



**BEFORE THE VIDYUT OMBUDSMAN
Andhra Pradesh :: Amaravathi**

:: Present ::

N. Basavaiah, B.Sc, B.L.

Date: 28-09-2020

Appeal No. 04 of 2020-21

Between

M/s Mungara Narasimha Rao, S/o Krishna Murthy, Lessee of Fish Tank,
Kollaparru (V), Akiveedu (M), W.G.District – 534 235

... Appellant- complainant

And

1. The Assistant Accounts Officer/ERO/Bhimavaram/APEPDCL/ Bhimavaram Industrial Estate, West Godavari District – 534 201
2. The Assistant Divisional Engineer / Operation/Akiveedu/APEPDCL/ Subdivision, I-Bhimavaram Road, 33/11KV SS, Akiveedu, W.G.Dist – 535 235
3. The Assistant Engineer / Operation/Akiveedu/APEPDCL, Operation Section, I-Bhimavaram Road, 33/11 KV SS, Akiveedu, West Godavari District – 535 235
4. The Divisional Engineer / Operation / Bhimavaram/APEPDCL, Operation Division, Bhimavaram Industrial Estate, Bhimavaram, W.G.District – 534 201.
5. The Assistant Engineer, DPE-Eluru, Circle Office, Eluru

....Respondents

ORDER

The above appeal- representation came up for final hearing, by way of Video Conferencing, before the Vidyut Ombudsman at the office of the Superintendent Engineer (Electricity Operation), Vijayawada on 21-09-2020. Sri.K.Pratap, advocate for the complainant, and the respondents, except the third and fifth respondents, were present. Having considered the appeal-representation and submissions of

the above parties present, the Vidyut Ombudsman passed the following:

1. This appeal has been preferred by the appellant-complainant against the order **dated.27-05-2020 in C.G.No:344/2019/Visakhapatnam**, passed by the **Forum for Redressal of Consumer Grievances in Eastern Power Distribution Company of A.P Limited, Visakhapatnam**, whereby and where-under the above Forum set aside the provisional assessment for short billing dated 01-10-2019 issued by the 2nd respondent for Rs. 3,89,491/- with respect to the service connection No: 1531485206/000179 obtained for a fish tank at Kollaparru village in West Godavari District for the period from 12-05-2017 to 06-09-2019 and directed the respondents to issue revised assessment for short billing to recover the energy charges in recording of 33.32 % error in negative value in the meter of the above service connection for the period from 02-10-2017 to 01-10-2019.

2. The case of the appellant complainant is that he being a consumer of the respondents, as the lessee of the above fish tank, received the above provisional assessment notice without any details including the date of the last inspection of the meter against the provisions of the GTCS of APSEB, and as such, the above provisional assessment is liable to be set aside, that though the meter reading was taken in August, 2019 , the meter reader did not report regarding the defect in the matter to the respondents and as such, it can be presumed that the meter has been functioning normally till August, 2019 and that the version of the respondents that the meter was running -33.32 error is false, that the defect, if any, in the meter would be between August & September only, that the respondents did not give him the alleged MRT report or a copy of it, and as per the amended Section 49 I of the Indian Electricity Act and as per the decision in

the Brilliant Industries Vs. APTRANSCO , ALT, 2002(1) page : 594, only Special Court has jurisdiction to decide the dispute relating to the correctness or otherwise of the meter, and the Divisional Engineer has no jurisdiction to decide the matter relating to defect in the meter. He, in his complaint, prayed to set aside the above provisional assessment.

3. The case of respondents 2 & 3 is that when the fifth respondent inspected the above service connection on 06-07-2019, he observed that the service meter was not working properly and recommended for MRT and that as per the MRI data and MRT report, the meter was functioning with 33.32 % error in negative value from 12-05-2017 onwards. Therefore, short billing assessment notice was issued for the period from 12-05-2017 to 06-09-2019 for Rs. 3,89,491/- .

4. Ex-B1 to B4 were only marked without any oral evidence. After considering the material available on record the Forum passed the order as stated supra by applying the provisions of Section 56(2) of the Electricity Act, 2003. Not satisfied with the above order , the complainant preferred his representation .

5. The advocate for the appellant, after submitting the facts in the complaint stated supra, submitted that his client had no grievance with regard to the first part of the order of the Forum , and his main grievance is with respect to the second part of the order of the Forum and that as the second part of the order is not in accordance with law, the appeal may be allowed after setting aside the order of the Forum.

6. The respondents submitted that the assessment has been made in this case as per the clause 7.5.1.4.4 of the GTCS and there are no merits in this appeal and that therefore, the appeal may be dismissed. They, subsequently, sent a written

submission through 'whatsapp' stating that the assessment was made as per the Annexure XII (VII)(c) of the GTCS-2006 coupled with the clause 7.5.1.5.4 of the GTCS.

7.The following point is framed for consideration:

Whether the second respondent applying the guideline given under the Annexure XII (VII)(C) coupled with the clause 7.5.1.5.4 of the GTCS for assessment of short billing in this case is not legal and correct?

8.Point: At the outset, I would to like to say that there is no provisional assessment notice for short billing and that there is only one assessment notice for short billing. In my view, applying the above guideline by the second respondent is not legal and correct as the alleged provisional assessment notice for short billing dated. 01.10.2019 is silent why the assessing officer, the second respondent, preferred the third guideline directly to the remaining two guidelines given in the GTCS. The relevant clauses of the GTCS-2006 touching the point framed, run as follows:

7.5.1.4 When a meter is found defective during meter reading or on inspection or otherwise, the following guideline shall be followed for computation of the assessed units.

