



VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA

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

:: Present:: **R. DAMODAR**

Wednesday, the Sixteenth Day of November 2016

Appeal No. 45 of 2016

Preferred against Order Dt.24.05.2016 of CGRF In
CG.No:05/2016-17 of Medak Circle

Between

Sri. B. Prabhu Das, S/o Vijya Sagar, H.No. 22-122, Meena Enclave,
Plot No. 201, Opp: Siddartha Nursingh Home, Jyothi Nagar, R.C.Puram,
Medak Dist. Cell No. 8008000495.

..... Appellant

AND

1. The AAE/OP/Isnapur/TSSPDCL/Medak Dist.
2. The ADE/OP/Sangareddy/TSSPDCL/Medak Dist.
3. The AAO/ERO/Sangareddy/TSSPDCL/Medak Dist.
4. The DE/OP/Sangareddy/TSSPDCL/Medak Dist.
5. The SE/OP/Sangareddy/TSSPDCL/Medak Dist.

..... Respondents

The above appeal filed on 23.06.2016, came up for final hearing before the Vidyut Ombudsman, Telangana State on 21.10.2016 at Hyderabad in the presence of Sri. B. Prabhudas the Appellant and Sri. Sudhakar - AAO/ERO/Sangareddy, Sri. B. Satyanarayana - ADE/OP/Sangareddy for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant has SC No. 0561-00673 category-III released on 10.10.2010. He claimed that on 16.4.2016 the 2nd Respondent/ADE/OP/Sangareddy issued a provisional assessment order for Rs 10,60,434/- alleged to be under category-II, said to have informed the Appellant in 2012. Had the changed category II been so informed, the Appellant claimed that he would have increased the productivity, earned more and would have paid the increased due amounts towards CC bills. Since

the issue of Provisional assessment order is for a period of 3 years, the Appellant sought enquiry into the matter and waiving of the arrears(back billing amount) through a complaint before the CGRF.

2. The ADE/OP/Sangareddy/R2 through a letter dt.25.4.2016 stated that the Appellant had applied for service connection in the name of M/s Jahnvi Industries under LT category-III and that the service was released on 30.09.2010. He stated that the Appellant has been using the power supply for water plants.

3. The 2nd Respondent further stated that the orders were issued directing categorization of water purifying treatment plants to be released under LT Category II only and that ADE/DPE had inspected the service in question on 15.4.2015 and found that the power was being used for R.O. Water plant purpose/commercial purpose, which falls under category-II and whereas, the supply was sanctioned originally for industrial purpose category III and hence he proposed back billing for the period from 15.8.2012 to 15.4.2015 for Rs 6,76,318/-. Again the ADE/DPE had inspected the service on 5.2.2016 and found the Appellant using the supply for R.O. Water plant falling under category II and therefore, he proposed short billing for the period from 18.4.2015 to 5.2.2016 and assessed the revenue loss to the DISCOM as Rs 3,17,590/- and accordingly, Provisional Assessment Order(PAO) notices were issued to the Appellant.

4. Before the CGRF, the Appellant claimed that without intimation to him, the category III was changed to category-II, which resulted in loss to him and that now he is being demanded to pay huge amount of Rs 10,60,434/- by the DISCOM placing huge financial burden on him and demanded withdrawal of the demand notice. On behalf of the DISCOM, R2/ADE/OP/Sangareddy reiterated that as per the orders of CGM Comml. dt.7.8.2012 the category of the water plant has been changed from category III to category II and accordingly, the billing has been proposed and P.A.O., was issued to the Appellant.

5. On the basis of the material placed on record and oral representation, the CGRF passed the following, without examining the rule position and without examining the merits of the case, in the following manner:

“ the Respondents are directed to act as per the rules in vogue, under intimation to this Forum.
The complaint is disposed of accordingly.”

through the impugned orders.

6. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal claiming that he had applied for service connection to run a fabrication industry with 10HP and in the year, 2013 and changed his business to R.O. Water plant by securing a certificate as SSI unit on 19.3.2013 issued by the District Industries Center. The Respondents who claimed that the category III was changed to category-II in the year, 2012 had failed to inform him about it and now about 4 years later, in the year 2016, the Respondents are demanding payment of Rs 10,60,434/- which is totally not proper. The Appellant sought reduction of the amount of payment as per the category.

