BEFORE THE VIDYUT OMBUDSMAN

::Present::

C.Ramakrishna

Date: 15-04-2014

Appeal No. 55 of 2013

Between

Sri Venkateswara Swamy Vari Devasthanam

Dwaraka Tirumala

West Godavari Dt.

... Appellants

And

1. The Asst. Accounts Officer, ERO, Rural, Eluru
2. The Asst. Engineer, Operation, Dwaraka Tirumala
3. The Asst. Divisional Engineer, Operation, Bhimadolu
4. The Divisional Engineer, Operation, Eluru

… Respondents

The above appeal filed on 22-04-2013 has come up for final hearing before the Vidyut Ombudsman on 07-04-2014 at Hyderabad. The authorized representatives of the appellants, as well as respondent 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 raised an additional demand of Rs. 13,31,352/- on the appellants following an audit objection holding that the appellants are liable to pay electricity charges as an HT Category II consumer, but not as an LT VI category consumer.

3. The appeal filed by the appellants states that the service connection bearing number 189 was primarily released in favour of Gram Panchayat for Public Lighting and was taken over by the appellants for the benefit of the pilgrims visiting Dwaraka Tirumala; that the respondents ignored the fact that the appellants are the custodians of a Dharmic Centre and as such should have been shown due deference while levying the additional amounts; that the contention of the audit party that the appellants should be paying electricity charges as a Category II consumer (Commercial) is perverse; that the classification of a service is based on the purpose for which the power is utilized and as the service connection is utilized by them for public lighting it ought to be classified under LT VI category only; that the service connection was originally in the name of Gram Panchayat and was taken over by the appellants only for the benefit of the Devotees visiting Lord Venkateswara; that because of this taking over of the service connection, the APEPDCL is getting high revenue and prompt payment which could otherwise have been in arrears if maintained and continued in the name of the Gram Panchayat; that the respondents have misinterpreted the Tariff provisions and initiated short billing by bringing them under HT Category II; that this is an instance of wrong interpretation of the Rule and taking unilateral action on the part of the DISCOM; that the connected load of 58.5 kW has exceeded the LT limit of 56

kW by a mere 2.5 kW; that as the service connection is being used for public lighting, it has to be billed under LT Category VI (A) only as per Tariff provisions; that treating the appellants as an HT II consumer just because the connected load exceeded the LT maximum of 56 kW by a mere 2.5 kW is unethical; that the concerned respondent AE ought to have advised the appellants the moment the connected load exceeded the LT maximum of 56 kW to either restrict the load or go for an HT connection; that as per the provisions of the Indian Electricity Act, when the DISCOM is at fault, it cannot go beyond six months for short assessment; that the appellants also by virtue of their being a state owned Devasthanam are prone for audit and it is unsustainable to explain to their audit as to the huge demand; that the demand is wholly arbitrary, capricious and contrary to public interest; that the respondent officers, instead of properly answering the audit query preferred to simply pass on the burden to the consumer though they are well aware that the objection is irrational; that none of the senior officers in the Circle office preferred to act in appraising the internal audit team on the issue; that the audit party in its anxiety to generate fictitious revenue to enrich their professional career, failed to understand and appreciate that their service is for Dharmic and Public cause and made a mountain of a molehill as the issue involved viz., that of connected load exceeding maximum allowed, is insignificant; that the APEPDCL is harassing an important Devasthanam with all prejudices and surmises by imposing a huge penalty of Rs. 13,31,352/- without there being an issue and without there being any conceivable aberration on the appellant's part; that the correct procedure would have been to ask the appellants to restrict the load to 56 kW; that the peculiar situation prevailing at Dwaraka Tirumala prompted the appellants from taking over the service connection of the Gram Panchayat in the interest of pilgrims' safety and

security and therefore the impugned order of the CGRF needs to be set aside.

