

BEFORE THE VIDYUT OMBUDSMAN

::Present::

C.Ramakrishna

Date: 15-04-2014

Appeal No. 141 of 2013

Between

M/s. Kolli Graphics Private Limited

47-B, S.R. Nagar

Hyderabad - 500 038

... Appellants

And

1. The Asst. Divisional Engineer, Operation, Sainikpuri, APCPDCL, Hyderabad
2. The Divisional Engineer, Operation, Sainikpuri, APCPDCL, Hyderabad
3. The Senior Accounts Officer, Operation, Ranga Reddy, East, APCPDCL,
Hyderabad
4. The Superintending Engineer, Operation, Ranga Reddy East, APCPDCL,
Hyderabad

... Respondents

The above appeal filed on 21-02-2014 has come up for final hearing before the Vidyut Ombudsman on 04-04-2014 at Hyderabad. The authorized representatives of the appellants, as well as respondents 1 to 3 above were present. Having considered the appeal, the written and oral submissions made by the appellants and the respondents, the Vidyut Ombudsman passed the following:

AWARD

2. The appeal arose out of the grievance of the appellants that the respondents have not refunded the excess amount collected by them on account of their wrongly classifying the appellants under HT II Category. On 21-02-2014, the appellants filed an appeal stating that they are manufacturers of printed cartons and their major supplies are to the pharmaceutical companies; that they have taken 125 kVA supply under HT Category I on 26-Jun-2010; that the respondent officers changed their category from HT I to HT II without giving any intimation to them in the month of April, 2011; that they have realized that their category was changed only in January, 2013; that since then the several representations made by them to the respondent officers have been in vain as they did not elicit any response whatsoever; that they have filed a complaint before the CGRF; that after considering the facts, the CGRF passed an order directing the respondents to get a clarification from their Head Office regarding classification of category or change the appellants's category from HT II to HT I within 30 days from the date of the order; that they are not happy with the decision given by the CGRF as the CGRF did not consider their request for refund of Rs. 5,51,802/- that was collected in excess from them because of category change; that they have approached the Vidyut Ombudsman on 20-Nov-2013 without agitating their cause properly; that though the respondent officers have changed the category from HT II to HT I from 22-Nov-2013, they have not returned the excess amount collected; that the respondent SE refused to refund the excess amount collected from them; and that the delay, if any, on their part in filing the appeal may please be condoned as they have been pursuing at various levels with the respondents for getting the refund. The appellants enclosed copies of various certificates to prove that they are a Small

Scale Industry recognized by the District Industries Centre, RR District, the Central Excise Registration, and Licence issued by the Inspector of Factories, RR District. They have also enclosed material to show that the process involved in their business is manufacturing. They have enclosed proof of their end products and also enclosed a copy of the CGRF's order.

3. The respondents were served with a notice for hearing the case on 13-03-2014, directing them to submit their written submissions, if any, duly serving copies of the same on the appellants. As they have not served the copies of their written submissions on the appellants, the same was got served on the appellants at the time of hearing 04-04-2014 giving them an opportunity of adjournment, in case they need any, to enable them to go through the written submissions and come up for arguments. As the appellants have expressed readiness to argue the case without any adjournment, heard the appeal finally on 04-04-2014.

4. The respondent SE stated in his written submissions that the appellants have submitted their first representation for change of Category from HT II to HT I on 07-01-2013; that on 21-01-2013, a field report was called for; that the respondent ADE submitted in his report that the supply is being utilized by the appellants both for manufacturing and printing activity; that a clarification from the Corporate Office also was sought on change of Category; that on 17-09-2013, the CGM, Commercial, APCPDCL informed that the issue was referred to Hon'ble APERC for clarification; that aggrieved with this intimation from the CGM, the appellants approached the CGRF; that the CGRF disposed of the matter directing the respondents to obtain clarification regarding categorization from the Corporate Office with the approval of APERC

within one month from the date of receipt of its order; that they have obeyed the orders of the CGRF by re-categorizing the consumer appellants as belonging to HT I and the same was intimated to the appellants also on 22-12-2013; that the consumer on receiving the intimation requested for adjustment of the amounts (Rs. 5,51,802/-) collected against future bills; that the appellants consumer was informed that the category change was done within one month from the date of the CGRF's order subject to revision/revocation that may take place after getting the APERC's order on reclassification of category; that the appellants in spite of being satisfied with the reclassification have unnecessarily filed the appeal; and that the appellants approached the Vidyut Ombudsman after a gap of 4 months from the CGRF's order to claim refund of the excess amount. The respondent SE finally requested that the case be dismissed for the above reasons.

5. The respondent SE enclosed copies of material in support of his assertions. One of the materials was the report of the respondent ADE which says that out of the total connected load of 209.3 kW, 108.4 kW is being utilized for manufacturing process while 100.9 kW is being used for printing process. It is based on this report that the respondent SE sought a clarification from their Head Office asking whether or not to classify the appellants as HT I from HT II. Their Head Office replied to the appellants that as majority of their load is being used for printing purpose, they sought a clarification from the Hon'ble APERC and informed that suitable action will be taken soon after receiving a clarification from the Hon'ble Commission.

6. The CGRF examined the issue in detail and directed the respondents to obtain clarification regarding classification of the appellants' category from

their Corporate Office with the approval of the Hon'ble Commission within one month from the date of receipt of its order. In the event of non receipt of clarification within the time specified, the respondents were directed to bill the appellants' service under HT I.

