



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

:: Present ::

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

Date: 21-08-2017

Appeal No. 22 of 2017

Between

Sri. Lakshmi Egg Farming Pvt Ltd., Director: V. Srinivasa Reddy, 5-8,
Balabhadrapuram, Biccavolu Mandal, East Godavari District.

...Appellant/ Complainant

And

1. The ADE/Operation/APEPDCL/Anaparthi/East Godavari District
2. The DE/Operation/APEPDCL/RC-Puram/East Godavari District
3. The SAO/Operation/APEPDCL/Rajahmundry/East Godavari District
4. The DE/DPE-Division/APEPDCL/Circle Office/Rajahmundry

... Respondents

The above appeal- representation filed on 19-07-2017 has come up for final hearing before the Vidyut Ombudsman on 29-07-2017 at Rajahmundry. The complainant, as well as the respondents 1 to 4 above was present. Having considered the appeal, the submissions made on behalf of the complainant and the respondents, the Vidyut Ombudsman passed the following:

ORDER

1. This appeal has been preferred by the appellant-complainant against the order **dated.12-05-2017 in C.G.No:64/2017,** passed by the **Forum for Redressal of Consumer Grievances in Eastern Power Distribution Company of A.P Limited, Visakhapatnam** whereby and where-under the above Forum dismissed the complaint and directed the consumer-complainant to pay the shortfall arrears of current consumption charges as mentioned in the assessment notice issued on behalf of the licensee in eight monthly instalments commencing from June, 2017 onwards.

2. The facts, not in dispute, leading to file this representation are that the Low-Tension service connection, Category- III(A) has been released in the name of the complainant for the purpose of running a poultry Farm prior to 2015. In the Tariff Order made during the financial year 2016-17, some new tariff categories have been created by the Hon'ble APERC as stated at para 264 of the tariff order. "Acqua Culture and Animal Husbandry", a new consumer category has been created while merging two sub-categories, viz., Poultry Farms and pisciculture, and it is described as (ii) under 1.3.1 LT Category-III Industry fixing fixed charges at Rs.21/ per Kilowatt per month and energy charge at Rs.3.75/ per unit and the sub-category (new tariff category) "poultry Hatcheries and Poultry Feed Mixing Plants" is described as (iv) under 1.3.1 LT Category-III Industry fixing fixed charges at Rs.55.12 and energy charges at Rs.4.75/ per unit. The complainant was being billed under the above new category (ii) "Acqua Culture and Animal Husbandry" from 1.4.2016 onwards. The concerned employees of the licensee inspected the premises of the above service connection on 17.01.2017, noticed that a part of the load in the premises was being utilized for the purpose of poultry feed mixing plant and got a provisional assessment notice in the prescribed proforma for short billing issued to the complainant stating that current consumption charges for the above service are to be paid from 1.4.2017 onwards as mentioned under the new tariff category (iv) of LT Category-III Industrial and the payment of charges as mentioned under the sub- Category (ii) of the above category III Industries is not correct and asking the complainant to pay the difference amount from 1.4.2016 onwards. The complainant raised objections to the above notice and preferred an appeal to the concerned Divisional Engineer and while the appeal was pending, the complainant filed the complaint questioning the above provisional assessment notice and praying the Forum to keep the above service connection as it is without making any change in the classification of the category or sub-category of the consumer.

3. No oral or documentary evidence was adduced before the Forum. After

considering the material available on record, the Forum passed the order as stated supra. Not satisfied with the above order passed by the Forum, the complainant preferred this representation.

4. The complainant made the following submissions:

i) that in the letter dated.28.6.2017 addressed by the Director of Animal Husbandry, AP to the secretary of A.P.Poultry Federation, Vijayawada, it is stated that infrastructure facility like feed mixing plant (non- commercial/for the own use) as well as office complex in poultry farms is categorized as integral part of poultry farm; that the feed in the above poultry farm is not being sold to others;

ii) that the State Government also gave exemption from levying house tax for poultry Farms including sheds;

iii) that a letter was addressed by the Principal Secretary to the Chairman and Managing Director of the Licensee about reduction of tariffs;

iv) that modification with respect to poultry Farms cannot be made as per para.265 of the Tariff Order of 2016-17;

v) that short billing notice without any prior notice is not legal and correct;

and

vi) that the representation may be upheld.

5. The respondents submitted that they claimed the amount as per the relevant tariff order of the Hon'ble APERC, that unless there is an amendment in the relevant tariff order in accordance with the contents of the letter addressed by the Director of Animal Husbandry relied upon the complainant, they cannot reduce the amount, that issuance of another notice prior to issuance of short billing notice to the consumer is not mandatory, that the letter from the Chief Secretary has no value and that therefore, the representation may be dismissed.

6. The following point is framed for consideration:

Whether the representation can be upheld?

7. No oral or documentary evidence is adduced even before this authority by both parties though they have been given an opportunity for the above purpose.

