

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

On this 9th day of February' 2021

C.G.No:60/2020-21/ Anantapur Circle

Present

Sri. Dr. A. Jagadeesh Chandra Rao

Sri. R.M.M. Baig

Sri. Dr. R. Surendra Kumar

Chairperson

Member (Finance)

Independent Member

Between

P.Chodaiah,

S/o. P. Ramulu,

C/o. M/s. Sri Saraswathi Vidya Mandir,

Pamidi Main Road (V) & (M),

Anantapur

Complainant

AND

Respondents

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

ORDER

1. President and Secretary, Sri Saraswathi Vidyamandiram Pamidi (V) & (M) Anantapur Dt. Main Road filed a complaint stating that a case for malpractice use of energy was registered by Dy. Executive Engineer against service No. 7211323003005 of Pamidi Distribution of Anantapur Circle. The inspecting officer calculated the assessment from 2011 for change of the category. Category was changed without intimation. The service may be billed as per the category changed by the electricity department. He is unable to understand how he is responsible for the lapses of electricity department personnel. Had his service was continued and arranged the payment as per category change, the question of accumulation of huge amount and there would not have been caused any burden on them. It is alleged that the supply is used for industrial purpose. But they are not using the supply for industrial purpose and they are running school 'Saraswathi Vidya Mandir'

since a very long time. The notice was served on 25.07.2020. They received CC bill for the month of Oct '2020. They contacted the authorities and sent representations but there is no response. The notice was issued erroneously, hence it is to be cancelled and withdraw the assessment notice.

2. Respondents filed written submission stating that service No.7211323003005 was released on 25.09.1992 under category -2 in favour of N.M. Nagaiah, Pamidi . The service has been billed under category- 2 from 25.09.1992 to July'2011. Further the service has been billed under Cat-VII from 08/2011 to 07/2018. There after it was billed under category -IV (Cat- VII was re-categorized under Cat-IV) till Jan'2020. An additional load of 5 KW was released to the existing load of 0.18 KW totaling to a contracted load of 5.18 KW. V.M Ravi Sankar Dy.EE/ DPE-1/Anantapur inspected the service under Cat- LT IV (D) in the presence of Pulla. Chodaiah beneficiary and Secretary of Sri Saraswathi Vidya Mandir . According to inspection report, consumer is utilizing power supply under Cat - IV (D1) General purpose instead of Cat-II (non-domestic) as the Saraswathi Vidyamandir , Pamidi Samithi Primary school and Saraswathi Vidya Mandir High School are running in the consumer premises which should be under Category- II. Consumer's representative P. Chodaiah and others admitted that Saraswathi Vidya Mandir was established 30 years back . The service was released in the name of N. M. Nagaiah . R. Srinivasan Head Master of Saraswathi Vidya Mandir had given statement that their school Pan No. AAO AS 2900A does not have I.T. exemption. Consumer representative has not provided N. M. Nagaiah's Pan Number details. Hence the case under un -authorized usage, non-sanctioned utilization of supply is registered. The service was under Cat -II up to july'2011, the category was changed to cat- VII from Aug'2011 and subsequently to Cat- IV (D1) in Aug' 2018. Hence assessment is calculated accordingly from 10.08.2011 onwards.

Dy. Executive Engineer /O/Gooty served Provisional Assessment Order for un -authorized usage of electricity. Superintending Engineer/Assessments/Tirupati has finalized the case as per the final Assessment order. Demand was raised for Rs.5,79,458/- and included in the CC bills in the month of June'2020.

3. Personal hearing through video conferencing was conducted on 23.12.2020. Sri. Subba Reddy president was present on behalf of the complainant and Respondent present.

Heard both sides. Since complainant stated that service was originally released in the name of N.M. Nagaiah, the then Head Master and he expired. Their school is having affiliation with Saraswathi Vidyapeetham, Andhra Pradesh. Their society is a registered society running on no - profit basis and he can file documents to prove the same. Hence time was given to furnish the documents. Accordingly he furnished the following documents:

1. Affidavit of P. Chowdaiah S/o. P. Ramudu Secretary S.S.V. Mandiram, Pamidi attested by Notary stating that service was taken in the name of N.M. Nagaiah the then Head master of the school and he died on 25.11.2017 the service No. is 7211323005 and it pertains to S.S.V. Mandiram, Pamidi and not to the individual.
2. Copy of Death certificate of N.M. Nagaiah
3. Confirmation letter by president and secretary of Sri Saraswathi Vidya Mandir stating that N.M. Nagaiah served as head master from 1989 to 1994 and from 2002 to 2017 . Service was released in the name of N. M. Nagaiah while he was working as head master to the school. The service was not pertains to Nagaiah and it is taken only for the school.
4. List of schools having affiliation with Saraswathi Vidya Peetham/Vidya Bharathi Andhra Pradesh in Aanatapur Dt . The Saraswathi Vidya Mandir Pamidi, (Primary) and Saraswathi Vidya Mandir Pamidi High School are shown in serial No. 6 and 11 respectively.
5. Proceedings of CIT (Exemption) Hyderabad issued in favor of Saraswathy Vidya Peetham, Anantapur dt: 18.08.2017 for the Assessment Year- 2017-18.
6. Order for registration under Sec 12 AA of the Income Tax Act, 1961 issued by CIT (Exemptions) Hyderabad Dt: 11.09.2020 issued to Vidya Bharati Andhra Pradesh

