



**BEFORE THE VIDYUT OMBUDSMAN
Andhra Pradesh & Telangana**

:: Present ::

C. Ramakrishna

Date: 06-09-2014

Appeal No. 14 of 2014

Between

Sri. Venkat Reddy, Jublakpally Village, Bhudan Pochampally Mandal, Bhongir
Division, Nalgonda Dt.

... Appellant

And

1. The Addl. Assistant Engineer, Operation, Bhudan Pochampally, TSSPDCL, Nalgonda.
2. The Asst. Divisional Engineer, Operation, Bibinagar, TSSPDCL, Nalgonda.
3. The Assistant Accounts Officer, ERO, Bhongir, TSSPDCL, Nalgonda.
4. The Divisional Engineer, Operation, Bhongir, TSSPDCL, Nalgonda.
5. The Superintending Engineer, Operation, Nalgonda Circle, TSSPDCL Nalgonda.

... Respondents

The above appeal filed on 29-04-2014 has come up for final hearing before the Vidyut Ombudsman on 01-09-2014 at Nalgonda. The appellant, as well as respondents 1 to 5 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 his service connection was wrongly classified as belonging to Category II while it was released under Category III by the respondents. The CGRF's order on his complaint also did not bring relief to the consumer appellant and hence he filed the appeal before this authority.

3. The appellant stated in his appeal that he received a final assessment notice against his service connection on 28-11-2013 asking him to pay an amount of Rs. 26,517/- for the period December, 2012 to November, 2013; that he is running a water plant with a connected load of 3 HP; that a case of unauthorized use of electricity has been booked against him saying that his service connection comes under Category II and not under Category III; that an appeal has been filed by him before the CGM, RR District against this final assessment and that till date he had not received any orders in the matter; that the CGRF also directed the CGM, RR District to dispose of the appeal pending before him; that he has been thoroughly disappointed with the order issued by the CGRF; that he is willing for the recategorization of the service connection but that the backbilling being proposed and demand raised is too much for him to pay; and that therefore, as a special case, treating this is the first offence, he should be excused and the amount of shortfall assessed on him should be waived. He enclosed, among other papers, copies of the provisional assessment order and the final assessment order.

4. The respondents were issued a notice of hearing directing them to submit their written submission, if any, in the matter. The respondent AAO

filed written submissions stating that their higher authorities have clarified that water purifying/treatment plants should be released under Category II only; that the field officers were requested to send proposals for changing the category of water purifying/treatment plants if they have been classified under a category other than Category II; and that a theft case has been booked against the appellant stating that water treatment plant should be under Category II but the billing for the service is being done under Category III. He enclosed lot of material to support his submissions which included among other things a clarification issued by their CGM (Commercial) dated 07-08-2012 that water purifying/treatment plants should be released under Category II only.

5. The final hearing was conducted on 01-09-2014. The key points that arose for consideration in this appeal are:

- a. Whether or not the procedure adopted by the respondent officers is correct in recategorizing the appellant;
- b. Whether or not there is any unauthorized use / theft of electricity as alleged in the assessment notices issued by the respondent officers; and
- c. Whether or not the re-categorization of the appellant is correct.

6. During the course of the hearings, while the appellant reiterated his plea for a benevolent dispensation from this authority, the respondents reiterated that they had done re-categorization based on the instructions of their higher authorities. In support of their contention, they relied on the circular issued by their CGM (Commercial) referred supra. The respondents

further argued that the category of consumer needs to be changed to Category II in view of the fact that the consumer also carries on the business of sale of water bottles within the business premises and that therefore, the re-categorization of the consumer done by them is correct and should not be interfered with. The appellant submitted that he has a retail outlet adjacent / abutting the manufacturing plant and that the said outlet has a service connection which is categorized under Category II and he has no complaint whatsoever with regard to that connection being classified as Category II as the activity that is being carried on there is commercial activity.

