



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

O. P. No. 91 of 2015

Dated: 04.08.2016

Present

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

Between:

M/s. Sanath Nagar Enterprises Ltd.,
D. No. 7-2-1669, Industrial Estate,
Sanathnagar, Hyderabad.

... Petitioner.

And

1. Managing Director,
Southern Power Distribution Company of
Telangana Ltd., Mint Compound,
Secretariat Road, Hyderabad.
2. Chief General Manager, Commercial & RAC
Southern Power Distribution Company of
Telangana Ltd., Mint Compound,
Secretariat Road, Hyderabad.
3. The Superintendent Engineer,
Operation Circle, Hyderabad North,
Southern Power Distribution Company of
Telangana Ltd., Mint Compound,
Hyderabad -63.
4. Asst. Divisional Engineer, Operation Circle,
Southern Power Distribution Company of
Telangana Ltd., Sanath Nagar, Hyderabad.
5. Senior Accounts Officer,
Operation Circle, Hyderabad North,
Southern Power Distribution Company of
Telangana Ltd., Mint Compound,
Hyderabad-63.

... 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. Sanathnagar Enterprises (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 inter alia engaged in the business of development and construction of residential and commercial flats. It has undertaken development of land situated at Sy. No. 44, 45, 55, 59, 59 / 221, 56 / IP and 59 / 22 of Sanath Nagar by constructing residential apartments. It has applied for service connection under HT category – II vide application dated 16.07.2010. The 3rd respondent accorded sanction on 19.07.2010 for supply of power with CMD of 150 KVA and connected load of 450 KW. Thereafter, on execution of HT Agreement the power was released on 28.07.2010. Since, then it has been supplied power and billed under HT category – II.

3. The petitioner stated that it has been issued letter dated 17.12.2011 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. 14,25,439/- has been

raised. Further, it has been informed that if the petitioner 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.

4. The petitioner stated that it under the threat of disconnection paid 50% of the demand, later submitted detailed representation to the 3rd respondent on 15.02.2012 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 affidavit. 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 (GTCS) 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 APERC and that the petitioner would squarely fall under HT-II category and not under HT temporary. It also contended 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 22.03.2012 and requested to continue it under HT Category – II and refund the amounts collected. In spite of the above said objections the respondents continued to bill the petitioner 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 12.06.2012. The said authority however without going into merits of the matter relegated it to pursue appeal before the 3rd respondent by its order dated 19.06.2012. Therefore, it filed Appeal No. 47 of 2012 before the 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 the petitioner. 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 a representation to the 3rd respondent enclosing the copy of the award and requested to refund the amount already collected for Rs. 16,66,966/- by adjusting the same in future bills and also requested to bill its supply under HT category – II henceforth. As there was no response it once again submitted reminder by letter dated 07.02.2013 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. It is stated that it has time and again been requesting the respondents to implement the award by order dated 31.08.2012 in Appeal No. 47 of 2012 passed by the Vidyuth Ombudsmen. However, the respondents neither implemented the order of the Vidyuth Ombudsmen nor refunded the amount already paid by it. Having no other alternative, it filed W. P. No. 13667 of 2013 challenging the action of the respondents in continuing to treat its supply and also to implement the order dated 31.08.2012 passed in A. No. 47 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.

7. 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. 47 of 2012 passed by the Vidyuth Ombudsmen.”

8. 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 4 for not complying the orders / directions issued in order dated 31.08.2012 in Appeal No. 47 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.
- b) 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.
- c) It is stated that the HT supply to M/s. Sanath Nagar Enterprises Ltd., was released on 30.08.2010 under HT cat-II tariff with HT. SC. No. HDN-1432 with a CMD of 150 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 CC bills were issued under HT category-II tariff upto Oct-2011 consumption month.
- d) 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.
- e) 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. In pursuance of said tariff order the second respondent issued the Memo No. CGM (Comml) / SE / DPE / ADE (T) / D. No. 1340 / 2011 dated 29.10.2011. As per said memo the HT consumers including petitioner service who are availing supply for construction purpose on or after 01.08.2010 are inspected by the DPE wing along with ADE / Operation.
- f) It is stated that the HT. SC. No. HDN-1432 of the petitioner service was also inspected by the DPE wing and confirmed that they are availing supply for construction purpose and proposed for back billing for Rs. 14,25,439/-. Accordingly, the Asst. Divisional Engineer / Op / Sanathnagar has issued back billing notice as per inspection report submitted by the ADE / DPE / HT-II / Hyd. for the period form 30.08.2010 to 24.11.2011 vide Lr. No. ADE / OP / Sanathnagar / D. No. 900 dated 17.12.2011. The consumer has paid 50% of initial assessment amount Rs. 7,12,720/- on 31-12-2011 without any protest.

