

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

This the 7th day of December 2012

C.G.No:240/2012-13/Vijayawada Circle

Present

Sri K. Paul
Sri A.Venugopal
Sri T.Rajeswara Rao
Sri K. Rajendra Reddy

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

Between

Sri K.Nagabushanam
Chartered Accountant
DNo:9/309, R.K.Complex
Second Floor., Eluru Road Post,
Gudiwada Town,
Krishna-Dist-521301

Complainant

And

1. Assistant Accounts Officer/ERO/Gudiwada
2. Assistant Engineer/CO/Gudiwada
3. Assistant Divisional Engineer/Operation/Gudiwada
4. Divisional Engineer/Assessments/Tirupati
5. Divisional Engineer/Operation/Gudiwada
6. Senior Accounts Officer/Operation/Vijayawada

Respondents

Sri K.Nagabushanam, Chartered Accountant resident of DNo:9/309, R.K.Complex Second Floor., Eluru Road Post, Gudiwada Town, Krishna-Dist-521301 herein called the complainant, in his complaint dt:22-11-2012 filed in the Forum on dt:22-11-2012 under clause 5 (7) of APERC regulation 1/2004 read with section 42 (5) of I.E.Act 2003 had stated that

1. He is a chartered accountant practicing since last 30 years at Gudiwada, Krishna-Dist. He is having electrical service at his office premises bearing service No: 8209 of Gudiwada section.

2. The above service was billed under category-II up to 2003.
3. In the year 2003 he had filed a writ petition before honourable High Court of A.P., vide WP No:8326 of 2003 (WPMP No: 10779/2003) requesting the honourable high court gave directions to the electricity authority to issue bills from the month of April, 2003 onwards in respect of service No: 8209 under category-I in view of the Judgement of Honourable High Court reported in 1993 (2) APLI 157.
4. The Honourable High Court of A.P was kind enough to grant through its interim order dt:04-08-2003 directing the Assistant Accounts Officer, ERO, Gudiwada to issue bills in respect of service No: 8209 under category-I from April 2003 onwards.
5. As per the interim order of the A.P.High Court the Assistant Accounts Officer/ERO/Gudiwada, vide his LrNo: AAO/ERO/GDV/JAO-2/West.UBC/D.No:285/Dt:06-02-2004 changed the category of the above service from II to I under intimation of the same to the D.E. (Operation), Gudiwada, ADE/Opn/Gudiwada and AE/Opn/Gudiwada west section and thereafter they are billing the service under category-I only.
6. Their service No:8209 was inspected on 09-08-2012 by ADE/DPE-VJA, and booked a case against me for unauthorized use of energy by stating that the service No: 8209 Gudiwada, was released under category-I but the consumer utilizing the total loan to office purpose. Therefore it should be billed under category-II only. Therefore he concluded that the consumer is utilizing the supply for other than stipulated purpose and provisionally assessed an amount of Rs.65,860/- towards the charges payable by him. ADE/DPE/VJA at the time of inspection not enquired us why the service is

billing under category-I and in fact that they have not noticed the inspection under taken.

7. he had filed a petition, dt:22-09-2012 before the DE /Assessments/ APSPDCL/Tirupati, stating that my service was billing under category-I on the interim directions of the honourable High Court A.P therefore it cannot be said that he is using the energy for unauthorized purpose and requested him to drop the proceedings.
8. The learned DE/Assessments/Tirupati refused to consider his request and also ignored and disregard the directions of the A.P.High Court, passed a final assessment order Dt:04-10-2012 under reference DE-ASMT/TPT/F.No.01-12/GDVT/T/DNo:1893/12 and directed him to pay a sum of Rs. 66,859/- as the charges payable for the alleged malpractice within 30 days. It is ones beyond imagination how the billing under category-I under the directions of A.P.High Court order, is amount to malpractice and for which make me liable for the penalty.
9. After that it came to my notice, that the honourable high court of A.P has disposed my writ petition and passed a final order on 22-08-2007 holding that the office of the petitioner cannot be treated as a commercial establishment and accordingly that the respondents cannot charge Electricity Consumption charges treating the same as a commercial establishment, and accordingly allowed my petition for billing for the above service under category-I.
10. After receiving the final assessment order from DE/Assessments/Tirupati, again he had submitted before him through my letter Dt:02-11-2012 stating that he has not considered the AP.High Court order on the given

subject for the reasons not known which warrants contempt proceedings and again requested him to rectify or cancel the final order on the basis of the A.P.High Court final order given in his case and so far he had not received any communication from the office of the DE/Assessments/Tirupati on the above petition.

