

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

On this the 1st day of February 2019

C.G.No:327/2017-18/Guntur Circle

Present

Sri. A. Jagadeesh Chandra Rao
Sri. A. Sreenivasulu Reddy
Sri. D. Subba Rao
Sri. Dr. R. Surendra Kumar

Chairperson
Member (Finance)
Member (Technical)
Independent Member

Between

M/s. Bharat Motors (Franchise of Mahindra First Choice),
Munuswamy Nagar,
Nagaralu,
Amaravathi Road,
Guntur Dt.

Complainant

AND

1. Assistant Divisional Engineer/O/Guntur 2
2. Superintending Engineer/assessments/Tirupati

Respondents

* * * * *

ORDER

1. Complainant presented this complaint alleging that Respondents issued a notice that their service No. 1122500061681 in the name of Pudota Ginning Mill will come under LT - II - Non domestic/Commercial whereas the complainant, Mahindra First Choice (Bharat Motor Automobile Service) is using electricity un-authorizedly and liable under Sec. 126 of the Electricity Act which comes under category LT- II (A) non-domestic/ commercial and provisionally assessed pilferage of units at 21627 and levied assessment amount of Rs.2,76,469/-. The appeal filed by complainant to SE/Assessments was dismissed without giving an opportunity to present their case. Hence they presented this complaint before this Forum as their grievance was not resolved.

Complainant also filed an application to grant interim stay of the enforcement of the notice not to disconnect their service connection till the disposal of their complaint before this Forum. Accordingly I.A. No. 06/2017 -18 Guntur Circle was allowed with a direction to deposit i.e. Rs.55,887/- being 1/4th of the disputed bill.

2. Respondent filed counter stating that the service No.1122500061681 was released in favour of Pudota Ginning Mill. The service was inspected by ADE/DPE Guntur-2 on 06.01.2018 and a malpractice case was booked against the service for utilizing the service for automobile center instead of Ginning Mill for which the service was released. The appeal filed by the

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complainant was dismissed by SE/Assessments. The complainant has made unauthorized alteration in the premises of service by dismantling the ginning mill and given for automobile service center. Consumer should not make any modification/alteration in the premises without any information to the APSPDCL as per Clause No.5.10 of General Terms and Conditions of Supply. Since the consumer is utilizing the service for automobile service center against the provisions of GTCS a case was booked for malpractice. Licensee issued proceedings vide Memo No.CGM/O&M&P&MM/DE Coml./D.No.1179/08. Dt: 04.7.2008 to the effect that all automobile centers comes under Cat-II. Hence the complaint may be dismissed

3. A personal hearing was conducted in this case on 30.10.2018 and 11.12.2018.
4. The points for determination are :
 1. Whether the unit of the complainant is a workshop or mere automobile service center?
 2. Whether the complainant un-authorizedly used the service connection and liable under Sec 126 of the Electricity Act, 2003?

Point No 1. :

Complainant represented by his counsel submitted that the unit of the complainant will come under workshop. Complainant was given a certificate to that effect by Ministry of Micro Small & Medium Enterprises. According to Google Cloud Free Trial the meaning of workshop in English is "A room or building where things are made or repaired using machines and /or tools or to which:

A carpenter's/Printer's workshop

An Engineering workshop".

He also filed proceedings issued vide No. EZ/Comm/Misc/68/309-M.P.Poorv Kshetra Vidhyut Vitaran Company Ltd, wherein it is mentioned that the connection may be either in the name of owner of the premises or lawful occupier of the premises. If tenant utilizing the service with the consent of the consumer, consumer should be served a notice for transfer of connection in the name of occupier and if fails to transfer the connection consumer himself will be liable for appropriate action as per Sec. 126 of the Electricity Act, 2003, if any irregularity/un- authorized use of supply is observed in the consumer premises.

ADE/Operation in his counter affidavit at para 5 stated that at the time of inspection it is noticed that there are 3 sheds one shed with partitions is utilized for office, work shop and color mixing, the second shed is used for utilizing car wash and third one for tinkering purpose. He has also given load particulars used for different purposes under 8 different activities they are:

1. Body Shop utilizing for tinkering purpose	240 watts.
2. Main shed using for repair works	1070 watts.
3. Color mixing room utilizing for paint mixing	846 watts.
4. 2 No's air compressors existing outside the workshop shed	9325 watts.
5. Car wash shed utilized for car washing	3990 watts.
6. Office room	3360 watts.
7. Workers room	750 watts.
8. Bathrooms	28 watts.

The activities mentioned 1 to 4 above fall under the workshop and the total load utilized for workshop is 11481 watts. The activities mentioned 5 and 6 above will come under non-domestic/commercial and the total load is 7350 watts and the remaining two activities mentioned 7 and 8 above 778 watts is used for workers and the same has to be added to the predominant load of the unit. If the above load of the unit is taken into consideration as stated above the workshop load is 12259 watts (11481 + 778) whereas the non-domestic /commercial load is 7350 watts. So also out of 8 activities done in the unit 6 activities fall under the purview of workshop. Respondents have not placed any authority from GTCS or any circular issued by Hon'ble APERC that even if some activities in the unit fall under non-domestic/commercial the entire unit is to be treated as non- domestic/commercial and accordingly the electricity charges have to be levied. Workshop will come under category III (1) industrial/general, whereas automobile service center will come under LT Cat-II.