7. In the Appeal, the R2/ADE/OP/Sangareddy filed written submission and a copy of memo dt.7.8.2012 issued by the CGM/Comml stating that most of the water purifying/treatment plants are being run or categorized in Cat-IIIA after producing the SSI certificates by the consumers and clarifying that the water purifying /treatment plants henceforth should be released under LT category -II only. R2 further stated that the service connection No. 0561 00673 was released on 30.9.2010 under LT -III Category to M/s Jahnvi Industries and as per the instructions in the memo dt.7.8.2012, a back billing case was booked against the service connection and the revenue loss to the DISCOM from 15.8.2012 to 5.2.2016 came to Rs 10,60,434/- and accordingly, he stated that a Preliminary Assessment Order (PAO) notice was issued to the Appellant as per the rules in vogue.

8. The efforts at mediation proved unsuccessful and therefore, the matter is being disposed of on merits.

9. On the basis of the material on record and contentions, the following issues arise for disposal:

1. Whether change of category from Category III to Category II is as per the terms of GTCS?
2. Whether the assessment of revenue loss amounting to Rs 10,60,434/- is correct and legal?
3. Whether back billing for the period from 15.08.2012 to 5.2.2016 is as per the rules?
4. Whether the impugned orders are liable to be set aside?

Issues 1 to 4

10. The provisional assessment notices 1) dt.19.5.2015 shows an amount of Rs 6,76,318/- 2) dt 8.2.2016 shows an amount of Rs.3,17,590/-, add upto Rs 9,93,908/-.The balance amount of Rs 66,526/- (10,60,434/- - Rs 9,93,908/-) is

unrelated to this back billing process. The record shows that this amount of Rs 66,526/- is related to the back billing on the ground of defective meter booked on 23.1.2015 for the period from 7.10.2014 to 7.2.2015 due to defective Y phase voltage, which was not recording in the meter and not reported. This is the subject matter of Preliminary Assessment Order notice dt.19.5.2015 towards short billing due to meter defect which is not the subject matter in the Appeal.

11. It is clear from the Tariff Order of 2015-16 that the category of R.O. Water purification plants fall under category-II until 31.3.2016, as per the clarification given.

12. The memo of CGM commercial dt 7.08.2012 classifying water purifying plants as commercial units directing that they should be brought under LT Category II only, has been issued as per the authority given by the ERC in the Tariff Orders under the General Conditions of L.T. Tariff. This fact has been brought to the notice of this office. Section 62(3) of Electricity Act 2003 authorises ERC to classify the consumers to various categories and accordingly, categorisation has been validly made. Regarding the category of water purifying plants in Tariff order 2015-16 dt 27-3-2015, there was a query to the ERC from the Licensee regarding the suitable category for water purifying units and the response of ERC was as follows:

Query No. 4.4.26 A) Objections regarding water purifying plant to be considered as industry & not as a commercial activity: Palamoor R.O water plants Association stated 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.

B) Licensee's Response: 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, theatres, 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.

C) Commission's View: The Commission agrees with the views of Discoms on this issue.

13. It is clear from the above clarification of TSERC, the Appellant unit which is a Reverse Osmosis plant/water processing plant does not come within the purview of the term industry, as no manufacturing activity was involved and therefore, the Appellant falls under LT Category II and not under LT Category III. Thus the claim of Appellant that the unit is a manufacturing unit and that it has been rightly categorized as LT Category III (Industry) is untenable. On the other hand, the claim of the Respondents that the Appellant unit does not fall within the term 'Industry' and therefore, the unit has to be considered as a consumer of LT Category II(Commercial) is tenable. The Licensee accordingly, billed the Appellant which is legal and as per the statutory provision.

14. The next question that arises is whether the back billing initiated on the basis of change of Category LT III (industry) to Category II (commercial) of the Appellant unit is sustainable?

15. Originally under clause 3.4.1 of GTCS, in the case of reclassification of the consumer category, the backbilling was permitted for 3 months in the case of domestic and agricultural categories and 6 months in the case of other categories. This clause 3.4.1 of GTCS was amended by the APERC vide proceedings No. APERC/SECY/96/2014 dt. 31.5.2014 and the amended provision is as follows:

For Clause 3.4.1 of GTCS, the following clause shall be substituted, namely:-

"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, 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.

16. The above amended provision makes it very clear that the reclassification can be made with retrospective effect and the assessment shall be made for the entire period during the period covering such reclassification. It is also clear that if the period of reclassification cannot be ascertained, such period shall be limited to the period of twelve months immediately preceding the date of inspection.

17. In the present case, for the period during reclassification, back billing is permitted for the entire period not merely for 12 months immediately preceding the date of inspection. Thus the contention of the Appellant that back billing is not legal, is not tenable. The clarification of ERC in tariff order 2015-16 entitles the DISCOM to categorise the unit of the Appellant as Category II (commercial) unit and collect energy charges accordingly.

