



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

:: Present ::

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

Date: 29-09-2020

Appeal No. 05 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.04-06-2020 in C.G.No:345/2019ratnam**, whereby and where-under the above Forum dismissed the complaint filed by the complainant questioning the provisional assessment notice dated: 11-07-2019 for short billing issued by the 2nd respondent for Rs. 1,58,242/- with respect to the service connection No: 1531485206/000129 obtained for a fish tank (Aqua Culture) covering the area in some sub-divisions of R S Nos.107 to 110 at Kollaparru village in West Godavari District for the period from 06-07-2018 to 06-07-2019.

2. The case of the appellant complainant is that he being a consumer of the respondents, as the lessee of the above fish tank (Aqua Culture), received the above provisional assessment notice; that in the above provisional assessment notice dated : 11-07-2019, the version of the respondents that the above service was running without capacitors and with multiple services (another SC.No. 179) in the same premises) is not true and correct ; that at the time of alleged inspection on 06-07-2019. no responsible person was present, and the inspection notes was not supplied to him; that without issuing show cause notice for erecting capacitors, demanding huge amounts is not permissible as per the clause 38.10.3 of terms and condition of supply of APSEB; that if any defect is found by the authorities during the inspection, a notice requiring the consumer to rectify the defect shall be served as per the provisions of the Electricity Act, but no such notice is served in this case, that if the consumer fails to rectify the defect within 30 days, the department may levy surcharge of 25 % per month on the bill amount till the defect is rectified limiting to one year from the date of inspection ;

that as the notice is not issued in this case as per the above clause of the GTCS, issuance of provisional assessment notice is illegal, arbitrary and barred by limitation; that he has no necessity to run fish tank with multiple services, and one service is enough to run the fish tank as his fish tank is only Ac. 9. 62 cents and that the meter reader took the meter reading in the last week of June, 2019 but did not report about running multiple services, and as such, it shall be presumed that the fish tank was not running with multiple services and that the alleged multiple services would be between June & July, 2019 only. He prayed to set aside the provisional assessment.

3. The case of respondents 2&3 is that the fifth respondent, AE/DPE/Eluru, inspected the above service connection on 6-07-2019 and observed that the service was being billed under kWh billing and that on verification of EPCCB records, it is noticed that an additional load case was already booked and was regularised from 10 HP to 30 HP on 19-11-2019 after consumer paying necessary amount on 18-11-2019 ; that the contracted load of the service is more than 20 HP, but the CC bills are being issued with kWh readings instead of KVAh readings and that therefore, the short billing notice was issued for an amount of Rs. 1,58,242/- for the period from 06-07-2018 to 06-07-2019.

4. Ex-B1 & B2, before the Forum, were marked without any oral evidence. The Forum, after considering the material available on record and quoting the clause 1.3.1 Category-III(A); LT Industry (General) of Terms and Conditions notified by the Hon'ble APERC in the "Retail Supply Tariffs" for the FY 2019-2020 and following the clause 3.5.3 of the GTCS -2006, dismissed the complaint as stated supra. Not satisfied with the above order, the complainant preferred this

representation .

5. The advocate for the appellant submitted the facts of the case of the appellant along with the objections against the provisional assessment as stated supra and submitted that the issuance of assessment notice for short billing is illegal. The respondents 2 &3 submitted that as per the tariff order for FY 2018-19, Aquaculture was existing in LT Category-III :Industry with sub-category (iii) and as per the tariff order of that financial year, energy charges shall be billed on the kVAh basis for all consumers with the contracted load of 15kW and 20 HP and above ; that as per tariff order for the FY 2019-20, Aqua service was re-categorized into LT Category V(c) ; that in this case, the fifth respondent found the complainant availing 30 HP load without capacitors, and as such, the consumer shall be liable to pay capacitor surcharge at 25% on the monthly bill amount as per the terms and conditions of supply and that therefore, the appeal may be dismissed. It is submitted that Rs.47,472/ being 30% of Rs. 1,58,242/ was paid by the consumer on 25-11-2019 as per the interim order of the Forum passed in I.A.No.37/2019.

