

**BEFORE THE FORUM FOR REDRESSAL OF CONSUMER GRIEVANCES OF
SOUTHERN POWER DISTRIBUTION COMPANY OF A.P LIMITED TIRUPATI**

On this the 28th day of March 2013

In C.G.No:231/2012-13/ Tirupati Circle

Present

Sri K. Paul
Sri A.Venugopal
Sri T.Rajeswara Rao
....Vacant....

Chairperson
Member (Accounts)
Member (Legal)
Member (Consumer Affairs)

Between

Sri.K.Mallikharjuna,
In-charge Secretary, Vasavi Bhavan,
Tirumala,
Tirupati.
Chittoor District.

Complainant

And

1. Assistant Accounts Officer/ERO/Town-1/Tirupati
2. Assistant Engineer/Operation/Tirumala
3. Assistant Divisional Engineer/Operation/OSD-3/Tirupati
4. Superintending Engineer/Assessments/C.O/Tirupati
5. Divisional Engineer/Operation/Town/Tirupati.
6. Senior Accounts Officer/Operation/Tirupati.
7. Chief General Manager/Operation/APSPDCL/Tirupati.

Respondents

* * *

Sri. K.Mallikharjuna, In-charge Secretary, Vasavi Bhavan, Tirumala, Tirupati, Chittoor District, herein called the complainant, in his complaint dt:12-10-2012 filed in the Forum on dt:20-10-2012 under clause 5 (7) of APERC regulation 1/2004 read with section 42 (5) of I.E. Act 2003 had stated that

1. They are presently availing supply to their VASAVI BHAVAN located at Medaramitta, Tirumala through the service connection No.5522106001037.
2. The building was constructed on the land taken on lease from the executive officer, Tirumala for the purpose of carrying out charitable activities i.e.

providing accommodation, serving food, etc. which are the essential requirements of the visiting pilgrims of Tirumala.

3. They have requested the APSPDCL to consider extension of supply to our building under category-VII during January, 2004 and accordingly, after observing our charitable activities, the APSPDCL authorities were kind enough and issued orders vide letter dt:21-07-2004 changing the service category from II to VII with effect from August, 2004. Since then, the billing is being done under category-VII.
4. The ADE/Operation/Tirupati has inspected their premises on 17-03-2012 and issued two notices vide letter dt:20-03-012. One is for payment of an amount of Rs.7,73,974/- by stating that they are utilizing the supply for commercial purpose, other than the purpose for which it was sanctioned and hence back billing from 9-3-2011 to 17-03-2012 was proposed by him. Another is payment of Rs.87,000/- towards regularization of excess load (30.14KW) over and above the contracted load of 3.3KW. These charges include developmental charges (Rs.62,000/-), Security deposit (Rs. 24,800/-) and application charges, etc. (Rs. 200/-).
5. The APSPDCL has been billing their service under category-II from March, 2012 onwards, i.e. after inspection of their premises by the ADE(Operation).
6. They have submitted the representations to the DE/Operation/Tirupati to reconsider the proposed action of the ADE through their letter dt:29-03-2012. They have submitted him that they are carrying out the charitable activity i.e. serving free meals and providing free accommodation to the visiting pilgrims of Tirumala. They have also brought to his notice of the records i.e. lease sanction of the executive officer, Tirupati for construction of the building for

charitable purpose, the orders of IT authorities exempting the income, etc on the grounds of charitable purpose.

7. As the concerned staff members of the APSPDCL are threatening for disconnection of supply to their premises, they have paid the following amounts under protest:

i. An amount of Rs.3,86,887/- vide DDNo:790108 dt:07-04-2012 being 50% of the assessed amounts. The assessment orders of ADE stated that the amount was arrived based on difference in tariff rates between categories – II & VII for the period from 09-03-2011 to 17-03-2012.

ii. An amount of Rs.87,000/- (DD.No:790106 for Rs.62,000/- and DD No:790107 for Rs.25,000/-, both dt:07-04-2012) for regularization of additional load as per the notice of ADE.

