



**BEFORE THE VIDYUT OMBUDSMAN
Andhra Pradesh & Telangana**

:: Present ::

C. Ramakrishna

Date: 11-11-2014

Appeal No. 59 of 2014

Between

M/s. Kshema Beverages and Foods (P) Ltd, 9-5-1/A/19, One More Nagar,
Ibrahimbagh, Hyderabad - 500 031.

... Appellants

And

1. The ADE/Operation/TSSPDCL/Ibrahimbagh/Golkonda area/R.R. District
2. The DE/Operation/TSSPDCL/Rajendranagar Division/R.R. District
3. The AAO/ERO/TSSPDCL/Gaganpahad/Section Ibrahimbagh/R.R. District

... Respondents

The above appeal filed on 29-09-2014 has come up for final hearing before the Vidyut Ombudsman on 07-11-2014 at Hyderabad. The appellant, as well as respondents 1 to 3 above were present. Having considered the appeal, the written and oral submissions made by the appellants and the respondents, the Vidyut Ombudsman passed the following:

AWARD

2. The appeal arose out of the complaint of the consumer about raising

arrears against their service connection without conversion of category and threatening conversion of category from Category III to Category II. The appellants were aggrieved by the order of the CGRF in so far as its indecision on the issue is concerned.

3. The appellants stated in their appeal that theirs is a small scale industry packaging drinking water for bulk supplies and was started in the year 2003 with all necessary licences and permissions from various Departments like the Department of Industries, Bureau of Indian Standards, Commercial Taxes, Factories Department and MCH; that they have also obtained a power connection in September, 2003 under LT Category III and have been paying charges as such since then; that their main activity comprises of pumping raw water to the plant where demineralization takes place and dousing the water with required salts to balance the mineral content in the water; that the water so obtained is packaged into small containers for supply to the consumers; that no selling activity takes place in the factory premises and hence the activity would fall within the definition and category of LT III only; that while things were like this, the respondent ADE had raised demand of Rs.23,980/- towards back billing on 24-01-2013 by treating the category of their connection as belonging to Category II without any prior notice; that they were forced to pay the illegal demand so raised under threat of disconnection on 14-05-2013 duly making a representation to the 2nd respondent to waive the demand and to keep the category of their service under LT III category; that as there was no response to their representation and they continued receiving their bills under LT III Category only, they were under the impression that their representation is considered favourably and the idea of category change is dropped by the respondents;

that again after one year and a half i.e., on 18-06-2014, the respondent ADE issued another back billing demand for Rs. 1,65,042/- for the period 11-01-2013 to 17-06-2014; that theirs is not a water purification unit and hence does not fall under commercial category; that it is pertinent to note that units like milk dairy units, cool drink units, milk chilling centres, oil packaging units, butter milk units etc., are still being categorized as category III only and that as their unit also is a similarly placed unit, categorizing it as LT II is unjust; and their complaint before the CGRF to set aside the letters dated 24-01-2013 and 18-06-2014 of the respondent ADE and to raise bills against their service connection under LT Category III has not been decided in their favour. The appellants further assailed the advice of the CGRF that they should approach the Hon'ble Commission seeking clarification in the matter as the respondents have failed to put the appellants on proper notice before change of category as contemplated under clause 3.4 of GTCS. They stated that seeking reclassification of the consumers based on some internal circulars and without following the due process laid down is illegal. They further contended that the CGRF, in colourable exercise of power, had given in similar circumstances relief in the case of Aqua Maestro Pvt. Ltd., Rampally, but was pleased in their case to direct that they should seek a clarification from the Hon'ble Commission. The appellants enclosed lot of material in support of their submissions.

4. Notices were issued for hearing the matter on 07-11-2014. While the hearing was pending, the appellants approached this authority on 24-10-2014 informing that the respondents are forcing them to pay the back billing arrears under threat of disconnection and requested for an order staying the forcible collection. Having found that forcible collection of arrears is not

warranted in this case, orders were passed accordingly prohibiting enforcement of collection of arrears from the appellants.

