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**

Monday, the Eighth Day of August 2016

Appeal No. 42 of 2016

Preferred against Order Dt. 24-03-2016 of CGRF In

CG.No: 121/2016 of Medak Circle

Between

M/s. Green Infrastructure Projects(p) Ltd. represented by its Director, S.F.No. 29E, 28AA, Mulugu Village and Mandal, Gajwel Sub-Division, Medak District. Cell ; 9989999533.

... Appellant

AND

1. The AAE/OP/Mulugu/TSSPDCL/Medak.
2. The ADE/OP/Gajwel/TSSPDCL/Medak.
3. The AAO/ERO/Gajwel/TSSPDCL/Medak.
4. The DE/OP/Toopran/TSSPDCL/Medak.
5. The SE/OP/Medak Circle/TSSPDCL/Medak.

... Respondents

The above appeal filed on 02.06.2016 coming up for hearing before the Vidyut Ombudsman, Telangana State on 21.07.2016 at Hyderabad, in the presence of Sri. V. Brahmaiah on behalf of the Appellant company and Sri. B.N. Jagadishwar Rao - ADE/O/Gajwel, Sri. K.S.A.Saleem - AAO/ERO/Gajwel for the Respondents and having considering the record and submissions of both the parties, the Vidyut Ombudsman passed the following:

AWARD

The Appellant is a consumer of electricity with SC No. 04040 1848, Category III(A) with 50 HP load. The Appellant lodged a complaint alleging that a false case has been booked alleging unauthorised use of electricity by the inspecting officer on 11.8.2014 on the ground that the connected load was 2.266 KW with the main machinery load of 30 KW not in use at that time and took the lighting load. The Appellant claimed that its work involved sorting, grading and keeping the agricultural produce in cold storage according to the need and also orders.

2. The Respondents have not filed any reply to the complaint of the Appellant before CGRF.

3. The Appellant's representative stated before the CGRF that they have installed cooled chiller EBM fans for circulation and recirculation of air which is meant for maintaining RH levels at the cool room, apart from having kirloskar pumps, humid parks, and a borewell. He claimed that the CGM gave final assessment order for recovery of Rs 45,260/- towards alleged unauthorised use of power.

4. The Appellant's representative further stated that they have invested huge amounts, installed machinery for industrial purpose only and that they felt that the business in fruits and vegetables which are perishable in nature cannot be sustained without a cold room and that as when it is required, they were using the cold room. The Appellant sought waiver of final assessment charges of Rs 45,260/- and refund of 50% of the deposited amount with interest. He also complained that when the matter is pending with the Appellant authority, the 2nd Respondent/ADE/Gajwel disconnected the power supply many times.

5. The 2nd Respondent ADE/O/Gajwel stated that he inspected the premises of the Appellant and found that the Appellant has been using the cool room for vegetables and distributing to the retailers and that he found that the machinery like (i) chiller, (ii)EBM Fans, (iii)Kirloskar pumps, (iv)crate washer etc were being kept idle.

6. After going through the record and statements of both the parties, the CGRF directed the appellant to pay the amount as per the final assessment passed by CGM/RR Zone, through the impugned orders.

7. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal claiming that the plea of the Respondents about the alleged unauthorised use of electricity is not correct and it is liable to be set aside and that it's claim on various issues has not been decided by the CGRF and that like every industrial unit being permitted lighting load, the Appellant too has been consuming the power and that the Inspecting Officer has wrongly ignored the load of the machinery and booked a case and that the total load of the factory like the chiller/processor/water pumps are being used according to the need of the day and that the entire machinery has been purchased and installed for

processing the agricultural produce as and when it is needed and therefore, the allegation of unauthorised use is not correct.

8. The AAO/ERO/Gajwel/R3 filed a reply dt.16.6.2016 in the Appeal stating that a case for unauthorised usage of electricity was booked against the Appellant, which is a LT III category industry by the ADE/SDI/DPE/Medak for Rs 1,69,215/- by way of provisional assessment, confirmed by SE/Assessments/Corporate office and that on Appeal the CGM/O/RR Zone reduced the Assessment amount to Rs 45,260/- only.

9. Efforts at mediation failed to succeed, because there is no agreement on any point between the parties.

Arguments heard.

10. On the basis of the record and facts, the following issues arise for determination:

i. Whether the Appellant indulged in unauthorised use of electricity being category LT III(A) (Industry) consumer?

ii. Whether non user of machinery in the premises of the Appellant amounts to unauthorized usage of energy, as alleged by the Respondents?

iii. Whether the Respondents have taken steps to alter the Category of the Appellant from LT III A(industry) to LTII ?

iv. Whether the impugned orders are liable to be set aside?

ISSUES 1 to 4

11. The Appellant admittedly has been LT III(A) (industry) consumer being a vegetable processor, equipped with EBM cooled chiller, fans for maintaining RH levels in the cool room, kirloskar pumps, humid parks and a borewell in the premises. The Appellant claimed that their fruits and vegetables business is of perishable nature, and without a cold room, the unit is not viable.

