BEFORE THE VIDYUT OMBUDSMAN

::Present::

C.Ramakrishna

Date: 22-04-2014

Appeal No. 101 of 2013

Between

Spoorthi Beverage Mineral Water

Prop: K. Hari Krishna

H. No: 19-93, Jagannath Rao Colony

Narsapur, Medak Dt.

... Appellant

And

1. The Assistant Engineer, Operation, Narsapur, APCPDCL, Medak
2. The Assistant Divisional Engineer, Operation, Narsapur, APCPDCL, Medak
3. The Divisional Engineer, Operation, APCPDCL, Medak
4. The Superintending Engineer, Operation, Medak Circle, APCPDCL, Sangareddy

… Respondents

The above appeal filed on 11-09-2013 has come up for final hearing before the Vidyut Ombudsman on 17-04-2014 at Sangareddy. The appellant, as well as respondents 1 to 4 above were present. Having considered the appeal, the written and oral submissions made by the appellant and the respondents, the Vidyut Ombudsman passed the following:

AWARD

2. The appeal arose out of the grievance of the appellant that the CGRF had not considered his complaint about unnecessarily booking a case of unauthorized use of electricity against him. The appellant in his appeal stated that the SE/Assessments had served a notice on him about using electricity unauthorizedly under Category II; that his unit is a micro enterprise that is engaged in the business of manufacturing packaged drinking water with a capacity of 4800 Kilo Liters per annum; that his unit has applied for and is registered as a micro enterprise by the District Industries Centre, Sangareddy, Medak Dt.; that therefore the said proceeding issued by the SE/Assessments is incorrect; that there is no notice whatsoever, before the CGRF finalized the complaint; that the CGRF had incorrectly disposed of the case holding that the subject matter does not fall under its jurisdiction; that the officer who inspected his business premises demanded an amount of Rs. 20,000/- as illegal gratification; that he has refused to pay the illegal gratification demanded of him; that the similar activity carried out by his neighbouring industries is continuing to be treated as Category III(A); and that the authorities concerned be directed to repay the excess amounts collected from him under Category II with interest, duly restoring his Category as Category III(A) as before. He enclosed copies of the order issued by the SE/Assessments dated 18-08-2013, an acknowledgment showing that he has filed an application as a Manufacturing Unit, the CGRF's order, and a photocopy of a paper showing one of his neighbouring units being shown as belonging to Category III(A).

3. The respondents were served with a notice for hearing the case on 09-11-2013, 06-12-2013, 19-12-2013, 24-02-2014 & 17-02-2014. They were directed to submit their written submissions, if any, duly serving copies of the same on the appellant. They have not submitted any written submissions.

Instead they chose to argue their case orally. Heard the appeal finally at at Sangareddy on 17-04-2014.

4. The CGRF noted in its order that the complaint relates to unauthorized usage of supply and that the matter does not fall within its jurisdiction.

5. During the course of the hearings, only the appellants have appeared in almost all the hearings while the respondents were conspicuously absent most of the time. It was this behaviour of the respondents which forced this authority to hold the hearings in Sangareddy on 17-04-2014.

6. During the course of the hearings, the appellants as well as the respondents relied on material evidence. Got the same served on each other duly during the course of the hearings itself.

7. Having taken due note of the written and oral submissions of the appellant, the oral submissions of the respondents, the material evidence placed before this authority, this authority finds that there is no substance in the stand taken by the CGRF that the issue relates to unauthorized usage of electricity. There never was unauthorized use of electricity as could be seen by this authority from the record placed before it. The consumer has been given electricity under Category III(A) on 23-Oct-2008. He continued to use the electricity supplied for the same purpose for which it was originally released to him. There never was a change in use by him. But there was a change in the thinking of the respondent officers regarding the purpose for which the electricity is being put to use by the consumer.

8. During the course of the hearings, the respondents were asked to produce the original file relating to the service connection to see how the issue evolved from the beginning. But the respondents were not able to produce the same in spite of giving them adequate opportunity. On the day of the final hearing also they expressed their inability to produce the same saying that it is an old record and is not traceable. But they, as well as the appellants agreed that the service was released in the month of October, 2008 under LT Category III(A). The appellant admittedly applied for the connection under LT Category III(A) as his unit is engaged in manufacturing activity and the respondents also agree that it was released under LT Category III(A).

