

**VIDYUT OMBUDSMAN**  
**O/o: ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
**4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad – 500 004**

Present

**K.Sanjeeva Rao Naidu**  
Vidyut Ombudsman

**Dated: 31-08-2012**

**Appeal No. 43 of 2012**

Between

M/s. Lodha Healthy Constructions & Developers (P) Ltd  
Lodha Bellezza, East Block, Eden Square, Off. KPHB Road,  
Near HITEC City MMTS Station, Hyderabad – 500 072.

**... Appellant**

**And**

1. Asst. Divisional Engineer / Operation / APCPDCL / KPHB / Hyderabad
2. Divisional Engineer / Operation / APCPDCL / Gatchibowli / Hyderabad
3. Superintending Engineer / Operation / APCPDCL / RR North / Hyderabad
4. Chief General Manager / Commercial & RAC / APCPDCL / Hyderabad

**....Respondents**

The appeal / representation dt 25.06.2012 received by this authority on 26.06.2012 against the CGRF order of APCPDCL in C.G. No. 367 / 2011-12 / Ranga Reddy North Circle Dt. 19.05.2012. The same has come up for final hearing before the Vidyut Ombudsman on 28.07.2012. Sri. K. Viswanath Guptha and Sri. D. Srinivas Raju, Associated Vice President – Liaison representatives of the appellant present. Sri. A. Srinivas ADE / O / KPHB; Sri. D.S. Mohan, DE / O / Gatchibowli and Sri. P. Krishna Reddy, SAO / RR North on behalf of the respondents present. Heard both the parties and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following :

**AWARD**

The petitioner filed a complaint before the CGRF against the Respondents for Redressal of the Grievances. In the complaint, the appellant has mentioned about the grievances as hereunder:

*The complaint is against the arbitrary action of SE/SAO in abruptly effecting change of category of the Service RRN 1536 in the bill of November, 2011 without observing the procedure of issue of notice, as laid down under the Clause 3.4.1. of GTCS and with retrospective effect from 01.08.2010, and making a claim of Rs.37,97,708.00 without actually serving the demand. All this is done on the plea of instructions under the Memo. Dated 29.10.2011, which has been contrary to the provisions of Tariff Orders.*

*The complaint is also on the issue of notice by the ADE proposing re-categorization of service, which in fact has already been effected with retrospective effect and already claimed for, making this a duplicate claim for the amount and same issue. The notice is given under wrong clause 7.5.1 of CTCS,. Which pertains to meter defect cases and not re categorization.*

*They have applied for a H.T. supply of 300 KVA with a connected load of 450 KW for construction of Residential Flats in the year 2008. As per the prevailing tariff orders, the temporary supply has to be extended on request for a maximum period of 6 months. There have been no restrictions to avail permanent supply for construction purpose, and at the same time there had been no compulsion to avail power supply for construction purpose under the Temporary Supply. As per the Tariff conditions, sanction was accorded by the S.E./O/Ranga Reddy North Circle for supply to our construction project under H.T. Category.II with a connected load of 300 KVA We have been utilizing the supply for construction purpose from the date of release under H.T. Category II till November, 2011 for more than 3 years, but the Respondents have abruptly changed the category of supply from H.T. Category II to H.T. Temporary Supply with retrospective effect i.e., from 01.08.2010.*

*The instructions issued by the CGM (Commercial)/APCPDCL/Hyderabad dated 29.10.2011 after 15 months of issue of Tariff Order 2010-11 which are detrimental to the interests of the consumers but the same have never been communicated to the affected consumers before implementing, thus violating the law of natural justice and on that count the **orders are eligible and qualified to be set aside. In fact these instructions are not in conformity with the Tariff Orders, and no approval of the competent authority, the APERC, was obtained for implementing.***

*They offer our stand/opinion on the instructions issued by the CGM/Commercial dated 29.10.2011*

- 1. The HT Category II is meant to be applicable for purposes not covered by any other H.T. Categories. There are no restrictions for extending permanent supply for construction purpose. There are also no instructions that supply for construction purposes shall be extended through Temporary Supply only. In fact the HT Temporary supply is to be extended only on request, which means it is the option/choice of the consumer.*
- 2. The instructions issued as per the Tariff Order w.e.f. 01.08.2010, for construction purposes at high tension, only temporary supply may be given, which is absolutely wrong interpretation made by the Licensee.*