7. On an examination of the way the re-categorization is done, it is clear that the respondent officers have simply gone by their higher authorities' instructions and have not followed the principles of natural justice. The tariff orders for the relevant period i.e., for the FY 2012-13 and 2013-14 give an identical classification for Category III as under:

213.1.3.1 L.T.CATEGORY-III (A) - NORMAL CATEGORY

The tariffs are applicable for supply of electricity to Low Tension Industrial consumers with a Contracted load of 100 HP/75 KW and below including incidental lighting load not exceeding 10% of the 154 total Contracted Load. Industrial purpose shall mean supply for purpose of manufacturing, processing and/or preserving goods for sale but shall not include shops, business houses, offices, public buildings, hospitals, hotels, hostels, choultries, restaurants, clubs, theaters, cinemas, bus stations, railway stations and other similar premises, notwithstanding any manufacturing, processing or preserving goods for sale.

This tariff will also apply to

- i. Water Works & Sewerage Pumping Stations operated by Government Departments or Co-operative Societies and pumpsets of Railways, pumping of water by industries as subsidiary function and sewerage pumping stations operated by local bodies.
- ii. Workshops, flour mills, oil mills, saw mills, coffee grinders and wet grinders, Ice candy units with or without sale outlets, Goshalas, grass cutting and fodder cutting units.
- iii. The Information Technology (IT) units identified and approved by the Consultative Committee on IT Industry (CCITI) constituted by GoAP.
- iv. News paper printing units.
- v. Poultry Farming Units other than those coming under LT Category - IV.
- vi. Pisciculture and Prawn culture units.
- vii. Mushroom production units, Rabbit Farms other than those coming under LT Category - IV.
- viii. Floriculture in Green Houses.
- ix. Sugar cane crushing.
- ...

8. The above given extract from Tariff Order for the FY 2012-13 is similar to the provision mentioned in the Tariff Order for the FY 2013-14 but for the small difference of omission of the words “other than those coming under LT Category - IV” in item v. above. The above provision defines what

is industrial purpose in regard to LT connections. It says that supply for industrial purpose means supply for the purpose of manufacturing, processing and/or preserving of goods for sale. It then goes on to exclude certain establishments, like shops or similar premises, from the purpose of industry notwithstanding any manufacturing, processing or preserving of goods for sale. The exclusion part of the definition makes it clear that those which are excluded from the definition of industry cannot be extended an LT III Category supply. What this means is that if there is a shop or similar premises which also carries on manufacturing activity within its premises, it cannot be extended LT III Category supply despite the fact that there is some manufacturing going on there in the shop. If the primary activity is that of a shop or similar place, then the nature of supply to such an establishment needs to be categorized as LT Category II. On the other hand if the primary activity is that of an industry or manufacture, the nature of supply to such an establishment needs to be under LT Category III. In the instance case on hand, the basic activity is that of processing of water to make it potable. It is an activity which clearly falls within the definition of manufacture / processing. The fact that there is also a commercial outlet located adjacent to the manufacturing place and that it has been extended an LT II Category supply makes it amply clear that the consumer has been behaving strictly in accordance with the terms of the Tariff Order. What has not remained constant is the behaviour of the respondents. It is they who classified the connection as LT Category III at the time of release of supply. Suddenly, when their CGM issues a clarification, they proceed ahead and make an inspection giving a finding that there is unauthorized usage of electricity. This is nothing but an obnoxious practice. The nature of activity being carried out by the consumer has never undergone a change from the

beginning. What has undergone a change is the attitude and impression of the respondents. Their trying to take shelter under the definition of the LT III arguing that there is some sale of bottles also happening there and hence the service connection needs to be categorized as LT II is wrong. For the purpose of selling bottles, the consumer has established an outlet and has taken a separate Category II connection for the same. In view of that, there is nothing wrong that has been done by the consumer.

9. Conducting an inspection of such a premises and giving a finding that there is unauthorized usage of electricity is totally wrong and baseless. Such an inspection cannot be called an inspection at all and hence such an act does not attract the provisions of section 126 of the Electricity Act. An act or proceeding which does not fall within the scope of section 126 of the Electricity Act cannot incorrectly mention that provision and take a different route of appeal / process other than the one which is provided under the Electricity Act, 2003. Hence the proceedings initiated against the consumer appellant u/s 126 of the Electricity Act are liable to be treated as non-est. The procedure adopted by the respondent officers to hold that the appellant belongs to a different category than the one to which he is originally released a service connection, is incorrect. Therefore, the first question is answered in favour of the appellant herein.