11. In the mean while the ADE/Opn/issued the billed for the month of Oct-12 – Nov 12 under category-II and billed an amount of Rs.4,172/- for the above month and pressuring us to pay the amount of Rs.71,131/- including the amount of final order of the DE/Assessments/Tirupati.

Notices were served upon the respondents duly enclosing a copy of complaint.

The respondents-1, 3 and 5 i.e. the Assistant Accounts Officer/ERO/Gudiwada, the Assistant Divisional Engineer/Operation/Gudiwada and the Divisional Engineer/Operation/Gudiwada in their Separate and similar written submissions dt:30-11-2012 received in this office on dt:05-12-2012 stated that:

1. The SCNo: 8209 of D2, Gudiwada is in the name of Sri K.Nagabushanam. The CC.bills are being issued under category-I. The ADE/DPE-I Vijayawada has inspected the service on 09-08-2012 and found that the consumer utilizing the total load to office purpose. Hence unauthorized use of energy case was booked. The case was registered as case No:DPE/GUDV/GUVT/196/12 DATE:13-08-2012. The inspection report was communicated to the respondent-1 office with a request to change the category from I to II.
2. A Provisional Assessment notice was issued by the Assistant Divisional Engineer/Operation/Town/Gudiwada vide LR.No: ADE/OSD/town/GDV/ D.No:1234/12, dt:24-08-2012 for unauthorized use of supply under section

126 of the Electricity Act 2003. The notice was issued for the assessment amount of Rs.65,860/- + Supervision charges of Rs.100.00 i.e., total of Rs 65,960.00. Further it was requested to change the category from I to II.

3. As per recommendations of the ADE/DPE-I/Vijayawada and the ADE/Opn/Town/Gudiwada the category of the service No: 8209 was changed from I to II.
4. The final assessment orders were issued by the Divisional Engineer/Assessments/APSPDCL/Tirupati vide Order.No:DE-ASMT/TPT/F.No:01-12/GDVT/T/DNo:1893/12, Dt:04/10/2012 for un-authorized use of supply under section 126 of the Electricity Act 2003. The order was issued for the assessment amount of Rs.66,859/- + Supervision charges of Rs.100/- i.e. total of Rs.66,956/-. Accordingly the final assessment amount is included in the CC.bills of the SCNo: 8209 of D-2/Gudiwada vide RJNo:15/10-12. The consumer has paid the final assessment amount including the regular CC.bill total an amounting of Rs.71,130/- vide PRNo: 329054 dt: 30-11-2012.
5. The consumer may prefer appeal against the final assessment orders issued by the DE/Assessments/Tirupati within 30 days from the date of receipt of the notice by paying the ½ payment of final assessment order.
6. The consumer has filed W.P.No:8326 of 2003 for billing under category-II. The Honorable High Court of AP has issued orders as below:
 - a. ***“Accordingly, the writ petition is allowed holding that the office of the petitioner cannot be treated as a commercial establishment and accordingly holding that the respondents cannot charge electricity***

consumption charges treating the same as commercial establishment.

No costs.”

The nature of the premises is office purpose as per the inspection report of the ADE/DPE-I/Vijayawada i.e. Non-Domestic purpose. As per the tariff orders LT category-II tariff is applicable to Non-Domestic/Commercial purpose. Further LT category-I tariff is applicable to Domestic purpose only. Here the consumption has not utilize the service for the purpose of domestic, hence the contention of the complainant to bill the service under category-I is not tenable.

7. While filing the court case i.e. W.P.No:8326 of 2003, the service has not in the present address. As per the interim orders of the honourable High court of A.P. the category of the service number 8209 of west (now D1) – Guduwada was changed from II to I. Then the service was shifted from West (now D1) section, Guduwada to C&O (now D2) section Guduwada as per the request of the consumer. Further it is to submit that the consumer is utilising the supply for office purpose by paying the CC.charges under category-I as per the interim directions of the honourable High Court of AP till to date even though the honourable High Court of A.P has issued the final orders as mentioned above on 22-08-2007.
8. Further the petitioner is a Private Accounting Agency of the APSPDCL. The DISCOM is paying the remuneration for PAA work and also for SBA work to the complainant. Further the service tax has also paid to the PAA for rendering his service for onwards paying the same to commercial tax department. The copy of the Remuneration bill along with the service tax challan are herewith enclosed for reference please. As per the remuneration bill the address of the agency is as Sri .K.Nagabhushanam,

Chartered Accountant, 9/309, R.K.Complex, Eluru Road, Gudiwada.” The service No: 8209 of D2, Gudiwada is pertains to the same address. This clearly shows that the consumer is utilizing the service for non domestic purpose and the service is to be billed under LT category-II as per the tariff order issued by the Honourable APERC.

