

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

On this the 30th day of January 2020

C.G.No:32/2019-20/ Guntur Circle

Present

**Sri. Dr. A. Jagadeesh Chandra Rao
Sri. A. Ramdas
Sri. Dr. R. Surendra Kumar**

**Chairperson
Member (Finance)
Independent Member**

Between

Vishnu Karumuri,
Lakshmipuram Main Road,,
Opp. NTR Stadium.
Guntur.

Complainant

AND

1. Assistant Executive Engineer/O/ Guntur Town- 2
2. Assistant Executive Engineer/O/ Guntur D 8
3. Deputy Executive Engineer/O/Guntur Town -1
4. Superintending Engineer/O/Guntur

Respondents

ORDER

1. The case of the complainant is that he is running a gaming centre in the name of 'AA Entertainment' in 4th floor of commercial building. He has obtained service connection with LT-II service with SC. No. 1122300373252 in September'14. The service is in the name of Sri. Srikanth and the complainant is the lessee of the premises. The connected load is 34 KW. The energy meter is available in the cellar along with energy meters of all other consumers.

The DEE/O/Guntur Town-2 served two notices one for additional development charges/ Security deposit and another one for back billing for a period of about 5 years from the date of existing supply.

DEE/Operation estimated the connected load at 39.12 KW but actual connected load would be 37.19 KW. However considering the amount payable is small and to avoid issues in future he had paid the additional development charges of Rs.12,200/- on 26.04.2019. He is paying the bills regularly from the beginning without default. The electricity authorities are also visiting

DESPATCHED
DATE 03/02

the commercial operation place occasionally, while visiting the cellar for meter reading and they never found fault with the electrical system. He also further stated that visitors mostly visit between 7 P.M. to 9 P. M visitors will be more on Sundays, Public Holidays and vacation to the schools and during the other days the visitors will be very few countable on figures. Air conditioners and other equipments are operated only during the visit of the customers and based on their area of interest and play item. Therefore the electricity consumption is variable which change from time to time in the month and from season to season over the year. Some of the air conditioners, computers, and electricity oven were recently bought between 6 to 24 months back and installed. The visitors are not on expected level and he is meeting the expenses in some months and also incurring losses in other months.

The back billing is proposed about 4 years and 8 months from September'2014 to April'2019. Respondents have never informed about inspection of the energy meter installed in the cellar of the building and on any previous occasion and also not in the present inspection dt: 28.03.2019. MRI dump was taken on 04.04.2019 and 12.04.2019. But the details of MRI dump i.e. readings for arriving the energy consumption was also not furnished to him till date.

Sec.56 of the Electricity Act, 2003 clearly specifies that the consumer cannot be demanded for any payment due to the Licensee for more than 2 years. The Hon'ble APERC also upheld the limitation period of 2 years specified in the Act while disposing the case pertaining to printing presses vide Tariff Order 2018-19.

Clause No. 7.5.1.4.1 of GTCS specifies that the average consumption of preceding 3 months shall be taken for arriving the consumption of the month in which the meter was found defective. Clause No. 7.5.1.4.4 of GTCS also specifies the period of limitation for back billing for 12 months if the meter status is not established and for the entire period if the meter status is established. In this case the meter status was established on 28.03.2019 only.

Therefore the complainant prays that back billing may be limited for a period of 1 month i.e. for March'19 in which the meter was found defective. If the orders are given to pay the back billing amount, he may be permitted to pay the same in installments.

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DATE 03/05/19

Complainant also filed an application for interim directions not to disconnect the service connection till the disposal of the complaint before this Forum in I.A. No.1/2019-20 and an interim direction was given to pay an amount of Rs.3,00,000/- immediately before AAO/ERO/GNT Town-2 and on such payment the service connection can be restored and complainant is directed to pay another amount of Rs.3,00,000/- within 7 days from the date of restoration of service connection.

3. Assistant Executive Engineer filed written submission stating that the service connection No.1122300373252 has been inspected by AAE/CT Meters-3/ Guntur and declared that meter recording very less consumption with (-) 81.7 % error duly testing the meter MRI dump and also recommended DPE wing for back billing. Accordingly AAE/DPE/ Guntur had inspected the service on 04.04.2019 and booked back billing case vide Case No. DPE/GNT-1/GNT-2/6327/19 dt: 04.04.2019. The DEE/O/Town-2 issued assessment notice dt: 17.04.2019 for an amount of Rs.22,98,083/- as per the provisions of Clause No. 7.5.1.4.4 of GTCS by proposing back billing from 01.09.2014 to 03.04.2019.
4. Executive Engineer filed written submission stating that A. Siva Nagi Reddy, AEE /DPE/Guntur inspected the service on 28.03.2019 and found that energy meter recording zero amps in 'Y' phase and partial amps (3 & 4) in R & B phase due to shorting of CT currents in the TTB. Tong tester readings were 27 A – 40A-40 A in RYB phases. The instantaneous values of currents as displayed in the energy meter mismatch the values measured by tong tester and hence CT shorts were released to ensure proper recording of energy by Assistant Engineer/ CT – M - 3 /Guntur for cross verification. As per the MRI dump it is concluded that the energy meter recorded very very less consumption from the beginning to date of testing by M& P wing and arrived as (-) 81.7 % error. Hence back billing proposed as per Clause No. 7.5.1.4.4 of GTCS. Energy recoded from 28.03.2019 to 12.04.2019 i.e. 15 days after rectification of CT meter by the CT meter wing is 3154 units. Average consumption per day is 210 units. However monthly consumption is arrived by taking average 210 units per day i.e. 6,300/- per month. As per consumption recorded from the date of release to rectification it was observed that high consumption was recorded with 1153 units in August'15. Hence the same was taken as bench mark consumption per

month by the meter. The percentage error shortfall recorded by the meter is arrived as $=100-(1153/6300 \times 100)=81.7\%$. Based on the above back billing case was proposed by the DEE/O/Town-2/ Guntur dt : 17.04.2019. Final assessment order was issued as per Clause No. 7.5.1.4.4 of GTCS. The CT meter is not changed after release of service and the same meter is being continued from the date of release of the service till the date of inspection and continued after rectification.

5. Personal hearing was conducted on two occasions. Complainant and respondents reiterated their versions again filed written submissions.
6. The point for determination is whether raising of short fall back billing from 01.09.2014 to 03.04.2019 on the ground that instantaneous values of currents display in the energy meter mis-matched with values measured by the tong tester is liable to be set aside?

According to respondent No.3 when the service was inspected by AE/CT Meter-III/Guntur on 28.03.2019 found that energy meter is recording zero amps in "Y" phase and partial amps (3&4) in "R & B" phases. The instantaneous values of currents displayed in the energy meter mismatched with the values measured by tong - tester. Hence CT shorts were released to ensure proper recording of energy and MRI dump was taken. Again the service was inspected on 04.04.2019 to verify and record the parameters again on 12.04.2019, MRI dump was taken from the meter by the AE/CT-M-3/Guntur for cross verification and as per the MRI dump it was concluded that the energy meter recorded very less consumption from the beginning to the date of testing by M & P wing and arrived as (-) 81.7% error. Hence back billing was proposed as per Clause. No. 7.5.1.4.4 of GTCS.

Energy recorded from 28.03.2019 to 12.04.2019 i.e. for 15 days after rectification of the CT meters by the CT meter wing is 3154 units. Average consumption per day is 210 units. Monthly consumption is arrived by taking average of 210 units per day and per month as 6300 units. It was observed that highest consumption is on August' 2015 is 1153 units and the same was taken as bench mark consumption per month. The percentage of error is arrived as $= 100-(1153/6300 \times 100) = (-) 81.7\%$.

On the other hand, according to the complainant his business is a seasonal one. Electricity consumption is not constant. He had installed 5 No's A/Cs and some other electrical equipment during December 2018 and inaugurated on 15.01.2019 (i.e. on Sankranti day). The actual effect of electricity consumption would be only during vacation for educational institutions from March onwards. The gadgets which were installed on December 2018 would consume half of his regular consumption.

