



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

Tuesday, the First Day of December 2015

Appeal No. 75 of 2015

Preferred against Order Dt.14.09.2015 of CGRF In

CG.No:51/2015 of Medak Circle

Between

M/s Ganga Bhavani Beverages, represented by Sri P. Somaiah, Envanpalli Road,
Siddipet, Medak District - 502 103 Cell No. 9948135536.

..... Appellant

AND

1. The AE/OP/Siddipet Town - II/TSSPDCL/Medak Dist.
2. The ADE/OP/Siddipet Town/TSSPDCL/Medak Dist
3. The AAO/ERO/Siddipet/TSSPDCL/Medak Dist
4. The DE/OP/Siddipet/TSSPDCL/Medak Dist
5. The SE/OP/Medak Circle/TSSPDCL at Sangareddy.

..... Respondents

The above appeal filed on **15.10.2015**, came up for final hearing before the Vidyut Ombudsman, Telangana State on **23.11.2015** at Hyderabad in the presence of the Appellant Sri. P. Somaiah and Sri. B. Ashok - AE/OP/Siddipet Town - II, Sri. T. Prashanth - ADE/OP/Siddipet Town and Sri. T. Ranveer Singh- AAO/ERO/Siddipet for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant has a Service Connection No 0002 57273 under LT category III , and it has been running a water purification plant. On 23.3.2015, the DEE/DPE/SDPT inspected the Service Connection, opined that the water purification plants should be categorized under LT category II, back billed the service from 21-01-2013 and sent a demand for Rs 3,58,418/-. The Appellant had no notice of conversion of

Service Connection from LT category III to LT category II. Aggrieved with the demand notice, the Appellant preferred a complaint to the CGRF.

2. Before the CGRF, the 1st Respondent AAE/OP/Siddipet Town-II stated about the inspection by DEE/DPE/MDK on 23-3-2015 and about finding the existing service to be a commercial activity and about taking recourse to back billing.

3. Before the CGRF, the Respondents represented that the water purifying /treatment plants are being run under category IIIA and that as per the memo issued by the CGM (commercial) SE/DEP/ADE/dt 7.8.2012), the water purifying and treatment plants should be released under category LT II only. After examining the facts and material on record, the CGRF had observed that as per the Tariff order 2015-16, a clarification was given by TSERC stating that the unit of the Appellant should be treated as category II (commercial). CGRF further observed that under clause 3.4.1 of GTCS , the Respondents are entitled to collect the back billing charges, in view of change in the category.

4. After having found the backbilling as legal and also finding that the Appellant was not at fault in the present matter, the CGRF granted 24 monthly instalments for clearing the back billing amount of Rs 3,58,418/- through the impugned orders. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present appeal alleging that he is not in a position to pay the back billing amount and that his unit has to be treated as a Category III consumer.

5. The 3rd Respondent submitted a report on similar lines as the Respondents who took their stand before the CGRF. He submitted that the Appellant has to pay the back billing amount in 24 equal monthly instalments arising out of change of the category of the unit from 'industry' to 'commercial' with effect from 1-7-2015.

The efforts made for mediation could not succeed and the matter is being disposed of on merits.

6. Heard arguments

7. The points for determination are:-

- i) 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?
- ii) Whether the back billing resorted to by the Respondents is as per the provisions of GTCS?

iii) Whether the impugned orders are liable to be set aside?

8. POINTS 1 to 3.

9. The Appellant has Service Connection No 0002 57273 under LT category III(industrial) for making purified water. The Appellant was being billed for drawing power under LT Category III and he was paying the bills. It was only on 23-03 -2015 DEE/DPE/MDK inspected the unit and found that the Appellant was engaged in commercial activity falling under LT category II and started the back billing procedure demanding payment of Rs 3,58,418/-. The inspecting officer was supported by the memo issued by CGM commercial dt 7-8-2012 of CPDCL which clarified and advised the Respondents that the water purifying plants should be released under LT Category II only. In the tariff orders, there is no specific mention of the water purifying plants falling under the service LT Category III.

10. In the first instance, the memo of CGM commercial dt 7.08 2012 classifying water purifying plants as commercial units which should be brought under LT Category II only, without any guidance from the Tariff Orders or from the ERC cannot stand the scrutiny of the law. Section 62(3) of Electricity Act 2003 authorises ERC to classify the consumers to various categories and not the distribution company or its employees to classify the consumers into various categories. In Tariff order 2015-16 dt 27-3-2015, there was a query to the ERC regarding the suitable category for water purifying units and the response of 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.

11. 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, he was billed is legal and as per the statutory provision which has to be upheld.

12. 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?

13. 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.**"

14. 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 the period of reclassification cannot be ascertained, such period shall be limited to the period of twelve months immediately preceding the date of inspection.

15. 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.

16. 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. Therefore, CGRF, through the impugned orders, by virtue of clause 4.6 of Regulation No.5 of 2004, granted 24 EMI to pay the back billed amount of Rs 3,58,418/- 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.

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 their clause.

17. The Appellant pleads that even the 24 EMIs is a heavy burden on him to pay the back billing amount, even though he was not at fault and pleaded to set aside the back billing order. The request of the Appellant to set aside the back billing amount cannot be granted in view of the reasons supra.

18. 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 file an objection and after due consideration of reply, the DISCOM may alter the classification and revise the bills if necessary, with retrospective effect. This procedure is not at all followed prior to issue of back billing notice dt 23.3.2015. Even afterwards, the clause of GTCS was not complied with.

19. Even clause 8 of the Regulation 7/2000 mandates the Licensee to notify the consumer it intend 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.

20. 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 interest charges on the back billing amount at all and collect this amount from those officials found responsible for the present issue after conducting due enquiry.

21. In the result the Appeal is disposed off:

a. Holding that the Appellant unit is correctly categorized as LT Category II (Commercial) consumer.

b. The Appellant shall pay the backbilling amount of Rs 1,36,870/- in 24 equal instalments as ordered by the CGRF starting from the month dec, 2015. Failure to pay any one installment shall make the entire amount falling due with all the attendant consequences.

c. 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, **and interest charges on the back billing amount** and collect this amount from those officials found responsible for the present issue after conducting due enquiry.

22. 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 1st day of December, 2015.

Sd/-

VIDYUT OMBUDSMAN

1. M/s Ganga Bhavani Beverages, represented by Sri P. Somaiah, Envanpalli Road, Siddipet, Medak District - 502 103. Cell No. 9948135536.
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Copy to:

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