



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

:: Present ::

**C. Ramakrishna**

Date: 7-11-2014

Appeal No. 130 of 2013

Between

M/s. B. Janardhana Rao & Others, H.No.1-10-32, 34 to 37, 44/A to E,  
1-10/38/A/1, Begumpet, Hyderabad - 500 016

**... Appellants**

**And**

1. The ADE/Operation/Greenlands/TSSPDCL/Begumpet/Hyderabad
2. The DE/Operation/Greenlands/TSSPDCL/Begumpet/Hyderabad
3. The SAO/Operation/TSSPDCL/Hyderabad North Circle/Hyderabad
4. The SE/Operation/TSSPDCL/Hyderabad North Circle/Hyderabad
5. The CGM (Commercial)/Corporate Office/TSSPDCL/Mint  
Compound/Hyderabad.

**... Respondents**

The above appeal filed on 05-02-2014 has come up for final hearing before the Viduyut Ombudsman on 05-11-2014 at Hyderabad. The appellants, as well as respondents were represented. Having considered the appeal, the written and oral submissions made by the appellants and the respondents, the Viduyut Ombudsman passed the following:

## AWARD

2. The appeal arose out of the complaint of the appellants that their service connection has been recategorized without issuing a notice to them and that backbilling also was done without following the general terms and conditions of service of the DISCOM ("GTCS" henceforth).

3. The appellants stated in their appeal that they received the order of the CGRF dated 13-12-2013 only on 06-01-2014; that they have an HT service with a contracted demand of 120 kVA, drawing supply at 11 kV for construction purpose; that the service connection has been released on 12-09-2008 duly categorized under Category II; that while matters stood thus, they noticed that the bill for November, 2012 was issued under HT Temporary Category; that no inspection of the service was done prior to issuing the said bill and that no notice also was served before conversion of the service; that in terms of clause 3.4.1 of the GTCS, the said conversion is liable to be set aside; that while they were ascertaining the reasons for the change of category, they received a notice dated 13-12-2011 proposing back billing for the period 01-08-2010 to the meter reading date of October, 2011; that the said notice was issued after the service was converted without issuing a prior notice; that the notice was issued under clause 7.5.1 of the GTCS which is for meter defect cases and not for conversion of category; that the notice proposed backbilling for a period of 15 months, a duration that is not authorized under the GTCS; that in spite of their approaching the CGRF, they got only a partial relief in as much as the CGRF authorized conversion of the category from HT II to HT Temporary w.e.f. 01-01-2012; that the tariff order for the year 2010-11 which authorized the release of temporary supply for

construction purposes up to a period of 3 years, permitted such release only for the future period; that the respondents have wrongly interpreted the tariff order to convert their existing service to HT Temporary; that the conversion of the service to HT Temporary by the SAO is against the principles of law laid down by the Hon'ble High Court in WP No. 15923 of 2009 inasmuch as the conversion was done without issuing any notice; and that similar conversions done by the DISCOM have been set aside by the Vidyut Ombudsman in Appeal Nos. 43 and 47 of 2012. The appellants finally prayed that the conversion to HT Temporary be set aside; that the notice of back billing issued by the ADE also be set aside, as it is not a prior notice; and that liberty may be given to the DISCOM to issue fresh notice in terms of clause 3.4.1 of the GTCS after converting the service back to HT II w.e.f 19-10-2011 and refunding the excess amounts collected so far. The appellants pressed lot of material in support of their contentions. The appellants also stated that the respondents have not even implemented the orders of the CGRF.

4. A notice for hearing the matter was issued. The respondent SE submitted his written statement stating that the CGM Commercial of their Corporate Office had issued instructions on 29-10-2011 to bill all HT II services being used for construction purposes under HT Temporary supply; that in the same circular, instructions were issued for back billing such services on and from 01-08-2010; that the ADE, HT meters had inspected the premises of the appellant on 16-11-2011; that based on the inspection note of the ADE, HT meters, the ADE, Operation had issued a back billing assessment notice; that the appellants had not paid the back billing amount and that they have been paying only CC bills under protest; that they did not appeal against the back billing assessment so far; that in spite of the personal hearing opportunity

given to the appellants, the appellants had been evasive to settle the issue and instead approached the CGRF and the Vidyut Ombudsman; and that the letter seeking clarification on the implementation of the CGRF's orders addressed to the CGM, Commercial has not elicited any response so far and that therefore, they are waiting for the orders of their Head Office for implementing the orders of the CGRF. The respondent SE also submitted lot of material in support of his contentions.