The error was identified by the department in March 2019 that too basing on the recorded consumption for a period 15 days in March and April' 2019 with reference to the consumption recorded in August' 2015. The department has not considered the seasonal variation of the consumption in the premises. The department has failed to read Section 56 (2) of Electricity Act in right prospective. Department also stated that MRI dump is available from 28.03.2019 only. Respondents are not entitled to raise back billing for 5 years that too when it was happened due to their fault. Respondents are entitled to raise bill only for one month i.e. in the month of detection of the defect. So back bill billing raised by the respondents is illegal and liable to be set aside.

Respondents are relying on the provisions of Clause No. 7.5.1.4.4 of GTCS and Sec. 56 (2) of the Electricity Act.

“Clause. No.7.5.1.4.4 of GTCS is as follows:

The assessment shall be made for the entire period during which the status of defective meter can be clearly established, however the period during which such status of defective meter cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection”.

Sub Section (2) of Sec. 56 of the Electricity Act is as follows :

“ Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”

According to respondents energy meter is recording zero amps in 'Y' phase and partial amps in R&B phases due to Shorting of CT currents in TTB. Tong tester readings are 27 A – 40A and 40 A in R, Y, and B phases.

Respondents raised back billing basing on the units consumed by the complainant for 15 days after rectification of the defect in the meter. They have taken the meter reading on 04.04.2019 and on 12.04.2019 and calculated the less consumption as (-) 81.7 % error.

Annexure XII (VII) (C) of Appendix -XI of GTCS provides guidelines for assessment of short billing cases. Sub Clause (1) is in respect of short billing arising out of defective meter wherein it is mentioned as :

'Meter is to be tested with Accucheck / Electronic Reference Standard (ERS) meter at site and % error is to be arrived at and billed for the period when the meter was defective. If the period of defect can be established with the aid of production figures of consumer and MRI dumps (Meter Reading Instruments) the assessment is to be undertaken for the period when the meter was defective as per the formula'.

Sub Clause (IV) of Annexure XII (VII) (C) of GTCS is as follows :

(IV) Short-billing arising out of three phases being defective either due to wrong connection to meter or defect in meter.

"The meter is to be checked with consumer load at site with Accucheck/ERS and % error is to be arrived at and billed for the period when the meter was defective.

In case of unbalanced loads if the meter is defective, consumption is to be assessed based on connected load on particular phase as per formula or with Accucheck/ERS for arriving at the % error.

For non CT meters, % Error can be arrived at based on the test results in the MRT Laboratory".

Respondents admittedly did not follow the above said methods in this case. Even though complainant asked for MRI Dump on which respondents relied for calculating the error at 81.7% respondents only furnished data of instantaneous parameters (1.0.94.91.0.255 downloaded on 28.03.2019 at 03:19:21 hrs. stating i.e. MRI dump). No

authority is placed before this Forum that tong tester readings taken instantaneously on 28.03.2019 are accurate and they can be used for calculating consumption of the previous period from the consumption taken in subsequent period.

Point 6 in Para 77 Copy of extract of APED manual of Vol - I (As amended 2012) Chapter –III, Organization duties and routine – B establishment – Officers and their duties - Divisional Engineer (Meters and protection) in respect of LT metering is as follows :

‘ To draw a calendar and ensure periodical testing of LT services with C.Ts once in a year’.

Respondents did not follow the above instructions. Respondents have not at all taken care while installing of the meter and see that actual consumption is recorded in the meter but also failed to conduct periodical testing of LT service once in a year as per the instructions given by the Licensee and after lapse of about 5 years, came with an argument that they found defect in the meter on 28.03.2019 and they have right to raise back billing for the entire period as per the provisions of Clause No. 7.5.1.4.4 of GTCS on the ground that the status of the defective meter was established on 28.03.2019.