8. In this context, they wish to bring to the kind notice of the CGRF, the following few lines for examination:

i. They are carrying out charitable activity in the building constructed on the land taken on lease from the executive officer, Tirupati for charitable purpose. The IT authorities i.e. Directorate of Income Tax (exemption), Hyderabad also granted approval for exemption of income tax for the amounts donated to Vasavi Bhavan under section 80G basing on the charitable activities being carried out by them.

ii. They have constructed a dining hall in the first floor, where free meals is provided to the pilgrims of Tirumala.

iii. They have also created facilities i.e. hot water, bathing and sanitary arrangements, etc for common accommodates in the first floor and constructed rooms in the next two floors. They are providing free

accommodations to the visiting pilgrims to Tirupati. They are accepting donations from the visiting pilgrims and after meeting the fund requirement for maintenance of the building, the excess amounts are being utilized towards ANNADANAM in the ground floor dining hall along with other donations. They are providing about 5,00,000 – 6,00,000 free meals every year.

- iv. After visiting their premises and observing the charitable activities being carried out there, the earlier officers of APSPDCL have considered their request for change of category from category-II to VII and accordingly issued orders vide letter dt:21-07-2004. When this the fact, the proposal of the ADE/APSPDCL/Tirupati for change of category from VII to II with back billing for one year by simply concluding that they are doing commercial activity is not justified.
- v. The DE (Assessments) has failed to take note of the above facts. The section-126 (5) and 126 (6) of Electricity Act, 2003 referred by him clearly specifies that the provisions are applicable when the electricity has been utilized for the purpose other than for which the usage was authorized. But they have been using the electricity for the purpose for which the APSPDCL extended. The DE has not commented/mentioned his findings on the issue in his order. Further, he has not discussed about the change of circumstances, rules, regulations etc. if any from 2004 during which the service was extended category-VII to till now and violations if any. They have made a representation to the Superintending Engineer/Assessments/APSPDCL to reconsider the assessments orders of the DE, Assessments on 24-08-2012.

- vi.** The SE/Assessments vide his proceedings dt:17-09-2012 rejected their plea and confirmed the orders of the DE/Assessments. While arriving to the conclusion, he later made the following remarks.
- a.** Free meals is being arranged by the trust.
 - b.** Rent is being collected in the form of donations.
 - c.** Change of category from II to VII effected in 2004, might be with the nature of the activity prevailing at that time.
 - d.** Another similar trust in Tirumala i.e., All India Vysya Samajam is being billed under category-II. The activities of the Trust are similar to the subject trust i.e., Vasavi Bhavan, **except supply of free meals.** All India Vysya Samajam is supplying free meals during Utsavam period only, where as Vasavi Bhavan is supplying free meals through out the year.
 - e.** Consumer i.e., Vasavi Bhavan failed to produce 'No profit-No loss' statement and is an Income tax Assessee.
- vii.** Requested to observe that the SE/Assessments have confirmed the charitable activity being carried out by them. They are supplying free meals throughout the year and almost Rs. 80 to 90 Lakhs are spending on this account. They are accepting the amounts including donations to meet the expenditure for regular maintenance of the sanitary and other facilities in the rooms, dining halls, etc. and for regular maintenance of the building activities and not for any profit motives and the surplus amounts are spending on the charitable activities only.
- viii.** The APSPDCL officers have never instructed them to produce the 'No profit- No Loss' statement. However, in view of the present remarks of the

SE/Assessments in his proceedings, they will submit the 'No profit- No Loss' statement from the practicing Chartered Accountant soon.

- ix.** Mentioned the relevance of the observations of the Vidyuth Ombudsman in Serve Trust Vs APSPDCL that the registered service institutions i.e. societies, trusts, etc shall be extended supply under category-VII even without insisting for documents like 80G, etc.

