

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

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 07-09-2012

Appeal No. 56 of 2012

Between

Sri Sundar Ratna Automobiles,
Prop : Jami Narasimha Murthy,
Old NH – 5, Near RTC Complex,
Tekkali. Srikakulam District.

... Appellant

And

1. Assistant Engineer / Operation / APEPDCL/ Tekkali
2. Asst. Divisional Engineer / APEPDCL / Tekkali /
3. Divisional Engineer / Operation / APEPDCL / Tekkali

.....Respondents

The appeal / representation dt. 25.07.2012 received by this authority on 28.07.2012 against the CGRF order of APEPDCL C.G. No. 80 / 2012-13 of Srikakulam District Dt. 29.06.2012. The same has come up for final hearing before the Vidyut Ombudsman on 05.09.2012. Sri. J. Narasimha Murthy, appellant present. Respondents absent but their written submissions received by this authority on 05.09.2012. Heard the counsel for the appellant 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 his Grievances. In the complaint, the appellant has mentioned about the grievances as hereunder:

The appellant has filed a complaint stating that unauthorized usage of electricity case was booked under Section 126 of the Electricity Act 2003, hence approached the Forum for Redressal of his grievances.

2. The 1st respondent has filed his written submission as detailed below.

“The Service Number D001-8869 of Tekkali Town released under cat.III, contracted load of 8HP on dt. 25-Oct-2006. At the time of release the type of activity might be under category III, but at present the supply is utilizing for commercial activity for the following types of utilization.

- 1. The supply is being utilized for motor cycle (bike) servicing purpose.*
- 2. The supply is utilizing for office premises cum sales point of motor bikes and its spare parts.*
- 3. The shop cum show room is just like all other commercial services which are billing under Cat.II.*

Ex: 1. Hero Honda show room in Kasibugga. SC.No.1361, Kasibugga, Cat.II

2. Bajaj show room in Tekkali,(near Jagathi metta Jn.) SC.No.10768, Tekkali, Cat.II

3. Hero Honda show room in Narasannapeta. SC.No.7274, Narasannapeta, Cat.II

The automobile showrooms including sales point are billing under Cat.II in entire EPDCL. The other show rooms will be asked to change their services into Cat.II to Cat.III.”

3. The Forum taking into cognizance of the written submissions of the Respondent No. 1, passed the following order.

The Forum concludes that as per the procedure to deal with the complaints received under Clause No. 4.7 of Lr. No.S-325/05-01 dt.7.7.2005 issued by Hon’ble APERC :

“If the subject matter of the complaint is show pending consideration before any court, tribunal or arbitrator or any other Forum or a decree or award has already been passed by a competent Court of Law, the Forum can forthwith reject the complaint”

The respondents are herewith directed to issue notice to convert the existing category to actual present billing category as per Clause No. 3.4 of General Terms and Conditions of Supply from date of inspection only.

Clause No.3.4: Reclassification of consumer category:

“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.”

Hence the Forum itself is not vested with power to deal with as it does not come within the definition of deficiency of service.

With the above directions, the CG No. 80/12-13 is disposed off with no costs.

4. Aggrieved by the said order, the appellant preferred this appeal questioning the same that the Forum has acted erroneously without verifying the facts submitted in the complaint and simply concluded that it did not vest with any power to grant any relief to them. It is also further mentioned that the building is a composite premises having two service connections one is under category IIIA SC. No. 8869 and another service is in the name of his wife Jami Manga who is running the business of sale of bikes Here Honda on the name and style of Sudhra Ratna motor bearing SC.No. 8889 (category commercial) and that the authority has issued a notice changing the category as if it is using commercial activity though obtained category III A and reclassified the same without following the procedure contemplated under GTCS and the Forum has simply failed to understand the deficiency of service definition; and that the impugned order is liable to be set aside.

5. The appellant and the respondents failed to attend on 09.08.2012 at Visakhapatnam. Again the matter was posted to 05.09.2012. On 05.09.2012 the appellant J. Narasimha Murthy appeared before this authority and filed his written submissions. Whereas the respondents failed to attend before this authority on 05.09.2012 but submitted their written submissions along with some papers and photograph by filing the same in the office inward. Their submissions are extracted as hereunder.