7. Order for approval under Sec. 80 G (5) (vi) of Income Tax Act, 1961 issued by CIT (Exemption) income tax Department Hyderabad dt: 12.09.2020 for the Assessment Year 2020-21.
8. Proceedings of Regional Joint Director, Kadapa dt: 04.07.2018 for grant of renewal of recognition for un aided school in favor of Sri Saraswathi Vidya Mandir High School, Pamidi, Anantapur Dt for the academic years from 2018-19 to 2022 -23 .
9. Pan card in the name of Sri Saraswathi Vidya Mandir Sanchalitha Samithi Pamidi High School AAO AS 2900A
10. Certificate issued by Sri. D. Harichandra Rama, Chartered Accountant dt: 18.11.2020 stating that Sri Saraswathi Vidya Mandir, Pamidi was established in the year 1974 under the flagship of Sri Saraswathi Vidyapeetam, Hyderabad. This school is imparting education to children from LKG to 10th Class, the school is collecting fee from students to meet the expenses only and running the school without any profit motive. This institute is running on no profit, no loss basis.
11. Audit reports issued by D. Aravind Rama, Chartered Accountant for the years 01.04.2015 to 31.03.2016, 01.04.2016 to 31.03.17, 01.04.2017 to 31.03.2018, 01.04.2018 to 31.03.2019 and 01.04.2019 to 31.03.2020.
12. Photostat copy of certificate of registration (No.40/2014) issued by Registrar of societies Anantapur Dt: 20.02.2014.

All the above documents shows that the service No. 7211323003005 in the name of N.M. Nagaiah is being utilized by Sri Saraswathi Vidya Mandir.

3. Point for determination is whether the service Connection No. 7211323003005 of the complainant is entitled to be continued under Cat-VII from the F.Y. 2011 -12 to 2018-19 and in category IV (D) from F.Y. 2019-20 and 2020-21?

The Tariff Order issued for the F.Y. 2018-19 for Cat- VII (A) General Purpose is :

“Applicable for supply of energy to places of Crematoriums, Government Educational Institutions and Student Hostels run by Government agencies, Charitable Institutions i.e., Public Charitable trusts and societies registered under the Societies Registration Act running educational and medical institutions rendering totally free service to the general public, recognized service institutions and registered old age homes”.

Subsequently in the Tariff order for the F.Y. 2019-20 LT Cat VII (A) is re-categorized as LT Cat- IV (D) .

All the above documents filed by the complainant shows that the complainant's institutions run by society registered under Societies Registration Act and rendering gratuitous service to the public at large without any profit. So complainant's institution will certainly fall under LT Cat IV (D) only and not under LT Cat-II.

The inspecting officer registered the case on the ground that service is in the name of N.M. Nagaiah is being utilized by Saraswathy Vidya Mandir Pamidi Samithi Primary School and Sarswathi Vidyamandir, Pamidi. According to the inspecting officer, R. Srinivasan Head Master gave a statement to him that they do not have IT exemption, hence he has registered a case for un-authorized usage from July'2011 on the ground that the service is under the category VII from Aug'2011. The inspecting officer did not choose to issue notice to the complainant for production of documents to ascertain on what basis the service of the complainant has to be continued to be billed under Cat-VII. So also he did not choose to verify the record in the office on what basis the service was re classified under Cat-VII from Cat-II in July'2011. Admittedly the service is being utilized by the complainant from the date of release of service. But no action was taken for change of the name of the service from N.M. Nagaiah to Sri Saraswathi Vidya Mandir . On the other hand ADE/Gooty issued a notice in D.No.98/2015 dt : 31.08.2015 (Filed by complainant) to Sri Saraswathi Vidya Mandir School, Pamidi for payment of additional load amount for the service No.7211323003005. So the respondents are aware that this service is being utilized by Sri Saraswathi Vidyamandir. But not advised the complainant to get the transfer of the service in the name of the school. Hence respondents are estopped from taking a plea though the service was taken in the name of individual N.M. Nagaiah utilized the

service by the school. Complainant did not alter the purpose of usage of the premises from the date of obtaining service connection. If the inspecting officer found that service is being billed under wrong category, he has to follow the provisions of Clause No. 3.4.1 of GTCS which 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.”

So if the inspecting officer found that the service is billed under wrong category, a notice has to be issued to the consumer giving an opportunity to file objections within 15 days from the date of receipt of notice and after hearing only the service can be reclassified. Respondents did not follow above said Clause No. 3.4.1 of GTCS and straight away issued provisional assessment order. Neither the inspecting officer nor the officer who served the provisional assessment order did not state under what provision of law they are empowered to assess un authorized usage from August'2011 i.e. for more than 9 years . Respondents have also not filed any document to show that calculation sheet of the assessment amount was served on the complainant. The provisional assessment order shows that complainant has to pay 50 % of the assessed amount within 7 days from the date of receipt of order and in case he has objections for the assessment, he can prefer an appeal to SE/Assessments/Tirupati within 10 days. When Clause No. 3.4.1 of GTCS mandates to issue notice to the consumer to file objections within 15 days for change of category, how a provisional assessment order can be given granting 7 days time for payment of 50 % of assessed amount and to prefer

an appeal within 10 days after paying 50% of the amount. So issuing of provisional assessment order without following the provisions of GTCS is not valid and sustainable.