3. As per the Tariff order for 2010-11 item No.7.1 at Page 179, reads as follows:

1. **For New Connections:** Temporary supply at High Tension may be made available by the Licensee to a consumer, on his request subject to conditions set out here in after as also in Part. C Temporary supply shall not ordinarily be given a for a period of exceeding 6 (six) months. In case of construction project, temporary supply can be extended for a period of 3 years.
2. From the above, it is clear that there is no provision that H.T. supply ,for construction shall be given under Temporary Supply only. Thus this is a wrong interpretation of tariff attempted to be forced on the consumer, without authority.
3. As per the item 249 & 250 of Tariff Order 2010-11, APERC accorded permission for the construction project the temporary supply for henceforth release. Hence, there is no provision in tariffs to back bill or convert the services already existing or already released services under H.T. Category II.
4. Even if the authorities, desire to re categorize the service of the consumer, the consumer will be informed through a notice of the proposed reclassification as per Clause No.3.4.1 of GTCS, duly giving him an opportunity to file an 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 agriculture categories and 6 months in the case of other categories.
5. Hence, the actions of SE/SAO in re categorizing our service without issue of notice and claiming amounts with retrospective effect, requires to be set aside with instructions to revise the bills from November, 2011 onwards, Under H.T. II and arrange to adjust the excess amount claimed and collected, to the immediate future bills.
6. The notice issued by the ADE/O/KPHB which is served on us under wrong clause No.7.5.1 of GTCS, which pertains to meter defect cases, and hence the notice also requires to be set aside.

In view of the above, it is requested to:

1. Set aside the instructions issued by the CGM/Commercial dated 29.10.2011;
2. Set aside the re categorization of the category of service with effect from 01.08.2010, as the same are done without serving a prior

*notice, as per the provisions under Clause 3.4.1 of CTCS, and in result the claim for Rs.37,97,708.00 is also to be set aside.*

- 3. Issue instructions to SE/SAO to revise the bills from November, 11 onwards with the original HT II Category and the excess amount claimed and collected, refunded by adjustment to the immediate bills.*
- 4. Issue instructions to the SE/O/RR North to set aside or drop the notice issued by the ADE for the amount of Rs.37,97,708.00 which is amounting to duplication of claim and the notice issued under wrong clause of GTCS.*

2. The third respondent has deposed before the Forum as hereunder :

*The estimate for release of supply to M/s.Lodha Healthy Constructions & Developers Pvt. Ltd. Sanctioned for construction purpose under HT Category II tariff and on payment of required development charges and security deposit, the service was released on 04.06.2008 duly collecting the HT Test Report and HT Agreement for the construction purpose.*

*The CC bills to the HT consumer was issued under HT Category II, who is availing supply for construction purpose, as there is no specific condition to release temporary supply for the consumer availing supply for construction purpose in the tariff order prior to 01.08.2010.*

*While filing tariff proposals for the FY 2010-11, APCPDCL has proposed temporary supply tariff for consumers who are availing supply for the construction of projects beyond two years period vide item No.249 of the tariff order. And the APERC allowed the Distribution Companies to extend temporary supply for the construction projects for a period 3 years vide condition No.7 of General Terms and Conditions of HT Supply in the tariff order for retail supply for 2010-11 effective from 01.08.2010.*

*But by oversight, the tariff condition 7 was not implemented in APCPDCL till 10/2011 and the same was communicated by the CGM/Commercial vide Memo.No.29.10.2011 to all the S.E./Operations take further necessary action.*

*Based on the field reports, the tariff category has been changed from H.T. Category II to H.T. Temporary Category with effect from November, 2011 consumption month as the complainant service is availing supply for construction purpose. The differential tariff amount for the period from 01.08.2010 to 10/2011 is to be paid by the complainant*

*As per tariff condition 7 of General conditions of HT Supply for the Financial Year 2010-11, the supply to the constructions has to be released under H.T. Temporary for a period of 3 years effective from 01.08.2010. And APCPDCL is entitled for back billing as per the tariff condition 7 of General conditions of HT Supply.*

*It is appropriate to release the HT Temporary supply during the construction period as it is not a permanent activity in that premises.*

3. The fourth Respondent, DEE / DPE / HT / APCPDCL / Hyderabad deposed before the Forum as follows:

*Instructions were issued from CGM(Commercial) dated 29.10.2011 to convert all the H.T. Services with constructions activity into Temporary Supply of the relevant category, based on the Tariff Orders approved by the APERC for the year 2010-11 to implement the same from 01.08.2010.*

*The request of the consumer cannot be considered for opting the category and the category will be decided by the Company depending upon the purpose of supply. There is no need for issue of separate /prior notice for implementing the Tariff Order Conditions approved by APERC as wide publicity has been given.*