12. The 2nd Respondent/ADE/DPE/Medak inspected the Appellant's service on 11.8.2014 and booked a case under Section 126(4) of the Electricity Act and found the meter seals intact and that after the inspection, he found out that the beneficiary has been utilising the supply for vegetable collection only and that there is no processing activity. Therefore, he concluded that the beneficiary has been indulging in unauthorised usage of supply and proposed booking of a case and provisionally assessed the loss at Rs 1,69,040/- to the DISCOM for the period from

1.6.2012 to 11.5.2014(about 2 years).

13. On Appeal, the SE/Assessment upheld the provisional assessment order. The Appellant paid 50% of the assessed amount on 17.11.2014 and further appealed to the CGM/OP/RR Zone, who finally assessed the amount to Rs 45,260/- limiting the period of assessment from 1.7.2013 to 11.8.2014(one year approximately).

14. Against the assessment of CGM/OP/RR Zone, the Appellant lodged a complaint with CGRF, who further upheld the assessment passed by the CGM/OP/RR Zone, through the impugned orders.

15. The Appellant claimed that it is a vegetable processing industry and that when needed, it would utilise the machinery for preserving vegetables and that it has been using the other facilities which the Respondents claimed as vegetable collection. The Appellant's representative claimed that whenever the need arises, he would operate the processing machinery and that there is no violation committed by the Appellant in utilising the benefit of LT III(A) industry category. The 2nd Respondent contended that when the machinery is not being used for processing vegetables since a long time and the power is being used only for vegetable collection, it would amount to unauthorised use of power, liable for payment as per the assessment made under Section 126(4) of the Electricity Act. The ADE arrived at Rs 1,69,040/- by way of provisional assessment. The SE Assessment, Corporate Office confirmed the preliminary assessment and the CGM/OP/RRZ on Appeal arrived at the assessment as Rs 45,260/- on the basis of clause 9.5.3 of GTCS and as per Annexure XII(III) through his orders dt. 2.1.2016.

16. To proceed further one has to understand what is unauthorised use? Section 126(6) explanation(b) explains what amounts to "unauthorised use" as follows:-

i. by any artificial means; or

ii. by a means not authorised by the concerned person or authority or licensee; or

iii. through a tampered meter; or

iv. for the purpose other than for which the usage of electricity was authorised; or

v. for the premises or areas other than those for which the supply of electricity was authorised.

The present case, it is clear does not fall within four corners of the above explanation.

17. The Respondents contended that when the consumption history of the Appellant is seen through Energy Billing System(EBS) ERO 25 Gajwel, it is clear that the consumption from about 1500 units and above got reduced to above 300 to 450 units from June,2013 onwards upto November,2014. It is clear from these details that there was heavy usage at the time of inception of the service connection and later the usage got reduced. The activity of the Appellant industry is to preserve vegetables, agricultural produce by maintaining R-H levels through air circulation by keeping the chambers cool and for this purpose, the use of industrial machinery is required. This activity is totally stopped by the Appellant and only sorting, grading and supply of vegetables is being undertaken with minimum use of electricity. From the pattern of usage of electricity, the Respondents claimed that the Appellant initially used the industrial machinery and later stopped using the machinery and limited the consumption for vegetable collection only, while keeping the machinery idle. This has been stated in the order of the ADE/OP/Gajwel.

18. Though the Respondents have not used the term wrong classification of the consumer, they are relying on the term "unauthorised use" for charging the consumption of energy, presumably under LT II Category.

19. There is no agreement at the time of inception of releasing the service connection that the consumer should use the full load always. Similarly, there is no agreement about minimum consumption of energy. Then how the Respondents are terming the less consumption of energy by the Appellant as unauthorised? There is no allegation that the entire machinery installed was removed or that the Appellant has no intention to use the machinery as and when needed. The allegation of unauthorised usage is a misnomer and used against the Appellant, which is totally untenable. The Appellant has not committed any violation of the terms of supply either under GTCS or under any Regulation. The wrong user of Section 126(5)(terming the user as unauthorised) of electricity act and Clause 9.3 of GTCS is unfounded and unwarranted.

20. From the facts and circumstances, it is clear that the Respondents, by alleging that the Appellant has not used the machinery for preservation of vegetables and agricultural produce and thereby, is not entitled to concessional tariff available under LT III(A) (Industry) Category and that reclassification of consumer category is warranted, have not taken suitable steps as per the amended clause 3.4.1 of GTCS by following the due procedure prescribed under the clause. This position obtains now, because the Respondents have not been saying about reclassification, but are asserting unauthorised use of energy by the Appellant, as an excuse for charging more.

21. At no place in the record submitted on behalf of the Respondents, there is any mention about reclassification of the service category of the Appellant from LT IIIA (Industry) to another category so that the benefit available to the Appellant is stopped. Thus the claim of the Respondents that less consumption of energy amounts to unauthorised usage of power and therefore, they have assessed the charges by removing the benefit available to the industry category cannot be sustained.

