

**BEFORE THE FORUM**  
**FOR REDRESSAL OF CONSUMER GRIEVANCES**  
**IN SOUTHERN POWER DISTRIBUTION COMPANY OF A.P LIMITED TIRUPATI**  
**On this the 2<sup>nd</sup> day of June' 2021**  
**C.G. No: 281/2019-20/Anantapur Circle**

**Present**

**Sri. Dr. A. Jagadeesh Chandra Rao**  
**Sri Y. Sanjay Kumar**  
**Sri. Dr. R. Surendra Kumar**

**Chairperson**  
**Member (Technical)**  
**Independent Member**

***Between***

K.Subramanyam,  
C/o. M/s.Vamsi Traders,  
Sy.No.56/3,  
Chukkaluru Road,  
Near New Bridge,  
Tadipatri (M),  
Anantapur Dt.

Complainant

***AND***

1. Assistant Accounts Officer/ERO/Tadipatri  
2. Deputy Executive Engineer/O/ Tadipatri  
3. Executive Engineer/O/Gooty

Respondents

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**ORDER**

1. The case of the complainant is that they are having ISC No.7231129001737 in the name of M/s. Vamsi Traders. They have received a notice for back billing from May' 18 to May'19. After receipt of notice, he submitted a letter to Respondent No. 3 for physical inspection of their unit but there was no response. Subsequently he appealed to SE/O/Anantapur and CMD/ APSPDCL/Tirupati but there was no response. AEE forced him to pay Rs.1,00,000/ on the threat of disconnection of the service. Hence he is requesting to withdraw the back billing charges and refund the amount of Rs.1,00,000/- paid by him under threat of disconnection of the service.

**DESPATCHED**  
02/06

2. Respondent No. 3 filed written submission stating that service No.7231129001737 is released in the name of K. Subramanyam M/s. Vamsi Traders with a contracted load of 100 HP and service was released on 09.01.2015. An auto generated case was registered for 6 KW(8HP) on the recorded MD of 79.7KW against the contracted load of 73.85 KW. The amount was included in CC bill in the month of 09/2018 and paid by the consumer on 26.12.2018. After payment of additional load case amount the contracted load of the above service shall be enhanced to 106 HP. Since there is no provision in CBS to enhance the contracted load above 100 HP the billing has been done under LT only and service shall be converted from LT to HT as per GTCS Clause No. 12.3.3.3.

On 18.05.2019 EE/DPE/Anantapur has registered a back billing case towards the differential tariff from LT to HT of Rs.4,21,138/-from 05/2018 to 05/2019 and PAO notice was issued to the consumer on 23.06.2019. Consumer has not responded to the PAO notice and subsequently paid only Rs.1,00,000/ and paying regular CC bills only. Consumer continuously exceeded RMD and respondent No.3 furnished the RMD particulars of the service number from June' 18 to February'2020.

3. Respondents No.1 and 2 also filed separate written submission on similar lines.
4. At first instance consumer filed an application for restraining the respondents from disconnecting the service connection during the pendency of his compliant before this forum. Basing on his request, an order was passed directing the complainant to pay Rs.1,00,000/- and on payment, the service connection shall not be disconnected during the pendency of the complaint before this forum. It appears complainant aggrieved by the orders of the forum directing him to pay Rs.1,00,000/- made a representation to Hon'ble Vidyut Ombudsman in Appeal No. 51/2019-20 and the



Hon'ble Vidyut Ombudsman was pleased to direct the forum to dispose of the complaint as expeditiously as far as possible.

5. After hearing both parties in video conferencing on 15.06.2020, this forum passed an order directing the respondents to issue revised back billing for a period of 12 months prior to the date of inspection on 18.05.2019 within 15 days from the date of receipt of this order and submit compliance report within 15 days thereon.
6. Aggrieved by the orders of this forum, complainant preferred another representation to the Hon'ble Ombudsman vide Appeal No. 19 of 2020 . The Hon'ble Ombudsman in its order dt: 20.11.2020 allowed the representation by setting aside the order of the forum and remanded this case to the forum to give a finding on the point whether the licensee followed the provisions laid down under Sub- Clause (iii) of Clause No. 12.3.3.2 of the GTCS.
7. In obedience to the orders of the Hon'ble Ombudsman the case was restored on its file and issued notice to both parties to file additional pleadings if any within 10 days from the date of receipt of the letter.
8. Point for determination is whether complainant is not liable to pay back billing amount raised on account of difference of tariff between HT and LT for theun -authorized use of electricity by the consumer for that period?