Also requested to examine the following for favourable orders:

- i.** Their institution is a registered and recognized service institution working on no-profit basis, thus failing within the stipulations mentioned by the APERC while issuing tariff orders from time to time and erstwhile APSEB and thus eligible for billing under category-VII.
- ii.** Please instruct the APSPDCL to restore the service category-VII to their service connection No: 5522106001037 with effect from March, 2012 and instruct to return the excess amounts paid by them.
- iii.** The amount of Rs.3,86,887/- paid by them towards 50% of the assessed amounts may be returned to them.
- iv.** They have paid an amount of Rs.1,39,000/- earlier in 2000 towards additional load up to 55KW vide T.R.No:93100 dt:21-08-2000, however as per the instructions from ADE, they have paid an amount of Rs.87,000/- again vide T.R.No: 88852 & 88853 dt:19-04-2012 to avoid disconnection as they could not produce evidence of previous payments in time. Hence requested for arranging returning by APSPDCL, the amount of Rs.1,39,000/- paid by them in 2000.

The respondents-1, 2, 3, 5 and 6 i.e. the Assistant Accounts Officer/ERO/ Town-1/Tirupati, the Assistant Engineer/Operation/Tirumala, the Assistant Divisional

Engineer/Operation/OSD-3/Tirupati, the Divisional Engineer/ Operation/Town/Tirupati and the Senior Accounts Officer/Operation/Tirupati in their separate but similar written submissions dt:31-10-2012 received in this office on dt:31-10-2012, 01-11-2012 and 02-11-2012 stated that:

1. The ISCNNo: 5522106001037, category-II is existing in the name of the Secretary , Vasavi Bhavan, Medaramitta, Tirumala with a contracted load of 34.3 KW under 3 phase.
2. On 17-03-2012 at 12:30 hrs, the ADE/Opn/Town-III/Tirupati has inspected the premises and observed that the service is released under category-VII, where as the consumer is utilizing the supply for category-II (i.e. for rooms rental purpose), hence malpractice case is booked. Accordingly the ADE/Opn-III/Tirupati has issued a provisional assessment order for Rs.7,73,774/- and requested the consumer to pay the 50% of provisional assessment amount of Rs.3,86,887 + Supervision charges Rs.150/- + RC Rs.50/- within 7 days vide letter Dt:20-03-2012. On 20-03-2012, the ADE/O-III/Tirupati has issued a notice for development charges of Rs.87,000/- (i.e. Rs.62,000/- towards development charges, Rs.24,800/- towards security deposit, Rs.50/- towards LT application charges and Rs.150/- towards supervision charges) for regularization of an additional load of 31 KW.
3. Accordingly the category of the service has been changed from Category-VII to category-II w.e.f. 04/2012.
4. On 20-03-2012, the consumer has paid 50% of the provisional assessment amount of Rs.3,86,887/- on 19-04-2012 vide PRNo: 173003 and BCRC No: 259127. Further the consumer has paid Rs.87,000/- towards regularization of additional load of 31 KW on 19-04-2012. Accordingly the contracted load is updated as 34.30

KW (i.e. existing load 3.30KW + additional load 31KW = 34.30 KW) in the month of 04/2012.

5. On 17-09-2012, the SE/Assessments/Tirupati has issued final assessment order for Rs.7,75,146/- (i.e. Rs.7,74,996/- towards energy charges and Rs.150/- towards supervision charges).
6. As per the final assessment orders, the assessment amounts was included in CC.bill vide JE No:051/09-2012 & 052/09-2012.
7. The consumer has obtained six installments for the balance 50% of assessment amount vide letter dt: 26-10-2012 and paid the first installment of Rs.68,260/- on 29-10-2012 vide PRNo: 113836. The balance 5 installments yet to be paid by the consumer.
8. The consumer has paid Rs.1,39,000/- towards service line charges only.

