consumer approached the Hon'ble CGRF and the CGRF passed the orders as:-

The Tariff order clause 7.89 under HT Category I industry under optional category for the year 2018-2019 under which condition is extracted as follows:-

Under HT Cat I optional it is mentioned, that optional category is applicable to HT-I Industry general consumer whose contracted maximum demand is up to 150 KVA and availing supply at 11 KV only. The consumers who qualify under this category are free to opt to remain under HT-I(A) or choose this optional category, at this juncture the petitioner that actually the first agreement was executed on 19.09.2018 under HT A Category. So the tariff mentioned as industry general optional is applicable as HT I optional only so the petitioner industry falls under "HT-IA as mentioned in tariff order under clause 7.89 for the year 2018-2019. "The licensee shall levy the tariff as per tariff order but the licensee in the instant case did not implement clause 7.89 mentioned in tariff order and collected fixed charges under HT Category I general tariff from the petitioner which was quite unreasonable and amount to have collected excess amount from Nov'2018 to Jan'2019. The subsequent execution of the new agreement was not necessary. So if the respondents imposed fixed charges from the date of release to December 2018 @ 390/- per KVA, it is to be reduced as per Tariff Order Clause 7.89 whatever the excess amount collected is to be withdrawn.

The joint inspection was done by the DE/OP/MRT & DPE wings. It is shown that the reactive power consumed by the Distribution transformer under no load condition is on the very high side as compared to the active power consumed. Hence the transformer may be defective further that the service is under HT Category, the meter is on HT side and distribution transformer owned and maintained by the petitioner himself only. Whatever the problem arises after metering due to faulty equipment the petitioner is responsible. As per the estimate proposals the sanction was accorded and mentioned in Sl.No.5 the consumer has to erect adequate capacities of DTR with necessary switchgear at their own cost.

As per the CGRF orders a letter was addressed to the CGM(Finance) TSNPDCL, Warangal for permission to withdraw excess demand charges raised for the month of 11/2018 and 12/2018 under General Tariff.

The CGM/Finance/TSNPDCL/Warangal has issued instructions to contact the Standing Legal Advisor and File a Writ Petition at Hon'ble High Court under order issued by CGRF Nirmal.

Heard both sides.

Issues.

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

1. Whether the billing of the Appellant has to be done under HT Category I (General) or HT Category I (Optional)?
2. Whether the excess billing due to the defective transformer requires to be withdrawn by the Respondents as the responsibility is on the Respondents to replace the defective transformer as contended by the Appellant? And
3. To what relief?

Issue Nos.1&2

6. The averments of both sides show that M/s. Aziziya Stone Crusher is an industrial service bearing SC No.15 06 00172, Chintal bori Village, Bhainsa Mandal, Nirmal Dist. The Respondents accorded sanction for enhancement of contracted load from 77 KVA(98 HP) to 150 KVA(Additional load 73 KVA) by changing the category from LT Category III to HT category I at 11 KV voltage level, vide Memo No. SE/OP/NML/ADE(C)/AE(C)/D.No.402/18 dt.05.07.2018, estimate No. E-1811-14-02-01-07-001. The Appellant paid the requisite amount towards the enhancement of load on 19.02.2018. Subsequently after completion of all the formalities including CEIG approval and HT Agreement, the service was released on 19.09.2018 under HT I (General Category) with new HT service connection No. NML-130. Thereafter CC bills were issued under the HT Category I(General Category) with demand charges @ Rs 390/- per KVA and energy charges Rs 6.65 ps per KVAH.

The Appellant alleged that the Respondents wrongly billed tariff under HT I (General Category) i.e. demand charges @ Rs 390/- per KVA for the month of December'2018, which includes the arrears amount of October and November 2018 months bill. That they are liable to be charged under HT-I (Optional Category) which envisages the demand charges @ Rs 80/- per KVA as per the Tariff Order. The above mentioned HT-I Optional Category, as per the Tariff Orders, is eligible for those consumers who have contracted load upto 150 KVA at 11 KV level of supply, basically introduced by the Hon'ble Commission to benefit small industries. Here

the Appellant can opt to remain under HT-I General Category or to choose HT-I Optional Category.