10. As the appellant had been using the supply to the same purpose for which he had originally applied for and had been sanctioned, there is no question of his indulging in any unauthorized use thereof. The respondent officers did not bring on record any instance of the appellant using the supply for a purpose which is different from the one that he is originally sanctioned

the supply for. Therefore, the second question also is answered in favour of the appellant. There is no unauthorized usage of electricity committed by the appellant herein.

11. The procedure of recategorization of a consumer is clearly laid down in the GTCS. Clause 3.4 of the GTCS which mentions about reclassification of consumer category reads as under:

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).** (Emphasis supplied)

12. The above clause provides for the method of reclassifying a consumer. According to the procedure laid down, a notice has to be issued first and the consumer's objections, if any, called for. Only after going through the objections filed, can the reclassification be done. Even if a reclassification is done, such reclassification cannot result in retrospective revision of bills for an indefinite period. The retrospective revision can happen in case of other categories i.e., consumers like the present appellant, only up to a maximum of 6 months. This is the procedure that ought to have been followed by the respondents; but not conducting an inspection and giving an incorrect finding of unauthorized usage of electricity to escape the rigour of scrutiny of their actions by the CGRF and the Vidyut Ombudsman. Therefore, the third question also is answered in favour of the appellant and the proceedings initiated by the respondent officers are all liable to quashed. Consequently any appeal processes that are pending thereof also are liable to quashed. The respondent's reliance on their CGM's circular instructions are also found fault with. The CGM of a DISCOM is not the authority to classify a consumer contravening the classification already done by the Hon'ble Commission. It is for the Hon'ble Commission to classify consumers. The Hon'ble Commission has done so clearly in their tariff orders. In the light of the clarity in classification that is already there, resorting to deviant methods of foisting false cases of unauthorized usage of electricity on unsuspecting consumers is very bad. The DISCOM's officers ought not to have resorted to such tactics. The naivete of the appellant can be fathomed from the very way in which he has appealed to this authority saying that he be shown a special dispensation in a case where he is basically not at all at fault. His willingness to bear with the unreasonable order of the respondents also confirms his gullibility. There is no need to treat the conduct of the appellant as an offence at all and hence

there is nothing that he should be excused of.

13. Coming to the CGRF's order, this authority finds that the Forum had incorrectly believed that the make believe proceedings initiated by the respondents need to be honoured and allowed to run their course. There is no legal sanctity at all for the proceedings initiated by the respondent officers in the reclassification of the appellant. Therefore, such proceedings are as good as non-est in the eye of law. As the CGRF also had failed to see through this fact, the order of the CGRF is set aside.

14. Therefore, it is hereby ordered that:

- the proceedings initiated by the respondent ADE and the SE in reclassifying the consumer appellant are illegal and are hereby quashed;
- the clarification issued by the CGM (Commercial) vide his Memo No. CGM(Comml)/SE/DPE/ADE(T)/D. No. 726/12 dated: 07-08-2012 is struck down as it the classification done by the Hon'ble Commission; and
- the respondents shall, within 15 days from the date of receipt of this order, withdraw the demands raised consequent to their reclassification attempt of the consumer appellant and report compliance within 15 days thereafter.

15. This order is corrected and signed on this 6th day of September, 2014.

VIDYUT OMBUDSMAN

To

1. Sri. Venkat Reddy, House No. 1-136, Jublakpally Village , Bhoodan Pochampally Mandal, Bhongir Division, Nalgonda 508 284
2. The Addl. Assistant Engineer, Operation, Bhudan Pochampally, TSSPDCL, Nalgonda.
3. The Asst. Divisional Engineer, Operation, Bibinagar, TSSPDCL, Nalgonda.
4. The Assistant Accounts Officer, ERO, Bhongir, TSSPDCL, Nalgonda.
5. The Divisional Engineer, Operation, Bhongir, TSSPDCL, Nalgonda.
6. The Superintending Engineer, Operation, TSSPDCL, Nalgonda Circle, Beside APSRTC Busstand, NALGONDA 508 001

Copy to:

7. The Chairman, C.G.R.F-1,(Rural), TSSPDCL, Door No. 8-3-167/14, GTS Colony, Vengalraonagar Colony, Erragadda, Hyderabad - 500 045.
8. The Secretary, APERC, 11-4-660, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad - 500 004.