9. The respondents are defending their case, among other things, on the ground that they have in fact issued a provisional assessment order dated 07-12-2012 for unauthorized use of electricity u/s 126 of the Electricity Act on the appellant. They contend that the appellant had refused to take the provisional assessment order and hence they were forced to resort to serve the same by way of affixture. They produced a photocopy of the record of service by affixture. The said photocopy contained the signatures of their Sub-Engineer and Lineman as witnesses. The appellant contends that such service by affixture with their own colleagues / employees as witnesses is totally illegal. The appellant contends that the said provisional order, had in fact never been served on him. That the respondents have cooked up all this evidence only with a view to further their argument in the case here. The contention of the appellant that this method of service of a notice or order by affixture is not legal, appears to be logical and reasonable. The respondents ought to have taken some third party's signature as witnesses when the appellant herein refused to receive the provisional assessment order. In any

case nothing prevented them from serving it through "Registered Post Acknowledgment Due" method. Be that as it may, even a proper service of such a notice accusing him of unauthorized use, when in fact, there was no unauthorized use, does not give any authenticity or legality to the deeds of the respondents.

10. The said provisional order states, among other things, that the service of the appellant was inspected on 07-11-2012; that at the time of inspection, the appellant is found using the supply for commercial (Water Plant) purpose; that as per the CC bill, it is observed that the service is under Category III; that hence a malpractice case is proposed to be booked as per the decision taken in the review meeting dated: 28-05-2012, the CMD's instructions dated 05-07-2012 and the instructions contained in the Memo issued by the CGM(Commercial) on 07-08-2012; that the appellant should pay an amount of Rs. 23,322/- towards the provisional assessment for the said unauthorized use of electricity; that if the appellant wishes to contest the order, he can approach the SE/DE Assessments; and that if there is no representation from him within 15 days, the Final Assessment order will be issued based on the material available.

11. This authority finds that this provisional order, even if it were to be construed that it was served on the appellants herein, cannot stand on merits. When the connection was applied for by the appellant and released by the respondents, way back in the year 2008 as a connection belonging to Category III(A), the grounds on which the respondent officers are trying to re-categorize it under Category II are totally unsustainable. Admittedly, there was no change in the way the supply was being used from the year 2008 till the year 2012 and beyond. What has changed really is the thinking of the respondents; albeit

with some external inputs as stated by the provisional order. In any case, even if the external inputs were to be considered reasonable, for whatever reason, this becomes a simple case of re-categorization of the service connection for which the GTCS, 2006 as approved by the Hon'ble Commission had specifically provided for certain relevant clauses as below:

"3.3 Classification of consumer Categories

The classification of consumers under different categories both under LT supply and HT supply shall be as specified by the Commission in the Tariff Orders issued from time to time or by any other order of the Commission.

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)."

12. A plain reading of the above provisions makes it clear that the final authority to categorize electricity consumers is the Hon'ble Commission and that it does this through its Tariff Orders issued every year. Clause 3.4 above provides for issuing a notice of 15 days to the affected consumer and then taking necessary action to re-categorize him. The classification of the consumer under Tariff Orders has remained the same throughout from the year 2008 to 2012. The Tariff Orders did not admittedly bring about any change. What has changed is the thinking on the part of the respondents, that too based on some review meetings and instructions from their higher authorities. The respondents could not bring on record any other material to substantiate the change of category from Category III(A) to Category II. Instead of following this simple procedure that was prescribed by the Hon'ble Commission, the respondent officers resorted to booking a case of 'unauthorized use of electricity' against the appellant. This is wholly unwarranted and uncalled for. This is illegal also for the reason that a power which was supposed to be exercised in certain given circumstances was sought to be exercised in totally different and unconnected situations. The respondents' so called provisional order does not specify as to what constitutes commercial activity and how the appellant's activity falls under commercial activity.

13. This authority finds that there is simply no unauthorized use of electricity resorted to by the appellant herein. When there is no unauthorized use, booking a case against him under that charge is not correct. The proper course that should have been adopted is issuing a notice for category change, obtain his objections, if any, and then take action to affect category change, if it was found to be the thing that should be done. Hence the provisional assessment order issued by the respondents and all the subsequent proceedings issued on that ground are liable to be set aside.

14. In view of this finding, it follows that the Final Assessment order issued by the SE/Assessments also is illegal and is liable to be set aside. The appeal dated 29.07.2013 filed by the appellant herein before the CGM, Operation, RR Zone, which is still pending unresolved, also is infructuous as the assessment proceedings for unauthorized usage are not legal.

15. Making packaged drinking water is an activity that is clearly manufacturing in nature. Such an activity falls under the type "Industry." There are a few terms that need to be examined in this context viz., trade, industry and commerce. While we are not concerned with trade here, the difference between the remaining two is the crux of the matter here. "Commerce" is a term that is understood to encompass all those activities which are helpful in transferring goods from place of production to the consumer. A consumer of electricity mainly engaged in this activity can be expected to be categorized under LT II or HT II non-domestic category. But the LT III or HT 1A categories are clearly meant for industry. A consumer who is mainly engaged in the business of extraction, production or preparation of goods is engaged in "industry." The word "industry" entails conversion

of raw material into finished goods or intermediate goods. As the activity engaged in by the appellant herein is one of preparation/processing of water for consumption, the activity falls within the meaning of industry. Hence the appellant is entitled to remain categorized under LT III (A) from the beginning.