7. The Appellant further contended that the consumed units billed by the Respondents in view of defective transformer. That they have represented to the authorities over the defective transformer and the Respondents did not rectify the defect resulting in inflated bills. Further, had the bills been generated in time disclosing the consumption (the October'2018 and November'2018 bills were not generated, which was included at a time in the December'2018 bill) this issue would not have been raised. It is alleged that faulty transformers have been installed by the Respondents, that they have purchased new transformers, it was not installed replacing the faulty transformer even after representations. In view of the above, the Appellant pleaded to revise the bills of November, December 2018 and January'2019.

8. The Respondents on the other hand contended that based on the representation of the Appellant to revise the agreement to HT-I optional category instead of HT-I General Category the agreement was revised under HT-I Optional Category on 27.12.2018, consequently the billing category was changed from HT-I General to HT-I Optional, subsequently the bills were issued under HT Category -I Optional from Jan'2019 onwards.

9. The Respondents further claimed that on the complaint received from the Appellant that the transformer is consuming more energy even though there is no connected load or usage of supply, the DE/MRT inspected the meter and the transformer and submitted the following observations:-

i) DTR Capacity - 160 KVA

ii) Capacitors installed:-

$25\text{KVAR} \times 3 = 75 \text{ KVAR}$, $15\text{KVAR} \times 1 = 15\text{KVAR}$, $10 \text{ KVAR} \times 7 = 70\text{KVAR}$, $17.6\text{KVAR} \times 2 = 35.2\text{KVAR}$.

iii) One of the 25 KVAR capacitor is connected for compensating DTR reactive load. On full load meter was tested and found satisfactorily.

iv) From the consumption pattern it is observed that the PF of this service is 0.25 for the month of Nov'18, 0.16 for the month of Dec'2018, 0.46 for Jan/19 and 0.49 for the month of Feb'2019. Due to non maintenance of the capacitor bank the consumer has got low PF during the period of Nov'2018 to Jan'2019 and suggested the consumer to install one more 5KVAR capacitor bank for

compensating the DTR reactive power. Hence the bills for the months of 10/2018, 11/2018 are high due power factor and high KVAH consumption.

10. In the face of the said contentions of the Respondents the Appellants claimed that they have fixed new capacitors on verification two capacitors were not working vide receipt bill dt.15.12.2018. That after receiving the CC bill for the month of Dec'2018 the capacitors were replaced. Hence, there is no issue of defective Capacitors.

The Appellant alleged that they have not started the second unit and so far not changed the utility of power supply. That no transformer with excess capacity was installed and it is defective since even after the unit is closed no power supply is consumed the meter was showing consumption of power. The Appellant pleaded that the Respondent to verify and find the defect in the transformer and reduce the excess bills and later in the joint inspection conducted by the Divisional Engineers of operation, MRT and DPE wings revealed that the reactive power consumed by the distribution transformer under no load condition is on the very high side as compared to the active power consumed. Hence declared that the transformer may be defective. Further held that the service is under HT Category, the meter is on HT side and distribution transformer is owned and maintained by the Appellant himself. Any defects in the DTR which is after the metering has to be dealt by the Appellant only. The estimate sanction was accorded in line with the above, stating that the Appellant has to erect the additional capacity of DTR which necessary switchgear at their own cost.

11. The Appellant with impending threat of disconnection of power supply stated to have approached the Hon'ble High Court and filed WP No. 4342 of 2019. After considering all the material facts on record the Hon'ble High Court was pleased to direct the Consumer Grievance Redressal Forum, Nirmal to consider the Application filed by the Appellant as expeditiously as possible preferably within a period of three weeks and that the Respondent company shall not disconnect the power supply subject to the petitioner depositing 50% of the amount demanded as of now within two weeks. The Appellant has paid the 50% amount, in compliance to the High Court Orders.