8. Point: It is the defence of the respondents that the above provisional assessment notice was given in accordance with the Tariff Order made by the Honble APERC during the financial year 2016-17. It is not the case of the complainant that the amount mentioned in the notice is calculated not in accordance with the tariff or is incorrect. Tariff Order binds both parties. The submissions (i) to (iii) of the complainant stated supra as to the contents of the letter of the Director of the Animal Husbandry or the Principal Secretary of the Government or as to the Government giving exemption from paying house tax need no consideration as those submissions will not affect the result of this case and are irrelevant considerations for the purpose of deciding this case. I perused the para.265 of the relevant Tariff Order but it does not contain any words supporting the fourth submission of the complainant that modification with respect to poultry farms can not be made. However, to answer the remaining two submissions of the complainant, I am inclined to look into the merits of the above defence. So, the question to be seen in this case is whether the provisional assessment notice was given in accordance with the tariff order made during the financial year 2016-17?. There is no dispute that the complainant has been running a Poultry Farm after obtaining a service connection stated supra from the licensee. It is the case of the respondents as stated in the written submission made by the concerned Assistant Divisional Engineer (Operation) that the employees of the licensee, at the time of inspection of the above service connection, saw the complainant utilizing some part of the load for the purpose of Poultry Feed Mixing Plant. The complainant did not dispute that fact. It appears that provisional assessment notice was given to the complainant on the sole

ground that the complainant has been utilizing a portion of the load for poultry feed mixing plant besides Poultry Farm. In para.266 of the Tariff Order made during the FY 2016-17, It is stated “It is further decided to provide an option to the consumer to choose a separate connection for feed mixing plant in cases where poultry farming and feed mixing plants are under single connection without separate connection the entire consumption shall be billed at the tariff applicable for Poultry Hatcheries and Feed Mixing Plants”. The above part of the para-266, it appears, is the sole basis for issuing the provisional assessment notice in question. The words in the above para do not clearly indicate whether the licensee has to inform the consumer by way of a notice asking the consumer to exercise the option as stated supra, or, the consumer himself has to come forward voluntarily to exercise the above option. Two views from the words in the above para, according to me, are possible. The view favourable to the consumer is to be accepted. In such a case, it is to be held that according to the above para, providing an option by way of a notice prior to issuing provisional assessment notice is necessary.

9. At para.264 of the above Tariff Order, it is stated that the commission has created some new tariff categories and at para.265 of the Order, it is stated that the commission has created a new consumer category. The above paras show that commission used the words “new tariff categories” at one place and “new consumer category” at another place. When a reclassification of category is made, the consumer shall be informed about it and I am inclined to mention the relevant clause 3.4.1 of GTCS helpful to the consumer and it runs as follows:

“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 consumers'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, the period during which such reclassification is needed can not be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.” Since reclassification of consumer category in this case involves revision of bills, claiming difference of the amount from the consumer, I am of the view that notice under the above clause to the consumer is necessary.

10. Since new tariff categories have been created in the relevant tariff order and since it is not stated in the para 266 of the relevant tariff order that the licensee can straight away issue a provisional assessment notice to the consumers like in this case without any prior notice providing option to exercise, I am of the view the provisional assessment notice issued to the complainant in this case is not in accordance with the relevant tariff order. Apart from it, I also hold that as per the above clause of the GTCS-2006, prior notice to the complainant is also to be issued. Therefore, I prefer the submission of the complainant to the submission of the respondents as to prior notice either for option or before reclassification of category. So, I am of the view that the provisional assessment notice issued is not in accordance with the relevant Tariff Order. The question is thus answered. For the above reasons, I am of the opinion that the representation can be upheld. This point is thus answered.

11. In the result, I allow the representation, set aside the order of the Forum and direct the respondents to give a notice to the consumer in writing informing the consumer as to his right to exercise option as stated in para 266 of the relevant Tariff order and to state objections against the reclassification of consumer category as stated in the clause.3.4.1 of the GTCS-2006 and then proceed in accordance with the relevant tariff and the clause 0f GTCS stated supra. Considering the facts and circumstances of this case, I direct both parties to bear their respective costs.

12. This order is corrected and signed on this 21st day of August, 2017.

13. A copy of this order is made available at

www.vidyutombudsman.ap.gov.in.

Sd/-

VIDYUT OMBUDSMAN

To

1. Sri. Lakshmi Egg Farming Pvt Ltds., Director: V. Srinivasa Reddy, 5-8, Balabhadrapuram, Biccavolu Mandal, East Godavari District - 533 343.
2. The Assistant Divisional Engineer, Operation, APEPDCL, Anaparthi, APEPDCL, D.No.6-119, Near Narayana Reddy, Eye Hospital, Near SBI, Anaparthi, East Godavari District - 533 342.
3. The Divisional Engineer, Operation, APEPDCL, RC-Puram, D.No.26-1-145, Sri Sai Srinivasa Complex, Seelavani Savaram Road, RC Puram, East Godavari District - 533 255.
4. The Senior Accounts Officer, Operation, Rajahmundry, APEPDCL, Ullithota Street, Near Godavari Bund, Rajahmundry - 533 101.
5. The Divisional Engineer, DPE-Division, APEPDCL, Circle Office, Rajahmundry.

Copy to:

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