5. The respondent ADE filed his written submissions stating that the appellants' premises was inspected by him along with the AAE, Operation, Ibrahimbagh; that on such inspection it was found that the appellants are using the electricity supply for processing the groundwater, converting the raw water into drinking water and packing it into 20 litre water cans; that the back billing case was booked by ADE, DPE wing on 10-01-2013 as per the directions issued in the Memo dated 07-08-2012 issued by the CGM, Commercial; that the same was finalized by the DE, Operations, Rajendranagar; that the category change from Category III to Category II was not effected by the ERO, Gaganpahad and hence another back billing case was booked on 17-06-2014 raising the demand of Rs. 1,65,042/-. Other than these submissions, there were no other written submissions from the respondents' end.

6. During the course of the hearing, the appellants and the respondents confirmed what they stated in writing. The key points that arose for consideration in this appeal are:

- a. Whether or not the back billing demand raised by the respondents is correct and legal; and
- b. Whether or not the CGRF's order is liable to be set aside in this case.

7. It is not in dispute that the service was originally released under LT Category III by the respondents after due process. The nature of business

being carried out by the appellants has not undergone a change from inception. The only thing that really changed is the coming into existence of the Memo dated 07-08-2012 issued by the CGM, Commercial of the respondent DISCOM. The said circular reads as follows (emphasis supplied):

“

During the Review meeting of the DPE & Assessment which is held on 28.05.2012, many a officers have expressed doubt about the Category of services for Water Purifying / Treatment Plants, i.e. whether the water purifying / Treatment Plants can be classified under LT cat - III or LT cat - II.

Most of the water Purifying / Treatment Plants are being run or categorized in Cat - IIIA after producing the SSI certificate by the consumers.

It is clarified that, the Water Purifying / Treatment Plants should be released under LT Cat-II only.

”

8. It is this memo which prompted the respondents to raise a back billing demand on the appellants. There are two aspects that deserve attention while perusing the memo issued by the DISCOM. First is that the circular did not say that the category of existing service connections needs to be changed. It was, on the face it, only speaking about future releases of service connections. Secondly, the DISCOM had totally gone wrong in undertaking a classification change without there being any concomitant change in the tariff order issued by the Hon'ble Commission. Categorization

of consumers is basically done by the Hon'ble Commission in its tariff orders. The tariff orders for 2012-13 or 2013-14 did not bring about any specific change with reference to water treatment / packaging units such as the appellants' unit. Without there being a change like that, the DISCOM interpreting one class / category of consumers as belonging to some other class / category amounts to arrogating to itself the power of categorization of consumers. The general terms and conditions of service ("GTCS" henceforth) of the DISCOM mention at clause 3.3 that classification of consumers is the domain of the Hon'ble Commission. The said clause reads as follows:

3.3 Classification of consumer Categories

The classification of consumers under different categories both under LT supply and HT supply shall be as specified by the Commission in the Tariff Orders issued from time to time or by any other order of the Commission

9. A plain reading of the above clause makes it clear that the classification of the consumers will be done by the Hon'ble Commission in its tariff orders or through any other order issued by it. A reading of section 62 of the Electricity Act also is pertinent in this regard. The Hon'ble Commission derives its power of tariff setting by virtue of Section 62 of the Act. The Hon'ble Commission classifies the consumers as belonging to various categories by virtue of sub-section 3 of section 62 which reads as under (emphasis supplied):

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

10. Every year tariff orders are issued by the Hon'ble Commission by following Regulation 4 of 2005 which is issued by exercising the power conferred under section 62 of the Act. Thus, every tariff order that is issued by the Hon'ble Commission is an order issued by virtue of the powers vested in it under section 62 of the Act. It follows from it, when read in conjunction with sub section 3 of section 62, that classification of consumers into various categories is a power that is derived by the Hon'ble Commission from section 62 of the Act. So any classification of consumers is done by the Hon'ble Commission through an order issued under section 62 of the Act and not otherwise. In the absence of any such order issued by the Hon'ble Commission re-classifying water treatment plants such as the appellants', the DISCOM undertaking such a reclassification through one of its memos is incorrect and illegal. It is nothing but arrogating to itself the power of classifying consumers. On this count, the memo in question issued by the DISCOM is liable to be set aside.

11. Even where the re-classification is to be done, the respondent officers have to follow the due process of reclassification as provided for in clause 3.4.1 of GTCS which reads as under:

3.4 Reclassification of consumer Category

3.4.1 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.

12. It is clear from the above clause in GTCS that the consumer will have to be informed of the proposed reclassification through a notice, given an opportunity of raising his objections against the same and then after a due consideration of the objections only the reclassification can be done. Any consequential back billing has to be in conformity with the period that is allowed specifically in this regard by the GTCS as amended from time to time. The period of back billing is restricted to 6 months during the relevant period in question.

13. The respondents admit that only a back billing notice was issued and that final orders on the notice were not issued / served on the consumers. Raising back billing arrears based on an unfinalized reclassification attempt is not correct and is illegal. In view of the foregoing discussion, point 1 is answered in favour of the appellants.

14. Let us now turn to the CGRF's order. In rejecting the plea of the appellants, the CGRF relied on two references issued by the Hon'ble Commission. One is that in view of the instructions issued by the Hon'ble Commission vide their letter No. APERC/Secy/DD-CA/S-336(A)/2014/1 dated 12-08-2014, it cannot take a decision on reclassification of consumer category, unless a clarification is issued by the APERC. As things stand, the Hon'ble Commission had not done anything which suggests that the category of units like the appellants' has been changed from LT Category III to LT Category II. If it had been the intention of the Hon'ble Commission to clarify so, the Hon'ble Commission would have done so by duly exercising its power under section 62 of the Act either in the tariff order or would have issued a

separate order to that effect. That is not done in the instant case. Hence, construing a letter by the Hon'ble Commission as imposing fetters on the power of interpretation of the CGRF is not correct. If the CGRF had been really so confused about the classification, it ought to have followed the letter and spirit of the instructions issued by the Hon'ble Commission and should have sought a clarification from the Hon'ble Commission itself in accordance with the instructions contained therein. Categorization is not the only issue in the present case. There is the issue of back billing consequent to the categorization. That back billing cannot be resorted to at the whim and fancy of the DISCOM's officers in total contravention of the GTCS cannot be lost sight of by the CGRF.

15. The second reference that is relied upon by the CGRF to reject the plea of the appellants is that the Director (Tariff) of the Hon'ble Commission had clarified during the meeting of the Commission with the Vidyut Ombudsman and the CGRFs that water treatment plants come under HT Category II as per tariff order. The minutes were issued on 10.01.2014. Such clarifications cannot be relied on to substantiate things that are done illegally before the clarification itself is given. Be the clarification as it may, but the method and manner in which back billing was done in the case of the appellants in total contravention of the provisions of GTCS makes the action of the respondent officers illegal in the eye of law. Hence the back billing is liable to be set aside. Therefore, CGRF's orders are liable to be set aside for not examining the legality of the back billing resorted to by the respondents, as it was totally in contravention of the provisions of the GTCS.

16. Therefore, it is hereby ordered that:

- the Memo dated 07-08-2012 issued by the CGM, Commercial of the DISCOM is set aside as it contravenes the provisions of the Electricity Act;
- the respondents shall withdraw the illegal arrears raised in the bills of the appellants towards back billing consequent to recategorization within 15 days from the date of receipt of this order; and
- the respondents shall report compliance to the above order within 30 days from the date of receipt of this order.
- The order granting interim stay on 24-10-2014 gets subsumed in this final order.

17. This order is corrected and signed on this 11th day of November, **2014**.

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

VIDYUT OMBUDSMAN

To

1. M/s. Kshema Beverages and Foods (P) Ltd, 9-5-1/A/19, One More Nagar, Ibrahimbagh, Hyderabad - 500 031.
2. The Assistant Divisional Engineer, Operation, TSSPDCL, Ibrahimbagh, Golkonda area, Ranga Reddy District
3. The Divisional Engineer, Operation, TSSPDCL, Rajendranagar Division, Ranga Reddy District
4. The Assistant Accounts Officer, ERO, TSSPDCL, Gaganpahad Section,

Copy to:

5. The Chairman, C.G.R.F -2 (Greater Hyderabad Area), TSSPDCL,
H. No.8-3-167/E/1, CPTI Premises, GTS Colony, Vengal Rao Nagar
Colony, Erragadda, Hyderabad - 500 045.
6. The Secretary, TSERC, 11-4-660, 5th Floor, Singareni Bhavan, Red Hills,
Hyderabad - 500 004.