- g) It is stated that consequent to the issue of CC bills under HT cat-II (temporary) tariff with effect from Nov-2011 consumption month and a demand notice for payment of back billing amount for Rs. 14,25,439.00. It is to stated that the CGRF. The CGRF vide Lr. No. CP / CGRF-2 / CG / 2012-13 / D. No. 1518 / 12 dated 19.06.2012 has informed to the consumer to contact the Superintending Engineer / Op Circle / North / Hyd for disposal of pending case.
- h) It is stated that consequent to the directions issued by the CGRF, the consumer did not approach the third respondent instead filed a petition before the Vidyut Ombudsman vide Appeal No.47 of 2012 on 31.08.2012 challenging the CRGF letter dated 19.06.2012.
- i) The Vidyuth Ombudsman has passed award dated 31.08.2012 and 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 after 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."
- j) It is stated that subsequently the petitioner has approached the Hon'ble High Court by filing W. P. No. 13667 of 2013 with the following prayers.
- a) For the reasons aforesaid, the petitioners pray that this Hon'ble Court may be pleased to issue a writ direction or orders especially one in the nature of Mandamus declaring the Memo No. CGM (Commercial) / SE / DPE / ADE(T) / D. No. 1340 / 11 dated 29.10.2011 issued by 2nd respondent which recited the 3rd respondent to re-categorize the existing HT Category-II services used for construction purpose to HT Temporary supply and further to back bill under HT Temporary supply with effect from 01.08.2010 as arbitrary, illegal, without jurisdiction and contrary to the tariff order issued by APERC for the year 2010-11, consequently set aside the same and further to direct respondents 1 to 4 to implement the orders dated 31.08.2012 in Appeal No. 47 of 2012 passed by Vidyuth Ombudsman by declaring their action in unilaterally re-categorizing the petitioner's service from HT-II category to HT temporary as arbitrary, illegal in violation of principles of natural justice besides violating the petitioner's right guaranteed under Article 14, 19 (1) (g) of Constitution

of India and pass such other orders in the interest of justice as this Hon'ble Court deems fit and proper.

b) It is further prayed that during the pendency of the present writ petition the Hon'ble Court may be pleased to direct respondents 1 to 4 bill the petitioner for the power consumed under HT category-II henceforth in respect of its service connection No.HDN-1432 and pass such other order or orders on the interest of justice as this Hon'ble Court deems fit and proper.

c) It is further prayed that during the pendency of the above writ petition this Hon'ble Court may be pleased to direct the respondents 1 to 4 refund the amounts collected for Rs. 21,74,697.20 up to the end of the January, 2013 from the petitioner on account of differential tariff by way of adjustment in the future bills and pass such other order or orders as this Hon'ble Court deems fit and proper.

k) The Hon'ble High Court was pleased to grant interim order in W. P. M. P. No. 16744 of 2013 in W. P. No. 13667 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. 47 of 2012, the APCPDCL shall continue to bill the petitioner under HT cat-II in respect of its service connection No.1432, till such time it initiates steps in this regard and conversion of the category is effected.”

l) Therefore, it is evident that the petitioner approached the Hon'ble High Court challenging the memo issued by the CGM Memo. No. CGM (Comm1) / SE / DPE / ADE (T) / D. No.1340 / 2011 dated 29.10.2011 and also a direction to implement the award passed by the Vidyuth Ombudsman in Appeal No. 47 of 2012 dated 31.08.2012. In compliance with the above said interim orders the petitioner is being treated as HT-II consumer. Further in the light of the award passed by the Vidyuth Ombudsman a notice has been issued to the petitioner on 09.12.2013 to file his objections for change of category HT-II to HT-Temporary. As per the GTCS clause 3.4.1 and to the above said notice the petitioner has addressed a letter dated 06.12.2013 to the 4th respondent herein referring to the interim orders of the Hon'ble High Court stating that the Hon'ble High Court gave any liberty to the 4th respondent to issue notice and take steps

for change of category and further contended that until the matter is decided by the Hon'ble High Court the 4th respondent herein is precluded from proceeding further in this matter.

m) It is stated that the petitioner has already approached the Hon'ble High Court by filing the W. P. No. 13667 of 2013 challenging the memo issued by 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. 47 of 2012. When the 4th respondent has issued notice of conversion of category as per the award of the Vidyuth Ombudsman the petitioner contends that the matter shall not be proceeded with until the Hon'ble High Court decides the matter. But, surprisingly the petitioner approached this Commission challenging the action of the respondents not complying with the award passed by the Vidyuth Ombudsman dated 31.08.2012 in Appeal No. 47 of 2012. As such the petition filed by the petitioner purported to be filed under section 142 of Act, 2003 is not maintainable and is liable to be dismissed.”