The Memo. No.CGM/O&P&MM/DE/Comml/ F.Circulars/D.No.1179/08 dt: 04.07.08 relied on by inspecting officer also does not contain what are the activities that will come under the purview of automobile service centre. It needs more clarification so that there will be no ambiguity to the inspecting officer while registering the cases. When there is ambiguity the benefit shall be given to the consumer.

In view of the above activates of the unit, the Forum is of the view that the unit will fall under the workshop and not mere automobile service center. The point is answered accordingly.

Point 2:

The objections raised by respondents is that initially the service was taken by pudota ginning mill, subsequently the ginning mill was dismantled and supply was availed by M/s. Bharath Motors for automobile service center, tenant of registered consumer . The fact of running of automobile service center was not intimated, not obtained permission from the Licensee. Complainant availed supply for the purpose other than the purpose for which it was released against the provisions of Clause 5.10 of GTCS.

Clause 5.10 of GTCS is as follows:

Extension & Alteration

- 5.10.1: "Consumers shall not make any alteration to his installation or make any extension to any other adjacent premises, except as provided hereunder. Should the consumer at any time after the supply of energy has been commenced, desire to increase the number or size of lights, fans, motors etc., on his premises or in any way alter the position of his wiring therein notice thereof shall be sent in writing to the company whose representative will call and inspect the proposed alteration within two weeks of the receipt of the request in writing and if, necessary, change the meters and fuse and alter the service lines.
- 5.10.2 In the event that the contracted demand or connected load of the consumer is modified, the consumer shall submit a wiring completion report duly signed by the licensed electrical contractor in case of LT, and the report issued by the Electrical Inspector, in case of HT and shall bear the cost of the alteration of the service line, if any as a consequence of the modification in contracted demand or connected load.
- 5.10.3 The procedure for inspection/testing of the alterations and additions in the installation shall be in accordance with clause 5.7 above. In the event of increase in load, the consumer shall be served a notice by the Designated Officer in this regard. Non-payment of the requisite amount will result in its inclusion in the CC charges bill after 3 months.
- 5.10.4 During such time as alterations, additions or repairs are being executed, the supply to the circuit which is being altered added to or replaced must be entirely disconnected and it shall remain disconnected until the alterations, additions or repairs have been tested and passed by the company".

A plain reading of the above said clause clearly shows that the consumer has to inform the Licensee, in case if he increases the load or makes any extension or alternation. The Respondents have not placed any authority before this Forum that mere violation of the above clause is itself sufficient to register a case against the consumer under Sec. 126 of the Electricity Act 2003.

The second objection is that the service connection in the premises is not used by the registered consumer but used by his tenant for another activity without permission from the Licensee. Non intimation of the fact that the premises was leased out for another purpose by the consumer or his tenant may be an irregularity if the tenant or the registered consumer fails to intimate that the connection is used by the

occupier other than the registered consumer and if the Licensee later finds that there is any irregularity /unauthorized use of supply in the consumer premises , the registered consumer alone will be liable for violation of provisions of Sec. 126 or 135 of Electricity Act, 2003.

Sec. 126 of the Electricity Act, 2003 is under "Part - XII - Investigation and Enforcement". Sec. 126 (1) of the Act is as follows:

"If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use".

The meaning of assessment for the purpose of tax is "process of calculating how much tax someone must pay, or the amount that must be paid:

Much of the responsibility for the tax assessment was passed to the tax payer".

So the above meaning clearly shows that the assessment will be made only for purpose of collecting tax. The purpose of assessment is only to calculate the amount that is liable to be paid by the consumer so as to collect /refund the differential amount as the case may be.

In this case the inspecting officer came to an opinion that the unit of the complainant fall under automobile service center and liable to be billed under non-domestic/commercial category in view of the memo issued by the Licensee. The memo also does not contain the activities which will fall under the automobile service center. Respondents also not furnished any provision in the GTCS or any circular issued by the Hon'ble APERC to show that mere change of activity in the same category in the premises is itself sufficient to treat it as unauthorized use of electricity which will fall under Sec. 126 of the Electricity Act. In the absence of any such provisions, registering of the case against the complainant under Sec.126 of Electricity Act is not valid and legal.

The learned SE/Assessments has not taken these facts into consideration. He has also not given valid reasons for confirming the provisional assessment made by the inspecting officer. On the other hand the grievance of the complainant is that the learned SE/Assessments has not given any opportunity to them to present their case and the appeal was dismissed on the same day. Disposing of the application on the same day without giving opportunity is against the principles of natural justice. The purpose

