



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004

O. P. No. 90 of 2015

Dated: 04.08.2016

Present

Sri. Ismail Ali Khan, Chairman
Sri. H. Srinivasulu, Member
Sri. L. Manohar Reddy, Member

Between:

M/s. Lodha Health Construction and Developers Pvt. Ltd.,
Survey No. 1009/P, KPHB Colony, Phase-IV,
Opp. To RTO Office. Hyderabad.

... Petitioner.

And

1. Chairman & Managing Director,
Southern Power Distribution Company of
Telangana Ltd., Mint Compound,
Secretariat Road, Hyderabad-500004.
2. Chief General Manager, Commercial & RAC
Southern Power Distribution Company of
Telangana Ltd., Mint Compound,
Secretariat Road, Hyderabad-500004.
3. The Superintendent Engineer,
Operation Circle, Rangareddy North,
Southern Power Distribution Company of
Telangana Ltd., Gurock,
Secunderabad – 15.
4. Asst. Divisional Engineer, Operation Circle,
Southern Power Distribution Company of
Telangana Ltd., Kukatpally, Hyderabad-72.
5. Senior Accounts Officer,
Operation Circle, Rangareddy North,
Southern Power Distribution Company of
Telangana Ltd., Gurock,
Secunderabad – 15.

... Respondents.

The petition has come up for hearing on 02.11.2015, 23.11.2015, 23.12.2015, 15.06.2016 and 04.07.2016. Sri Challa Gunaranjan, Counsel for the petitioner appeared on 02.11.2015, 23.11.2015, 23.12.2015 and 04.07.2016. Sri Challa Gunaranjan, Counsel for the petitioner appeared on 15.06.2016 along with Sri. T. Zhay Babu Advocate. Sri. Y. Rama Rao, Standing Counsel for the respondents appeared on 02.11.2015. Sri. Y. Rama Rao, Standing Counsel for the respondents along with Sri. P. Venkatesh, Advocate appeared on 23.11.2015 and 23.12.2015. Sri. Y. Rama Rao, Standing Counsel for the respondents along with Smt. Priya Iyengar. Advocate appeared on 15.06.2016 and 04.07.2016. The petition having stood for consideration to this day, the Commission passed the following:

ORDER

M/s. Lodha Healthy Construction and Development Private Limited (petitioner) has filed a petition under sec 142 of the Electricity Act, 2003 (Act, 2003) questioning the action of the TSSPDCL (DISCOM) in not implementing the order passed by Vidyuth Ombudsman with regard to treating the petitioner and not charging it under HT Category – II.

2. The petitioner stated that it is a company incorporated under the provisions of Companies Act, 1956 engaged in the business of development and construction of residential and commercial flats. It has undertaken development of land situated at Sy. No. 1009 / P of Kukatpally constructing residential apartments. It has applied for service connection under HT category – II. The 3rd respondent accorded sanction for supply of with CMD of 300 KVA and connected load of 400 KW. Thereafter, on execution of HT Agreement the power was released on 04.06.2008. Since, then it has been supplied power and billed under HT category – II.

3. The petitioner stated that it has again been issued letter dated 12.01.2012 by the 4th respondent purported to be assessment for short billing, as per which it has been stated that in view of the instructions contained in Memo No. CGM (Commercial) / SE / DPE / ADE (T) / D. No. 1340 / 11 dated 29.10.2011 issued by 2nd respondent, it has been proposed to bill the petitioner service under HT temporary supply and back billing done with effect from 01.08.2010 accordingly a demand of Rs. 37,97,708/- has been raised for the period 01.08.2010 to 20.10.2011. Further, it has been informed

that if it is agreeable for the same the demand to be paid within 15 days from the date of order or otherwise to appeal before 3rd respondent and in the meanwhile to avoid disconnection it is directed to pay 50% of the demand. It is stated that the 3rd respondent by letter No. SE / OP / RRN / SAO / JAO / HT / D. No. 752 dated 09.12.2011 informed it that as per the tariff order applicable with effect from 01.08.2010 all the HT services availing power supply for construction purpose shall have to be billed under the HT temporary for the period from 01.08.2010 to October, 2011, accordingly the demand of Rs. 37,79,605/- has been issued towards differential charges.

4. The petitioner stated that it submitted detailed representation to the 3rd respondent on 20.02.2012 contesting the assessment done by 4th respondent. The objections raised in the said letter are sought to be read as part and parcel of the present petition. It has mainly contended that the 4th respondent could not have undertaken assessment under Clause 7.5.1.1 of General Terms and Conditions of supply as the said provision relates to defect in meter, further the memo issued by 2nd respondent is contrary to the tariff order passed by the Commission and that the assessment is not preceded with any notice, therefore, the order is in sheer violation of principles of natural justice. Similar kind of representation was made to 2nd respondent on 05.03.2012 and requested to continue the petitioner under HT-category II and refund the amounts collected. Further, it is stated that once again it submitted letter dated 15.03.2012 to the 3rd respondent reiterating the objections raised in the earlier letter and requested to continue it's service under HT category – II and drop the back billing demand. In spite of the above said objections the respondents continued to bill it under the category of HT temporary from the month of December, 2011 onwards.

5. The petitioner stated that as the respondents 2 to 4 have not been responding to the objections raised by it, it was constrained to make complaint before the Consumer Grievance Redressal Forum (CGRF) by letter dated 02.04.2012. The said authority however without going into merits of the matter relegated the petitioner to pursue appeal before the 3rd respondent by its order dated 19.05.2012. It filed Appeal No. 43 of 2012 before Vidyuth Ombudsmen. After hearing both it and respondents the Ombudsmen passed award by orders dated 31.08.2012 holding that the assessment

order issued by 4th respondent is not preceded with any notice, further that it since is an existing consumer under HT category – II, the categorization referred to in the tariff order for the years 2010-11, 2011-12 on HT temporary supply shall not apply to it. Accordingly, the appeal was allowed and the respondents were directed to adjust the amounts collected in the future bills. However, liberty was given to respondents to issue notice before proceeding to undertake the exercise of change of category. This order has become final as the respondents have not chosen to challenge the same.

6. The petitioner stated that it thereafter submitted representation to the 3rd respondent dated 06.09.2012 enclosing the copy of the award and requested to refund the amount already collected for Rs. 27,55,307-16 for the period November, 2011 to August, 2012 by adjusting the same in future bills and also requested to bill the petitioner supply under HT category – II henceforth. That being so, on 20.09.2012 it's representative received phone call from JAO / HT Section informing that personal hearing is scheduled on 22.09.2012 afternoon and that the notice is sent to it. Immediately on 21.09.2012, it submitted representation informing that there is no proceedings before him and also that it has not received any notice of hearing, therefore the question of attending personal hearing does not arise. So far as representation made on assessment for short billing is issued by 4th respondent is concerned, it has been informed that in view of the orders passed by Vidyuth Ombudsmen on 31.08.2012, the said proceedings would no longer survive. Though the said order gave liberty to respondents to issue notice proposing re-categorization it has been informed that though there are no proceedings before the authority for apprising the above factual aspects the petitioner would depute its representation for the said limited extent.

7. The petitioner stated that to the utter surprise of it the 3rd respondent even before complying the order passed by Ombudsmen has issued Lr. No. SE / OP / RRN / SAO / JAO / HT / D. No. 586 dated 13.09.2012 received by petitioner on 21.09.2012 demanding the petitioner once again Rs. 37,97,605/- towards back billing amount for the period from 01.08.2010 to 31.10.2011. Further, the said demand has been requested to be paid within 15 days or to attend personal hearing on 21.09.2012 and file objections for finalizing the back billing. It immediately on 25.09.2012 issued reply to the 3rd respondent objecting to the demand of back billing which already has been

set aside by the Ombudsman. Surprisingly the 3rd respondent by letter dated 12.10.2012 informed it that it has failed to attend personal hearing on 21.09.2012 and file its objections for finalization of back billing, therefore it was once again requested to attend on 29.10.2012 forenoon, failing which the matter will be decided basing on the record available. Thereafter on 30.01.2013 the 4th respondent straight away came to it's site and disconnected the power supply as it failed to pay the back billing amount. It immediately approached SAO / RR North complaining against the high handed action of the 4th respondent in disconnecting the power supply without the mandatory requirement of 15 days notice under section 56 of the Act, 2003, it was demanded to pay 50% of the demand for restoration of the power supply. It is stated that after disconnection, on 30.01.2013, the service was arranged to be reconnected on the same day by the SAO, subject to payment of 50% of amount within 24 hours. It is stated that petitioner on 01.02.2013 submitted detailed representation to the 1st respondent explaining the aforesaid case and requested to intervene in the matter. The respondents on persuasion have restored power supply. Further, it once again submitted reminder by letter dated 07.02.2013 to 3rd respondent and also appraised to the Ombudsmen by letter dated 28.03.2013 for non-implementation of the award. So far the respondents have not taken any further steps pursuant to the award nor have they challenged the same. But the respondents are continuing to bill it under HT temporary category having suffered order against them.

8. The petitioner stated that it was given power supply under HT category – II for its construction activity even before the tariff order for the year 2010-11 come in to effect from 01.08.2010. The said tariff order also does not categorize the construction projections under HT temporary supply as there is no such category of HT temporary supply in the schedule. Only in the conditions to the schedule to meet the exigencies of the temporary supply provision has been made to grant temporary supply at high tension to those who make specific request. The construction activity would fall within HT category – II alone and not under HT temporary category. In the present case it has been issued power supply under HT – II category even prior to the tariff order for the year 2010-11 came into effect and assuming for the sake of argument that the construction activity would fall under HT temporary by going with the clause incorporated in the schedule it is manifestly clear that the same applies to only new connections but not existing. Therefore, the very memo issued by 2nd respondent

which purports to create a separate category for construction activity and consequential action of back billing is without jurisdiction, contrary to the tariff order itself. This memo purports to back bill with effect from 01.08.2010 for a period beyond 6 months, which is contrary to clause 3.4.1.

9. The petitioner stated that the 4th respondent has straight away issued orders dated 12.01.2012 purporting to be assessment for short billing, following the instructions in Memo dated 29.10.2011 issued by 2nd respondent communicating in Memo dated 29.10.2011 issued by 2nd respondent communicating the decision of changing the category and raised demand for back billing without any notice and calling for explanation from it, therefore, this order is in sheer violation of principles of natural justice. The General Terms and Conditions of supply in clause 3.4 deal with re-classification of consumer category and clause 3.4.1 contemplate issuance of a notice proposing re-classification and passing of an order. That further the respondents if re-classify or empowered to revise the bills retrospectively up to 6 months in case of HT categories. The respondents without following this procedure have straight away passed the order dated 12.01.2012 reclassifying it's category and raised demand up to 16 months which is totally impermissible. Therefore, both the memo and also the order of assessment for short billing are unsustainable and liable to be set aside. The Ombudsmen rightly held that it cannot be re-classified without issuing prior notice and further that the HT temporary clause in tariff order 2010-11 and 2011-12 shall apply to only new connections but not existing.

10. The petitioner stated that it has paid difference of amounts on account of change of category of Rs. 27,55,307/- up to the end of August'12, on account of billing it under HT temporary from November'2012 onwards. The respondents though suffered order against them as back as on 31.08.2012, are still billing the petitioner under HT temporary category. The petitioner is put to severe financial burden on account of this high handed action.

11. The petitioner stated that it thereafter submitted representation to the 3rd respondent enclosing the copy of the award and requested to refund the amount already collected for Rs. 45,14,599-38/- by adjusting the same in future bills and also requested to bill it supply under HT category – II henceforth. So far the respondents have not taken any further steps pursuant to the award nor have they challenged the

same. But the respondents are continuing to bill it under HT temporary category having suffered order against them. It is stated that petitioner is time and again requesting the respondents to implement the award by order dated 31.08.2012 in Appeal No. 43 of 2012 passed by the Vidyuth Ombudsmen. However, the respondents have neither implemented the order of the Vidyuth Ombudsmen nor refunded the amount already paid by the petitioner. Having no other alternative it filed W. P. No. 13807 of 2013 challenging the action of the respondents in continuing to treat it's supply and also to implement the order dated 31.08.2012 passed in A. No. 43 of 2012. In terms of the interim orders dated 30.04.2013, the respondents are treating it under HT-II category, however, have not implemented the order dated 31.08.2012 in toto. As these orders are issued in exercise of the powers vested under the provisions of the Act, 2003 it is constrained to file the present petition to punish the respondents for non-compliance of the same.

12. The petitioner has sought the following prayer in the petition.

“Punish respondents 1 to 4 for not complying the orders / directions issued in order dated 31.08.2012 in Appeal No. 43 of 2012 passed by the Vidyuth Ombudsmen.”

13. The respondents have filed a counter affidavit on the following lines.

a) “At the outset the petitioner has prayed in the above petition before this Commission as follows:

i) Punish respondents 1 to 5 for not complying the orders / directions issued in order dated 31.08.2012 in Appeal No. 43 of 2012 passed by the Vidyuth Ombudsman; and

ii) Pass such other order or orders as this Commission may deem fit and proper in the interest of justice.

It is respectfully submitted that the petition filed by the petitioner for the above reliefs is not at all maintainable neither under law nor on facts. As such the petition is liable to be dismissed in limine.

b) It is stated that the HT supply to M/s. Lodha Healthy Constructions and Developers Private Limited, was released on 04.06.2008 under HT cat-II tariff with HT. SC. No. RRN-1563 with a CMD of 300 KVA for the purpose of construction activity on payment of required service line charges, development

charges and security deposit duly entering HT agreement and test report. The C.C bills were issued under HT category-II tariff upto Oct-2011 consumption month.

c) It is stated that the Commission has approved to extend temporary supply for the construction projects for a period of (3) years vide condition No. 7 of General Terms of Conditions of HT supply in the tariff order of 2010-11 (w.e.f. 01.08.2010) as proposed by APCPDCL vide item No. 249 of the tariff order for the Financial Year 2010-11.

d) The tariff condition No. 7 of General Terms of Condition of HT supply in tariff order for the Financial Year 2010-11 in respect of HT consumers who are availing supply for construction of sites and projects was not implemented to end of Oct-2011. The 2nd respondent issued instructions for change of tariff category from HT cat-II to HT cat-II (temp) in respect of all the HT consumers who are availing supply for construction purpose with effect from 01.08.2010 vide Memo No. CGM (Comm) / SE / DPE / ADE (T) / D. No. 1340 / 2011 dated 29.10.2011. Accordingly, the list of HT consumers including petitioner service who are availing supply for construction purpose on or after 01.08.2010 are confirmed with the concerned Asst. Divisional Engineer's / Operation. Similarly, all such services were also inspected by the DPE / wing. After confirmation, the tariff category of petitioner company HT. SC. No. RRN-1563 was changed from HT Cat-II to HT cat-II (temporary) w.e.f. Nov-2011 consumption month as a uniform policy along with all other construction projects services. For realization of the differential tariff amount between HT cat-II (temporary) and HT cat-II for the period from 01/08/2010 to 20/10/2011, a demand notice was issued to the petitioner for payment of Rs. 37,79,605.00 vide Lr. No. SE / OP / RRN / SAO / HT / D. No. 752 / 11 dated 09.12.2011.

e) It is stated that the HT. SC. No. RRN-1563 of the petitioner was also inspected by the DPE wing and confirmed that they are availing supply for construction purpose. Accordingly, the Asst. Divisional Engineer / Op / KPHB has also issued a back billing notice for the period from 01.08.2010 to 20.10.2011 vide Lr. No. ADE / OP / KPHB / F. No. 6 / D. No. 2768 dated 12.01.2012.

f) It is stated that consequent to the issue of C.C bills under HT cat-II (temporary) tariff w.e.f. Nov-2011 consumption month and a demand notice for

payment of back billing amount for Rs. 37,79,605.00, the petitioner has filed a C. G. No. 367 of 2011-12 / RR North before the Consumer Grievances Redressal Forum of GHMC / Hyderabad. The CGRF vide its order dated 19.05.2012 has directed the 3rd respondent to issue final orders on the appeal of the consumer within (15) days of receipt of forum orders. Accordingly, final orders were passed vide Lr. No. SE / OP / RRN / SAO / JAO / HT / D. No. 325 / 2012 dated 11.06.2012. But, the petitioner has not paid the back billing amount as per the final orders issued.

g) It is stated that consequent to the issuance of final order by the 3rd respondent vide SE / OP / RR North dated 11.06.2012 as per the CGRF directions in C. G. No. 367 of 2011-12 / RR North, the petitioner has filed an Appeal No. 43 of 2012 before the Vidyut Ombudsman on 25.06.2012. As per the notice issued in Appeal No. 43 of 2012, the written submissions were submitted to the Vidyut Ombudsman vide Lr. No. SE / OP / RR. North / SAO / JAO / HT / D. No. 436 dated 27.07.2012. The Vidyuth Ombudsman has passed the award dated 31.08.2012. The operative portion of the award is as follows.

‘The appeal is allowed and the impugned order is hereby set aside. Liberty is given to the respondents to issue a notice as contemplated under 3.4.1 and hearing pass appropriate orders after considering the explanation / reply if any given by the party. The amount already paid shall be adjusted in the future bills. No order as to costs.’

h) In obedience to the Vidyut Ombudsman orders dated 31.08.2012, as per the liberty given to the respondents (Discom) by the Vidyut Ombudsman, a 15 day notice as per clause No. 3.4.1 of GTCS was issued to the petitioner company and an opportunity was also given to file their objections, if any, to appear in the personal hearing to be held on 21.09.2012 and 29.10.2012. But, the petitioner has intentionally avoided to appear for the personal hearing. However, based on the available records and tariff conditions approved by ERC, it was decided to change the tariff category to the petitioner HT service connection No.RRN-1563 w.e.f. 01.08.2010 and to collect the back billing amount of Rs. 37,79,605.00 vide Lr. No. SE / OP / RRN / SAO / JAO / HT / D. No. 787, dated 07.12.2012 was issued by the 3rd respondent as a uniform policy among the similar group of consumers. However the petitioner did not pay the said amount. Subsequently the petitioner has approached the Hon’ble High

Court filed W.P.No.13807 challenging Memo issued by the 2nd respondent vide CGM Memo No. CGM (Comml.) / SE / DPE / ADE (T) / D. No. 1340 / 2011 dated 29.10.2011 and also implementing of the award passed by the Vidyut Ombudsman of Ref No. 43 of 2012.

i) The Hon'ble High Court granted interim orders in W. P. No. 16893 of 2013 dated 30.04.2013 as follows.

“As the APCPDCL has not taken steps for conversion of the category in accordance with the order dt.31.08.2012 passed by the Vidyuth Ombudsman, Hyderabad in Appeal No. 43 of 2012, the APCPDCL shall continue to bill the petitioner under HT cat-II in respect of its service connection No.1563, until such time steps are initiated and the conversion of the category is effected.”

j) It is stated in obedience to the Vidyuth Ombudsman orders dated 31.08.2012, a 15 day notice as per clause No. 3.4.1 of GTCS was issued and an opportunity was also given on 21.09.2012 and 29.10.2012 with a request to file objections, if any, to finalize the back billing case as per the liberty given to the respondents. But, the petitioner intentionally has not attended for personal hearing. Further, the petitioner company has filed a W. P. No. 13807 of 2013 and obtained interim orders. In obedience to the Hon'ble High Court orders dated 30.04.2013 in W. P. M. P. No. 16893 of 2013 in W. P. No. 13807 of 2013, the issue of CC bills under HT Cat-II temporary tariff was stopped with effect from May-2013 and the payment of back billing amount was also not insisted. Hence, the disobedience of the orders of Vidyuth Ombudsman does not arise.

k) It is submitted that the petitioner has already approached the Hon'ble High Court by filing the W. P. No. 13807 of 2013 challenging the Memo issued by the CGM Memo. No. CGM (Comml.) / SE / DPE / ADE (T) / D. No. 1340 / 2011 dated 29.10.2011 and also to implement the award of the Vidyuth Ombudsman for conversion of category in accordance with the award dated 31.08.2012 in Appeal No. 43 of 2012. When the 4th respondent has issued notice of conversion of category as per the award of the Vidyuth Ombudsman the petitioner did not attend as such final orders were issued by the 3rd respondent vide Lr. No. SE / OP / RRN / SAO / JAO / HT / D. No. 787 dated 07.12.2012. Suppressing all this the petitioner surprisingly has approached this Commission challenging not complying with the award passed by the Vidyuth Ombudsman

dated 31.08.2012 in Appeal No. 43 of 2012. As such the petition filed by the petitioner purported to be filed under section 142 of Act, 2003 is not maintainable is liable to be dismissed.”

14. The petitioner upon directions during the hearing has filed written submissions on the following lines.

“i) Lodha Healthy Constructions & Developers has filed a petition with Commission, under section 142 of the Act, 2003, to punish the respondents, in terms of section 142 of the said Act, since they have failed to comply with the orders of Vidyuth Ombudsman dated 31.08.2012, in spite of the consumer making a representation on 06.09.2012 (acknowledged by the respondent SE on the same day) for taking action as per the award of Vidyuth Ombudsman, duly enclosing copy of the order, in token of acceptance of the award.

ii) Even till today, they have not complied with the orders in full. As per clause 12 (7) of the Regulation 1 of 2004, the Licensee is supposed to comply with the award within (15) days of receipt of acceptance letter under sub clause (6) and it shall intimate compliance to the Vidyuth Ombudsman.

iii) Hence the licensee should have complied with the award of Vidyuth Ombudsman, not later than 21.09.2012. Hence this situation attracts action under the provisions of Section 142 of Act, 2003, taking the delay for acting from 21.09.2012 onwards.

iv) The Licensee has neither implemented, nor got the orders stayed from a higher authority and thus, has to be treated as intentionally violating the award of Vidyuth Ombudsman. In spite of the opinion of their counsel, that there is no case for going in an appeal, the respondents have not been complying with the orders of Vidyuth Ombudsman, thereby illegally withholding amount of about Rs. 56 Lakhs over the past nearly 4 years.

v) In spite of setting aside the re-categorisation, on legal grounds, the licensee has continued to bill the service, under HT Ty. Thereby keeping the responsibility for such illegal action on themselves to withdraw and pay the excess amounts collected illegally even beyond the date of orders. In fact during the hearing of the matter before Commission, the Commission has advised the respondents to refund the amounts from the date of re-

categorization till the date from which the billing as per court orders that is end of April, 2013 consumption month.

vi) But the respondents have initially prepared the details for refund, but as an afterthought limited the same on the name of the date of orders of Vidyuth Ombudsman, as could be seen that the respondents have implemented the orders up to the date of 22.09.2012, thereby not observing any date either as per the orders of Commission or up to the date of award. (In the statement it is clearly mentioned as up to 22.04.2013, but limited to 22.09.2012).

vii) Thus the orders of the Commission are violated. Hence the Commission has decided to dispose the application under section 142 and desired that written submissions are given by both parties. Hence this written submission.

Facts of the Case:

ix) Lodha has applied for power supply of 300 KVA at 11 KV under H.T. Cat.II. As per the procedure in vogue, power supply was released on 06.04.2008 and being billed under HT II till October, 2011. In fact the categorization under HT II was correct, since the HT Cat-II is meant for purposes not covered by any other HT Category. Suddenly bills started issued under HT II (Ty) from November, 2011 without any prior notice. In fact there is no such category HT Ty. II. The re-categorization was done clandestinely, in a way, not to be noticed by consumer, unless a cursory check of bills is made. Subsequently, a notice was received from ADE for re-categorization.

x) When the consumer met the SE on receipt of a show cause notice from ADE to convert the service to HT Ty. with effect from 01.08.2010, it came to light that a demand for back billing of Rs. 37,97,708 was issued, but we have not received the copy till then. Hence a copy was supplied by the SE. We complained the matter to CGRF I, in the absence of any response from the respondents and they finalized the matter asking us to go back to the SE. Having been aggrieved by the CGRF order, we appealed to the Vidyuth Ombudsman as Appeal No. 43 of 2012.

xi) Vidyuth Ombudsman issued orders dated 31.08.2012 in the Appeal No. 43 of 2012, setting aside the re-categorization, since no prior notice was issued in terms of clause 3.4.1 of GTCS and ordered refund of the excess paid amount by adjustment to future bills. However, liberty was given to the respondents to issue notice in terms of clause 3.4.1. On 06.09.2012 we have addressed the

respondent SE to implement the orders of Vidyuth Ombudsman by enclosing a copy of award.

- a) Withdrawing the claim of back billing of Rs. 37,97,708.
- b) Refunding the amount of Rs. 27,57,307 by adjustment to future bills.
- c) Issue the bills from September, 2012 onwards under HT II.

xii) There has been no response from the respondent. Nor they have appealed against the orders of Vidyuth Ombudsman and obtained a stay. But the respondents continued the billing under HT Ty. eventhough the re-categorization was set aside, thus acting illegally. In fact, when we approached the Hon'ble High Court through W.P.No.13807 of 2013 and the Court was pleased to issue interim orders. (as extracted in the counter affidavit of the respondent)

In all probability the respondents should have billed the service under H.T.II from the date of issue of orders of Vidyuth Ombudsman i.e., 31.08.2012, but they have issued bills under H.T. Category II only from the month of May, 2013 thus retaining an amount of about Rs. 26 Lakhs illegally.

Action misinterpreting the liberty given by Ombudsman to serve notice:

xiii) When the respondents desired to utilize the liberty given by Vidyuth Ombudsman in the later part of the award, they should have first implemented the earlier portion of the order by complying with our request vide our letter dated 06.09.2012. Then they should have served the notice as per clause 3.4.1 of GTCS as per the liberty given by the Ombudsman. But the intention was to manage to nullify the orders of Vidyuth Ombudsman and retain all the excess amounts ordered for refund by misinterpreting the orders of Ombudsman. The respondents have resorted to act on the plea of the liberty given to them to serve a notice by Ombudsman without implementing the earlier portion of the orders to adjust the excess amounts collected. They continued to bill the service under HT Ty ignoring the setting aside of re-categorization.

The correspondence on this is as follows:

xix) Telephone call from respondent SE's H.T. Section at about 17-00 Hrs. of 20.09.2012, a telephone call was received by our Associate Vice-President (Liaison) from JAO / HT / of respondent SE, when we were asked to attend personal hearing on the next day afternoon i.e., 21.09.2012. We met the SE with a representation and informed that we have not received any notice nor we have

asked for personal hearing. In connection the following correspondence occurred:

- a. Our letter dated 25.09.2012 handed over in receipt as well as to SE personally.
- b. Out letter dated 25.09.2012 acknowledged on the same date.
- c. Lr.No.SE/OP/RRC(N)/SAO/JAO/HT/662 dated 12.10.2012.
- d. Abrupt disconnection of service on the A.N. of 30.01.2013 and reconnection after about 3 Hrs. on a condition that we have to pay 50% of the demand of back billing amount within 24 hours.
- e. Our letter dated 01.02.2013 to the C & MD of DISCOM.
- f. Our letter dated 07.02.2013 to respondent SE
- g. Our letter dated 16.02.2013 addressed to respondent SE
- h. Our letter dated 16.02.2013 addressed to Vidyuth Ombudsman.

From then on there has been no attempt for demand of the amount nor for disconnection. Thus the liberty given by Ombudsman was misused and got closed.”

15. Based on the above written submissions, the petitioner sought relief as pointed out below:

“Under the circumstances of the case, gauging the loss of interest, mental agony created by the respondents intentionally violating the orders of Vidyuth Ombudsman dated 31.08.2012 as well as the Commission dated 15.06.2016, it is requested that the following reliefs, within the purview of the provisions of section 142 of the Electricity Act are ordered:

1. Payment of the excess collected amounts from October, 2012 consumption month up to April, 2013 consumption month amounting to about Rs. 26 Lakhs.
2. Penalty of Rs. 1,00,000 and at Rs. 6000 per day from 21.09.2012, the date by which the orders of Vidyuth Ombudsman orders should have been implemented up to the date of issue of refund orders i.e., 01.07.2016.
3. Penalty of Rs. 6000 per day of delay from 02.07.2012 to the date by which the total refund will be ordered.

The above penalties have to be ordered to be paid to us towards compensation of loss of interest and mental agony and the expenses incurred by us towards filing writ petitions, in the Hon'ble High Court of A.P. then and application filed before TSERC.”

16. The respondents have filed their written submissions as directed on the hearing date and stated thus

“a) It is stated that the Commission has approved to extend temporary supply for the construction projects for a period of 3 years vide condition No.7 of General Terms of Conditions of HT supply in the tariff order of 2010-11 with effect from 01.08.2010 as proposed by APCPDCL vide item No.249 of the tariff order for the Financial Year 2010-11. The Copy of APCPDCL proposal is submitted herewith.

b) Consequent to the approval of Tariff orders for the F.Y. 2010-11 with effect from 01/08/2010, the tariff category of above HT service was changed from HT Cat-II to HT Temporary with effect from November, 2011 and back billing amount was assessed and issued demand notice for the period from 01/08/2010 to October, 2011 as per the tariff conditions approved for construction projects under temporary supply.

c) The said HT consumer has paid the regular C.C. bills under HT temporary tariff with effect from November, 2011 and they have filed case before the CGRF, Hyderabad. The CGRF has issued orders to TSSPDCL for disposal of consumer representation and to issue final orders. Accordingly, notice was issued to the consumer to attend the personal hearing. But, they have not attended. Thereby, the appeal of the consumer was disposed with a request to pay the CC Charges under HT temporary Cat-II tariff with effect from 01.08.2010. All the copies of notices issued to consumer are enclosed herewith.

d) The HT consumer has filed an Appeal No. 43 of 2012 before the Vidyuth Ombudsman. The Vidyut Ombudsman has passed the orders as extracted by the respondents in counter affidavit shown above.

e) Accordingly, a notice was issued to M/s. Lodha Healthy Constructions and Developments Pvt. Ltd., and an opportunity was given vide letter dated 13.09.2012 and 12.10.2012 to attend personal hearing and to submit the grounds by the consumer. But they have not attended for personal hearing.

Thereby, final orders were issued with a request to pay the back billing amount and regular CC bills under HT temporary Cat-II tariff vide letter dated 07.12.2012.

f) Further, the consumer has filed Writ Petition No. 13807 of 2013 before the Hon'ble High Court. The Hon'ble High Court has passed the following order dated 13.04.2013 vide W. P. M. P. No. 16893 of 2013. (already extracted in the submissions of the petitioner)

g) Accordingly, the Vidyuth Ombudsman orders are complied by changing tariff category from HT temporary Cat-II to HT Cat-II with effect from May-2013 except refund of excess amount paid under temporary category II during the period from November, 2011 to April, 2013. The payment of back billing amount was not insisted so far.

h) Subsequently, the said HT consumer has filed O. P. No. 90 of 2015 before the Commission and prayed to refund of excess amount paid by them under HT temporary tariff instead of HT Cat-II for the period from November, 2011 to April, 2013.

i) As per the directions of the Commission during the hearing held on 16.06.2016, the orders dated 31.08.2012 passed by the Vidyuth Ombudsman are implemented and an amount of Rs. 30,67,286.00 was arrived as excess paid during the period from 11 / 2011 to 09 / 2012 and addressed a letter to the said HT consumer for adjustment in their future CC Bills vide letter No. 432 dated 01.07.2016.

j) The following written submissions, additional submissions and ground / merits are submitted hereunder with a prayer to direct the consumers to pay the CC. Charges under HT temporary tariff with effect from 31.08.2012 that is from the date of Vidyuth Ombudsman orders.

i) As per the clause No. 5.5 & 5.6 of GTCS approved by Commission, it is appropriate to give temporary supply instead of regular supply for the construction projects as such consumers cannot provide the approvals.

ii) It is to submit that the Commission has approved to extend temporary supply for the construction projects for a period of 3 years vide condition No. 7 of general terms and conditions of HT supply in the tariff order of 2010-11 with effect from 01.08.2010) as proposed by APCPDCL vide item No. 249 of the tariff order for the Financial Year 2010-11.

iii) The consumers who are availing supply for construction projects / sites may not obtain/produce the CEIG approval and occupancy certificate issued by GHMC. Hence, the supply to such consumers shall be extended under temporary category only.

iv) The Hon'ble High Court has passed final orders in W. P. No.32906 of 2014 and directed the DISCOMs not to release the supply to new services and to terminate the agreement, if the occupancy certificate is not produced in various writ petitions filed by some HT / LT consumers.

v) The HT consumer is still availing supply for construction purpose and not produced the CEIG approval and occupancy certificate. Hence, issue of CC bills under HT Category II duly treating their service as regular connection, will not be possible.

vi) As a uniform policy TSSPDCL is entitled to change the tariff category to the petitioner company HT service from HT Cate-II to HT Cate-II temporary as per the tariff condition No. 7 of general terms and conditions of HT supply in tariff order for the Financial Year 2010-11 with effect from 01.08.2010 as it was approved after conducting public hearing and published in the press.

vii) Two different tariff categories cannot be implemented between the existing old consumers, supply released before 01.08.2010 and new consumers, supply released on or after 01.08.2010 without any discriminations purpose.

viii) The TSSPDCL has implemented the change of tariff category from HT cat-II to HT Cat-II temporary in respect of all its HT consumers who are availing supply for constructions purpose on or after 01.08.2010 without any discrimination / partiality among the consumers.

ix) In obedience to the orders of the Vidyuth Ombudsman dated 31.08.2012, a 15 day notice as per clause No. 3.4.1 of GTCS was issued and an opportunity was also given on 21.09.2012 and 29.10.2012 with a request to file objections, if any, to finalize the back billing case as per the liberty given to the respondents company. But, the petitioner intentionally has not attended for personal hearing. Further, the petitioner has filed a W. P. No. 13807 of 2013 and obtained interim orders.

x) In obedience to the orders of the Hon'ble High Court dated 30.04.2013 in W. P. M. P. No. 16893 of 2013 in W. P. No. 13807 of 2013, the issue of CC bills under HT Cat-II temporary tariff was stopped with effect from May-2013 and the payment of back billing amount was also not insisted. Hence, the disobedience of the orders of Vidyuth Ombudsman does not arise.

xi) The TSSPDCL has inspected the premises of petitioner before change of their tariff category and issued notices several times.

xii) If the Vidyuth Ombudsman orders are implemented for the subsequent period and CC bills are issued under HT Cat-II instead of HT temporary, TSSPDCL may lose heavy revenue on account of issue of CC bills under HT Cat-II tariff for the consumers who are availing supply for construction projects with effect from 01.08.2010 that is. for the Financial Years 2010-11 to 2015-16 due to non-realization of revenue and refund of excess amount paid under HT cat-II temporary as projected in ARR filing.”

17. We have heard the counsel for the parties. We have noticed the pleadings as have been filed and extracted above in order to arrive at proper conclusion. In the circumstances, the point that arises for consideration is “whether the licensee and its officers have failed in implementing the order passed by the Vidyuth Ombudsman.”

18. It is the case of the petitioner that despite orders of the Vidyuth Ombudsman, the officers of the licensee choose not to implement the directions in the said order. The Vidyuth Ombudsman while setting aside the demand raised by the licensee towards back billing amount, had required it to give a proper notice under the relevant GTCS and then to proceed further in the matter of changing the category. On the other hand, it has been contended in the arguments from the respondents that notice was in fact served on the petitioner, but the petitioner did not avail the opportunity. Therefore, the final order had been passed in terms of the orders of the Vidyuth Ombudsman. It is also contended by the respondents that the petitioner also filed a writ petition questioning the action of the licensee in issuing a memo for carrying forward the orders of the Commission in the tariff order and consequently non-implementation of the orders of the Vidyuth Ombudsman.

19. The counsel for the petitioner sought to emphasise the fact that the writ petition is not related to implementation of the order of the Vidyuth Ombudsman, but, the limited issuance of the memo for taking action for converting the service connections of the petitioner and like consumers from other categories to temporary category issued by the licensee as well as its applicability to subsequent action vi-a-vi the petitioner is changed. Thus, the writ petition is not related to the present petition and does not amount to invoking plural remedies. In fact, it is also the case of the counsel for the petitioner that due to threat of disconnection of power supply interim orders were sought by the petitioner before the Hon'ble High Court and after examination, the Hon'ble High Court directed the licensee to give effect to the order of the Vidyuth Ombudsman and until such time their shall not be disconnection of power supply.

20. During the course of hearing, we had pertinently enquired with the parties about the status of implementation of the order of the Vidyuth Ombudsman. The counsel for the petitioner stated that the total amount according to petitioner which requires adjustment as per direction of the Hon'ble High Court is Rs. 37,97,708/-. On the other hand, the counsel for the respondents stated that the DISCOM has complied with the order of the Vidyuth Ombudsman as well as by interim order of the Hon'ble High Court by giving fresh notice as required and passed necessary orders after considering the submission of the petitioner. We had directed the licensee to report the status of compliance of the order of the Ombudsman subsequent to the interim order of the Hon'ble High Court with regard to adjustment of amounts claimed by the petitioner. The licensee shall place the actual figures in respect of amounts due and the amount required to be adjusted in respect of category change of the petitioner.

21. In the further hearing, the counsel for the petitioner relied upon the order of the Vidyuth Ombudsman in another matter in respect of the same issue, which has been implemented by the licensee to drive home the point that the licensee is discriminating between the consumers in the matter of implementation of the order of the Ombudsman. The counsel for the respondents placed before us a letter addressed to the petitioner on 01.07.2016 duly enclosing a calculation sheet for the amounts to be adjusted against the service connection. The contents of the letter are re-produced for better understanding.

“It is to inform that the TSSPDCL has decided to implement the Vidyut Ombudsman orders issued under reference cited. Accordingly, the C.C. bills for the period from November, 2011 to 31.08.2012 are revised under HT cat-II tariff instead of HT Temporary tariff and an amount of Rs.30,67,288.00 is arrived as excess paid by you.

Hence, it is requested to adjust the above excess paid amount against your HT SC. NO. RRN-1563 of M/s. Lodha Healthy Constructions & Developers (P) Ltd future CC bills.”

22. We are unable to accept the arguments of the licensee on two counts, firstly, the contention that the Hon’ble High Court directed insisting of occupancy certificate for releasing the power supply. It is pertinent to state here that the supply is availed for construction activity. The properties are not constructed and occupied by the owners according to the petitioner, therefore the contention appears to be farfetched. Secondly, any order passed by the Commission is prospective and on the said analogy the connection once released in another category if it is patently wrongly categorized then a reclassification should take place at the earlier point of time. In this regard the relevant clause in the GTCS as well as the relevant portion of the tariff order is passed for better understanding.

GTCS

“3.4 Reclassification of consumer Category

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, of 3 months in the case of domestic and agricultural categories and 6 months in the case of other categories.

3.4.2 If a consumer makes a written request for reclassification of his service connection (change of category) the company shall comply with the request

within the time frame specified in the APERC (Licensees' Standards of Performance) Regulation, 2004 (No.7 of 2004)"

Tariff order

“(7) TEMPORARY SUPPLY AT HT

i. *For new connections:* Temporary supply at High Tension may be made available by the Licensee to a consumer, on his request subject to the conditions set out herein-after as also in Part-C. Temporary supply shall not ordinarily be given for a period exceeding 6 (six) months. In case of construction projects, temporary supply can be extended for a period of 3 years. The electricity supplied to such consumer shall be charged for, at rates 50% in excess of the rates set out in the H.T. Tariffs applicable subject to, however, that the billing demand for temporary supply shall be the contracted demand or the recorded maximum demand registered during the month whichever is higher.

ii. Existing consumers requiring temporary supply or temporary increase in supply: If any consumer availing regular supply of electricity at High Tension requires an additional supply of electricity at the same point for a temporary period, the temporary additional supply shall be treated as a separate service and charged for as in clause (i) above, subject to the following conditions.

a. The contracted demand of the temporary supply shall be the billing demand for that service. The recorded demand for the regular service shall be arrived at by deducting the billing demand for the temporary supply from the maximum demand recorded in the month.

b. The total energy consumed in a month including that relating to temporary additional supply, shall be apportioned between the regular and temporary supply in proportion to the respective billing demands.”

23. On reading of the provision in the GTCS it is clear that the petitioner has to be given a notice of atleast 15 days to reclassify a consumer's power supply. It may be gainful to refer the notice given at the first instance

Letter dated 09.12.2011

“It is to inform that as per the schedule of retail supply tariff rates and terms & conditions applicable with effect from 01.08.2010, all the HT services released

and availing supply for construction purpose shall be billed under HT Cat-II Temporary supply tariff with effect from 01.08.2010.

The supply to your HT SC. No. RRN-1563 of M/s. Lodha Healthy Construction and Developers (P) Ltd was released on 04.06.2008 with a CMD of 300 KVA at 11 KV voltage for the purpose of construction. But, your HT service was wrongly billed under HT Cat-II tariff instead of HT Cat-II temporary tariff up to October, 2011/date of completion of construction activity i.e., October, 2011.

Hence, it is requested to pay an amount of Rs.37,79,605/- towards differential tariff charges between HT Cat-II tariff and HT Cat-II temporary supply tariff against your HT.SC.No.RRN-1563 of M/s. Lodha Healthy Construction and Developers (P) Ltd within (15) days from the date of issue of this letter and co-operate with APCPDCL.”

While the provision in the GTCS consciously puts the back billing of the service connection for a period of 6 monthly as noticed supra thus the present letter could not have issued for a period of 14 months form 01.08.2010 to 29.10.2011. We can safely state that any order passed by the erstwhile APERC or this commission at present cannot be retrospective in nature unless such order specifically says so. Thus the notice in terms of the tariff order 2010 – 2011 could not have been applied to the connection released in the year 2008 where the consumer has not changed the usage of the supply.

24. We notice from the provision extracted in the tariff order for the year FY 2010 - 2011 that the stipulation of providing temporary connection is inserted, but a subtle distinction is made about the type of consumers and nature of use. The temporary connection has to be given on the request of the consumer only in any of the existing categories that is HT I to HT VI but not at the discretion of the licensee, as the tariff is determined by the Commission. The construction activity connection cannot be said as temporary connection and no where it is defined in the Tariff order. Further, while giving supply to the petitioner, the licensee has collected development charges whereas for giving temporary supply connection such clause is not provided in the Tariff order / Regulation. The licensee can give the supply for construction activity under HT Cat-II which is in order at that point of time.

Letter dated 03.06.2008

“As per the powers delegated vide Memo No.T.O.O.Ms.No.357 dated 25/10/1999 the Divisional Engineer, Elecl., Operation Kukatpally hereby accords approval for extension of HT Cat-II supply at 11 K.V. for a CMD of 300 KVA with a CL of 400 KW for constructions purpose to M/s Lodha Healthy Constructions and Developers (P) Ltd, Sy.No. 1009, Kukatpally KPHB, R.R. Dist.

The Assistant Divisional Engineer/Operation/Kukatpally is requested to take necessary action for release of the load after observing all the departmental formalities and as per the instructions issued on R&C from time to time and after the following ‘Terms and Conditions of Supply’ as amended vide B.P.MS. No.1875/ dated 02/10/1989 and Memo No. CEE/Com/BL/s-14/Release order/D.No.84/91, dated 09/09/1991 and as per CEIG’s approval.

The approval is subject to the conditions that the supply is to be released only after completion of all works and also conditions stipulated in the feasibility-cum-load approval vide reference first cited and production of fresh NOC from A.P. Pollution Control Board.

The Assistant Divisional Engineer/Operation/Kukatpally is requested to keep ready for release of service and should inform to the Divisional Engineer, Elecl., Operation: Kukatpally for early release of power to the above unit.”

It is clear from the above letter that the on the application made by the consumer the supply is released for construction activity under particular category. Having done so, the licensee after 3 years of period has lapsed cannot apply a subsequent order to correct its mistake, even if purported to have been done, under the garb new tariff order. Therefore, rightly the Ombudsman has directed proper action in the matter in view of the above two aspects, though not recorded therein.

25. Prima facie we are convinced that the licensee has to comply with the directions of the Vidyuth Ombudsman as well as directions of the Hon’ble High Court. At the same time we are not inclined to impose any penalty in terms of the Act, 2003 as has been prayed by the petitioner in its submissions, as there is already a protection given by the interim order of the Hon’ble High Court. That apart the order of the Vidyuth Ombudsman did not completely extinguish the right of the licensee to change the

category, which is partly covered by the order of the Hon'ble High Court. Therefore, the only action remains is adjustment of the excess amount collected by the licensee.

26. Inasmuch as we have already noticed the communication given by the licensee for adjusting the additional amounts in the future CC bills as extracted above. Therefore, also nothing further remains to be decided by this Commission. However, we deem it appropriate to state that the licensee requested adjustment by the petitioner contrary to the action of adjusting the said amounts towards claim from the petitioner by the licensee.

27. In these circumstances, we dispose of the present petition with a direction that the parties shall comply with the directions of the Ombudsman and act according to the observations noted above. The original petition is allowed to the extent indicated supra leaving the parties to bear their own costs.

This order is corrected and signed on this the 4th day of August, 2016.

Sd/-
(L. MANOHAR REDDY)
MEMBER

Sd/-
(H. SRINIVASULU)
MEMBER

Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN

CERTIFIED COPY