18. The Appellant obviously had not concealed the activity of processing water and it was only subsequently in the Tariff Order 2015-16 dt. 27.3.2015, a statutory clarification was given by the ERC on the point which is binding. The Appellant is found not at fault and therefore, directing him to pay the back billing amount in a lump sum at one time would work out hardship on him. Regulation No 7/2013 amended the Regulation No 5/2004 and substituted clause 4.6.1 limiting instalments to 12 in any case and reducing interest to 18% (PA). No additional charges for delayed payment are permitted under this clause.

19. The Appellant pleaded that even though he is not at fault has been burdened with back billing which is unjust and illegal and sought setting aside of the back billing order. The request of the Appellant to set aside the back billing amount cannot be granted in view of the enabling provision and change of category carried out as per the provisions of the Tariff Order and Regulations.

20. There is one significant omission regarding reclassification under clause 3.4.1 of GTCS which mandates a notice to the consumer on proposed reclassification, an opportunity to the consumer to file an objection and only after due consideration of reply, the DISCOM may alter the classification and revise the bills if necessary, with retrospective effect. It is quite clear that this procedure is not at all followed in this case prior to issue of back billing notice dt 23.3.2015 or thereafter. Even clause 8 of the Regulation 7/2000 mandates the Licensee to notify the consumer it intends to reclassify that the consumer must execute a fresh agreement on the basis of the altered classification, else the licensee may state that

it may disconnect the supply of power if the consumer does not take the required steps.

21. The first case on back billing for an amount of Rs 6,76,318/- from 15.8.2012 to 15.4.2015 on Wrong categorization was booked through inspection of ADE/DPE on 15.4.2015. The subsequent course of action i.e. billing of the service under Category II was not carried out due to negligence. This resulted in issuing another back billing case which piled up to Rs 3,17,590/- from 18.4.2015 to 5.2.2016. Had the category been changed to LT-II as a result of the initial inspection i.e. on 15.4.2015, this amount of Rs 3,17,590/- representing the difference of billing from Cat-III to Cat-II, there was a possibility that the Appellant would have paid the amount regularly, without causing heavy burden on the Appellant.

22. It is clear from the record that the Appellant had changed the activity of Fabrication at the time of setting up the industry to water processing from 19.3.2013 as per the copy of Small Scale Industry certificate issued by the District Industries Centre. If there is any change of user from Category III to II, it shall be from 19.3.2013 only and not from 15.8.2012 for starting the back billing by the Respondents. Thus back billing from 15.8.2012 is found not correct and to that extent the back billing deserves to be set aside.

23. Keeping in view the infraction of Clause 3.4.1 of GTCS, violation of right of the consumer to be heard before reclassification, it is found necessary to direct the DISCOM not to levy additional charges for the delayed payment on the outstanding amount as per the clause 9 of Regulation 7 of 2013 and not to charge interest on the back billing amount at all and collect this amount from those officials found responsible for the present issue, after conducting due enquiry.

24. In the result the Appeal is disposed of:

- a. Holding that the Appellant unit is correctly categorized as LT Category II (Commercial) consumer.
- b. The assessment of revenue loss to the DISCOM Rs 10,60,434/- is found to be partly not correct.
- c. The back billing shall be calculated afresh for the period from 19.3.2013 to 5.2.2016 in compliance to the provisions of GTCS.
- d. The Appellant shall pay the back billing amount so arrived at (as per (c)) in 12 equal instalments from the next month of serving of the revised assessment notice on the Appellant. Failure to pay any one installment

shall make the entire amount falling due with all the attendant consequences.

e. In view of the violation of the right of the consumer to be heard before reclassification, there shall be a direction to the DISCOM **not to levy additional charges for the delayed payment** on the outstanding amount as per clause 9 of Regulation 7 of 2013. The mandated **interest charges on the back billing amount as per Clause 9 shall be** collected from those officials who are found responsible for the present issue, after conducting due enquiry.

f. The impugned orders are set aside for lack of reasons and objectivity.

25. The licensee shall comply with and implement this order within 15 days for the date of receipt of this order under clause 3.38 of the Regulation 3 of 2015 of TSERC.

The impugned orders are confirmed to the extent indicated in this order.

Corrected, Signed & Pronounced on this the 16th day of November, 2016.

Sd/-

VIDYUT OMBUDSMAN

1. Sri. B. Prabhu Das, S/o Vijaya Sagar, H.No. 22-122, Meena Enclave, Plot No. 201, Opp: Siddartha Nursingh Home, Jyothi Nagar, R.C.Puram, Medak Dist. Cell No. 8008000495.
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Copy to:

7. The Chairperson, CGRF - 1, TSSPDCL, Vengal Rao Nagar Colony, Erragadda, Hyderabad.
8. The Secretary, TSERC, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad.