

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

On this 30th day of March 2021
C.G.No:47/2020-21/ Anantapur Circle

Present

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

Chairperson
Member (Finance)
Member (Technical)
Independent Member

Between

A. Suresh,
M/s. Suresh Stone Crusher,
4/98, Extention/734-A,
Rayalacheruvu,
Yadiki (M),
Anantapur (Dt)

Complainant

AND

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

Respondents

ORDER

1. The case of the complainant is that complainant is having service No.7231430001756 with a connected load of 100 KVA. All the demand notices served on them as per RMD recorded for that month and charged accordingly. They have paid all demand notices in full and in time. They have communicated the same to the officials from time to time but there is no relief and disconnected the supply. They have paid all demand notices raised in the disconnection period. Hence requested to cancel the cases raised against their service, refund that amount paid till now towards this case and refund the demand notices amount.

2. Dy. EE/O/Tadipatri filed written submission stating that complaint was filed against issuing of short billing cases booked against the service and the details are as follows:

Additional load case was booked on 16.12.2016 by Mr. G. Reddeppa ADE/DPE/TPT with a connected load of 177.5 HP. Mr. D. Nagaraju Ex. Dy.EE/O/Tadipatri to finalize the load, inspected the service. No. 7231430001756 on 28.01.2017 and found the connected load as 140 HP. Complainant also signed in the inspection notes.

Basing on the above said report, EE/O/Gooty issued Final assessment orders in Case No.DPE/GTY/TDPO/5913/16 for connected load of 140 HP for an amount of Rs.97,050/-. Consumer paid Rs.97,050/- for the Final assessment order issued for the above said additional load case. But the load was not regularized as the service is in LT and contracted load cannot be fixed more than 100 HP. Mr. G. Reddeppa ADE/DPE/TPT booked second case on 16.12.2016 for short billing with an amount of Rs.5,01,194/- as the LT service to be billed in HT billing from June '2014 to December'2016 considering the additional load case and RMD.

Complainant has un- authorizedly exceeded the contracted load and RMD suitably fit for HT category billing as per Clause No. 12.3.3.3 of GTCS. Therefore the short billing was proposed for value of energy and value of demand. The same was explained to consumer and informed that service has to be converted to HT. The payments are not regularized. Consumer was informed to book the application in mee-seva for conversion of LT service into HT service.

Consumer booked an application in mee-seva vide Reg. No.72314C000082017Jun14 Dt: 14.06.2014 by declaring his CMD as 104 KVA to convert into HT category. After receipt of application consumer was informed about the amount required to be paid for sanction and replacement of DTR for converting the service from LT to HT. After knowing the expenditure for converting the service, consumer not come forward due to bad financial condition and application was deleted. Mr. V. Jayaraju Ex- DE/DPE/Anantapur booked a short billing case on 18.05.2019 for an amount of Rs.10,60,375/-.

After the back billing case booked for an amount of Rs.10,60,375/-consumer came forward to convert the LT service to HT service with CMD of 105 KVA(180HP). The application was registered in mee-seva vide Reg. No.72314C027442018AUG14 re-registered and the manual estimate was created and forwarded to higher authorities but due to technical problems another application was booked vide Reg. No.72314C002682019Jun20 Dt: 20.06.2019 and estimate was created vide WBS No. E - 2019-07-02-11-04-012. The estimate was sanctioned vide sanction No.SE/Op/ATP/NP/HT/SAN. No.14 /19-20 Dt: 19.07.2019. The demand notice served to the consumer but payments are not paid by the consumer.

Since consumer not paid demand charges for the estimate, the service could not be changed to HT Cat-III with CMD 105 KVA including HT metering structure.

LT Service No. 7231430001756 billing in HT from the month of 06/2019 with CMD 105 KVA after taking declaration of CMD from the consumer to avoid further HT short billing.

Consumer is utilizing the supply more than 100 HP physically and RMDs are crossing, so liable to pay back billing amount of two shortfall billing cases with a total amount of Rs.15,61,569/- (Rs.5,01,194/-+ Rs.10,60,375/-)

3. AAO/Rural/Tadipatri filed written submission separately. The contents of the written statement are almost similar with that of written submission of Respondent No.2. The additional submission in brief are that Provisional Assessment notice issued to the consumer on 06.01.2017 by Dy.EE/O/Tadipatri vide Lr. No. ADE/OSD/TDP/D.No.330 /16 dt: 06.01.2017 towards back billing for an amount of Rs.5,01,194/- for the period between 14.06.2014 to 14.12.2016 vide case No. DPE/GTY/TDPO/5912/16 Dt: 29.12.2016 .

