

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

On this the 25th day of March 2019

C.G.No:180/2018-19/Vijayawada 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

Smt. K.V. S.N. Jyothi,
C/o. M/s. Sri Ambica Foods,
Plot No.2 Road No.2,
APIIC, IDA,
Kondapalli,
Krishna -Dist.

Complainant

AND

1. Assistant Accounts officer/ERO/Ibrahimpattam
2. Assistant Engineer/O/Kondapalli
3. Assistant Divisional Engineer/O/ Ibrahimpattam
4. Divisional Engineer/O/Vijayawada Rural

Respondents

ORDER

1. i) The case of the complainant is that she is having service No.6311400009665 for her small scale unit. She had received a notice to pay shortfall amount of Rs.8,73,663/- (Rupees eight lakh seventy three thousand six hundred and sixty three only) for a period of more than 2 years under the camouflage of wrong categorization of her service due to the negligence of erring officers of the Licensee.
- ii) Complainant fixed the sale price of ice cream cones by taking into consideration the actual electricity consumption charges and cost of other inputs. Therefore the complainant is incapacitated to recover the differential amount from her customers. Complainant is not in a position to pay the shortfall amount and the same could not be recovered from her customers as it was happened due to gross negligence of employees of the Licensee. Hence the entire shortfall amount may be waived.
2. i) Respondent No.1 filed written submission stating that the service No.6311400009665 was released in favour of M/s. Ambica Foods with a load of 15 HP (Present load is 99.00 HP under Cat-III Sub Cat-(I) i.e. Aqua Culture and

DESPATCHED

DATE

28/3/19

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C.G.No.180/2018-19/Vijayawada Circle

Animal Husbandry at the tariff rates Rs.3.86 paisa per unit and fixed charges @ 30/- KW/Month. On review of MRBs (Meter Reading Books) it is noticed that the above service is utilizing for production of Ice Cream Cones. ADE/O/Ibrahimpattanam inspected the premises of the above service on 23.01.2018 and confirmed that service is utilized for manufacturing of ice cream cones. The above service has to be billed under Cat-III- Industrial (General) at the tariff rate Rs.6.71 paisa per unit and fixed charges @ 75/- KW/Month, but since this service was charged under Cat-III (0) aqua culture with effect from April'2015 to Dec'2017 a bill for shortfall amount of Rs.8,67,792/- (Rupees eight lakh sixty seven thousand seven hundred and ninety two only) was raised for the said period as per the prevailing tariff order. The consumer has to pay the shortfall amount.

ii) Respondent No. 3 also filed separate written submissions reiterating the same version that was mentioned by Respondent No. 1.

3. A personal hearing was conducted at Tirupati on 05.02.2019. Both the parties reiterated their contentions. Apart from that the complainant stated that they were paying electricity bills without any default from the date of taking service connection. They have taken the service connection clearly mentioning that they require service connection for their ice cream cones business. They fixed the price of cones basing on the production cost. If they were compelled to pay enhanced electricity charges from April'2015 to December'2017, it will be very difficult for them to pay the same and there is no possibility for them to recover the differential amount from their customers. This episode had occurred only due to mistake done by the respondents, they cannot be penalised.

On the other hand respondents represented that when subsidy was given by the Govt. for aqua culture for Cat-III Sub category (1) the service connection in the dispute was wrongly entered in the records as Category -III (1) instead of Cat-III (0). This was only inadvertent clerical mistake. Complainant cannot enrich herself only on the ground that the mistake was committed by the employees of the Licensee. Complainant is liable to pay as per existing tariff rates. The mistake was detected in the month of Jan'18 and a notice was issued to pay shortfall amount. Complainant used the electricity for her own benefit and she is liable to pay the amount as demanded and the complaint may be dismissed.

4. Point for determination is whether the respondents are entitled to recover shortfall amount from April'2015 to December'2017?

- a) The service was released on 15.12.2012 under LT-Cat-III Sub category (1). According to respondents the service has to be billed under Cat- III Sub Category (0) i.e. Industry (General) as per tariff order 2017-18 @ 6.71 paisa per unit and fixed charges @ 75/- KW/month. But erroneously the service was billed under Cat - III (1) i.e. aqua culture and animal husbandry @ tariff rates 3.86 paisa per unit and fixed charges 30/- per KW per month. When they reviewed MRB (Meter reading book), they noticed that the service is being utilised for production of ice cream cones. Then ADE/O/Ibrahimpatnam inspected the premises on 23.01.2018 and confirmed that the service is utilised for manufacturing of ice cream cones. Since the bills were raised for the service connection under Cat - III (1) instead of Cat III (0) they have revised the bills from Apr '2015 to Dec'2017 from the date of change of tariff order 2014-15 and assessed shortfall amount of Rs. 8,67, 792/-
- b) There is no dispute that the service connection is being used for manufacture of ice cream cones. So also different tariff rates are applicable for industry (General), aqua culture and animal husbandry though they were broadly categorised under Cat - III industry (General) i.e ., Cat-III (0) whereas aqua culture and animal husbandry is categorised as Cat-III(1) for billing purpose.
- c) Respondents themselves admitted that they have raised bills under Sub Cat- I of Cat- III instead of Sub Cat (0) of Cat- III. The contention of the complainant is that as the mistake was committed by the respondents and they have fixed the cost price of the ice creams basing on the cost of production, and it is not possible to recover the differential tariff from the customers, so they are not liable to pay the shortfall amount is not tenable.