The respondent-7 i.e. the Chief General Manager/Operation/Tirupati in his separate written submission dt: 23-03-2013 received in this office on dt: 26-03-2013 stated that:

1. The approval has been accorded for change of Category of the service bearing SC.No.07901001031 pertaining to Vasavi Bhavan, Tirumala from LT Category –II to LT Category-VII based on the following certificates produced by the consumer.
 - i) Proof of Society Registration Certificate on Vasavi Satra Samudayam, Srisailam, Vasavi Bhavan at Tirumala , Vasavi Nivas at Puttaparti and Vasavi Satram at Srisailam are considered as Vasavi Satra Samudayam.
 - ii) Certificate from Chartered Accountant.
 - iii) Certificate from Assistant Director of Income Tax, Hyderabad.

iv) Letter issued by the Director/Commercial/APCPDCL/Hyderabad, wherein approval has been accorded by the APCPDCL for Change of Category from II to VII in case of Vasavi Nivas at Puttaparthi.

Findings of the Forum:

1. The grievance of the complainant is that
 - i. The service of their premises Vasavi Bhavan at Tirumala, wherein they have under took charitable activities like providing accommodation and serving food for the pilgrims, visiting Tirumala, first released in LT, Category –II, in 1995 was re-categorised to LT Category-VII in August 2004, at their request and duly observing the fitness but not that it was first released in category–VII as represented by the complainant. As such his contention is not correct.
 - ii. But subsequently, upon inspection on 17-03-2012, the Assistant Divisional Engineer/Operation/Tirupati recommended for categorizing the service into LT –II, the original one besides back billing for an amount of Rs.7,73,974/- for the period from 09-03-2011 to 17-03-2012. A notice demanding for regularization of additional load of 30.14 KW was also served to them. They paid the amounts for regularization of the said additional load on 07-04-2012. The complainants paid 50% of the assessed amount towards the said back billing on 19-04-2012 and approached the SE/Assessments who had finalized the case for Rs.7,75,146/- on 17-09-2012. The said amount was included in the CC bills through JEs in 09/2012. The complainant, for the balance amount obtained permission to pay in 6 installments and paid the first

- installment of Rs.68,260/-on 29-10-2012. Requested for return payment of the amount of Rs.3,86,887/-paid towards 50% of assessed amount
- iii. They paid an amount of Rs.1,39,000/-for an additional load of 55 KW on 21-08-2000 against TR.No.93100 and hence the amount is to be returned back.
2. As could be seen from the account copy of the service, the service was released on 25th June 1995 under LT category–II in the name of the Secretary.
3. Subsequently, by the billing month of August 2004, it was changed to Category-VII, LT by the Licensee in their order dated 21-07-2004 issued in the name of the Chief General Manager, Projects (commercial) as stated by the consumer and also as per the account copy. The reasons for the said re-categorisation were not explained any where.
4. The said service was again inspected by the ADE/ concerned on 17-03-2012 in the presence of the Cashier of the service , and noticed that the activity is of commercial nature as the consumer was collecting Rs.120/- for room maintenance and Rs.300/-as rent as per the statement recorded from the cashier which factor constitutes commercial activity and hence treated it as malpractice.
5. Also the inspecting officer noticed on the above date that the total connected load was 33.44KW, where as the contracted load was 3.3KW and hence a load of 30.14 KW was additional which is to be regularized by paying the necessary security deposit and the development changes and he issued notice on 20-03-2012 for an amount of Rs.62,000/- towards development changes and Rs.24,800/- towards security deposit and the consumer paid the said amounts on 07-04-2012 vide DD Nos:790106 and 790107.

6. But as seen from the temporary receipt No: 93100 dt:21-08-2000 produced by the complainant, the contracted load was mentioned as 55 KW and an amount of Rs.1,39,000/- was paid by the consumer in 6 numbers DDs with numbers 722101 to 722105 and 722117 dated 13-07-2000, towards Service line charges and Development charges, but the amounts against each was not mentioned.
7. Contra to the above, the respondents replied that the said amount of Rs.1,39,000/- was paid by the consumer towards Service line Charges only but not the Development Charges and hence the consumer is liable to pay the amount of Rs.87,000/- and got regularised the additional load. But there is no proof produced to that effect.
8. As such, the Forum is of the opinion that the consumer paid for a total load of 55 KW then itself (for 56 KW, the supply shall be under HT) and it can not be adjudged at this juncture in absence of the proper records to that effect and is a doubt.
9. In accordance to Law, the benefit of doubt shall be in favour of the consumer in lieu of his producing the evidence to some extent.
10. As such, it shall be treated that the consumer was having a contracted load of 55 KW as on the date of inspection i.e., 17-03-2012 itself, which was not updated in the consumer master for which the consumer shall not be penalized and hence the said notice dt.20-03-2012 for Rs.87,000/-towards regularization of additional load of 30.14 KW has got no validity and fit for setting aside.
11. As such, the respondents shall remit back the said amount of Rs.87,000/- paid by the consumer and adjust to the service account in future bills.
12. Coming to the point of change of category to LT VII as requested by the consumer, In accordance with the Tariff Order for 2012-13, Category VII (A)