4. On 23-12-2013, the appellants' representative appeared before this authority and filed some more material along with a copy of the letter addressed by the respondent ADE to the Executive Officer of the appellant Devasthanam. The gist of the letter was that in spite of the appellants' approaching the Hon'ble AP High Court, as the Hon'ble Court said that the respondents shall await the final decision of the Vidyut Ombudsman in the matter and not initiate any coercive steps for recovery of the amount claimed, the appellants have not approached the Vidyut Ombudsman and if they had, they should produce evidence of the same. In view of the filing of this letter, along with a host of other material, a notice for hearing was issued in the matter directing the respondent officers to file their written submissions, if any, after duly serving the same on the appellants.

5. The respondent AAO and the respondent ADE submitted their written submissions stating that the service connection was released on 31.7.1997 in favour of the Executive Officer, Malleswara Swamy Temple, Dwaraka Tirumala under Category VI-A for a connected load of 58.5 kW; that in the month of August 2010, the audit party had raised a shortfall objection for Rs. 13,31,532/- by changing the category of the service from Category VI A to HT Category II; that a revised shortfall notice was served on the appellants for Rs. 13,06,224/- for the period 04/2007 to 09/2009; that on the appellants' approaching the CGRF also, the CGRF had given an order in favour of the DISCOM; that in view of the Hon'ble AP High Court's order in WP 13646 of 2013, no coercive steps were initiated for recovery of the amounts outstanding; and that the consumer is liable to pay the above amount as the same was levied as per tariff order.

6. During the hearing on 30-01-2014, having noticed that this case is a fit case for disposal by way of settlement under Clause 11 of Regulation 1 of 2004, this authority gave an opportunity to both the appellants' and the respondents' representatives to attend the hearing with proper authority to enter into a settlement. But the respondents' representatives stated that they don't have any such power and that it is only the CMD of the APEPDCL who can exercise such power. Therefore, a notice was served on the CMD, APEPDCL making him a respondent and directing that he can appear before this authority for settlement either in person or through a representative. When the matter was posted for hearing on 05-03-2014 at Eluru, the authorized representative of the CMD, APEPDCL viz., Sri K.S.N. Murthy, CGM/O&CS/VSP appeared before this authority and stated that they are not willing to accept any settlement and that they would prefer to await the decision of this authority on merits. Hence the matter is decided based on the written and oral submissions from both the sides and the material available on record.

7. On 28-02-2014, the appellants filed another submission, basically reiterating the very same points that were raised at the time of filing the original appeal.

8. The CGRF noted in its order that the connected load of the service connection was 58.5 kW at the time of initial release itself and that it should be billed under Category HT II only. The CGRF had gone ahead revising the shortfall calculated by the internal audit party and directed that a revised shortfall amount be communicated and collected from the appellant complainants.

9. Having taken note of the written submissions made by both the sides, the CGRF's findings, the additional material made available to this authority, this authority finds that there were lapses on both the sides from the beginning and thereafter.

10. As the service was with a connected load of 58.5 kW right from the beginning, billing it under LT VI from the beginning is not correct. It ought to have been billed under HT II only, as held by the CGRF correctly. The contention of the appellants that the service connection bearing number 189 was primarily released for Gram Panchayat is not substantiated with documentary evidence. As per the records of the respondent and as confirmed by the CGRF, it was released in favour of the Executive Officer, Sri Malleswara Swamy Temple, Dwaraka Tirumala. If it were a case of the service connection being first released to the Gram Panchayat of Dwaraka Tirumala and then being transferred in favour of anybody else, the concerned documentary evidence should have been made available. Without that, mere assertions saying that it originally belonged to Gram Panchayat is not correct. The appellants should be careful in making such assertions without there being any backing of documentary evidence. The mere fact that the appellants are custodians of a Dharmic Centre does not entitle them for any differential treatment under the common law. Being a an officer appointed by the Government as the Executive Officer of Dwaraka Tirumala, this point should have been very much in the know of the Executive Officer representing the appellants herein. Other than merely asserting that the audit party's contention, that the service connection ought to have been categorized under Category II, is perverse, the appellants have not produced any evidence to arrive at such a conclusion. When making