The other contention of the respondents is that the limitation provided in Sec. 56 (2) of the Electricity Act is also not applicable to the facts of this case as the amount of back billing payable by the consumer was became first due on the date of expiry of the period informed in provisional assessment order as this back billing was raised due to identification of problem in recording of consumption in the meter on 28.03.2019.

It was held by Hon’ble Sri. Justice C.V. Nagarjuna Reddy in his order Dt : 04.06.2015 in W.P No. 15070 of 2011 of High Court of A.P. in between M/s. Sree Setharamjaneya Rice Mill (SC01) Tallapudi Vs. The Assistant Accounts Officer/ Nidadavole and another while dealing with Section 56 Clause 2 of the Electricity Act observed as follows:

“Sub- section (1) of Section 56 of the Act empowers the licensee to disconnect the power supply if the consumer neglects to pay any charge for electricity or any sum due other than a charge for electricity due from him to a licensee in respect of supply, transmission, distribution or wheeling of electricity to him. The phrase ‘any charge

for electricity or any sum other than a charge for electricity due' is referable to the supply, transmission, distribution or wheeling of electricity. Sub-Section (2) of Section 56 of the Act, however, limits the power of the licensee to recover such sums up to the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied. A conjoint reading of Sub-Sections (1) and (2) of Section 56 of the Act would leave one in no doubt that section 56 deals with any charge for electricity due from the consumers payable in connection with the supply, transmission, distribution or wheeling of electricity. Therefore, the provision does not make any distinction based on the nature of charges payable by the consumer. In other words, whether the charges payable by the consumers are regular electricity charges or otherwise, for non - payment of such charges, the licensee is empowered to disconnect the power supply. Equally the limitation on this power of the licensee to recover such charges and disconnect the power supply is clearly envisaged in Sub Section (2) of Section 56 of the Act. If the licensee is empowered to disconnect the power supply for nonpayment of any charge for electricity under Sub-Section(1) of Section 56 of the Act, equally, a clear embargo is placed on the licensee for recovery and disconnection of power supply with reference to such charge, if the same is not recovered within two years from the date when such sum became first due. Under this provision, however, an exception is made that if such sums are continuously shown as due and recoverable as arrear of charges, the limitation of two years has no application.

Sub - Section (2) of Section 56 of the Act is evidently envisaged to prevent the licensee from making stale claims, Legislature has expected the licensee to be vigilant in demanding its charges, so that the consumers will not be placed with undue burden by the Licensees by coming out with sudden demands after expiry of a certain period. This being the legislative object, the respondents were expected to have been circumspect in detecting the liability of the petitioner for payment of the purported distribution transformer charges. Unfortunately, for them, by the time they have realized that the petitioner was liable to pay such charges, the period of two years from the date such sum became first due had expired. It is not in dispute that even in respect of the amount which fell due in January'2009, more than two years had expired by the time the impugned demand was made. Therefore, no part of the demanded amount remained

within the period of two years from the date it fell due and consequently, the same is not recoverable”.

In this case, respondents came out with a sudden demand of back billing for a period of about 5 years on the ground that CT meter do not record actual consumption of energy and it recorded with an error of (-) 81.7 % . Respondents did not ensure installation of CT meter correctly at the time of releasing the service connection and they have failed to inspect the CT meter periodically till 28.03.2019 and now they are not permitted to say that the defect was found only on 28.03.2019 and the amount became first due on that day and limitation provided under Section.56 (2) of the Electricity act is not applicable to the facts of this case. It is not the case of the respondents that complainant do not pay electricity charges regularly. Respondents raised bill every month and complainant paid the bills regularly. Now respondents are not permitted to raise back billing for about 5 years on the ground that CT meter was found defective from the date of installation and the defect was only detected on 28.03.2019. Sub Section (2) of Section. 56 of this Act provides preventing the licensee from making stale claims. Respondents who are not diligent in carrying out periodical checking of the meter to rectify the defects and collecting electricity charges regularly by issuing bills to the consumer are not permitted to raise undue burden on the complainant with a sudden demand after lapse of about 5 years that too when the defect is on the part of the respondents. The facts of this case will clearly attract the provisions of Sub Section (2) of Section. 56 of the Electricity Act.

