

BEFORE THE FORUM
FOR REDRESSAL OF CONSUMER GRIEVANCES
IN SOUTHERN POWER DISTRIBUTION COMPANY OF A.P LIMITED TIRUPATI
On this the 23rd day of October 2018
C.G.No.254 /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. Satyanarayana Industries,
Guntur Road,
Piduguralla,
Guntur.

Complainant

And

1. Assistant Accounts Officer/ERO/Piduguralla
2. Assistant Engineer/O/ Piduguralla Town
3. Assistant Divisional Engineer/O/ Piduguralla
4. Divisional Engineer/O/Macherla

Respondents

ORDER

1. The case of the Complainant is that he is running a small lime mill from the year 2007 in the name of M/s. Satyanarayana Industries, obtained Service Connection No.1422100014282 under LT Category –III for 74.5 HP load . He sustained heavy losses in the business. AAO /S-ERO collected 14 HT bills for the months of December'2008 to December'2009 for an amount of Rs.8,20,513.19, though the complainant obtained service connection under LT Category –III collecting amount under HT bills is against the tariff orders. He has utilized 144915 units only for the above said 13 months. He is liable to pay only Rs. 5,97,074.37 but due to wrong billing the department had collected excess amount of Rs.2,23,438.84 . Department is also liable to pay interest @ 24 % per annum. He is entitled to get refund of Rs.14,27,727/- and the same may be ordered to be refunded by crediting the same to the service connection No. 1422100020750.

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C.G.No:254/2017-18/Guntur Circle

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2. At the first instance the Forum issued notice to the complainant to appear before the Forum and state how the complaint is maintainable before this forum, as the complainant was questioning issuing of wrong bills between December '2008 to December'2009. The complaint has to be filed within 2 years from the date of cause of action has arisen as per para 10.2 (c) of Regulation No.03/2016. Then one Mastanvali representative of M/s. Satyanarayana Industries, Piduguralla appeared before the forum and later filed a notarized affidavit of the complainant for the delay in presenting the complaint.

The forum has not satisfied with the reasons mentioned in the affidavit of the complainant for the delay in presenting the complaint and rejected the complaint as barred by limitation.

3. Aggrieved by the orders of the Forum complainant approached the Hon'ble Ombudsman in Appeal No.27 of 2017-18.

The Hon'ble Ombudsman opined that "The cause of action in this case has arisen in the month of December '2008, vide Reg. No.01/2004 was in force prior to 01.03.2016. On the above similar provision as to limitation had not been incorporated in the previous repealed Reg. No.1/2004 and the above Regulation No.03/2016 does not contain any words to indicate that the above limitation clause can also be made applicable to the cases where the cause of action has arisen even before 01.03.2016. So, I am of the view that the Clause 10.2(c) of Regulation No.03/2016 cannot be made applicable to the facts of the present case and the opinion of the forum is that the complaint is barred by Limitation Law is not legal and correct".

The Hon'ble Ombudsman set aside the orders of the forum and directed the forum to admit the complaint for hearing and decide the same on merits after ordering notice to both the parties.

4. In view of the above orders the complaint was registered and notice was issued to both the parties.

AAO/S-ERO/ Piduguralla i.e Respondent No.1 submitted written submissions stating that service connection No.1422100014282 was released on 26.04.2007 under Cat-III with contracted load of 74.5 HP in the name of M/s. Satyanarayana Industries. From then the service was billed under Cat- III LT tariff and paid by the consumer. Subsequently on exceeding of Recorded Maximum Demand more than contracted demand the service was billed as per HT tariff in accordance with the Clause. 12.3.3.2 (i)

of GTCS issued by Hon'ble APERC vide Proceedings No. Secy/01/2006 Dt: 06.01.2006. Respondent No. 1 also gave the particulars of connected load, RMD, Exceeded RMD for the months from Mar'2009 to Dec'2009.

5. Complainant also filed the copy of the orders of the Hon'ble Ombudsman in Appeal No. 42/2014 Dt: 18.11.2014 wherein the Hon'ble Ombudsman opined that "Demand charges applicable to HT Cat-I (11 KV supply) only on such of the demand that is in excess of the contracted demand for the months of 07/2011 and 08/2011".
6. During the course of arguments Mr. Mastan Valli representative of M/s. Satyanarayana Industries reiterated that the service connection has to be billed under LT Cat- III only and it cannot be billed under HT Cat - I on the protest that RMD exceeded CMD. If at all, if RMD exceeds CMD only such of the excess of RMD over the CMD has to be billed under HT Cat-I. Complainant is also relying upon the orders of Hon'ble Ombudsman in Appeal No.42/2014.
7. On the other hand the contention of the respondents at the time of personal hearing is that the complaint was filed after about 8 years, General Law of Limitation of 3 years will be applicable to the facts of this case. Licensee is not permitted to recover the amount after the period of 2 years from the date when such sum become first due unless such sum has been shown continuously as recoverable as arrears of charge for the electricity supply under Sec.56 (2) of the Electricity Act, 2003. So also para 4.8.2 of Regulation No.05/2004 issued by Hon'ble APERC also provides that Licensee is not empowered to collect amount after a period of 2 years. So, the consumer is also not entitled to put forth a claim after 2 years that too when he paid the amount without any protest. It was also further argued that the service No.1422100014282 was dismantled on account of nonpayment of arrears. Subsequently the arrears were cleared and at the time of restoration a new number was assigned as SC.No.1422100020750. The service connection was transferred to LT on 10.03.2014 and RMD was exceeded between Dec'2008 and Dec'2009 besides exceeding contracted load. On repeated persuasion the complainant entered into an agreement on 11.12.2009 for a contracted load 149.5 HP with CMD 80 KVA under LT Cat-III (B). Entering into agreement for a load of 149.5 HP clearly shows that the connected load was more than 100 HP and paid bills under HT Cat-I without any protest to avoid disconnection. After admitting that his connected load is more than contracted

