



**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**

Saturday, the Twenty Second day of August 2015

Appeal No. 46 of 2015

(Old Appeal No. 98 of 2014)

Preferred against Order Dt. 16.12.2014 of CGRF In

CG.No: 113/2014 of Mahaboobnagar Circle

Between

G. Sreedhar, Managing Partner,  
M/s Sree Renuka Beverages,  
Plot No. 3-28, Jemmichedu Village,  
Gadwal Mandal,  
Mahaboobanagar Dist.

..... Appellant

**AND**

1. The AE/OP/Gadwal Rural/TSSPDC/Mahaboobangar Dist
2. The ADE/OP/Gadwal/TSSPDCL/Mahaboobnagaar Dist
3. The AAO/ERO/Gadwal/TSSPDCL/Mahaboobangar Dist
4. The DE/OP/Gadwal/TSSPDCL/Mahaboobnagar Dist
5. The SE/OP/MBNR Circle/TSSPDCL/Mahaboobnagar Dist.

..... Respondents

The above appeal filed on 05.2.2015 came up for final hearing before the Vidyut Ombudsman, Telangana State on 22.07.2015 at Hyderabad in the presence of Sri. G Sreedhar - Appellant and Sri. B Srinivasulu - DEE/OP/Gadwal, Sri. K Kishore Kumar - ADE/OP/Gadwal, Sri. M Ramachandraiah - AE/OP/Gadwal and Sri. G.S. Raju - AAO/ERO/Gadwal (FAC) for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

**AWARD**

The Appellant has been running a packaged drinking water unit with Service Connection No. 06231 00103 at Jemmichedu Village, under category III ( Industrial). The CC bills were being issued continuously under category III till Oct, 2014. The AAE/DPE/MBNR had inspected the service connection on 5/9/2014 and

issued an assessment order stating that the unit has to be billed under Category II (Commercial) instead of Category III (Industrial) for payment of Rs 2,76,920/- . The Appellant claimed that the Respondents should be directed to bill the service under Category III (Industrial) only.

2. Before the CGRF, the Respondent No.3 filed a reply stating that the service connection originally was released under LT Category III (Industrial) on 31/7/1989 with a Contracted load of 28 HP in favour of M/s Shanthi Ice Factory, Zamched village in Gadwal Rural. The assessment notice regarding back billing and change of category was served on the Appellant by the operations wing on 30/10/2014. The owner of the service connection was later changed in favour of M/s Sree Renuka Beverages Industries (The Appellant) which has been running a mineral water plant with the service connection.

3. According to the Respondent No.3, the CGM,Commercial & RAC,TSSPDCL had issued orders instructing that the service connections to the water purifying/treatment plants should be released under LT Category II (Commercial) only. As a result, AAE/DPE/MBNR who inspected the Appellant unit, issued backbilling assessment notice dt.5.9.2014 changing the Category of the Appellant unit from LT III(Industrial) to LT II (Commercial).

4. After hearing both sides and on consideration of the material on the record, the CGRF observed that the Appellant's unit is a "Water purifying/treatment plant" which is not clearly mentioned in the Tariff Order. On the question whether the water purifying plant would fall under the Category II or Category III, CGRF had directed the Appellant to approach DEE/OP - Respondent No.4 or SE/OP/ Respondent No.5 regarding back billing and further directed the Appellant to approach ERC to get clarification regarding the Category of the service connection as to whether it is LT III (Industry) or LT II (Commercial).

5. Aggrieved and not satisfied with the relief granted in the impugned orders, the Appellant preferred the present Appeal.

6. ADE/Elect/OP/TSSPDCL, Gadwal, Mahabubnagar Circle filed a report stating that originally the service connection was released in Category III on 31/7/1989 in the name of M/s Shanthi Ice Factory and now the Appellant has been running a mineral water plant. He further stated that in view of the clarification regarding water purifying or treatment plants by way of a Memo dt. 7.8.2012 issued by the CGM/COMM & RAC, CPDCL, it was AAE/DPE/MBNR who inspected the premises of

the Appellant, booked a back billing case on the basis that the service connection ought to have been released under LT Category II (Commercial) only.