5. During the course of the hearings, the appellants submitted written submissions, essentially reiterating what they have stated in their appeal. They further submitted that the CGM, Commercial of the DISCOM should be made a respondent in the matter in view of the fact that it is the circular instructions given by him that are in question in the appeal. Having found the demand reasonable, this authority felt that the CGM(Commercial) of the DISCOM should be made a respondent in the appeal. Accordingly, notices were issued to the CGM, Commercial making him also a respondent in the matter.

6. The CGM, Commercial submitted his written submissions stating that the said instructions were issued based on the tariff order for 2010-11; that the consumer had been released a HT II supply in 2008 as there was no HT Temporary Supply category existing prior to 01-08-2010; that the tariff order for 2010-11 had brought in the condition that HT Temporary supply can be given for a period of up to 3 years; that the DISCOM is entitled to back bill the consumer in view of tariff condition number 7 of the General Conditions of HT supply mentioned in the tariff order; that the applicable tariff shall be decided by the DISCOM based on the licensee's rules in vogue and based on

the purpose of supply but not based on the consumer's request; that clause 3.4.1 of the GTCS is not applicable for this back billing case; that in view of the wide publicity given to the tariff order issued by the Hon'ble Commission, there is no need to issue a separate notice to each of the consumers engaged in construction activity; and that it is based on the inspection report of the ADE that the service connection was converted from HT II to HT Temporary.

7. On perusal of the rival contentions, the issues that arose for consideration in this appeal are as under:

- a. Whether or not the conversion of the category of the appellants from HT II to HT Temporary is done in accordance with the extant rules; and
- b. Whether or not the back billing of the appellants from 01-08-2010 to the meter reading date of October, 2011 is legal.

8. It is not in dispute that the appellants were released HT II service on 12-09-2008. The relevant tariff for the year the connection of the appellant was released was as under:

**H.T. CATEGORY-II ( Non - Industrial)**

This tariff is applicable to all H.T. Consumers other than those covered under other H.T. Categories:

**DEMAND CHARGES & ENERGY CHARGES**

Voltage of supply	Demand Charges		Energy Charges
	Rs/kVA/month Demand	of Billing	Paise/unit
132kV and above	250		360
33kV	230		380
11kV	195		430

**IMPORTANT**

- i) The billing demand shall be the maximum demand recorded during the month or 80% of the contracted demand, whichever is higher
- ii). Energy charges will be billed on the basis of actual Energy consumption or 25 units per kVA of Billing Demand, whichever is higher. FSA will be extra as applicable

9. From the above it can be clearly seen that the entry is a residuary entry. That means that, if the appellants do not belong to any of the other HT categories, they would be classified under HT II category. This is what the DISCOM has classified them as and accordingly the bills were being raised from the date of release of service.

10. In the tariff order for 2010-11, the Hon'ble Commission enabled the DISCOMs to extend temporary supply to construction projects for a period beyond the usual 6 months as under:

(7) TEMPORARY SUPPLY AT HT

- i. For new connections: Temporary supply at High Tension may be made available by the Licensee to a consumer, on his request subject to the conditions set out herein-after as also in Part-C. Temporary supply shall not ordinarily be given for a period exceeding 6(six) months. **In case of construction projects, temporary supply can be extended for a period of 3 years.** The electricity supplied to such consumer shall be charged for, at rates 50% in excess of the rates set out in the H.T. Tariffs applicable subject to, however, that the billing demand for temporary supply shall be the contracted demand or the recorded maximum demand registered during the month whichever is higher.
- ii. Existing consumers requiring temporary supply or temporary increase in supply: If any consumer availing regular supply of electricity at High Tension requires an additional supply of electricity at the same point for a temporary period, the temporary additional supply shall be treated as a separate service and charged for as in clause (i) above, subject to the following conditions.
  - a. The contracted demand of the temporary supply shall be the billing demand for that service. The recorded demand for the regular service shall be arrived at by deducting the billing demand for the temporary supply from the maximum demand recorded in the month.
  - b. The total energy consumed in a month including that relating to temporary additional supply, shall be apportioned between the regular and temporary supply in proportion to the respective billing demands.

11. While the entire clause as such has continued to exist over the years in the tariff orders issued by the Hon'ble Commission over the years, the change that is brought about is the extension of temporary supply to construction projects for up to 3 years. It is the introduction of this facility, admittedly, that prompted the respondent CGM to come out with the circular instructions

specifying that all existing HT services released / running under HT II for any construction purpose should be billed under Temporary supply. While issuing the instructions in his circular dated 29-10-2011, instructions were issued to undertake back billing from 01-08-2010. This is totally wrong. The DISCOM had taken a totally incorrect interpretation of the tariff provision to come out with the instructions dated 29-10-2011. The tariff provision only authorized a mere extension of the temporary supply for construction purposes beyond the ordinary period of 6 months. Nothing more. It had not authorized the DISCOM to convert the existing HT II services for construction purposes into Temporary category. The Hon'ble Commission had not come up with any new category for supply and instead had simply enabled the extension of Temporary supply beyond a period of 6 months, in case of construction projects, upto 3 years, if the situation warrants and is specifically asked for by the consumer. Both the sub-clauses under clause 7 specify that the extension of supply shall be at the specific request of the consumer concerned. Extension of supply for a period of up to 3 years, is not a different category at all. It is a facility extended to the consumers to avail power for a temporary period, albeit a longer one, based on their needs. Whenever they foresee a surge in their consumption, they have the option of availing power for the temporary period. Whenever they know that the power required by them would not be required beyond a definite period not exceeding 3 years, they can opt for temporary supply. Because the very nature of supply is temporary, they would not be subject to any development charges and instead are made liable to a tariff which is in excess of the normal tariff otherwise applicable for such consumers by 50%. The respondent CGM had taken a totally contorted interpretation of the provision. The circular issued by the respondent CGM is, thus, based on a

misinterpretation of the tariff provision and is liable to be set aside. For the aforementioned reasons, the conversion of the appellant from HT II to HT Temporary is totally wrong and is not based on any rule. The conversion does not stand legal scrutiny, even if it had been done by following the due process.

12. Coming to the second issue -- whether or not the back billing resorted to is correct -- let us look at the rule position with reference to reclassification of consumers and consequent back billing that can be done. Clause 3.4.1 of the GTCS lays down the reclassification procedure of the consumers as below:

### **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.

Clause 3.4.1 above had been substituted by the Hon'ble Commission with the following w.e.f 31.5.2014 (emphasis supplied):

"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, the assessment shall be made for the entire period during which such reclassification is needed, however, the period during which such reclassification is needed cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection."

13. The basic difference brought about by the substitution is that back billing in case of reclassification of category can go as far back as needed where the period can be ascertained and no more than 12 months where the period cannot be ascertained in contrast to the restricted period of 6 months that was there in case of HT consumers earlier. In any case, the substitution has been brought about only on and from 31.5.2014. So, this cannot apply to a back billing case which is prior to 31.5.2014. Therefore, the back billing of the consumer appellants from 01-08-2010 to the meter reading date of October, 2011 is not in accordance with any rule and is based on the circular instructions issued by the CGM, Commercial which do not accord with any rule or regulation issued by the Hon'ble Commission. Recategorization, as was done in the case of the appellants, is wrong per se. Back billing, based on such recategorization, even the period for which it was done was also totally illegal. Therefore, the back billing is liable to be set aside.

14. Let us now turn to the other aspects of the representation filed by the appellants. The appellants stated that they received the order issued by the CGRF only on 06-01-2014 and hence the appeal filed by them is very much in time. There is no contest from the respondents on this score and hence the submission of the appellants is accepted.

15. The appellants contended that the back billing proposed by the respondent ADE, Operation was mentioning clause 7.5.1 of the GTCS which is for meter defect cases and that theirs is not a meter defect case at all. The respondents could not defend this back billing notice at all. Clause 7.5.1 of the GTCS deals with the procedure to be adopted by the DISCOM in respect of defective meters. By no stretch of imagination can the present case of the

appellants be considered as a case of defective meter. The respondents made a feeble utterance that there is no specific proforma provided for issuing notice for reclassification of category and that hence this proforma provided under clause 7.5.1 of the GTCS was used. This is not tenable. The various proformae at the end of the GTCS were devised only for the guidance of the field officers. It does not mean that where there is no proforma provided, the field officers have to necessarily use a totally unrelated proforma for the purpose of assessment. They have to devise their own custom format and fulfill the purpose provided for therein. What all is expected of the DISCOM's officers is that they follow the principles of natural justice. If and when a new category is prescribed and if it is found that the existing consumers will have to be classified under that new category, principles of natural justice enjoin on the DISCOM's officers that they issue a notice -- as deemed fit by them -- to the consumer going to be affected by the reclassification, take his objections, consider them and give an appropriate decision about the reclassification. This is not done in the present case. Hence, the back billing done by the respondents is liable to be set aside.

16. Coming to the CGRF's order, the appellants contended that they got only a partial relief there inasmuch as the CGRF had authorized the conversion of category from HT II to HT Temporary w.e.f 01-01-2012. The order issued by the CGRF was perused. The CGRF had considered the back billing notice issued by the respondent ADE and found that it amounts to giving sufficient notice for conversion of category. The CGRF's interpretation is not correct. Lack of proforma is no correct reason for using a wrong proforma mentioning wrong reasons. Nothing prevented the officers from

writing a notice in clear terms and getting it served on the consumer. In any case, the service of the appellants is not liable to be classified under HT Temporary merely because they are engaged in construction activity. They had paid the development charges for availing HT II supply and have been paying bills under that category right from the date of release of supply. More than 3 years after the release of supply, the classification of the supply cannot undergo a change without there being an express provision in the tariff order. The provision being cited as authorizing the reclassification is not correct. As discussed hereinbefore, the tariff order 2010-11 had merely enabled extension of temporary supply beyond a period of 6 months and up to 3 years when required by the consumer. If the supply has to go beyond 3 years, then the consumer ought to take regular supply by paying all the development charges etc. Therefore, the order of the CGRF is liable to be set aside as it is issued based on an incorrect interpretation of the tariff order issued by the Hon'ble Commission.

17. The respondent SE took the stand that the consumer had not appealed against the back billing so far before him. This is a very feeble defence. The appellant had complained to the CGRF against the very same back billing. When he approached the CGRF on the same issue, the question of the consumer appealing before the SE does not arise. Had it been a case of proper back billing in case of defective meters, then it would have been proper to expect the consumer to have followed up the line of appeal provided for therein.

18. The respondents are also further found wanting very badly in regard to the implementation of the CGRF's order. Once the CGRF had given an order,

the respondents are bound to implement the order of the CGRF. By resorting to unnecessary correspondence with their higher authorities, they are only procrastinating the implementation of the order of the CGRF. This is very bad and is viewed seriously.

19. The defence taken by the respondent CGM is not at all convincing. First of all he erred in giving instructions based on an incorrect interpretation of the tariff order. His contention that the appellant had been released a HT II supply in 2008 because there was no category of HT Temporary supply existing is wrong. "Temporary Supply" has always been allowed at a higher tariff to various categories of consumers. The Hon'ble Commission had, by looking at the very nature of temporary supply, prescribed a 50% markup in the tariff applicable for temporary supply. The mark up is with reference to the original categorization that applies to the consumer concerned. Therefore, to say that the DISCOM could not extend Temporary supply to the consumer because there was no provision existing for extending temporary supply is totally misleading and incorrect. The fact is that, the appellant applied for HT II service connection and it was extended after due diligence. When the DISCOM had seen an opportunity to get more revenue, it resorted to issuing instructions misinterpreting the tariff order issued by the Hon'ble Commission. The DISCOM should desist from such practices. It should remember that its basic mandate is supply of electricity. Revenue is concomitant to it.

20. The respondent CGM is also wrong in submitting that the applicable tariff will be decided by the DISCOM and not at the request of the applicant. Tariff applicable is always laid down by the Hon'ble Commission. DISCOM has

to just follow the tariff decided in toto. It has got no power to interpret the tariff the way it feels like. Temporary supply, can only be asked for and got by the consumers. DISCOM cannot thrust temporary supply on consumers.

21. The respondent CGM is wrong also in taking the stand that in view of the wide publicity given to the tariff order, there is no need to issue a notice before changing the category of a consumer. Issue of a notice before changing the category of the consumer is mandatory.

22. Therefore, it is hereby ordered that:

- billing the appellants re-categorizing them as belonging to HT Temporary Supply from 01-08-2010 is incorrect and is accordingly set aside;
- the circular instructions given by the DISCOM in CGM(Comm)/SE/DPE/ADE(T)D.No. 1340/11 dtd: 29-10-2011 are struck down as illegal and not in accordance with the tariff order issued by the Hon'ble Commission;
- the respondents shall refund the excess amounts collected from the appellants by way of adjustment in future bills within 15 days from the date of receipt of this order; and
- the respondents shall report compliance to this order within 30 days from the date of receipt of this order.

23. This order is corrected and signed on this 7<sup>th</sup> day of Nov, 2014.

24. A digitally signed copy of this order is made available online in pdf format at [www.vidyutombudsman.ap.gov.in](http://www.vidyutombudsman.ap.gov.in).

## VIDYUT OMBUDSMAN

### To

1. M/s. B. Janardhana Rao & Others, H.No.1-10-32, 34 to 37, 44/A to E,1-10/38/A/1, Begumpet, Hyderabad - 500 016
2. The Assistant Divisional Engineer, Operation, Greenlands, TSSPDCL, Begumpet, Hyderabad 500 016
3. The Divisional Engineer, Operation, Greenlands, TSSPDCL, Begumpet, Hyderabad 500 016
4. The Senior Accounts Officer, Operation, TSSPDCL, Hyderabad North Circle, Mint Compound, Stone Building, Hyderabad 500 063
5. The Superintending Engineer, Operation, TSSPDCL, Hyderabad North Circle, Mint Compound, Stone Building, Hyderabad 500 063
6. The CGM/(Comml. & RAC)/TSSPDCL, Corporate Officer, Mint Compound Hyderabad - 500 063

### Copy to:

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