12. The plea of the Appellant that rectification and testing is required to be done on the transformer to show that the same is defective is countered by the

Respondents that even if the transformer is defective the service connection is under HT Category and as such the meter is on HT side and so the burden lies on the consumer/owner of the meter to maintain the transformer under Clause 2.2.10 read with Clause 2 of GTCS.

13. The Appellant further contended that the Respondents have committed blunder mistakes by installing faulty transformer and the transformer defect was not acknowledged further the Appellant has purchased a new transformer but it was not installed after repeated requests and representations, due to this irresponsible act of the Respondents Appellant was put to suffer grave and irreparable loss and damage. Aggrieved by the inaction of the Respondents, they have filed WP No.2155 of 2020 before the Hon'ble High Court. On 03.02.2020 the Hon'ble High Court having heard both sides and after considering the material facts on record, directed the Respondents to take action to enable the Appellant to get installed the transformer through a licensed contractor and as such contended that the order given by the CGRF is set aside and declare the action of the Respondents in issuing improper, illegal and inflated billing as arbitrary and contrary to law. The Appellant also requested to set aside the bills for the month of December'2018 showing an amount of Rs 3,58,525/- and arrears of Rs 4,83,346/- total aggregating to Rs 8,42,371/- and month of January 2019, showing an amount of Rs 1,53,700/- and arrears of Rs 8,42,371/- total aggregating to Rs 9,96,071/- pertaining to service connection No. NML 130 (15 06 00172) and pass such other orders as this Hon'ble Ombudsman may deem fit and proper in the circumstances of the case.

14. Admittedly the issue No.1 though raised by the Appellant is not agitated before the Ombudsman which goes to show that the Appellants have no grievance against the orders of the CGRF and that they have not come in Appeal before the Ombudsman on the said aspect i.e. the finding given by the CGRF that the billing has to be done under category HT I(Optional) as such no further finding is required on the said issue.

15. Regarding the issue No.2, whether the burden lies on the Appellant or on the Respondents has to be clarified so as to give a finding whether the billing done by the Respondents is not in accordance with the provisions of the Act.

16. Admittedly both the Appellant and the Respondents admitted that the transformer fixed to the service connection of the Appellant was defective. The Appellant contended that the excess billing is done by the Respondents due to the defective transformer. The Respondents though admitted that the transformer was defective contended that the burden lies on the consumer i.e. the Appellant herein with regarding to the maintenance of the transformer. They claimed that the consumer himself has to buy and fix the transformer on their permission, but they are not responsible for the functioning of the said transformer. Hence in view of the said contentions by both sides the provisions of Clause 2.2.10 read with Clause 2 of GTCS is reproduced as under:-

2.2.10: "consumer's installation" means any composite electrical unit including the electric wires, fittings, motors, transformers and apparatus erected and wired by the consumer or on his behalf, in one and the same premises.

A reading of the above provisions clearly shows that the transformers fall under consumers installations under HT Consumers, which goes to show that the responsibility of fixing of transformers and replacing of defective transformers fall on the shoulder of the consumers and not on the Licensee i.e. the Respondents. As such as the transformer was defective it was the liability of the Appellant to either refix the same by rectifying its defects or by replacing the same with a new one. And hence any abnormal consumption recorded whether a load is connected for usage or not is the liability of the consumer i.e. the Appellant herein and not that of the Respondents. Hence decides Issue No.2 against the Appellant.

Issue No.3

17. In the result the Appeal is accordingly disposed.

TYPED BY Office Executive cum Computer Operator, Corrected, Signed and Pronounced by me on this, the 21st day of March' 2020.

Sd/-

Vidyut Ombudsman

1. Sri. Abdul Hakim Prop, M/s. Aziziya Stone Crusher, H.No.2-5-96, Khaji Gally,Bhainsa (M), Nirmal Dist. Cell: 9553682627, 9440372708.
2. The ADE/OP/Bhainsa - 9440911688.
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5. The SE/OP/Nirmal - 7901093952

Copy to :

6. The Chairperson, CGRF,TSNPDCL,Nirmal.
7. The Secretary, TSERC, 5th Floor Singareni Bhavan, Red Hills, Lakdikapul,Hyd.