The said back billing amount has been raised and included in the consumer ledger in 07/2019 and Consumer not paid the amount.

EE/O/Gooty issued Final Assessment Order on additional load case when consumer has un-authorizedly exceeded contracted load by 107 HP over and above the contracted load and having connected load of 140 HP. Consumer has paid the assessed amount of Rs.97,050/- on 01.04.2017 vide order No.DE/OP/GTY/F. No. FAO/D.No.1139/17

Dt: 23.02.2017. On 18.05.2019 EE/DPE/Anantapur inspected consumer premises and found connected load of 178 HP and booked back billing case towards difference of tariff between LT to HT for Rs.10,60,375/- for the period from 01/2017 to 05/2019 and issued notice to the consumer by Dy.EE/O/Tadipatri.

Accordingly the bill amount has been raised and included in consumer ledger in the month of September' 19 and consumer not paid the amount.

On 26.07.2020 AE/DPE/Anantapur inspected the service and found partial voltage drop in R -Phase of the meter, resulting less energy consumption recorded and booked short billing case for Rs.13,358/- for defective period from 30.06.2019 to 26.07.2019 and issued notice to consumer by Dy. EE/O/TDP vide case No. DPE/GTY/TDPO /8346/19 Dt: 20.08.2019 and bill has been raised and included in the consumer ledger in the month of September'19 and consumer so far not paid and service was disconnected. Consumer has approached the Corporate Office, Tirupati on 27.12.2019 and requested for sanction of installments against 25% of back billing case amount of Rs.15,74,827/-. Corporate Office/Tirupati has sanctioned 5 monthly installments for Rs.3,93,710/- i.e. 25% of Rs.15,74,827/- on 03.01.2020 .

Consumer had paid 1st installment on 13.01.2020 for Rs.81,710/- and got restored the supply and balance installments also paid as on 17.06.2020. Consumer accepted and requested for sanction of additional load of 69 HP and making total of 140 HP for service conversion from LT to HT. Based on estimate sanction Dy. EE/O/Tadipatri has recommended for HT billing until the conversion of service to HT billing with a load of CMD 105 KVA vide Lr. No.Dy.EE/O/TDP/JE/F. No. D.No.557/19 Dt: 21.06.2019. As per the above recommendation office of Respondent No.1 changed the CMD for 100 HP in CBS and no provision to enhance CMD more than 100 HP in LT-CBS software and issuing monthly cc bills under HT tariff billing with load of CMD 105 KVA from 06/2019 onwards. Consumer is not paying regularly as per HT bill and an amount of Rs. 14,35,123/- is outstanding as on 31.07.2020.

According to Clause.7.5.1 and 12.3.3.3 of GTCS issued by Hon'ble APERC the service shall be convertible to HT and liable to be billed under HT tariff.

Respondent No. 1 also furnished the particulars of RMD from July' 2014 to July'2020 in a table which reveals that RMD of the service is more than 100 HP in every month.

4. Personal hearing through video conferencing was conducted on 09.11.2020 and 10.02.2021. Complainant and respondents present and heard both sides.
5. The point for determination is whether the supplementary bills issued for an amount of Rs.5,01,194/- for the period between 14.06.2014 to 14.12.2016 and for Rs.10,60,375/- for the period between January'2017 to May'2019 are liable to be withdrawn?

The written statement of respondents No. 1 and 2 shows that additional load case was booked by DPE/Gooty on 16.12.2016 stating that complainant is having connected load of 178 HP against the contracted load of 71 HP having excess load of 107 HP. Subsequently Mr. D. Nagaraju the then Dy.EE/O/Tadipatri inspected the service on 28.01.2017 and found the connected load is as 140 HP. Complainant also signed in the inspection notes. Subsequently basing on the above said report EE/O/Gooty issued FAO for a connected load of 140 HP for an amount of Rs. 97,050/- on 06.01.2017. The payment details of Rs.97,050/- are not furnished by the respondents. The notice issued for development charges dt : 06.01.2017 by Dy.EE/O/Gooty shows the previous history of cases booked against the service connection as :

1. On 16.12.2016 for back billing,
2. On 20.09.2016 for short billing on account of meter found defective
3. On 18.05.2019 for back billing and
4. On 26.07.2019 for short billing on account of meter found defective.