Complainant filed additional written submissions on 25.02.2021 stating to issue orders to remove the amount levied with interest in CC bill and to reverse the collected amount of Rs.1,50,000/- and adjust the same towards future bills.

Dy.EE/O/Tadipatri filed additional written submissions. Most of the contents are similar to the written submissions submitted by respondents prior to remand and further stated that acknowledgement copy of auto generated case ATP/GTY/TDPO/AG 476/18 is

not found but complainant is aware of the connected load. After receipt of additional load amount included in CC bill, complainant simply paid that amount and came with a plea that he has withdrawn the additional load only after receipt of back billing notice. Though consumer addressed letter and filed complaint before the forum questioning the back billing amount, he did not remove the additional load as per Clause No. 12.3 of GTCS and only got reduced his load when the case was coming for final hearing before the forum on 15.06.2020. The history of the account statement of the complainant clearly shows that complainant exceeded RMD continuously and that exceeding RMD is due to adding new machinery in his factory and not for any other reason. So it can be safely concluded that consumer is having more than 100 HP for about one year prior to letter dt: 03.07.2019 addressed to respondents and the service is liable to be billed under HT category only but not LT category as claimed by the complainant.

Personal hearing through video conferencing was conducted on 23.04.2021. Mr. K .Vamsi son of the complainant present on behalf of the complainant, heard him and Executive Engineer. In the afternoon after the case is posted for orders, this forum received a letter dt: 19.04.2021 stating that they are authorizing one V. Venkateswarulu to represent on behalf of them in this case. Respondent No 3 represented that Sri V. Venkateswarulu is intending to represent in all the matters pertain to Gooty posted on that day. Since Sri. V. Venkateswarulu is not an advocate and a single person could not be permitted to represent all the cases posted on that day without prior permission of this forum. The request of the complainant is declined and he was advised to file evidence or additional written submission if any within one week from the date of personal hearing.



Accordingly complainant sent additional written submissions stating that acknowledgement of receipt of notice of one month prior notice as provided in Clause No.12.3.3.2 of GTCS was not produced by the respondents in the personal hearing. Hence the proceedings may be set aside and return Rs. 1,50,000/- with interest. The contention of the complainant is that one month prior notice is not issued as per provisions of Clause No. 12.3.3.2 of GTCS to the complainant. Hence respondents are not entitled to raise back billing for the period between May' 18 to May'19.

Admitted facts in this case are that an auto generated case was registered on 28.05.2018 and included in CC bill in the month of September'18 and paid by the complainant on 26.12.2018. Respondents did not file copy of the acknowledgement of the auto generated case before the forum. So there is no documentary evidence to show that notice issued basing on the auto generated case for regularizing additional load on the complainant.

On 18.05.2019 EE/DPE/Anantapur inspected the service and found that the connected load is 107 HP. He raised back billing on the ground that complainant paid additional load amount for the auto generated case which was included in the monthly bill of August' 18. Service recorded continuously excess RMD more than 75KW/100HP from 05/2018 and it was informed to the complainant through HT bills regularly every month. Complainant also paid HT fixed charges for RMD recorded above 75 KW and this is a significant factor of recording the billing tariff of the service as per Clause No. 12.3.3.3 of GTCS and raised back billing towards difference of tariff between LT and HT from 05/2018 to 05/2019 for 13 months. PAO notice for short billing was served on the complainant on 24.06.2019.