6. The following point is framed for consideration:

**Whether the order of the Forum upholding the provisional assessment for short billing dt.11.07.2019 in this case is not legal and sustainable in law?**

**7. Point:** At the outset, I would to like to say that the Forum passed the order not in accordance with the provisions of APERC Regulation No.3/2016. The Forum has to determine the complaint on merits on the pleadings and evidence available on record, as per the clause 12.3 of the Regulation No.3/2016, and pass reasoned orders, as per the clause 13 of the above Regulation. Even this authority has to

settle the representation on merits on the pleadings and evidence available on record and has to pass reasoned orders. In this case, only pleadings besides Ex.B1 and B2, a copy of Inspection Report and provisional assessment Notice, respectively, are available without any oral evidence to appreciate the above submissions of both sides. The complainant, in his complaint, denied the entire case of the respondents. Except Ex.B1, the alleged copy of the inspection report, there is no other material placed by the respondents to accept their case. The order of the Forum does not disclose that the exhibits were marked by consent so that it can be held that the contents of those exhibits are proved. The Forum did not cite any provision of law in its order to hold that the report of the inspecting officer can be used and read as evidence without examining the maker of it. Mere marking of a copy of document (secondary evidence) is not sufficient unless the opposite party admits the truth of the contents of that document. In my view, unless the maker of the inspection report is examined, we cannot look into the contents of it in the present facts of this case. If Ex.B1 is excluded from consideration, there is nothing on record to accept the case of the respondents. The pleadings remain as pleadings without any proof. The assertion of the respondents is positive. So, it is for the respondents to prove their case.

8. The Forum in its order relied upon "Other conditions applicable to Category-III(A): LT Industry (General) and category III(B): LT Seasonal Industries(Off-season)" mentioned at page 264 of the Order on Tariff for Retail Supply of Electricity during the FY 2019-2020, accepted the case of the respondents and dismissed the complaint. The above clause is applicable to only LT categories III(A) and III(B). The view of the Forum is incorrect as the category of 'Aqua Culture' (fish Tank) is neither LT III(A) nor III(B). The category of it was changed from LT

Category-III(iii) in the tariff order for FY 2018-19 to the Category -V(C) in the tariff order for FY 2019-20. So, it is clear that energy charges in this case cannot be billed on KVAh basis from 1.4.2019 to 6-7.2019. The submission of the respondents touching the tariff order during the FY 2018-19 or the capacitor surcharge cannot be appreciated without any evidence and without any finding by the Forum. The particulars of assessment are lacking in the provisional assessment for short billing. Hence, I am of the view that the order of the Forum is not a reasoned order and is not correct and sustainable in law. For the above reasons coupled with my finding on the Point framed, I am of the view that this representation is to be upheld, and the order of the Forum is liable to be set aside and that this case is to be remanded to the Forum for fresh disposal of the case on merits on all aspects. This point is, thus, answered.

9. In the result. I allow the appeal- representation, set aside the order of the Forum and remand this case to the Forum with a direction to dispose of the case afresh on merits on all aspects including the aspects pointed out supra in this order in accordance with the relevant Regulations made under the Electricity Act. The Forum shall take this case to its original number on its file, issue notices to both parties and give an opportunity to both parties to file additional pleadings and lead evidence, if parties want to do so, before the case is decided on merits. Considering the facts and circumstances of this case, I direct both parties to bear their respective costs. It is needless to mention that the amount paid by the consumer on 25-11-2019 as per the interim order of the Forum passed in I.A.No.37/2019 or otherwise in connection with this matter during the pendency of this case will be adjusted as per the orders of the Forum after remand. This appeal-representation is thus disposed of.

10. A copy of this order is made available

[www.vidyutombudsman.ap.gov.in](http://www.vidyutombudsman.ap.gov.in)

This order is corrected and signed on 29th 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//**