4. After hearing both sides and after considering the material on record, the Forum passed the following order.

*The S.E./O/Ranga Reddy North Circle/Hyderabad is directed to issue final orders on the appeal of the Complainant/consumer within 15 days of receipt of this order.*

*The Complainant, if aggrieved by the orders of the S.E./O/Ranga Reddy North Circle, may prefer an appeal with the Chief General Manager, Operation, Ranga Reddy Zone, Hyderabad within one month of receipt of the order.*

*The complaint is disposed off accordingly*

5. Aggrieved by the order of the Forum, the appellant filed the above said appeal projecting the following grounds.

6. The appellant is having connected load of 300 KVA at 11 KV under HT service and utilizing the same for construction purpose. The S.A.O / RR / North has issued a bill in the month of November 2011 abruptly changing the category of service from HT II to HT Temporary Supply without giving any notice though it is mandatory. After preparing the back billing on 09.02.2012 a notice was issued on 12.01.2012 served on 03.02.2012 by which time, the proposal for payment was ordered and that no opportunity was given to reply the notice issued under 7.5.1 which itself was under an incorrect provision. The copy of the inspection report is not

served on the appellant and the Forum has simply passed order directing the superintending engineer to pass orders and therefore, the impugned order is liable to be set aside.

7. Now the point for consideration is, whether the impugned order is liable to be set aside? If so on what grounds?

8. Sri. K. Vishwanath Gupta Retired Chief Engineer representing the appellant present and stated that without giving any notice and issuing bill without giving 15 days time for reply is against to the procedure and that the tariff orders for both the years are not applicable to the case of the appellant and the appeal preferred by the appellant is to be allowed by setting aside the impugned order. The respondents are represented by Sri. M. Eshwara Rao, ADE, Operation, Sanath Nagar, Sri. J. Mathura Naik, Senior Accounts Officer, Hyderabad, and stated that they issued the notice basing on the circular issued by the CGM and the appeal preferred by the appellant is devoid of merits and the appeal is liable to be dismissed.

9. The CGM has issued a notice / circular dated. 29.10.2011. It reads as follows

**It is noticed that the HT services are being released wrongly under HT Cat-II for construction purpose. As per the schedule of retail tariff rates w.e.f. 01.08.2010, for construction purpose the supply at high tension shall be given under category of temporary supply only. As he Superintending Engineers / OP are designated officers for entering the agreement of HT supply as per GTCS vide designated officers notification amended up to dated. 27.02.2006, they are responsible for any wrong categorization of HT supply.**

**Further to the above, all the existing HT services released/running under HT Cat-II for any construction purpose on or after 01.08.2010 should be billed under HT temporary supply only. Necessary back billing should be done for the period from the date. 01.08.2010 under HT temporary supply tariff. If any deviation is noticed in the above instructions will be viewed seriously and action will be initiated against the concerned.**

**Hence all the Superintending Engineers/Operation are requested to issue necessary instructions to field for releasing of HT services for**

**constructions purpose under HT temporary category as per rules in vogue. The Superintending Engineers/Operation are requested to furnish the list of HT services release/running under HT Cat-II for any construction purpose on or after 01.08.2010 immediately for taking necessary action.**

10. The tariff order for both the years i.e. 2010-2011 and 2011-2012 on tariff on temporary supply at HT is one and the same is extracted as hereunder.

**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.**

11. It is apparent from the very said tariff order that it is applicable for new connections. It is also to be given on the request made by the consumer. Here in this case, it is neither a new connection, nor a request is made by the appellant to give H.T. temporary supply. So the above said circular issued by the CGM Commercial & RAC is not applicable to the case on hand i.e. the appellant herein.

12. It appears that the respondent has issued a notice to change the category and even without waiting for reply by giving 15 days time as contemplated under clause 3.4.1 of GTCS. The notice was issued under clause 7.5.1 of GTCS, and it is not under a correct provision and it is wrongly quoted instead of 3.4.1 of GTCS. The mandatory provision is not complied in this case. At the same time, the respondents are not precluded from issuing a notice in future under clause 3.4.1 while reclassifying the category.

13. It is the bounden duty of the respondents to give notice before reclassifying the category. As the same is not followed by the respondents in this case, the impugned order passed by the Forum is not sustainable and the same is liable to be

set aside. In the decision delivered by the Hon'ble High Court in WP.No. 15293 of 2010 it is very clear that notice has to be issued before taking action against the consumer. The Hon'ble High Court has also ordered giving prior notice is mandatory.

14. In the result, the appeal is allowed and the impugned order is here by 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. No order as to costs.

This order is corrected and signed on this day of 31<sup>st</sup> August, 2012

Sd/-  
**VIDYUT OMBUDSMAN**