After receipt of PAO notice for short billing, consumer represented that due to connecting of new machine, the contracted load was exceeded and he has removed the machinery and requested to inspect the service. Basing on the request of consumer Dy.EE/O/Tadipatri inspected the premises in the month of July' 19 and noticed those 4 ginning machines with each 5 HP are removed. The physical connected load is noticed as 99 HP. The consumer was advised not to connect load more than 99 HP. In cross verification the MD re-verified and found that MDs are maintained below 99 HP between the months of July' 19 to October' 19. But in the month of November' 19 MD recorded as 75 KVA and in the month of December' 2019 MD recorded as 78 KVA. The service was again inspected suddenly on 12.2.2020. and found the loads which were removed during the last inspection was again re-connected and working in process and total load is 109 HP. The inspection was conducted by D. Raghu Dy. EE/ O/ Tadipatri in the presence of consumer and consumer also signed in the inspection report . It is pertinent to note that inspection had taken place after 12 days of registering the complaint before the forum. The RMD recorded from the months of Dec' 18 to June' 19 ( Part of short billing ) shows that the connected load is more than contracted load of 99 HP. Again another inspection was conducted at the request of consumer on 10.6.2020 i.e. 5 days prior to the personal hearing stating that he has decreased the load and on inspection it was found that the connected load is 99 HP. So the history of this service shows after receipt of PAO notice for short billing, complainant decreased his connected load and requested for inspection and in that inspection the connected load is found to be 99 HP and according to the inspecting officer 4 ginning machines of 5 HP each were removed. Again when inspection was conducted on 12.02.2020 after filing of complaint before this forum, the inspecting officer found that the connected load as 109 HP. Again complainant made a representation on 12.06.2020 just before 5 days of personal hearing



with a request that he decreased the connected load as 90 HP. So complainant sought for inspection stating that he decreased the load and got inspected on 03.07.2019 and again after inspection enhanced the connected load and again before personal hearing got reduced his connected load .

Respondents did not place any documentary evidence to show that notice was served on the complainant as per Sub- Clause (iii) of Clause No. 12.3.3.2 of the GTCS.

The facts of this case shows that complainant himself addressed a letter dated 03.07.2019 to respondent No.3 admitting that he has arranged new machinery, during the previous year and from that date, he received excess bills and after receipt of notice, they reduced the load by removing the machinery. So complainant himself is admitting that he had additional load during previous year. Once complainant admitted that he is having un authorized additional load and the subsequent inspections made in this case reveals that complainant is utilizing un- authorized additional load, there is no necessity to the Respondents to prove the admitted facts. It is settled law that admitted facts are need not be proved.

Complainant did not show any authority that he is not liable to pay difference of tariff between HT and LT even though he is having connected load and exceeding the limits of LT tariff rates only on the ground that no notice is served on him under Clause No. 12.3.3.2(iii) of GTCS.

Nowhere complainant stated in the complaint or in his additional submissions subsequent to the remand that he is not having additional load other than the contracted load and his load will come under LT category only.

As per our understanding, the one month prior notice as provided in Clause. No. 12.3.3.2 of GTCS is an enabling provision to the consumer either to regularize the enhanced additional load or to reduce the connected load to enable him to continue his or her service in LT only. Consumer is entitled to exercise this option on one occasion only, if the consumer after exercising the option and reduced the load and later found the connected load is more than contracted load , penal provisions shall be invoked as per the rules in vogue. Consumer is liable to pay at the respective HT tariffs from the consumption month in which un authorized additional load is detected and till the additional load is removed. If the consumer fails to regularize the additional connected load or remove the additional load, the licensee at its discretion for the reasons to be recorded continue to provide LT supply, if there is no loss of revenue is involved. If the consumer do not get the LT service converted to HT supply and regularize as per procedure within 3 months from the date of issue of notice, Licensee is entitled to terminate the agreement by giving required notice as per Clause No. 5.9.4 of GTCS notwithstanding that complainant is paying bills at HT tariff load as per Clause. No. 12.3.3.2(i) of GTCS. The procedure mentioned in Clause No.12.3 of GTCS as per our understating is that the procedure that has to be adopted after detecting the additional load and it is with regard to regularizing of additional load and for conversion of service from LT to HT. and it is prospective in nature.

The issue whether consuming excess load than the sanctioned and connected load will come under “un-authorized use of electricity or not” is considered by the Hon’ble Apex Court of India in a case between Executive Engineer Vs M/s. Sri Seetaram Rice Mill on 20.10.2011(<http://Indian Kanoon.org/doc/430744631>)



The Hon'ble Apex Court held in Civil Appeal No. 8859 of 2011 at Para 58 as :

*“Having dealt with and answered determinatively the questions framed in the judgment, we consider it necessary to precisely record the conclusions of our judgment which are as follows:-*