load and paid bills, he cannot be permitted to raise a dispute in respect of those bills after 8 years and the complaint is liable to be dismissed.

8. Point for determination is whether the complainant is entitled for refund of excess bill purported to be issued under HT Category-I and also entitled for interest @ 24% on such excess amount ?

Clause No. 12.3.3.2 (i) of General Terms and Conditions of Supply is as follows:

Cases where the connected load is above 75 HP /56 KW or :

“These services shall be billed at the respective HT tariff rates from the consumption month in which the un-authorized additional load is detected. For this purpose, 80% of connected load shall be taken as billing demand. The quantity of electricity consumed in any month shall be computed by adding 3% extra on account of transformation losses to the energy recorded in LT meter”.

No documentary evidence is adduced before this forum by either parties in support of their contention as to why the bills to be issued whether under HT Cat –I or under LT Cat-III. Now after lapse of nearly nine years it cannot be decided under what circumstances the HT bills were issued for the months from Dec’2008 to Dec’2009 by the respondents. Complainant paid the amounts without any protest. Merely because the respondents have issued the bills under HT Category – I. It cannot be concluded that the bills were issued only on the ground that the RMD was exceed CMD.

Clause No.12.3.3.2 (v) of GTCS says :

“If the consumer where required, does not get the LT services converted to HT supply and regularized as per procedure indicated above within three months from the date of issue of the notice, the Company is entitled to terminate the Agreement by giving required notice as per clause 5.9.4 of the GTCS, notwithstanding that the consumer is paying bills at HT tariff rates prescribed in clause 12.3.3.2 (i) above.

Clause No. 12.3.3.3 of GTCS says:

“Cases where the total connected load is above 75 HP/56 KW or cases where the total connected load is above 150 HP under LT Category III (B). These services will be billed at the HT Category-I tariff rates from the consumption month in which the un-authorized additional load is detected till such additional load is removed and got it inspected by the designated officer of the company”.

In this case as per the version of the complainant, he exceeded RMD continuously for a period of 13 months for 14 bills. Generally if RMD exceeds CMD continuously for

more than 3 months the field officers would certainly inspect the premises and advise the consumer whether to increase the connected load or to restrict their load within the permissible limits. Unless the consumer is willing to pay bills under HT Category – I and increase the load the service connection would have been disconnected. Entering into agreement in December'2009 clearly shows that the consumer is aware that his connected load is more than contracted load and silently without any protest paid bills under HT Cat –I and subsequently on persuasion and under threat of disconnection he entered into agreement for LT Cat –III (B) with a contracted load of 149.5 HP. According to respondents the service connection was converted to LT in the month of March'2014. It can be safely presumed in this case that the bills were issued under HT Cat –I not only on the ground that RMD exceeded CMD but also on account of excess of connected load over contracted load. Complainant has not placed any evidence when he increased his connected load from 74.5 HP to 149.5 HP. It is not the case of the complainant that his connected load was enhanced to 149.5 HP only after entering into agreement on 11.12.2009. So all these facts clearly shows that complainant is having excess connected load as on December'2008 and as RMD exceeded he paid bills under HT Cat-I without any protest to avoid disconnection and charges for enhancement of additional load. Complainant with a view to have a wrongful gain came with a plea that Licensee collected bills under HT Cat –I illegally and is entitled for refund with interest after 8 years.

According to Para 10.2(d) (ii) of Regulation 03/2016 the Forum is competent to reject the complaint at any stage when “appears ex -facie to be barred by any law”.

The above provision clearly shows that the provisions of Limitation Act, 1963 is also applicable to the cases filed before the forum. According to Article 113 of Limitation Act, 1963 any suit for which no period of limitation is provided elsewhere in the schedule of Limitation Act, can be filed within 3 years from the date when right to sue occurs. Complainant is disputing the bills raised by the respondents. So, he is entitled to file a suit for recovery of excess amount alleged to have been collected within 3 years from the date of cause of action accrues to him. Complainant is seeking refund of alleged amount said to have been collected excessively for 13 months from Dec'2008 to Dec'2009. So, Complainant has to file a suit on or before Dec'2009 but the present complaint was filed before the Forum on 10.04.2017 i.e more than 7 ½ years after alleged