is applicable for supply of energy to *places of worship like Churches, Temples, Mosques, Gurudwaras, Crematoriums, Government Educational Institutions and Student Hostels run by Government agencies, Charitable Institutions i.e., Public charitable trusts and societies registered under the Societies Registration Act running educational and medical institutions on a no profit basis, recognized service institutions and registered old age homes.*

13. In the light of the above, the said service having no room in the above said list cannot be considered under this category-VII as requested by the petitioner and on the other hand having collecting money as room rent it is nothing but a commercial activity fit to be classified under LT category-II (B) as the load is more than 500 watts and hence the contention of the inspecting officer that the service shall be classified under LT-II is quite in order.
14. Moreover, the premises is meant for a particular community ie, Vysya only and the beneficiaries also are from that particular community only but not a Charity open to all.
15. The other point of consideration is booking of malpractice case against the consumer. The service was first released on 25th June 1995 under category-II in LT, and subsequently was re-categorised in August 2004 as category-VII in LT, by the Licensee itself, therefore it can not be treated as a malpractice by the consumer but it is an act of misinterpretation by the then officials and since there is no change in activity of the consumer and also it was approved by the licensee earlier, it shall be treated that there is no intention attracting the provisions of the Section 126 of the Electricity Act 2003 applicable to malpractice in use of energy and simple back billing suffices the recoupment of

revenue loss sustained by the licensee because of the said classification in the middle.

16. As such it is felt by the FORUM that it is more appropriate to set aside the said notice for Rs.7,73,774/- towards malpractice and the service billed under Cat-II for a period of one year prior to inspection, i.e., from 18-03-2011 to 17-03-2012.
17. In view of the above, the Forum passed the following order.

ORDER

The respondents are directed that they shall

1. Withdraw the notice dated 20th March 2012 issued by the Respondent-3, i.e. the ADE/Operation/CCO/Tirupati for regularization of additional load of 30.14KW demanding payment of Rs.87,000/- with immediate effect and adjust the amount of Rs.87,000/- already paid in excess by the consumer towards the future bills of the service within 15 days from the date of this order.
2. Withdraw the notice dated 20th March 2012 issued by the Respondent-3, ie the ADE/Operation/CCO/Tirupati towards the malpractice for Rs.7,73,974/- and issue back billing notice for the period from 18-03-2011 to 17-03-2012 treating under Category –II, within 15 days from the date of this order.
3. Change the category of the service from LT-VII to LT-II **with effect from the date of inspection i.e. 17-03-2012 onwards** and bill the service accordingly.
4. Report compliance on the items 1, 2 and 3 above of the order with in 22 days from the date of this order.

Accordingly the case is disallowed and disposed off.

If aggrieved by this order, the complainant may represent to the Vidyut Ombudsman, O/o the APERC, 5th floor, Singarenibhavan, Redhills, Hyderabad-500004, within 30 days from the date of receipt of this order.

Signed on this the 28th day of March 2013.

Sd/-
Member (Legal)

Sd/-
Member (Accounts)

Sd/-
Chairperson

Forwarded by Orders

Secretary to the Forum

To
The Complainant
The Respondents
Copy submitted to the Honourable Ombudsman, APERC, 5th floor, Singarenibhavan, Redhills, Hyderabad-500004.
Copy to the General Manager/CSC/Corporate office/Tirupati for pursuance in this matter.

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