7. The only question that falls for consideration in this appeal is whether or not the appellants are entitled for refund of the difference between the HT II tariff and the HT I tariff from the month of April, 2011 till December, 2013 when their service was re-categorized under HT I consequent to CGRF's directions.

8. A perusal of the material placed before this authority reveals that the process involved in the appellants' premises is one undoubtedly of manufacture and hence they are entitled to be categorized under HT I only. At the time, they applied for the service connection originally, they were classified as belonging to Category I. Subsequently, from the month of April, 2011, without there being a notice of any sort, they were billed under HT II. The GTCS, 2006 were brought about with the approval of the Hon'ble Commission based on the license conditions (clause 21 of the license) of the DISCOM. Clauses 3.3 and 3.4 of the GTCS, 2006 deal with the classification of consumers under various categories. The said clauses are extracted 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)."

9. A plain reading of the above provisions makes it clear that classification of consumers is in the domain of the Hon'ble Commission in its Tariff Orders. If and when any change in category of a consumer is to be brought about, either consequent to the changes made in the Tariff Orders or due to noticing a defect in earlier classification, the respondents are bound to give a notice of at least 15 days, take into consideration the objections, if any, raised by the consumers and then reclassify the consumer. The respondent officers have not done this in letter and spirit. On and from April, 2011, without there being a notice of any sort, they went ahead and changed the appellants' category from HT I to HT II. This is not correct and is illegal. When it comes to reclassifying

the consumer based on CGRF's orders, the respondent officers did not show this kind of alacrity and instead took a full two months' time to reclassify the appellants under HT I.

10. Clause 5 of Schedule I to the APERC (Licensees' Standards of Performance) Regulation, 2004 lays down that the DISCOM shall affect change of category (or inform its decision in that regard) within 7 days from the date of application. When the appellants have approached them in the month of January, 2013 itself, what made them not give any written communique informing their decision till December, 2013 is unfathomable. It was only in the month of October, 2013 that the CGRF had come out with its order. What were the respondents doing from January, 2013 to October, 2013 is not at all clear. They cannot take months together to decide on a representation from a consumer.

11. The CGRF giving a conditional order also is not correct. No decision of a quasi-judicial authority can be made to depend on a future event. The authority has to first of all decide whether or not it can adjudicate on the matter. If it comes to the conclusion that it has to adjudicate the matter, it is for it to give its order without making the decision dependent on an external event. The CGRF saying that the consumer appellants shall be reclassified subject to a clarification from the Hon'ble APERC within one month is not correct. It ought to have decided whether or not the classification is correct per se. The Hon'ble Commission cannot be expected to sit in judgment in each and every such case to give out clarifications to the respondents. The Tariff Orders were clear in regard to the classification of the appellants. Moreover, the respondents have not followed the due process that was required of them

to reclassify the consumer. It is this which ought to have made the CGRF strike down the reclassification from HT I to HT II.

12. During the hearings, there was no proper explanation forthcoming from the respondent officers for the illegal classification of the appellants from HT I to HT II. They kept on harping that they have scrupulously followed the CGRF's orders. It's really sad that even the Corporate Office of the respondents has not done any better in this regard. It cannot make the reclassification / classification of a consumer dependent on some future clarification from the Hon'ble APERC. It is for them to understand and interpret the orders of the Hon'ble Commission as deemed fit by them. Whether or not that interpretation is correct will be decided by the quasi-judicial authorities or the Courts in course of time. It's not for them to keep running to the Hon'ble Commission asking it to interpret and reinterpret its quasi-judicial order. No judicial or quasi-judicial authority would usually, resort to clarifying its own orders, unless in an extremely rare case the authority decides to clarify its stand, albeit in a subsequent quasi-judicial / judicial proceeding. Expecting them to respond with a clarification in each such case by entering into correspondence with it, is asking for the moon. The respondent officers shall better desist from resorting to such correspondence.

13. Having regard to all the material that is placed before this authority, the written and oral submissions made by the appellants and the respondents, this authority concludes that the appellants are to be classified under HT I category only. The reclassification of the appellants done in April, 2011 from HT I to HT II is not correct and is illegal. Hence the appellants are entitled for a refund of the difference amount paid by them from April, 2011 to December,

2013 when they were admittedly reclassified under HT I.

14. Therefore, it is hereby ordered that:

- a. the respondents shall refund the excess amount that was collected from the appellants from April, 2011 to December, 2013. They shall do so within 30 days from the date of receipt of this order;
- b. the respondents shall intimate their compliance to this order within 15 days from the date of their refunding the excess amount ordered above.

15. This order is corrected and signed on this **15th day of April, 2014**.

VIDYUT OMBUDSMAN

To

1. M/s. Kolli Graphics Private Limited, 47-B, S.R. Nagar, Hyderabad - 500 038
2. The Asst. Divisional Engineer, Operation, Sainikpuri, APCPDCL, Hyderabad
3. The Divisional Engineer, Operation, Sainikpuri, APCPDCL, Hyderabad
4. The Senior Accounts Officer, Operation, Ranga Reddy, East, APCPDCL, Hyderabad
5. The Superintending Engineer, Operation, Ranga Reddy East, APCPDCL, Hyderabad

Copy to:

1. The Chairperson, CGRF-2 (Greater Hyderabad Area), APCPDCL, H.o.8-3-167/E/1, CPTI, GTS Colony, Vengal Rao Nagar Colony Erragadda, Hyderabad - 500 045.
2. The Secretary, APERC, 11-4-660, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad-04.