such a strong statement, the appellants should have taken all the care to substantiate their assertions. Classification or categorization of services is a thing that is in the domain of the Hon'ble APERC now and it was being exercised by the erstwhile APSEB during the period when this particular service connection was released in 1997. Both of them are the final authorities when it comes to identifying the basis on which a certain classification or categorization is done. It's not for anybody else to read into their minds. Just as the purpose which the electricity being supplied is being put to is important, the nature of the person who obtains the connection also acquires equal importance in determining the characteristic of the service connection. Public or street lighting is the exclusive domain of the local bodies. It is not for anybody to proclaim that they have taken over that function, for whatever reason, and hence should be charged tariff at the rates applicable to Gram Panchayats. The contention raised by the appellants that the service connection was originally in the name of the Gram Panchayat and was taken over by the appellants is not proven by record. The appellants ought to have produced adequate proof for the same. Was there any Gram Panchayat resolution to this effect? Was there any Devasthanam Board's resolution to this effect? Or was there any dictat from the Government of the day? Without producing any of these, merely asserting that it was taken over by the Devasthanam is not correct. The appellants should remember that they are not doing any favour to the DISCOM by taking over the service connection. Doing a favour to the present day DISCOM or the erstwhile APSEB was not the criterion at all for the asserted taking over. The purposes were different. Hence posturing that the appellants is doing a great service to the DISCOM is nothing but a misplaced grandstand.

11. The contention that the respondents have misinterpreted the tariff provisions is correct to the extent that the respondents have miserably failed in their duty to properly categorize the service connection initially at the time of its release. They cannot be accused of misinterpretation even now; because it is not they who interpreted the tariff provisions even for this revision. It was the audit party which did that job; and a commendable one at that. As for the unilateral action part of it, yes that's all they can be accused correctly of for now. When the audit party raised the objection, the respondent authorities ought to have issued a proper notice; ensured proper delivery of the same and taken action to recategorize the connection after following the due process that is laid down in the GTCS, 2006. In the month of July, 2009 it's on record that a notice was issued to the appellant Devasthanam saying that they come under HT category and that the service connection be got regularized by paying the required service line charges, development charges within one month from the date of notice. The appellants profess that they are not in receipt of the said notice. But it is equally on record that from the month of October, 2009 they have been billed under HT category and they have been paying without murmur. It is this which puts the blame on both the sides equally. Mere assertions that they are not in receipt of the notice while still complying with what was stated therein without there being any other apparent reason, shows that the appellants are aware of the fact that the respondents are treating it as an HT connection and that there is some responsibility cast on them to get it converted into HT.

12. 2.5 kW may appear a small number in absolute terms. But law is the same for everybody. As the connected load is beyond 56 kW, it is a connection that ought to have been released only under HT category. As to

why it was released under LT VI is not properly explained by the respondents. The appellants should also remember that they are not being billed under HT for crossing the 56 kW limit only once. It's on record that the appellants have crossed the 56 kW limit almost every month since May 2007, barring a few months. So thinking that the respondent AE ought to have advised them to restrict the load to 56 kW is nothing but shifting the blame on somebody else. The fact is that right from the beginning i.e., since in the day or release, the service connection is on a connected load of 58.5 kW. In spite of this, the respondent officers curiously have allowed the release of SC under LT VI. There are two mistakes here. One is that of releasing the SC under LT category; the other is that of releasing it under Category VI when the appellants is not a local body. On both these counts, the respondents erred. And the appellants is taking a holier than thou attitude because of this. Both are not correct.