But as per the provisional assessment order for back billing issued by the Dy.EE/O/Tadipatri dt: 16.12.2016 shows that three theft of energy-metered are registered against the service on 26.05.2009 (Two cases) 14.07.2009 and on 16.12.2016 towards development charges of Rs.97,050/- The cases registered on 20.09.2016 and 26.07.2019 towards short billing on account of meter found defective and the case for back billing on 18.05.2019 .

Para 11 and 12 at page 2 of written statement of Respondent No.1 shows that as per the complainant's request after DPE case for additional load, an estimate was prepared and sanctioned vide estimate No.E-2019 -07-02-11-04-012 and basing on estimate sanction

Dy.EE /operation/Tadipatri has recommended for HT billing until the conversion of service to HT billing with load of CMD 105 KVA (140HP) vide Lr. No. Dy.EE/O/TDP/JE/ F. No/ D.No.557/19 dt : 21.06.2019.

Para 8 to 10 at page 2 of written statement of respondent No. 2 shows that complainant booked an application in mee- seva vide Reg. No.72314C000082017Jun14 Dt : 14.06.2014 by declaring his CMD 104 KVA to convert into HT category. After receipt of application from the complainant, he was informed about the required amount to be paid for converting the LT service to HT service. But the application was deleted as complainant did not come forward to pay the amount.

The written statement of Respondent No. 2 at page 3 in the end of para 12 further shows that complainant came forward to convert the LT service to HT service with CMD of 105 KVA (180HP) after back billing case was registered on 18.05.2019 and the same mee-seva application vide Reg No. 72314C027442018Aug14 was re -registered and manual estimate was created and there after the estimate was sanctioned vide sanction No.SE/OP/ATP/NP/HT/SAN No.14/19-20/Dt:19.7.2019. The demand notice was served but complainant not paid the amount.

So as per the versions of respondents No. 1 and 2 an estimate was prepared on two (2) occasions i.e. on 14.06.2014 and 19.07.2019. But complainant did not come forward to convert the service from LT to HT. No explanation was given by the field officers as to why action was not taken as per Clause No. 12.3.2 of GTCS. When complainant did not come forward to convert the service from LT to HT and why they allowed him to continue in LT service and raised 2 shortfall billing cases for the period between June'2014 to December'2016 and from January'2017 to May'2019. Respondents also did not explain why the back billing amount was included in the consumer ledger in July'2019 i.e. after a lapse of 2 years and six months when case was registered by Dy.EE DPE-2/Tirupati on 29.12.2016 and provisional assessment notice was served by Dy. EE/O/Tadipatri on 06.01.2017. So also as to why Dy. EE/ O/Tadipatri inspected the premises on 28.01.2017 to finalize the load when PAO was served on the complainant on 6.01.2017. So it can be safely concluded that after serving of PAO notice by Dy.EE/O/Tadipatri on 06.01.2017, complainant might have approached him objecting for the load mentioned in the inspection report by

Dy. EE/DPE/Tadipatri on 16.12.2016 and ADE/O/Tadipatri might have inspected the premises again in the presence of complainant and found the connected load is at 140 HP and FAO was issued by EE/Operation/Gooty basing on the inspection report of ADE/Operation/Tadipatri.

The above facts clearly shows that complainant is having 140 HP against his contracted load of 71 HP as on 28.01.2017. But respondents to the reasons best known to them allowed the complainant to continue the service under LT category only and without resorting to apply the mandatory provisions of Clause No. 12.3.2 of GTCS.

The office copy of the proceedings of the CMD Dt: 03.12.2020 (It appears there is a typographical mistake instead of typing the date as 03.01.2020) complainant was permitted to pay 25% of the amount of Rs.3,93,710/- out of back billing amount of Rs.15,74,827/- in five installments upto 16.05.2020. The order is also silent in respect of mode of payment of balance of 75% of the back billing amount.

