



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

:: Present ::

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

Date: 28-02-2022

Representation No.36 of 2021-22

Between

M/s. Sudhara Shrimp Hatcheries Pvt. Ltd. Represented by Elaprolu Vishnu Vardhan Rao, S/o. Veera Rajeswara Rao, K. Chodipallipeta (V), Thondangi (M), E.G. District ... Complainant

And

1. The Assistant Engineer/Operation/APEPDCL/Annavaram
2. The Assistant Accounts Officer/APEPDCL/ERO-Jaggampeta
3. The Divisional Engineer/Operation/APEPDCL/Jaggampeta
4. The Assistant Divisional Engineer/Operation/APEPDCL/Tuni
5. The Divisional Engineer/APEPDCL/DPE-Rajahmundry
6. The Divisional Engineer/APEPDCL/DPE-Srikakulam Respondents

ORDER

The above representation came up for final hearing, by way of Video Conferencing, before me at the office of the Vidyut Ombudsman, Vijayawada on 21-02-2022. The director of the complainant and the respondents 1 to 5 were present. Having considered the representation and the submissions of the parties present, the Vidyut Ombudsman passed the following:

1. This representation has been submitted by the complainant after the ***Forum for Redressal of Grievances of the Consumers in Eastern Power Distribution Company of A.P Limited, Visakhapatnam*** determined the complaint ***in C.G.No.30***

of 2021 on 21st day of December, 2021 setting aside the provisional assessment dated 20-10-2020 as well as final orders dated 23-01-2021 for an amount of Rs.19,41,568/- for the period from 01-03-2014 to 06-10-2020 and directing the respondents to revise the LT to HT shortfall against the subject service for the two years back period from the date of provisional assessment dated 20-10-2020 for the period from 20-10-2020 to 21-10-2018 and to refund /adjust the excess collected additional load charges from 49.53 HP to 73.73 HP (24.2 HP) based on Ex.B2 inspection dated 24-01-2014 as well as from 49.53 HP to 99 HP (49.47 HP) based on Ex.B4 inspection dated 13-04-2016 together with applicable interest thereon and further directing them to regularize the additional load from 49.53 HP to 122.2 HP based on Ex.B2 inspection dated 24-01-2014 since he has already paid the necessary additional load charges to regularize the additional load by giving liberty to the complainant to derate the load as per his requirements and awarding Rs.5000/- towards the cost of the complainant.

2. The facts which are necessary for settling this representation are that the complainant has been a Low Tension-VA consumer of the respondents with a contracted load of 36.949 KW (49.43 HP). The ADE/DPE2 /Rajamahendravaram on 24-01-2014 inspected the premises of the complainant and noted the connected load as 62 HP + 44.96 KW = 122.2 HP against the contracted load of 49.53 HP as per the original of Ex.B2. The ADE/O/Tuni on 13-04-2016 also inspected the above premises and observed the total connected load of 99 HP only as per the original of Ex.B4. Thereafter, the employees of the licensee inspected the above premises on 12-10-2017, 15-03-2018, 03-02-2020, 15-09-2020 and 06-10-2020 and noted the connected load as 122.2 HP, as in the original of Ex.B2 dated 24-01-2014, without verifying the actual connected load, as per the originals of Ex.B5, B7, B9,

B10 and Ex.B12, respectively. A notice under the original of Ex.B3 dated 28-01-2014 was issued to the complainant for payment of development charges for the additional load of 72.67 HP detected as per the original of Ex.B2. Short billing notices dated 17-10-2017, 30-03-2018 and 17-09-2020 for Rs.37,280/- for the period from 01-01-2014 to 12-10-2017, for Rs.9,793/- for the period from 12-10-2017 to 15-03-2018 and for Rs.25,698/- for the period from 17-09-2020 to 05-09-2020, claiming 3% extra on account of transformation losses to the energy recorded in LT meter, as per the originals of Exs.B6, B8 and B11, were issued to the complainant, and those amounts were paid by the complainant. In pursuance of the inspection dated 06-10-2020, under the original of Ex.B12, a provisional assessment notice dated 20-10-2020 under the original of Ex.B13 for Rs.19,41,568/- claiming the difference between the HT Tariff rate and the LT tariff rate for the period from 01-03-2014 to 06-10-2020, was issued by the third respondent to the complainant on the ground that the total connected load has been beyond LT permissive limit above 100 HP and that there has been short assessment since 01-03-2014, and thereafter, final assessment confirming that provisional assessment order was issued by the third respondent to the complainant under the original of Ex.A1. As the amount was not paid, power supply was disconnected. The complainant filed a writ and a complaint before the Forum, after withdrawing the writ. The complainant paid Rs.5,82,515/- being 30% of the above disputed amount for restoration of the power supply as per interim orders. The objection of the complainant is that for raising the bill under HT category, statutory notice is to be given for regularization of load or deration of load, that though the service was inspected for several times, no notice as per the statutory regulations was given at any point of time, that the order should have

prospective effect only and that the claim of the licensee is barred by time as per the clause 4.8.2 of Regulation 5 of 2004 and also under section 56 (2) of the Electricity Act. The respondents 2 and 4 filed responses stating that the complainant paid the amounts, as per the demand notices prior to 06-10-2020 and as per the orders of the High Court and the Forum subsequently.