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

“a) M/s. Sanathnagar Enterprises has filed a petition with Commission under sec 142 of the Act, 2003, to punish the respondents, in terms of sec 142 of the Act, 2003, 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. Even till today, they have not complied with the orders in full.

b) 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. 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 Sec 142 of Act, 2003, taking the delay for acting from 21.09.2012 onwards.

c) 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. 26 Lakhs over the past nearly 4 years. In addition to causing mental agony to the consumer.

d) In spite of setting aside the re-categorization, on legal grounds, the licensee has continued to bill the service, under H.T. Temporary 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. But the respondents have limited their refund to 22.09.2012. 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.

Facts of the Case:

e) Sanathnagar Enterprises Ltd., has applied for power supply of 150 KVA at 11 KV under H.T. Cat. II. As per the procedure in vogue, power supply was released on 30.08.2010 and being billed under HT II till November, 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. It received a notice on 22.12.2011 for re-categorization of service from ADE demanding an amount of Rs. 14,25,439 towards back billing and stating that the service will be disconnected if 50% of the amount is not paid. Hence to avoid the disconnection, it had paid 50% of the amount.

f) Suddenly bills started issued under H.T. II (Ty.) from December, 2011, even before the notice period was over and no orders were issued by the final authority. Infact there is no such category H.T. Ty. II. It 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, it appealed to the Vidyuth Ombudsman as Appeal No. 43 of

2012. Vidyuth Ombudsman issued orders dated 31.08.2012 in the Appeal No. 47 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.

g) On 06.09.2012 it had 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. 14,25,439/-.
- b) Refunding the amount of Rs. 16,66,000 by adjustment to future bills.
- c) Issue the bills from September, 2012 onwards under HT II.

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 respondents.

h) In all probability the respondents should have billed the service under H. T. II from the date of issue of orders of Vidyuth Ombudsman that is 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:

i) The respondent ADE has served a notice vide Lr. No. ADE / OP / Sanathnagar / D-XV / Hyd (N) / F. No. / 1666 / 13-14 dated 09.12.2013 utilizing the liberty given by the Ombudsman for issue of notice for re-categorizing the service under H.T. Ty. with effect from 01.08.2010 in terms of the instructions of CGM dated 29.10.2011.

j) Then they should have prepared the notice as per clause 3.4.1 of GTCS as per the liberty given by the Ombudsman. But their 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 as could be seen from the wording of the notice.

k) 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. It had replied the notice stating

“In the reference cited, you have informed that in pursuance to the orders of High Court, the department has changed the category of our service from H.T. Ty. to H.T. II. To our knowledge, the Hon’ble High Court in their orders has stated that as the APCPDCL has not taken steps for conversion of the category in accordance with the orders dated 31.08.2012 passed by Vidyuth Ombudsman in Appeal No. 47 of 2012, the APCPDCL shall continue to bill the petitioner under H.T. Cat II in respect of the service connection No. 1432 till such time it initiates steps in this regard and conversion of category is affected.”

l) As per the Hon’ble High Court orders, the APCPDCL has to continue to bill the service under H.T. Cat. II, till such time it initiates steps in this regard and conversion of category is effected, the notice given by the ADE becomes sub-judice.

m) Further, as mentioned in the notice, nowhere the Hon’ble High Court of A. P. gave any liberty to issue notice and take steps for change of category. Therefore, until the matter is decided by the Hon’ble High Court you are precluded from proceeding further in this matter. 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.”

10. Based on the above written submissions, the petitioner sought relief in the petition 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:

a) Payment of the excess collected amounts from October, 2012 consumption month up to April, 2013 consumption month amounting to about Rs. 8 Lakhs.

- b) 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.
- c) Penalty of Rs. 6000 per day of delay from 02.07.2012 to the date by which the total refund will be ordered.
- d) 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 it towards filing writ petitions, in the Hon'ble High Court of A.P. then and application filed before TSERC.
- e) Since the service is already requested to be terminated, it is requested that the amounts are paid by cheque / Draft / RTGS to its account.

11. 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 offices have failed in implementing the order passed by the Vidyuth Ombudsman.”

12. 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 terms and conditions of supply 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, 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 for the year 2010-11 and consequently non-implementation of the orders of the Vidyuth Ombudsman.