The relevant provision when additional load is detected is provided in Clause No.12.3.3 of GTCS. The relevant provision for this case is Clause. No. 12.3.3.2 and 12.3.3.3 which are as follows;

12.3.3.2 : Cases where the total Connected Load is above 75 HP/56kW or

- i. 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.***
- ii. The Company may at its discretion, for the reasons to be recorded and in cases where no loss of revenue is involved, continue LT supply. If the consumer, however, makes arrangements for switchover to HT supply, the Company shall release HT supply as per the rules.***
- iii. One Month notice shall be given to regularize the additional Connected Load or part of additional load as per the requirement of the Consumer or to remove the***

additional connected load. If the consumer desires to continue with the additional connected load, he shall pay the required service line charges, development charges and consumption deposit required for conversion of LT service into LT 3(B) or HT service depending upon the connected load. However, if the consumer opts to remove the additional connected load and if the additional load is found connected during subsequent inspection, penal provisions shall be invoked as per the rules in vogue.

- iv. Service of such consumers who do not pay HT tariff rates or who do not pay the required service line charges, development charges and consumption deposit, shall be disconnected immediately on expiry of notice period and these services shall remain under disconnection unless the required service line charges, development charges and consumption deposit are paid for regularizing such services by conversion from LT to HT category.*
- v. 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.*

12.3.3.3: *Cases where the total Connected Load is above 75 HP/56kW 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 inspected by the designated officer of the Company”.*

Respondent No.3 in his reply for the letter addressed to him by the secretary of the forum requesting to furnish information stated that:

1. There is no record for the inspection notes for Case No. ATP/GTY/TDPO/E.79547/11 and copy of acknowledgment served on the complainant. Case details were also not available in MATs as the case is deleted. The above said case is an auto-generated case. But in his letter dt: 15.03.2021 addressed to secretary of the forum it was mentioned that the date of inspection was

06.06.2011, amount was assessed for Rs.1,02,000/- and Rs.50,000/- was paid and this amount was transferred to finalize the case vide DPE/ GTY/ TDPO/ 5913/16.

2. There is no record for the inspection notes for case No. ATP/GTY/TDPO/3230/14 and acknowledgment copy. Executive Engineer further stated that as the additional load booked vide the above 2 cases was less than the case booked vide DPE/GTY/TDPO/5913/16 CL140 HP, at the time of finalizing the case, the highest additional load was taken and the two cases i.e. ATP/GTY/TDPO/E.79547/11 and ATP/GTY/TDPO/3230/14 were deleted. According to Respondent No. 3 those two cases might have deleted in the month of February'17 on the report of the then Dy.EE /O/Tadipatri. No provision is placed before this forum to show that earlier cases registered in the year 2011 and 2014 can be deleted in the year 2017 while finalizing the case that was detected in 2016. Rs.50,000/- was paid by the complainant vide PR No. 823512 Dt: 09.4.2012 and it is entered in records on 21.04.2012 and Rs.47,050/- was paid vide PR No.0417-13944475 dt: 01.04.2017.

The record of the service number shows that the service was inspected on 3 occasions on 06.06.2011, 23.01.2014 and 16.12.2016. Complainant filed applications for conversion of his service from LT to HT on two occasions declaring his load as 104 KVA and 105 KVA respectively. But did not choose to pay the necessary amount for conversion of the service. Complainant did not state in his complaint specifically that he is not having load of 140 HP. But in para 4 of his complaint, he only raised technical objection that RMD has shown up to 136 KVA but the capacity of DTR is 100 KVA. So it will not withstand up to 136 KVA hence RMD was recorded wrongly. The back billing notices were not served on him basing on the RMD. The contracted load of 140 HP was finalized only after physical inspection of the premises. The burden lies on the complainant to prove that 100 KVA DTR could not withstand 136 KVA. No authority is placed before this forum by the complainant that a DTR of 100 KVA could not withstand up to 136 KVA. On the other hand respondents categorically stated in the personal hearing that 100 KVA DTR could withstand up to the RMD recorded from the service of the consumer.