3. Exs.A1 to A3 and Exs.B1 to B13 were marked. After considering the material available on record, the Forum passed the order as stated supra. Not satisfied with the above order of the Forum, the complainant submitted this representation along with a copy of the above order of the Forum.

4. Submitting the above facts as stated supra, the director of the complainant has further submitted that had the notice been given under the original of Ex.A1 in 2014 itself, this problem would not have arisen, that he cannot be penalized for no fault of him, that as Ex.B4 dated 13-04-2016 shows that the connected load has been within LT permissive limits below 100 HP, he is not liable to pay any amount to the licensee as per the clause 12.3.3.3 of GTCS and that therefore, the representation may be allowed. 4th respondent on behalf of the respondents submitted that having inspected the premises on 06-10-2020, 5th respondent, in his inspection report, Ex.B12, noted the same additional load detected on 24-01-2014 without actually observing the connected load and supported the order of the Forum.

5. The following point is framed for consideration:

Whether the representation can be upheld?

6. Point: The order passed by the Forum has now become final so far as the respondents are concerned and is to be implemented by the licensee. Limitation

aspect has been properly considered by the Forum. The submissions touching the clause under **12.3.3.2 (iii)** besides the clause **12.3.3.3** of the GTCS-2006 are alone to be considered in this case to fix the liability of the complainant. Clause **12.3.3.2 (iii)** runs as follows:

*“12.3.3.2 iii. One Month notice shall be given to regularize the additional Connected Load or part of additional load as per the requirement of the Consumer or to remove the additional connected load. If the consumer desires to continue with the additional connected load, he shall pay the required service line charges, development charges and consumption deposit required for conversion of LT service into LT 3(B) or HT service depending upon the connected load. *However, if the consumer opts to remove the additional connected load and if the additional load is found connected during subsequent inspection, penal provisions shall be invoked as per the rules in vogue*”. (amended on 07-03-2012)*

The amended clause 12.3.3.2 (iii) of the GTCS says that one month notice shall be given by the licensee giving an option to its consumer to regularise the additional load or remove the additional connected load before the consumer is required to pay service line charges, consumption deposit and development charges. It is clear that the notice was given in this case not as per the above amended clause giving an option to the complainant to regularise the additional load or remove the additional connected load but was given as per the un-amended clause. The above clause is like a term or condition of an agreement between the licensee and the consumer. That omission on the part of the licensee in giving notice as per the above amended clause of the GTCS bars the licensee to claim any charges from its consumer, is not there in the GTCS. Consequences of breach of a term or condition of agreement are not incorporated in the GTCS. Considering the meaning of the word 'Grievance' given under clause 2.7 of Regulation No.3/2016, I feel though there is some fault on the part of the licensee, I am doubtful if this

authority can deal questions as to the consequences of breach of term or condition of agreement not being incorporated in the GTCS. Apart from it, clause 2.7 of the Regulation No.3/2016 defining the meaning of word 'Grievance' does not contain any words to indicate that breach of any clause of GTCS-2006 by the licensee will fall within the meaning of the above word. The complainant did not quote any provision of law or cite any decision to the effect that **the demand made by the licensee in this case can be vitiated by violation of the amended clause 12.3.3.2 (iii) of the GTCS and is not legal and valid. Therefore, I am unable to accept the above first submission of the complainant touching the amended clause 12.3.3.2 (iii) of the GTCS. The next submission touches clause 12.3.3.3 of the GTCS, and it runs as follows:**

“12.3.3.3 Cases where the total Connected Load is above 75 HP/56kW or Cases where the total connected load is above 150 HP under LT Category III (B). These services will be billed at the HT category I tariff rates from the consumption month in which the un-authorized additional load is detected till such additional load is removed and got inspected by the Designated officer of the Company”.

The words in the above clause "till such additional load is removed and got inspected by the Designated officer of the company" are to be noted with great significance. To attract the above clause, the consumer has to remove the additional load and take steps to get it inspected by the designated officer of the company. Without taking any steps to get the removed additional load inspected by the designated officer of the company, the consumer can't invoke the above clause. In this case, the complainant-consumer did not do so. In the absence of evidence on the above aspect, the submission of the complainant cannot be upheld. It appears the inspection dated 13-04-2016 is a routine inspection and is not made at the instance of the complainant. The complainant cannot be

permitted to take advantage of the connected load noted in the original of Ex.B4 inspection report for the purpose of the above clause. Had the complainant removed the additional load and got it inspected by the Designated officer of the Company as per the above clause, this problem would not have been arisen. For the above reasons, I am of the view that the complainant cannot escape from his liability for the period from 21-10-2018 to 20-10-2020 fixed by the Forum. **The point is, thus, decided against the complainant, and the representation cannot be upheld and is liable to be dismissed.**

7. In the result, I dismiss the representation without costs.

A copy of this order is made available at www.vidyutombudsman.ap.gov.in

This order is corrected and signed on this the 28th day of February, 2022.

Sd/- N. Basavaiah
VIDYUT OMBUDSMAN, AP

To

1. M/s. Sudhara Shrimp Hatcheries Pvt. Ltd. Represented by Elaprolu Vishnu Vardhan Rao, S/o. Veera Rajeswara Rao, K. Chodipallipeta (V), Thondangi (M), E.G. District
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6. The Divisional Engineer/APEPDCL/DPE-Rajahmundry
7. The Divisional Engineer/APEPDCL/DPE-Srikakulam

Copy To:

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