The other contention of the respondents is that as status of the defective meter was clearly established, so they are entitled to raise back billing more than 1 year as per Clause 7.5.1.4.4 of GTCS is also not tenable on the ground that circular mentioned above was issued by the licensee only to prevent to raise assessment beyond 1 year. Respondents who have not followed and violated the circular issued by the Licensee to have periodical checking of CT meter once in a year are not permitted to take shelter under the guise of the exemption provided in Clause No. 7.5.1.4.4 of GTCS to raise back billing.

Respondents have not placed any authority from GTCS to show that they are competent to raise short billing by calculating units for the entire period basing on the consumption of 15 days of subsequent period of detection and rectification of the defect in

the CT meter. In the absence of any supporting provision from GTCS or circular issued by the Licensee or by the Hon'ble Commission, respondents are not entitled to raise back billing by taking error as (-) 81.7% .

Clauses 7.5.1.4.1 to 7.5.1.4.3 of GTCS provides provisions in respect of calculating the energy from defective meters. Respondents could not follow the above three provisions as there is no authenticated prior data. GTCS did not permit the respondents to take data from the subsequent period to arrive the consumption for the previous period.

Complainant also stated that he installed five ACs and some electrical equipments in December'2018 and also filed Photostat copies of receipts showing about purchase of 5 ACs . Respondents did not physically inspect the premises and has not furnished the actual connected load from the date of releasing of service connection till the date of detection of defect in the meter on 28.03.2019. Respondents also did not furnish the actual connected load till date. Respondents cannot take the entire contracted load to raise back billing for the entire previous period as complainant is disputing about the actual connected load and came with a plea that he purchased 5 ACs and other electronic gadgets in the month of Dec'2018 and opened it on the day of Sankranti in the year 2019 though he had taken contracted load 39.12 KW (34 KW and including the amount paid by him for additional load on 26.04.2019 for an amount of Rs.12,200/-)

In the absence of any authenticated data and as this Forum is competent to decide on this aspect as per Clause No.7.3.6 of GTCS, the Forum is of the opinion that the average consumption from 01.04.2019 to 31.12.2019 be taken to arrive shortfall units for one month. The total consumed units by the complainant from 01.04.2019 to 31.12.2019 is 33122 units and per month is 3680 units.

Since respondents did not conduct periodical testing of CT meter as per the circular the forum is of the opinion to meet the ends of justice, it is just and proper to raise back billing only for the period i.e. from 01.04.2018 to 03.04.2019 by taking average units of 3680 per month. The point is answered accordingly.

7. In the result the entire shortfall billing raised by the respondents is set aside. Respondents are directed to raise shortfall billing commencing from 01.4.2018 to

03.04.2019 by taking average units of 3680 per month. Respondents are directed to issue revised bill within 15 days from the date of receipt of this order and submit compliance report within 15 days thereon. The amount paid by the complainant as per the orders in I.A.No.1/2019-20 dt : 09.05.2019 shall be adjusted in the revised bill

If aggrieved by this order, the Complainant may represent to the **Vidyut Ombudsman, Andhra Pradesh**, 3rd Floor, Sri Manjunatha Technical Services, Plot No:38, Adjacent to Kesineni Admin Office, Sri Ramachandra Nagar, Mahanadu Road, Vijayawada-520008 within 30 days from the date of receipt of this order.

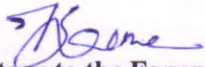
This order is passed on this, the day of 30th January 2020.

Sd/-
Member (Finance)

Sd/-
Independent Member

Sd/-
Chairperson

Forwarded By Order


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 Nodai Officer (Executive Director/Operation)/CGRF/APSPDCL/TPT.

Copy Submitted to the Vidyut Ombudsman, Andhra Pradesh 3rd Floor, Sri Manjunatha Technical Services, Plot No:38, Adjacent to Kesineni Admin Office, Sri Ramachandra Nagar, Mahanadu Road, Vijayawada-520008 within 30 days from the date of receipt of this order

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