

BEFORE THE VIDYUT OMBUDSMAN

:: Present ::

C. Ramakrishna

Date: 30-05-2014

Appeal No. 38 of 2013

Between

Sri. K. Ramalingeswara Rao

Prop: Vijayalaxmi Rice Mill, Vissakoderu Village

Palakoderu Mandal, West Godavari Dt

... Appellant

And

1. The Assistant Engineer, Operation, APEPDCL, Palakoderu
2. The Assistant Accounts Officer, ERO, APEPDCL, Bhimavaram
3. The Assistant Divisional Engineer, Operation, APEPDCL, Bhimavaram
4. The Divisional Engineer, Operation, APEPDCL, Bhimavaram

... Respondents

The above appeal filed on 15-04-2013 has come up for final hearing before the Vidyut Ombudsman on 19-05-2014 at Rajahmundry. The appellant as well as the respondent ADE were present. Having considered the submissions of the appellant, the respondents and the material available on record the Vidyut Ombudsman passed the following:

AWARD

2. The appeal arose out of the grievance of the appellant that the departmental officers assessed him illegally to higher back billing demand

consequent to the inspection made by them on 28-03-2012. His main grievance is that the assessment of back billing made by the DISCOM's officers cannot encompass a period which is after 03-06-2011, as the DISCOM's officers have inspected the service meter on 03-06-2011 and it's their duty to notice and change the defective CTPT set consequent to that inspection.

3. In his appeal dated 15-04-2013, the appellant assailed the orders passed by the 4th respondent herein and challenged the orders passed by the CGRF. In his appeal, the appellant stated inter alia that his service connection was inspected by the ADE, HT Meters, Eluru on 03-06-2011 but that the said ADE had not transmitted the inspection report to the concerned authorities viz., the ADE, Operation, Bhimavaram. Because of this, the defective CTPT was not changed and hence he cannot be held responsible for it; that when the service was inspected again on 28-03-2012, the CTPT was declared as defective and consequently back billing assessment was made from 01-03-2011, the date from which one phase of CTPT was found to be defective; that the backbilling assessment made from 01-03-2011 to 11-04-2012 ought to have been restricted from 01-03-2011 to 03-06-2011 only; that the AE, Operation, Palakoderu was regularly visiting his premises to take note of the meter readings and he did not note any adverse findings either on the DISCOM's readings' register or his own register and expecting a non-technical consumer like him to detect a defective CTPT is far fetched; that his appeal to the DE, Operation, Bhimavaram to send the meter for testing to NAL, Bangalore fell on deaf ears; that his service was disconnected on 28-07-2012 for no valid reason and that this disconnection caused him lot of mental agony; that in spite of the CGRF taking note of the agony, it did not do anything and let off the respondent officers leniently; that the respondent DE had committed a contempt of the Hon'ble High Court as he

did not follow the Hon'ble Court's orders in letter and spirit; that as per the GTCS, production figures should have been taken into consideration while assessing the amount relating to back billing -- a thing which was not only not done, but was also totally ignored by the CGRF; and that the CGRF did not give him an opportunity of being heard and to submit the 'B' Register which was certified by the AGPO.

4. The appellant prayed that the assessment of back billing charges needs to be limited to the period 01-03-2011 to 03-06-2011.

5. Soon after receipt of the appeal, in view of the fact that the service of the appellant was disconnected, this authority ordered restoration of supply pending disposal of the appeal. A notice was issued for hearing the appeal directing the respondents to submit their written submissions, if any, in the matter. The respondent AAO filed his written submission on 04-01-2014 stating that the service of the appellant was released under Category III(A) with contracted load of 78.84 HP on 12-12-1998; that a provisional assessment order for Rs. 3,32,560/- was served by the respondent ADE as the CTPT was found defective and stayed defective during the period 01-03-2011 to 11-04-2012; that the provisional assessment was done based on the inspection report of the ADE, HT Meters-I of Eluru on 28-03-2012; that soon after the receipt of the provisional assessment order, the consumer approached the Hon'ble AP High Court in W.P 28177/2012; that the Hon'ble Court disposed of the case by directing that final assessment orders be passed duly considering the written representation of the appellant; that accordingly, after giving due consideration to the written submissions of the appellant, final assessment orders were passed by the DE, Bhimavaram confirming the provisional

assessment; that the service was disconnected on 18-12-2012 for non-payment of the assessed amount by the consumer; that aggrieved by the final assessment, the consumer approached the CGRF; that the CGRF had dismissed the complaint holding that the amounts assessed are liable to be paid by the consumer; that the service connection which was restored based on the interim orders of this authority, had to be disconnected again due to non-payment of regular CC charges on 31-05-2013; and that in spite of a notice of termination, the consumer has been delaying payment on one pretext or the other.

6. The respondent AAO and the ADE have submitted written submissions again on 15-02-2014 essentially reiterating the same points. They have also submitted copies of the MRI report which evidences that the CTPT has been tampered with / remained defective from 01-03-2011 to 11-04-2012.