Clause 3.4.1 of GTCS is as follows:

“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 consumer’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, however, the period

during which such reclassification is needed cannot be ascertained such period shall be limited to a period of twelve months immediately preceding the date of inspection. ”

In view of the above provisions in GTCS, respondents have got right to raise a bill for shortfall amount subsequently when they found that classification is not correct. But the Licensee is not empowered to raise the shortfall beyond one year, if period from which reclassification has to be made cannot be ascertained. But in this case respondents ascertained the date from which the erroneous classification was done. So they are entitled to raise bill for the shortfall amount.

It was held in M/s. Sri Balaji Agro Industries Vs The Managing Director & Others (Karnataka High Court) 7th Aug' 2017 in para 17,19,21,22 & 23 as :

“From the above, it is clear that this Court has conclusively held that the calculation period of two years is only from the date of knowledge and not from the date on which the first amount became actually due.

“A five Judges Bench of the Hon'ble Apex Court in the case of The Sales Tax Officer, Banaras and Others Vs Kanhaiya Lal Mukund Lal Saraf reported in AIR 1959 Supreme Court 135 have conclusively held that the term “Mistake used in Section 72 of the Contract Act, has been used without qualification or limitation and comprises within its scope a mistake of law as well as a mistake of fact. That the true principle is that if one party under a mistake, whether of fact or law, pays to another party money which is not due then that money must be repaid”.

This Court further relies on the law laid down by the Hon'ble Apex Court in the case of D. Cawasji & Co vs. The State of Mysore & Anr reported in 1975 AIR 813 wherein the Apex Court while considering the scope of Section 17(1) (C) of the Limitation Act, 1963 with reference to payments paid under a mistake, the period of limitation does not remain to run until the party had discovered the mistake. The relevant paragraph reads as under:-

“Section 17(1) (C) of the Limitation Act, 1963, provides that in the case of a suit for relief on the ground of mistake, the period of limitation does not begin to run until the plaintiff has discovered the mistake or could, with reasonable diligence, have discovered it. In a case where payment is made under a mistake of law as contrasted with a mistake of fact, generally the mistake becomes known to the party only when a court makes a declaration as to the invalidity of the law.

Though a party could, with reasonable diligence, discover a mistake of fact even before a court makes a pronouncement, it is seldom that a person can, even with reasonable diligence, discover a mistake of law before a judgment adjudging the validity of the law”.

“In the light of the law laid down by the Apex Court, the contention of the petitioner that the limitation commences to run within two years from the date on which the first payment became due, cannot be accepted.”

“The Apex Court had clearly held that the period of limitation commences only when the mistake is discovered. In the instant case it is not in dispute that the mistake came to light when auditors of the company raised objections. Further more the petitioner also lacks bonafides as a consumer and as a contracting party. He was well aware of his dues”.

5. Complainant filed an application before the forum for interim directions not to disconnect the service connection during the pendency of the complaint before the Forum. Complainant was advised to pay 1/4th amount of Rs.2,18,416/- and continued to pay regular bills to avoid disconnection of service during the pendency of the complaint before this Forum in I.A.No.3/2018-19/ VJA Circle. Accordingly the complainant has deposited Rs.2,18,501/- in three instalments.
6. Consumers are liable to pay the amount as per tariff order. The contention of the complainant is that as the mistake was committed by the respondents, they need not pay the amount is not tenable. Complainant cannot take benefit of the mistake committed by the employees of the Licensee in wrong classification of category of the service and liable to pay the amount for utilisation of electricity as per the prevailing tariff for this category for which she has been availing supply. But as the mistake was committed by the employees of the Licensee and the period of assessment for 22 months, consumer can be permitted to pay the amount in liberal instalments without any surcharge.
7. In the result the complaint is dismissed but the complainant is permitted to pay the balance of back billing amount in 15 equal monthly instalments apart from their regular bills. In case if the complainant commits default in payment of any one of the instalments, Licensee is at liberty to proceed against the complainant in accordance with Law.

If aggrieved by this order, the complainant may represent to the **Vidyut Ombudsman, Andhra Pradesh, Flat No:401, 4thFloor, Ashoka Chambers, Opposite to MLA Quarters, Adarsh Nagar, Hyderabad-500063**, within 30 days from the date of receipt of this order.

This order is passed on this, the 25th day of March 2019.

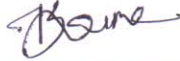
Sd/-
Member (Finance)

Sd/-
Member (Technical)

Sd/-
Independent Member

Sd/-
Chairperson

Forwarded By Orders



Secretary to the Forum

To

The Complainant

The Respondents

Copy to the General Manager/CSC/Corporate Office/ Tirupati for pursuance in this matter.

Copy to the Nodal Officer(Executive Director/Operation)/CGRF/APSPDCL/TPT

Copy Submitted to the Vidyut Ombudsman, Andhra Pradesh ,Flat No:401 ,4th Floor, Ashoka Chambers, Opposite to MLA Quarters , Adarsh Nagar,Hyderabad-500063.

Copy Submitted to the Secretary, APERC,11-4-660, 4th Floor, Singareni Bhavan, Red Hills, Lakdikapool, Hyderabad- 500 004.