22. Section 62(3) of the Electricity Act 2003 authorises classification of consumers on the basis of total load and the purpose for which the supply is required. Amended Clause 3.4.1 of GTCS permits reclassification of consumer category which is as follows:

> "Clause 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 can not be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection."

Even this reclassification is subject to the consumer altering the category or purpose of usage of the premises without prior intimation to the DISCOM. In the present case, the appellant has not altered the purpose of usage of the premises or the category. Infact, the Appellant has not done anything to attract displeasure of the DISCOM. He has not moved the machinery from the premises and he has not abandoned the purpose of setting up of the unit for using the machinery for preserving and processing of vegetables. He merely stated that whenever there is need, he would use the machinery to preserve the vegetables. For a considerable period of time, the Appellant has not used the chiller, EBM Fans and water pump etc and the average consumption of the Appellant has been termed as 'for vegetable collection consumption only'. If it is so, Clause 3.4.1 of GTCS is not applicable, in view of the fact that initially, the unit of the Appellant was, even according to the Respondents, correctly classified as LT IIIA (industry) Category.

23. The Respondents claimed that since the Appellant has not been using the machinery like Chiller, EBM Fans, water with crate water pump, the Appellant is not entitled to be charged for the power under LT III A industry and should be charged differently. The Appellant is not ready to accept this claim of the Respondents.

24. The consumption pattern from Sep,2012 to Nov,2014 disclose very less consumption, except for April to June 2013. Added to this, the Appellant's claim that only when needed, the unit would use the electrical machinery, certainly calls for change of category from LT III A industry to LTII, which is found to be reasonable, with the assurance of the 2nd Respondent at hearing that whenever the Appellant wants the category LT IIIA back, and wants to use the chiller, EBM Fans, waters with crate water pump etc, he may apply to the DISCOM for restoration of category LT IIIA of GTCS to avail the concessional tariff, appears to be reasonable which would come into play only when the category is reclassified.

25. The 2nd Respondent ADE/OP Gajwel preliminarily assessed the loss sustained by the DISCOM on account of unauthorised usage of electricity at Rs 1,69,040/- demanding Rs 84,520/- towards 50% of the initial assessment plus supervision charges of Rs 100/- pending finalisation of the case, which was confirmed by SE/Assessment by way of final assessment. Against this assessment, the CGM of the DISCOM on Appeal estimated the loss as per Clause 9.5.3 of GTCS by unauthorised use of power from 1.7.2013 to 11.8.2014 at Rs 45,260/- including

incidental and reconnection charges, through his final assessment order dt.2.1.2016. This assessment is also devoid of any mention about reclassification of the service from category LT III A industry to Category LT II. It is quite surprising that both the primary and Appellate authorities for assessments have assessed the loss to DISCOM for non user, terming it as unauthorised use, which is not in conformity with the present terms of GTCS, Tariff Orders or Regulations. The assessment is found to be irregular and not supported by any statutory provision. On similar ground, the two line order supporting the final assessment order of CGM in the impugned orders is also cannot be sustained on any ground. Let the Respondents, in the first instance, change the category of the service as per Clause 3.4 of GTCS and then embark on imposing energy charges in accordance with the changed category of service. Till such step is taken, the Respondents, on basis of the present position, cannot term and charge the reduced consumption of the Appellant as unauthorised consumption.

26. For the aforementioned reasons,the impugned orders cannot be sustained on any ground.The Issues 1 to 4 are answered accordingly.

27. In the result, the Appeal is allowed holding that:

a. the Appellant has not consumed the power unauthorisedly being category LT III A consumer.
b. the non user of the machinery in the premises of the Appellant does not amount to unauthorised usage of energy.
c. the Respondents have not taken steps to alter the category of the Appellant from LT III A industry to LT II category(as shown in EBS consumption, billing particulars) as per the amended Clause 3.4.1 of GTCS to charge more on the pretext of unauthorised use, as claimed by them in the assessment.
d. the final assessment of CGM/O/RRZ Dt. 2.1.2016 is set aside.
e. The amount collected on the Assessment shall be repaid by way of adjustment in the future consumption bills.
f. the impugned orders are set aside as devoid of merits.

28. This award shall be implemented within 15 days of its receipt at the risk of penalties as indicated in clauses 3.38, 3.39, and 3.42 of the Regulation No. 3/2015 of TSERC.

TYPED BY CCO, Corrected, Signed and Pronounced by me on this the 8th day of August, 2016.

Sd/-

VIDYUT OMBUDSMAN

1. M/s. Green Infrastructure Projects(p) Ltd. represented by its Director, S.F.No. 29E, 28AA, Mulugu Village and Mandal, Gajwel Sub-Division, Medak District. Cell ; 9989999533.

2. The AAE/OP/Mulugu/TSSPDCL/Medak
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5. The DE/OP/Toopran/TSSPDCL/Medak.
6. The SE/OP/Medak Circle/TSSPDCL/Medak.

Copy to:

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