The service has to be billed at respective tariff rates from the consumption in which the un-authorized additional load is detected as per Clause No. 12.3.2 of GTCS. In this case as per the version of Respondent No. 3 additional load case was detected in the year 2014. Complainant also filed an application for converting the service to HT declaring his CMD as 104 KVA on 14.06.2014. So complainant himself admitted that he is having CMD of 104 KVA as on 14.06.2014. EE/ DPE issued back billing notice for the case registered by him vide Case No. DPE/GTY/TDPO/5912/16 Dt: 29.12.2016 for the difference of tariff between HT to LT from 14.06.2014 to 14.12.2016 for an amount Rs.5,01,194/- PAO notice was issued to consumer on 06.01.2017 vide Lr. No. ADE/OSD/TDP/D.No.330/16 Dt: 06.01.2017. The amount was included in the ledger in July'2019. The back billing notice was issued for two and half years and it was included in the ledger after two and half years after issuing of back billing notice.

On 18.05.2019 Executive Engineer/DPE/Anantapur inspected the premises and issued back billing notice for the difference of tariff from LT to HT for Rs. 10,60,375/- for the period between 01/2017 to 05/2019. Notice was issued to the consumer vide case No. DPE/GTY/TDPO/8228/19/Dt:21.05.2019 and Lr.No.Dy.EE/O/TDPO/JESB/D.No.13/2019-20/Dt:11.06.2019. The amount was included in the consumer ledger in the month of September' 2019. The back billing notice was issued for about two years and four months and included in the ledger within four months from the date of issuing of Provisional assessment order.

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. ***The next issue is as to whether the period of limitation of two years provided by Section 56(2) of the Act, would be applicable to an additional or supplementary demand.***

7.1 *Prior to the coming into force of the Electricity Act, 2003, the Indian Electricity Act, 1910 governed the law pertaining to the use and supply of electricity in India. Section 24 of the Indian Electricity Act, 1910 read as follows:—*

“24. Discontinuance of supply to consumer neglecting to pay charge.

(1) *Where any person neglects to pay any charge for energy or any sum, other than a charge for energy, due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charger or other sum, together with ally expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.*

(2) *Where any difference or dispute which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision:*

Provided that the prohibition contained in this subsection shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the Electrical Inspector of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request.”

The Standing Committee of Energy in its Report dated 19.12.2002 submitted to the 13th Lok Sabha, opined that Section 56 of the 2003 Act is based on Section 24 of the 1910 Act

The Standing Committee further opined that a restriction has been added for recovery of arrears pertaining to the period prior to two years from consumers, unless

the arrears have been continuously shown in the bills. Justifying the addition of this restriction, the Ministry of Power submitted that : –

“It has been considered necessary to provide for such a restriction to protect the consumers from arbitrary billings.”

7.2 In Swastic Industries v. Maharashtra State Electricity Board, this Court while interpreting Section 24 of the Indian Electricity Act, 1910 held that : –

“5. It would, thus, be clear that the right to recover the charges is one part of it and right to discontinue supply of electrical energy to the consumer who neglects to pay charges is another part of it.”

(emphasis supplied)

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.

In this case complainant approached the corporate office and requested to grant installments for the two back billing amounts of Rs. 15,74,827/- . According to respondent No.1 the 1/4th amount of Rs.15,74,827/- was paid in 5 installments by June' 2020. The complaint was registered on 29.07.2020 (i.e. only after payment of the above mentioned amount).

Clause 4.5 of Reg.05/2004 provides the method of adjustment of amount paid which is as follows:

“Adjustment of amount paid : The amount paid by the consumer shall first be adjusted as per the priorities stated hereunder :

- a) *Arrears as on 31st March of previous financial year*
- b) *Arrears accrued from 1st April of the current financial year till the date of bill.*
- c) *Current month consumption charges”*

Licensee is entitled to adjust the amount paid by the complainant mentioned above towards arrears of the supplementary bills as per the Clause 4.5 (a) and (b) of Reg.05/2004.

6. Since the supplementary bills issued for more than two years in this case, relying upon the above cited decision respondents are entitled to issue supplementary bill with a threat of disconnection for recovery of back billing amount for two years only. However respondents are at liberty to recover the remaining back billing amount for the remaining period under any other mode in accordance with law.
7. Accordingly the complaint is disposed off.

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 March'2021.