- 1. Wherever the consumer commits the breach of the terms of the agreement, Regulations and the provisions of the Act by consuming electricity in excess of the sanctioned and connected load, such consumer would be 'in blame –*
- 2. and under liability' within the ambit and scope of Section 126 of the 2003 Act.*
- 3. The expression 'unauthorized use of electricity means' as appearing in Section 126 of the 2003 Act is an expression of wider connotation and has to be construed purposively in contrast to contextual interpretation while keeping in mind the object and purpose of the Act. The cases of excess load consumption than the connected load inter alia would fall under Explanation (b)(iv) to Section 126 of the 2003 Act, besides it being in violation of Regulations 82 and 106 of the Regulations and terms of the Agreement.*
- 4. In view of the language of Section 127 of the 2003 Act, only a final order of assessment passed under Section 126(3) is an order appealable under Section 127 and a notice-cum-provisional assessment made under Section 126(2) is not appealable.*
- 5. Thus, the High Court should normally decline to interfere in a final order of assessment passed by the assessing -*
- 6. Officer in terms of Section 126(3) of the 2003 Act in exercise of its jurisdiction under Article 226 of the Constitution of India.*
- 7. The High Court did not commit any error of jurisdiction in entertaining the writ petition against the order raising a jurisdictional challenge to the notice/provisional assessment order dated 25<sup>th</sup> July, 2009. However, the High Court transgressed its jurisdictional limitations while travelling into the exclusive domain of the Assessing Officer relating to passing of an order of assessment and determining factual controversy of the case.*

8. *The High Court having dealt with the jurisdictional issue, the appropriate course of action would have been to remand the matter to the Assessing Authority by directing the consumer to file his objections, if any, as contemplated under Section 126(3) and require the Authority to pass a final order of assessment as contemplated under Section 126(5) of the 2003 Act in accordance with law”.*

So relying upon the above decision of Hon’ble Apex Court having excess load than sanctioned load and connected load is violating the terms of agreement and regulations and provisions of the Act and it will come under the expression “un - authorized use of electricity” as provided under Sec. 126 of the Electricity Act, 2003.

Sub- Section ( 5) of Sec. 126 of Electricity Act is as follows :

*“If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.”*

According to us, the relevant provision for un -authorized use of electricity is provided in Clause No. 9.3.2.9 of GTCS which is as follows:

*“If the assessing officer reaches to the conclusion that Un-authorized Use of Electricity has taken place, the assessment shall be made for the entire period during which such un-authorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection in accordance with Section 126 (5) of the Act”*



In this case, the inspecting officer only raised back billing for 13 months on the ground that consumer has paid amount for additional load. But the same fact was not reflected in accounts resulting in raising bill under LT tariff instead of HT tariff. In this case only back billing was raised for the difference of tariff between HT and LT and this forum in its earlier order dt:24.09.2020 limited the back billing for a period of one year in consonance with the provisions of Sec. 126 (5) of the Electricity Act and as per Clause 9.3.2.9 of GTCS. Amount due and payable by the consumers is public money. Electricity is not a commercial commodity brought and sold, but a national energy resource. Consumers are liable to pay for the energy used and enjoyed by them.

There is no additional material placed by the complainant before this forum to revise the order passed by the forum earlier on 24.09.2020. Hence the order passed by this forum on 24.09.2020 is to be confirmed. There are no merits in the complaint. The point is answered accordingly.


9. In the result respondents are directed to issue revised back billing for a period of 12 months prior to the date of inspection i.e. 18.05.2019 within 15 days from the date of receipt of this order and submit compliance report within 15 days thereon. Accordingly the complaint is disposed off.

Sd/-  
**Member (Technical)**

Sd/-  
**Independent Member**

Sd/-  
**Chairperson**

**Forwarded By Order**

  
**Secretary to the Forum**

**This order is passed on this, 2<sup>nd</sup> the day of June'2021.**

If aggrieved by this order, the Complainant may represent to the **Vidyut Ombudsman, Andhra Pradesh, 3<sup>rd</sup> 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.**

To

The Complainant

The Respondents

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

Copy to the Nodal Officer (Chief General Manager /O&M)/CGRF/APSPDCL/TPT.

Copy Submitted to the Vidyut Ombudsman, Andhra Pradesh , 3<sup>rd</sup> Floor, Sri Manjunatha Technical Services, Plot No:38, Adjacent to Kesineni Admin Office, Sri Ramachandra Nagar, Mahanadu Road, Vijayawada-520008.

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