It is appropriate to refer the judgment of the Hon'ble Apex Court delivered in Civil Appeal No.1672/2020 (Arising out of SLP (Civil) No. 5190 of 2019) in between:

-Assistant Engineer (D)-Ajmer... Vs Rahamatuallh Khan Alias ...on 18 February, 2020

7.3 *"Sub-section (1) of Section 56 confers a statutory right to the licensee company to disconnect the supply of electricity, if the consumer neglects to pay the electricity dues.*

This statutory right is subject to the period of limitation of two years provided by sub-section (2) of Section 56 of the Act.

7.4 *The period of limitation of two years would commence from the date on which the electricity charges became "first due" under sub-section (2) of Section 56. This provision restricts the right of the licensee company to disconnect electricity supply due to non-payment of dues by the consumer, unless such sum has been shown continuously to be recoverable as arrears of electricity supplied, in the bills raised for the past period.*

If the licensee company were to be allowed to disconnect electricity supply after the expiry of the limitation period of two years after the sum became "first due", it would defeat the object of Section 56(2).

8. *Section 56(2) however, does not preclude the licensee company from raising a supplementary demand after the expiry of the limitation period of two years. It only restricts the right of the licensee to disconnect electricity supply due to non-payment of dues after the period of limitation of two years has expired, nor does it restrict other modes of recovery which may be initiated by the licensee company for recovery of a supplementary demand".*

So, issuing of provisional assessment notice for back billing for more than two years with a stipulation that the service connection will be discontinued within 7

(Seven) days in case the consumer fails to pay 50% of the provisional assessment amount is not legally sustainable.

It is brought to the notice of the Forum that a circular was given in D.No.243/2002 dt 23.05.2002 by the then Chairman & Managing Director of the Licensee in respect of the documents required to be submitted by the consumers who wants their service connections to be categorized under LT Cat – VII(A). The circular further shows that all the cases have to be reviewed every year. In this case neither the inspecting officer nor the officer who served the provisional assessment order did not choose to follow the circular issued by the Licensee.

It was also brought to the notice of this Forum that previously there is a procedure of conducting Annual physical verification of the service connections. Had that procedure is being continued, this type of mistakes could have been avoided.

The inspecting officers are not expected to follow only some provisions of GTCS ignoring other provisions of GTCS, the law of Limitation and also the provisions of Electricity Act, 2003 more particularly Sub Sec. (2) of Sec.56 of the Electricity Act, 2003 while registering cases for back billing on the ground that the service is billed under wrong category. So also the officers who are serving provisional assessment orders on the consumers are also expected to go through the provisions before serving assessment order and if they found that there is error apparent on the face of the inspection notes, they should seek clarification and approval from the higher authorities before serving the provisional assessment order. It will be very difficult for any consumer to pay 50% of the provisional assessment amount when back billing was issued for more than 8 years and all the officers concerned should take this fact into consideration before they are issuing back billing notices that too when the mistake was apparently on the part of the employees of the licensee.

Several cases came before this Forum that field officers issuing back billing notice under wrong category for several years (in this case 9 years) after the mistake is said to have been detected, straight away serving provisional assessment order for payment of the back billing amount without initially serving notice as per provisions of Clause No.3.4.1 of GTCS. This procedure is causing hardship to the consumers and

are compelled to pay 50 % of provisional assessment amount mentioned in the notice, even to prefer an appeal and avoid disconnection though the wrong categorization was happened only due to the lapses of the employees of the Licensee.

Hence, Licensee is requested to issue suitable directions to the field officers to get prior approval from Superintending Engineers of the circle whenever they are raising bill for back billing for more than one year and also to restore the procedure of annual physical verification of the service connections or at least for the subsidized categories and also to follow the circular issued by the Licensee in D.No.243 dt:23.05.2002 scrupulously, so that there will be no financial loss to the DISCOMs, hardship and inconvenience to the consumers.

In view of the above reasons the service No.7211323003005 is entitled to be continued under Cat-VII A till the financial year 2018-19 and under Cat- IV D from F.Y. 2019-20. The point is answered accordingly.

4. In the result the Provisional assessment order dt : 20.04.2020 issued by the Respondent No.2 is here by set aside and respondents are directed to continue the service connection No.7211323003005 under Cat IV (D) during this financial year and submit the compliance report within 15 days from the date of receipt of this order. Complainant is advised to get the service transferred in the name of Sri Saraswathi Vidya Mandir, Pamidi to avoid this type of complications in future.

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.

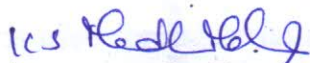
This order is passed on this, the day of 9th February'2021.

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 Nodal Officer (Chief General Manager (O&M)/ 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.

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