The complainant in his further petition dt: 05-12-2012 received in the Forum on 06-12-2012 stated that

1. He had received the copy of the written submissions filed by the respondents in the above case and noted that the respondents in their written submissions stated that he was doing private accounting agency work & spot billing work of APSPDCL from his office premises therefore he was carrying business and hence liable for billing under category-2.
2. In this contest he humbly submit before the Forum that APSPDCL considers the above work as a professional engagement and therefore deducting the income tax from his bills @ 10% U/s 194J of the income tax act, which covers TDS deduction from payment of fee for professional services. If the assignment is a contract payment (business) they are supposed to deduct tax only @ 2% U/s 194C of the income tax Act.
3. Moreover they are not doing any PAA work or spot billing work from his office. They are doing PAA work only in the ERO itself and spot billing work is done in the field. Therefore the contention of the respondents is not correct on facts.
4. Further the respondents have stated vide Para No: 5 of their written submissions that consumer may prefer appeal against the final assessment

orders issued by the DE/Assessments, Tirupati within 30 days from date of receipt of the notice by paying 50% payment of the final assessment order.

5. The issue is not alternative remedy available to him, but the willful disregarding and grossly ignoring the binding nature of the honourable AP High Court decision given in his case by the DE/Assessments/Tirupati and ADE/Opn/D2/Gudiwada. If the respondents have a case if any against him on this point they have to prefer before Supreme Court not otherwise.

Findings of the Forum:

1. The grievance of the complainant is that he is a Chartered Accountant and his office is billed under commercial category though there was specific orders of the Honourable High Court that his office service cannot be treated as commercial establishment and hence the respondents cannot charge electricity consumption under commercial establishment. Requested for considering facts and render justice.
2. The brief history of the case is as follows
 - a. The complainant is running his office in the premises having service number 8209 at Gudiwada Town. The service was released under category-I on 06-08-1984 and the name of the registered consumer is K.Nagabhushanam herein the complainant. The said service was inspected by one namely E.Ramamurthy ADE/DPE-I/Vijayawada on 09-08-2012 at 11:00 hrs and the time of inspection Sri K.Nagabushanam, the owner of the premises was present and the inspecting officer noticed that the said premises was being utilized for office purpose other than the domestic for which the service was originally released and the loads at the time of inspection were four

numbers AC, Computer, Fans, Tube-lights, CFL, exhaust fan all are of commercial nature and hence booked a malpractice case under section 126 of the Electricity Act 2003.

- b. Based on the inspection report, the ADE/Opn/Gudiwada issued provisional assessment notice to the consumer/complainant for an amount of Rs.65,960/- towards the malpractice on 24-08-2012.
- c. The DE/Assessments/Tirupati being the finalizing authority assessed the loss as Rs.66,959/- and passed orders to that effect on 04-10-2012.
- d. Though there was a provision to prefer an appeal before the SE/Assessments/Tirupati in this regard within 30 days the complainant did not take any action.
- e. Meanwhile the category of the service was changed from domestic to commercial in the month of 10/2012 and the assessed amount was included in the CC.bill of the service through RJNo: 15/10-12.
- f. Accepting the above, the complainant paid the total amount of Rs.71,130/- on 30-11-2012 vide PRNo: 329054.
- g. But in the mean time before making the payment, the complainant represented in the Forum stating that the booking of malpractice case to his office is unjust and requested for its recategorisation.

- 3. The complainant himself is accepting that the premises is an office and his claim for considering his office premises under domestic category is quite contra to the tariff order in force and also there shall be a kitchen in the premises in accordance with the clause 3.5.1 item-4 of the General Terms and Conditions of Supply and hence the request of the complainant for

considering his case and recategorisation of the service into domestic is not in order and hence is set aside.

Definition of Separate Establishment

3.5.1 For the purpose of the GTCS, separate establishments shall include the following types of establishments:

- i Having distinct set-up and staff;
- ii Owned or leased by different persons;
- iii Covered by different licenses or registrations under any law where such procedures are applicable; and
- iv For domestic category, the households having a separate kitchen.

In view of the above, the Forum passed the following order.

ORDER

”No separate order need to be issued”.

Accordingly the case is allowed 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 7th day of December 2012.

Sd/-	Sd/-	Sd/-	Sd/-
Member (Legal)	Member (C.A)	Member (Accounts)	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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