7.5.1.4.1 The number of units to be billed during the period in which the meter ceased to function or became defective, shall be determined by taking the average of the electricity supplied during the preceding three billing cycles to the billing cycle in which the said meter ceased to function or became defective provided that the condition with regard to use of electricity during the said three billing cycles were not different from those which prevailed during the period in which the Meter ceased to function or became defective.

7.5.1.4.2 If the conditions with regard to use of electricity during the periods as mentioned above were different, assessment shall be made on the basis of any 3

(three) consecutive billing cycles during the preceding 12 Months when the conditions of working were not different.

7.5.1.4.3 Where it is not possible to select any 3 (three) consecutive billing cycles consumption, as indicated in clause 7.5.1.4.1 or 7.5.1.4.2 above, or if there is no meter installed, the number of units shall be assessed on the basis of the Assessment Rules in Appendix XII herein. Industrial consumers shall be given due consideration for the production figures and conditions of working in the period under question. For all services/ equipment, which cannot be classified with the aid of the groupings under LT I, II, III, Annexure XII (V) of Appendix XII of the GTCS may be used for the calculations. Annexure XII (V) of Appendix XII is also applicable for services under LT IV, V, VI, VII and VIII.

7.5.1.4.4 to 7.5.1.5.3 Not necessary.

7.5.1.5.4: Wherever the test results indicate a clear level of error, the bills for the period of defectiveness of the meter, Bills for the period prior to the month in which the dispute has arisen may be adjusted as per the test results. In case the meter is found to be fast, the refund shall be adjusted in the next bill. In case meter is found to be slow, additional charges shall be recovered along with the next bill.

The words in the above clause 7.5.1.4.3 "Where it is not possible to select any 3 (three) consecutive billing cycles consumption, as indicated in clause 7.5.1.4.1 or 7.5.1.4.2" are to be noted with great significance. The above clause 7.5.1.4.1, the first preferable guideline to be followed in a case of this nature, says that the number of the units to be billed are to be determined by taking the average of the electricity supplied during the preceding three billing cycles as stated in the above clause, while the clause 7.5.1.4.2, the next guideline to be followed, says that the assessment is to be made on the basis of any three consecutive billing cycles during the preceding 12 months as stated in the clause. The clause 7.5.1.4.3, the third guideline to be followed, says that if it is not possible to select either the above first guideline or the above second guideline, the number of units are to be assessed on the basis of Assessment Rules in Appendix XII. The

clause 7.5.1.5.4, relied upon by the respondents, will come into play only when the necessity to follow the above third guideline arises. The respondents cannot directly follow the third guideline without considering the possibility of selecting any three consecutive billing cycles consumption as indicated in clause 7.5.1.4.1 or 7.5.1.4.2 above. Since there is no material available on record that it is not possible to select any three consecutive billing cycles consumption, as indicated in clause 7.5.1.4.1 or 7.5.1.4.2 above, *assessment of number of units by the second respondent on the basis of Assessment Rules in the Appendix XII coupled with the clause 7.5.1.5.4 is not correct and legal.* The Forum did not consider the above legal aspect. Considering the facts and circumstances of this case, I feel there is no need to discuss the submissions made by the counsel for the appellant at this stage. Therefore, I decide this point in favour of the appellant against the respondents. This point is thus answered.

9. Since the above point is answered in favour of the appellant complainant and since the Forum dismissed the complaint without considering the above legal aspect, the order of the Forum, as well as, the alleged provisional assessment notice for short billing, under the original of Ex.B2, is liable to be set aside, and the appeal-representation is liable to be upheld.

10. In the result, I allow the appeal-representation, set aside the order of the Forum, as well as, the provisional Assessment Notice of the second respondent dated.01.10.2019 and direct the second respondent, being the designated officer, to issue assessment notice for short billing in this case afresh by following the prescribed guidelines for computation of the assessed units as per the clauses No.7.5.1.4.1, 7.5.1.4.2 and 7.5.1.4.3 of the GTCS-2006 besides the

observations made in this order supra. There is no order as to costs.

11. A copy of this order is made available in the website www.vidyutombudsman.ap.gov

This order is corrected and signed on 28th September, 2020.

s/d. N.Basavaiah

VIDYUT OMBUDSMAN

To

1. M/s Mungara Narasimha Rao, S/o Krishna Murthy, Lessee of Fish Tank, Kollaparru (V), Akiveedu (M), W.G.District – 534 235
2. The AAO /ERO/Bhimavaram/APEPDCL/ Bhimavaram Industrial Estate, West Godavari District – 534 201
3. The ADE/Operation/Akiveedu/APEPDCL/ Subdivision, I-Bhimavaram Road, 33/11KV SS, Akiveedu, W.G.Dist – 535 235
4. The AE / Operation/Akiveedu/APEPDCL, Operation Section, I-Bhimavaram Road, 33/11 KV SS, Akiveedu, West Godavari District – 535 235
5. The DE Operation / Bhimavaram/APEPDCL, Operation Division, Bhimavaram Industrial Estate, Bhimavaram, W.G.District – 534 201.
6. The AE, DPE-Eluru, Circle Office, Eluru

Copy To:

1. The Chairman, C.G.R.F., APEPDCL, P & T Colony, Seethammadhara, Near Gurudwara Junction, Visakhapatnam – 530 013.
2. The Secretary, APERC, 11-4-660, 4th Floor, Singareni Bhavan, Red Hills, Hyderabad - 500 004

//CERTIFIED :: TRUE COPY//

//FORWARDED :: BY ORDER//