7. The CGRF observed that non-rectification of the failed CTPT due to non-communication of the inspection report of the ADE, HT Meters to the ADE, Operations resulted in revenue loss to the DISCOM and lot of inconvenience to the consumer. But the CGRF failed to notice that the back billing assessment was done for a period much beyond the six months that is authorized by the GTCS. Hence, the CGRF's order is liable to be set aside on this count.

8. The main point to be decided in the appeal is whether or not back billing for the entire period from 01-03-2011 to 11-04-2012 is to be upheld.

9. It is evident from the record produced that the tampering / malfunctioning of the CTPT was noticed on 03-06-2011 itself by the DISCOM's officers. But due to non-communication of the inspection result to the

Operations officers, the service was allowed to keep recording less number of units. This situation got rectified only with the inspection of the service done again on 28-03-2012. The CTPT rectification appears to have been done on 11-04-2012 consequent to this inspection. It is obvious that there was a serious lapse on the part of the inspecting officer that inspected the service on 03-06-2011 in communicating the result / report of his inspection to the field officers and this resulted in revenue loss to the DISCOM. While it is open to the DISCOM to initiate corrective measures to recoup the loss by duly fixing responsibility on the individuals concerned, it is not correct to assess the service connection with back billing for the entire period from 01-03-2011 to 11-04-2012 in contravention of clause 7.5.1.4.4 of GTCS. The said clause lays down that back billing in such cases be done subject to a maximum of 6 months in respect of consumers like the present appellant.

10. During the hearings, the appellant has been contending that backbilling should be restricted to the period 01-03-2011 to 03-06-2011, since it is the fault of the respondents to not rectify the CTPT and he cannot be penalised for the fault of the erring officers. This argument cannot be accepted because the GTCS conditions would not allow for assessment beyond six months. Whosoever's fault it is, the fact remains that the meter had recorded less units than are being consumed during the period in question i.e., from 01-03-2011 to 11-04-2012. And the GTCS provides for assessment of missed units only for a period of six months. Hence, the appellant's contention is rejected.

11. The contention of the appellant expecting a non-technical consumer like him to detect a defective CTPT is not proper, is viewed with circumspection. An LT III consumer is usually more knowledgeable when compared with other

electricity consumers who are not subjected to demand charges billing. Being a consumer engaged in a profession that calls for exposure to / knowledge of various facets of his assets and liabilities, it is surprising that he did not exhibit the kind of diligence that is normally associated with people engaged in such businesses as he engages in. Having known that the CTPT was found defective on 03-06-2011, when the DISCOM's officers have not acted on setting it right, as a diligent consumer, the appellant ought to have reminded the respondent officers of the need to rectify the CTPT. That he did not do so, cannot be ignored totally.

12. As regards the contention that the defective meter ought to have been sent for testing to NAL, Bangalore, this authority finds no substance in the argument. The GTCS clearly provide for meters to be tested in the DISCOM's testing laboratories and the consumer can have the testing done right in his presence. In view that, there is no reason to suspect the findings of the MRT lab of the DISCOM. As regards the charge that the respondent DE committed contempt of court also, this authority finds no substance in the charge. The Hon'ble AP High Court directed that the consumer be given a reasonable opportunity of being heard and pass necessary orders there after. That's what the respondent DE did in this case. Reliance on production figures could have become very difficult in cases like the present one where there is no purchase and production on their own account. Hence, the respondent officers cannot be found fault with for ignoring the production figures / 'B' Register of the appellant. In any case, 'B' Register is not a record which can be relied for arriving at electricity consumption.

13. As regards the contention of the appellant that the CGRF had not accorded him an opportunity of being heard, it is viewed sympathetically. The CGRF did not act fairly by not giving him an opportunity of being heard. The methods adopted by CGRF call for introspection at its end. Principles of natural justice demand that an opportunity of being heard should be accorded to the appellants as well as respondents. Not doing so, defeats the very purpose of the Forum. The CGRF shall henceforth keep this in view while giving judgments.

14. Therefore, it is ordered that:

- back billing in this case shall be restricted to a period of 6 months ending on 11-04-2012;
- the respondent officers shall issue revised proceedings duly restricting the assessment to 6 months as ordered above; and
- the revised proceedings shall be issued within 15 days from the date of receipt of this order and compliance shall be reported within 15 days from thereafter.

15. This order is corrected and signed on this 30th day of **May, 2014**.

VIDYUT OMBUDSMAN

To

1. Sri. K. Ramalingeswara Rao, Prop: Vijayalaxmi Rice Mill, Vissakoderu
Village, Palakoderu Mandal, West Godavari Dt

2. The Assistant Engineer, Operation, APEPDCL, Palakoderu
3. The Assistant Accounts Officer, ERO, APEPDCL, Bhimavaram
4. The Assistant Divisional Engineer, Operation, APEPDCL, Bhimavaram
5. The Divisional Engineer, Operation, APEPDCL, Bhimavaram

Copy to:

6. The CGRF, APEPDCL, 3rd Floor, Corporate Office, P&T Colony,
Seetammadhara, Visakhapatnam 530 013
7. The Secretary, APERC, 11-4-660, 5th Floor, Singareni Bhavan, Red Hills,
Hyderabad - 500 004.