13. Regarding the contention that the Indian Electricity Act does not allow the respondents to go beyond six months to raise the short billing demand, let us see what are the provisions of law and rules speaking about this. During the hearings, it has been clarified that the appellants have quite a few other connections also. All put together there are about 5 or 6 connections but under different heads / categories. This is accepted by both the sides. Clause 3.5.3 and 3.5.4 of the GTCS, 2006 (similar provisions were existing in the GTCS before the year 2006 also) expressly lay down that if any consumer has a total connected load of more than 75 HP, the consumer has to necessarily switch over to HT supply within 60 days of being noticed. Clause 12.3.3.2 of the GTCS also empowers the respondent officers to collect HT tariff in cases where the consumer is seen as having more than 56 kW / 75 HP

connected load, eventhough he still continues under LT category. It's this provision which enables the respondent officers to collect HT tariff from the appellants in the present case. However, in so demanding HT tariff rates, the respondent officers cannot go beyond two years as per section 56(2) of the Indian Electricity Act, 2003.

14. As for the appellants being a state owned Devasthanam, they are also prone to various types of audits and it becomes very difficult for them to explain to audit the huge demands raised also is not a sustainable ground to show any differential treatment. The appellants can be assured that they will be treated equally like anybody else in the eye of the law.

15. All the remaining assertions also made by the appellants herein are made in an emotional manner rather than objectively. If the appellants feel that they are serving 'public interest' by strongly pitching for removal of the demands raised, the respondent officers also are equally right in thinking that they are serving 'public interest' by demanding the amounts raised. It's not for the respondent officers to keep playing an advisory role to each and every consumer. In any case, they have already played that part well in 2009 and the appellants appear to have paid heed to such advice.

16. The appellants are advised during the hearings also to shift to an HT supply for all the services that are currently existing. The respondent officers shall take up this conversion work on a war footing basis and see to it that the existing service connections are all merged into one single HT connection.

17. Having regard to all the material that is placed before this authority, the written and oral submissions made, this authority feels that there were lapses on both the sides and that nobody deserves any special treatment. Under the guise of a Dharmic centre, the appellants should not seek any special treatment.

18. Therefore, it is hereby ordered that:

- the appellants are liable to pay at HT II rates, as held by the CGRF, from the day of release of service. However, in view of section 56(2) of the Indian Electricity Act and in view of the fact that the respondents have not shown the HT II rates as liable to be paid in their bills, the liability is restricted to a maximum of 2 years as ordered herein below;
- the short billing amounts as identified by the CGRF shall be taken as the reference point;
- these amounts shall be collected for a total period of 2 years only i.e., from 10/2007 to 09/2009;
- having due regard to the whole issue, there shall be no delayed payment surcharge levied on the appellants and the entire delayed payment surcharge of Rs. 5,80,430/- stands waived;
- the appellants shall cooperate with the respondents and ensure that the entire electrical infrastructure at the appellant's premises in Dwaraka Tirumala stands converted to HT infrastructure within 60 days from the date of receipt of this order;
- if the appellants is in agreement with this order, he shall inform the respondents in writing about the same within 30 days from the date of receipt of this order. On receipt of such acceptance, the respondents

shall carry out, within 15 days from there, the delayed payment surcharge waiver and restriction of back billing to 2 years ordered above;

- the respondents shall report compliance to this authority on all the above aspects within 90 days from the date of receipt of this order.

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

VIDYUT OMBUDSMAN

To

1. Sri Venkateswara Swamy Vari Devasthanam, Dwaraka Tirumala, West Godavari Dt.

2. The Asst. Accounts Officer, ERO, Rural, Eluru
3. The Asst. Engineer, Operation, Dwaraka Tirumala
4. The Asst. Divisional Engineer, Operation, Bhimadolu
5. The Divisional Engineer, Operation, Eluru

Copy to:

1. The Chairperson, CGRF, APEPDCL, P & T Colony, Seethammadhara, Near Gurudwara Junction, Visakhapatnam - 530 013.
2. The Secretary, APERC, 11-4-660, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad-04.