16. The contention of the appellant that he holds a licence as micro enterprise was not contested by the respondents. Going by the acknowledgment produced, it appears that the District Industries Centre registered him as a micro enterprise. This registration by the District Industries Centre also substantiates the appellant's claim that he is a manufacturer and is entitled to be categorized under LT III(A).

17. The appellant's next contention that certain neighbouring units which are similarly placed like his are being continued under Category LT III(A) was strongly refuted by the respondents saying that they had already taken steps to bring all such units engaged in the manufacture of packaged drinking water under Category II. If so, this is also incorrect. In any case, it is not for the appellant herein to claim parity based on what is done to somebody else. He is very much within his rights to seek justice for himself based on his own merits; not what is done in somebody else's case. All the facts relating to those cases are also not before this authority at this stage to draw any parallels. Hence this contention of the appellant is not being given credence to.

18. As for the contention of the appellant that the inspecting officer had demanded illegal gratification from him, it's only a proper enquiry by the appropriate authority that can bring out the truth. As this forum is not the proper one nor is it equipped to handle such allegations, the CMD, APCPDCL

shall cause necessary enquiry made into the allegations and take appropriate action as deemed fit.

19. One last contention raised by the appellant is about refund of excess collected from him with interest. Clause 9.5.3 of the GTCS prescribes an interest rate of 16% for the delayed payments made by the consumers on assessment. Applying the rule of equality before law, the same rate should be applicable when it is found that excess amounts are collected by the DISCOM from the consumers based on wrong assessments done by them. Hence, the respondents are liable to refund the excess amounts collected from the appellant with interest @16% per annum.

20. The CGRF is not correct in holding that this is a case of unauthorized use of electricity and hence it has no jurisdiction to decide the matter. As the respondent officers have illegally termed a case of simple re-categorization as one of unauthorized use of electricity, their orders / proceedings on this ground are all illegal and are invalid. When the orders themselves are illegal, if they are not interfered with at the CGRF's stage or this stage, the consumers would be deprived of their rightful remedial action, which otherwise is legally available to them. Hence the CGRF's orders are liable to be set aside.

21. Therefore, it is hereby ordered that:

a. The order issued by the CGRF holding that this is a case over which it has no jurisdiction, is set aside;
b. Final assessment orders issued by the SE/Assessments holding that the appellant herein had indulged in unauthorized use of electricity are set aside, as they are illegal;

c. The pending appeal before the CGM, Operation, RR Zone from the appellant herein also is declared as infructuous as the Assessment order itself is found to be illegal;

d. The respondent officers shall reclassify the appellant herein as belonging to LT III henceforth;

e. The respondent officers shall refund the excess amount collected, if any, from the appellant consequent to his being held as belonging to LT Category II by the respondents along with interest @16% per annum. While the actual refund part will be borne by the DISCOM, the DISCOM is free to recover the interest portion from those of the officers who made the illegal assessment;

f. As the charges of bribery levelled by the appellant herein are serious, the CMD, APCPDCL (to whom a copy of this order is marked) shall cause necessary enquiry into those charges and take appropriate action as deemed fit;

g. The respondent officers shall give effect to the orders mentioned above within 30 days from the date of receipt of this order and shall report compliance within 15 days from thereafter.

This order is corrected and signed on this **22nd** day of **April, 2014**.

VIDYUT OMBUDSMAN

To

1. Spoorthi Beverage Mineral Water, Prop: K. Hari Krishna, H. No: 19-93,

Jagannath Rao Colony, Narsapur, Medak Dt.

2. The Assistant Engineer, Operation, Narsapur, APCPDCL, Medak
3. The Assistant Divisional Engineer, Operation, Narsapur, APCPDCL, Medak
4. The Divisional Engineer, Operation, APCPDCL, Medak
5. The Superintending Engineer, Operation, Medak Circle, APCPDCL, Sangareddy

Copy to:

1. The Chairperson, CGRF-I (Rural), APCPDCL, Door No.8-3-167/14, GTS Colony, Erragadda, Hyderabad - 500 045.
2. The Chairman & Managing Director, APCPDCL, 6-1-50, 5th Floor, Corporate Office, Mint Compound, Hyderabad - 500 004.
3. The Secretary, APERC, 11-4-660, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad-04.