**7. Arguments heard.**

8. Efforts made to get the matter settled by mediation were not successful. Therefore, the matter is being disposed off on merits.

9. The points for determination are:-

- i) Whether the impugned orders are liable to be set aside?
- ii) Whether the water purifying/treatment plants fall within the purview of Category III(Industrial) or Category II (Commercial) as per the clarification given by ERC?
- III) Whether back billing resorted to by the Respondents is as per the provisions of GTCS?

**10. POINTS 1 to 3.**

11. Admittedly, the Service Connection No. 0623100103 of the Appellant was being run under LT Category III (Industrial) manufacturing packaged drinking water and CC bills were being issued under LT Category III till October, 2014. On 5/9/2014 AAE/DPE/MBNR had inspected the service and issued a back billing assessment order demanding payment of Rs 2,76,920/- after the CGM,COMM & RAC,TSSPDCL issued a clarification vide memo dt. 7.8.2012. This is opposed by the Appellant on the ground that the Appellant unit has been engaged in manufacturing mineral water and it is an industry. In support of such claim, the Appellant filed an acknowledgement in FORM No. MICRO 2 from the department of Industries, Government of Andhra Pradesh dt. 19.12.2006 to say that the appellant is a packaged drinking water manufacturing enterprise, a registration certificate issued by the Government of Andhra Pradesh under the Food Safety and Specifications Act, 2006 stating that the Appellant is a food business operator, a copy of license issued by BIS showing that the Appellant was issued a license to manufacture packaged drinking water other than mineral water and a renewal certificate dt. 6.9.2013, a certificate of registration for ISO 9001/2008 with accreditation No. 10918 by beaurau of international quality standard PTE.Ltd with a covering letter to show that the Appellant has been making packaged drinking water. The Appellant explained the process of making packaged drinking water at the unit to the effect that the groundwater is extracted and processed through reverse osmosis process etc and therefore the unit is an industry and it should be treated as a category III

(Industrial) consumer and not category II (Commercial) consumer and billed as such.

12. The Appellant relied on orders dt. 11.11.2014 in Appeal No. 59 of 2014 in support of the claim that the unit should be treated as a consumer under Category III (Industrial) and billed as such. In the cited decision, after considering the material on record, the learned Vidyut Ombudsman for the states of Andhra Pradesh & Telangana had set aside the memo of CGM, Commercial dt. 7.8.2012 advising the Respondents under the Appeal that the water purifying plants should be released under LT Category II only on the ground that it is ERC which has the power to classify the consumers by virtue of Subsection 3 of section 62 of the Electricity Act, 2003 and directed the Respondents therein that they should withdraw the backbilling assessments, in support of the present case.

13. The Appellant also had relied on the decisions of CGRF, APEPDCL, Visakhapatnam dt 28.3.2013 in CG No. 710-714/2012-2013 of E.G Dist, Orders dt. 31.10.2013 of CGRF in CG No.1132/2013-14 of Ranga Reddy East circle , Orders dt. 16.12.2013 of CGRF in CG No. 187 OF 2013 of Kurnool circle and orders of CGRF, Kurnool Circle in CG.No. 188 of 2013 dt 16.12.2013 directing the complainants therein to be treated as consumers under LT Category III only until clarification is issued by ERC in support of its case. The Appellant claims that since this clarification is not given by ERC, the Appellant should be treated as a consumer under the Category III and the back billing should be set aside.

14. In the impugned orders, CGRF gave a free advice to the Appellants to approach ERC for clarification in the matter, instead of CGRF itself of the discom taking the initiative and getting the clarification.

15. By orders dt 11.11.2014 in Appeal No. 59 of 2014, the learned Vidyut Ombudsman rightly held that neither the CGM Commercial nor anybody other than ERC has any power to classify the consumers into various categories and it is the statutory duty of ERC by virtue of Subsection 3 of Section 62 of the Electricity Act, 2003 to classify consumers into categories and the said provision is extracted hereunder for clarity:

“The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may

differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required”.

16. It is clear from the above provision, that the ERC alone has the authority to classify consumers into various categories and not the discoms or any other authority, much less the CGM/Commercial.