SC.No. 8869, Tekkali released on 25.10.2006 for a contracted load of 8.00 HP for Two wheeler servicing center, under Cat.III (A). The type of activity indicated by consumer while at the time of release of supply is a “a. AUTOMOBILE SERVICE CENTRE, b. TWO WHEELER WATER SERVICING CENTRE.”. The same is Enclosed in evidence page number 4, SI.NO.12a&b which is forwarded from District Industries Center, Srikakulam at the time of release.

But the consumer violated the type of activity and the following activities observed at the premises.

1. The supply is being utilized for motor cycle (bike) repairing and servicing purpose.

2. The supply is utilizing for Office premises cum sales point of motor bikes and its spare parts.
3. The shop cum showroom is just like all other commercial services which are billing under Cat.II.
 Ex.1. Hero Honda show room in Kasibugga SC.No. 1361, Kasibugga Cat.II.
 2. Bajaj show room in Tekkali (near Jagathi metta Junction) SC.No. 10768, Tekkali Cat.II
 3. Hero Honda show room in Narasannapeta SC.No. 7274, Narasannapeta, Cat.II.

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

7. The Forum has simply extracted clause No. 4.7 of Lr.No. S-325 / 05-01 dated. 07.07.2005. APERC and passed an order that the Forum is not vested with power to deal with the matter. This observation is itself incorrect. It is nowhere pleaded that the case is pending before any other authority. The respondents have not mentioned anything about the pendency of the case to attract the above said clause. How the forum has arrived to that conclusion and the same itself is incorrect and the same is liable to be set aside.

8. The appellant has come up with a clear cut contention that Sundar Ratnam Motors is in the name of his wife bearing No. SC.No. 8889 category commercial. He is having another service connection under category III A for assembling of bikes to make them ready for delivery for the customer and providing free service under warranty of Hero Honda Company. Whereas, the assessing authority has assessed that he is using service connection category IIIA for office purpose and it comes under category II and without giving any notice and without verifying the other service connection he has reclassified the same. The tariff order says as follows

“The tariffs are applicable for supply of electricity to Low Tension Industrial consumers with a Contracted load of 75 HP/56 KW and below including incidental lighting load not exceeding 10% of the 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, railway stations and other similar premises, notwithstanding any manufacturing, processing or preserving goods for sale. This tariff will also apply to 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. This tariff is also applicable to **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. The Information Technology (IT) units identified and approved by the Consultative Committee on IT Industry (CCITI) constituted by GoAP also fall under this category. Further, this tariff is also applicable to:

- i). Poultry Farming Units other than those coming under
- ii). Pisciculture and Prawn culture units.
- iii). Mushroom production units, Rabbit Farms.315
- iv). Floriculture in Green Houses.
- v). Sugar cane crushing.”

9. So it is evident that workshop is included in the said tariff under category III A. The nature of work attended by the appellant is well within the said tariff order. If the sale of Hero Honda bikes is not under category commercial with SC.no. 8889, it comes within the definition of unauthorized usage, if the power for the shop room is drawn from SC.no. 8869 category IIIA. It is not for the respondents to change the category without following the procedure contemplated under clause 3.4 reclassification commercial category

Clause 3.4.1 reads as follows

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.

10. If at all the respondents are inclined to change the category after personal inspection of the usage, they have to issue a notice 15 days in advance and after receiving the reply within the period or after hearing the party the reclassification can be made but not without giving any notice, as they are not vested with the power to reclassify the category suo-moto. The approach made by the respondents without verifying both the connections is incorrect. It is for them to verify whether there is any usage of shop room business in the service of category IIIA, they can issue a notice and reclassify the same after following the above said procedure under the above

said clause or they can book a case for unauthorized use of power. In this case, the mandatory provision is not complied. The impugned order, including the assessment is liable to be set aside as the method of assessment itself is incorrect and the Forum as well as this authority are competent to entertain the petition and appeal respectively filed by the appellant. If the procedure as stated supra is followed, this authority and the Forum are not competent to probe in to the method of assessment. As there is violation of the said clause and the same is liable to be set aside.

11. In the result the appeal is allowed setting aside the impugned order and the method of assessment. However, the respondents are at liberty to follow the procedure contemplated under the above said clause if there is any misuse of power of commercial activity into category IIIA or by taking action for unauthorized usage. No order as to costs.

This order is corrected and signed on this day of 7th day of September, 2012

Sd/-
VIDYUT OMBUDSMAN