13. The counsel for the petitioner sought to emphasize the fact that the writ petition is not related to implementation of the order of the Vidyuth Ombudsman, but, the same is limited to the issuance of the memo for taking action for converting the service connections of the petitioner and like consumers from other categories to temporary category by the licensee as well as its applicability to subsequent action vis-a-vi the

petitioner is taken. 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 there shall not be disconnection of power supply.

14. 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. 21,00,000/-. 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 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.

15. In the further hearing, the counsel for the petitioner relied upon the order of the Vidyuth Ombudsman in another matter in respect of the licensee on the same issue, which has been implemented to drive home the point that the licensee is discriminating between the consumers in the matter of implementation of the order of the Ombudsman.

16. 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 constructed is completed and therefore the connection has been sought to be surrendered according to the petitioner's counsel. 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.”

17. 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. Interestingly the connection in this case was released after the tariff order has been passed by the erstwhile APERC. It may be gainful to refer the notice given at the first instance

Letter dated 17.12.2011

“The service connection bearing No.HDN1432 Category HT-II, Village/Section was inspected on 28/Nov/2011 at 17:00 Hours by Sri. R. Srinivas with designation ADE/DPE/HT-II. A copy of the inspection report was handed over to the consumer / his representative on .

2. The following incriminating points are observed from the inspection report:
YES.

During the routine inspection of the service the following observations were made. 1. At the time of inspection consumer availing 3ph healthy supply. 2. The CMD of the HT service is 150 KVA and the service is being billed under HT-II category. 3. The consumer is being utilized the supply for the purpose of construction only. 4. As per tariff order terms and conditions of the APCPDCL (w.e.f. 01.08.2010) the category of the above service falls under HT temporary supply. 5. Hence, it is proposed to bill the HT service under HT temporary supply category and proposed for back-billed as per instructions vide Memo No.CGM(Comml)/SE/DPE/ADE(T)/D.No.1340/11 dated 29.10.2011.

3. Nature of defect reported.

4. Charges payable to the Company for un-authorized use.

On careful consideration of all the relevant aspects, I have provisionally assessed the electricity charges due to the company as per clause 7.5.1 of the General Terms and Conditions of Supply at Rs.14,25,439.00. The calculation sheets for the same are enclosed for your reference.

5. Future Course of Action.

If you wish continuance of supply, you may pay Rs.7,12,719.50 being 50% of the provisionally assessed amount + supervision charges of Rs. 0.0 to the SAO/HYD NORTH (designated officer for payment of assessed amount) and furnish receipt to me within 7 days from the date of service of this order.

If you are agreeable to the assessed amount, you may pay the amount in full within 15 days from the date of service of this order. Further proceedings to recover the assessed amount will be closed after production of a receipt towards payment of the provisionally assessed amount of Rs. 14,25,439.00 in full to SAO/HYD NORTH (designated officer for payment of assessed amount) in addition to the supervision charges of Rs. 0.0 and the reconnection charges of Rs.

If you are not agreeable to the above assessment, you may make a representation to Superintending Engineer/Operation/HYD NORTH within 15 days from the date of service of this order. You may also specifically indicate in your representation whether you want to be heard in person.

In case there is no representation from you within 15 days from the date of service of this order, the electricity charges payable by you shall be included in your subsequent CC bill.”

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 13 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 have been applied to the connection released just after tariff order has been passed by the erstwhile APERC, where the consumer has sought the usage of the supply for the activity construction itself.

18. 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 27.08.2010

“The Asst. Divisional Engineer / Operation / Sanath nagar has reported in the reference cited (1) that the electrical work in respect of HT supply HDN New of M/s. Sanath Nagar Enterprises Ltd., Door No. 7-2-1669, Industrial Estate, Sanath nagar for a CMD of 150 KVA with connected load of 450 KW at 11 KV supply under HT Cat-II was completed and consumer has paid SLC, Development and Security Deposit charges.

As the consumer has entered into HT agreement with the company and obtained statutory approval of the CEIG of A.P. for HT installation, the Asst. Divisional Engineer / Operation / Sanath nagar is directed to release the supply duly observing all department formalities.”

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 13 months of period has lapsed cannot apply an 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.

19. 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.

20. The counsel for the petitioner stated that it had already conveyed to the licensee that the construction activity has been completed and therefore, it requested the licensee to withdraw the service connection and adjust the amounts due to it by refunding the same. We notice from the record available with us that the licensee has neither confirmed nor refuted the above position. Accordingly, the licensee shall have to refund the amount as quantified by the petitioner.

21. 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

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