17. The Appellant further contended that the unit is SSI and it has been extracting groundwater and processing it and therefore, it is an industrial unit and that it has been processing water by being a consumer of Category III since 2006, and that In the beginning, it was an ice manufacturing factory having service connection with Category III and this conversion of the service connection into Category II commercial is not legal. The Respondents opposed this argument on the ground that all similar units are being treated as consumers of Category II (Commercial) and that the Appellant is not entitled to any relief in this case and that the appellant is liable to pay back the billing charges. In the Tariff Orders 2015-16 dt. 27.3.2015, there was a query to the ERC regarding the suitable Category and the response of the ERC is 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.

18. It is clear from the above clarification of TSERC that 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 within the LT Category II and not LT Category III. Thus the claim of Appellant that the unit is a manufacturing unit and that it was 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) and accordingly billed is legal and as per the statutory provision which has to be upheld.

19. The next question to be decided is about the backbilling on the basis of the change from the Category LT III(Industrial) to Category II (Commercial) of the Appellant unit. It was ADE/OP who issued backbilling assessment order dt. 5.9.2014 stating that pursuant to the inspection by AAE on 5.9.2014 at 1.30 P.M , the category of the Appellant service connection was found actually to be LT Category II and not LT Category III and based on this interpretation, he issued backbilling assessment notice for the period from 7.8.2012 to 5.9.2014 for Rs 2,76,920/- which was acknowledged by the Appellant on 30.10.2014.

20. The Appellant questioned the billing with back date much prior to the assessment order dt. 5.9.2014 on the ground that the Respondents have no power to impose backbilling from 7.8.2012. Obviously, this date is taken from the date of Memo of CGM, COMMERCIAL of CPDCL.

21. Originally under the 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 proceeding No.APERC/SECY/96/20114 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.”

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

23. In the present case, the period during the reclassification is ascertainable and therefore, backbilling can be done for the entire period and not merely for 12 months immediately preceding the date of inspection. The contention of the Appellant regarding backbilling is untenable, in view of the latest clarification of ERC in Tariff Order 2015-16 dt. 27.3.2015. From the clear clarification of the ERC in the Tariff Order 2015-16, the licensee is entitled to categorize the unit of the Appellant as Category II (Commercial) and collect energy charges accordingly. Though the memo dt. 7.8.2012 of CGM/Commercial is not legal, the licensee is entitled to, under clause 3.4.1 of GTCS, to collect back billing charges in view of the change in the category of the Appellant from LT Category III (Industry) to LT Category II (Commercial).

24. 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, the clarification was given by the ERC which is a statutory clarification. The Appellant is found not at fault and therefore, directing the unit to pay the back billing amount in a lump sum at one time would work out hardship. Therefore, by virtue of clause 4.6 of Regulation No.5 of 2004 the Appellant can be granted instalments to pay the back billed amount of Rs 2,76,920/- and accordingly, the Appellant shall pay the back billed amount in 24 equal installments, starting from the month of September, 2015 apart from paying regular CC charges.

25. In the result, the Appeal is allowed:

- a. The impugned orders are set aside.
- b. The Appellant unit is correctly categorized as LT Category II (Commercial).
- c. The Appellant shall pay the backbilling amount of Rs 2,76,820/- in 24 equal installments @ Rs 11,538/- per month starting from the month of September, 2015, the last installment being Rs 11,546/-. Failure to pay any one instalment, the entire amount shall become due.

Corrected, Signed and Pronounced on this the 22<sup>nd</sup> day of August 2015.

Sd/-

**VIDYUT OMBUDSMAN**

1. G. Sreedhar, Managing Partner,  
M/s Sree Renuka Beverages,  
Plot No. 3-28, Jemmichedu Village,  
Gadwal Mandal,  
Mahaboobanagar Dist.
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5. The DE/OP/Gadwal/TSSPDCL/Mahaboobnagar Dist.
6. The SE/OP/MBNR Circle/TSSPDCL/Mahaboobnagar Dist.

**Copy to:**

7. The Chairman, CGRF - 1, TSSPDCL, GTS Colony, Erragadda, Hyderabad.
8. The Secretary, TSERC, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad.