

BEFORE THE FORUM
FOR REDRESSAL OF CONSUMER GRIEVANCES
IN SOUTHERN POWER DISTRIBUTION COMPANY OF A.P LIMITED TIRUPATI
On this the 1st day of February' 2021
C.G.No:59/2020-21/ Guntur Circle

Present

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

Chairperson
Member (Finance)
Independent Member

Between

B. Krishna Murthy,
M/s. Bommidala Charitable Trust,
Beside SBI Main Branch,
Nagarampalem
Guntur .

Complainant

AND

1. Assistant Accounts Officer/ERO/Guntur Town 1
2. Deputy Executive Engineer/ Guntur Town-3
3. Executive Engineer/O/Guntur Town - 1

Respondents

ORDER

1. B.S Krishna Murthy filed this complaint on behalf of M/s. Bommidala Charitable Trust aggrieved against the back billing notice for about 4 years from 07/2016 to 08/2020 for an amount of Rs.3,59,912/- .

The case of the complainant is that they are running a charitable trust by providing subsidized food and accommodation under 'No-Profit' basis to the rural poor students who are pursuing their higher education in Guntur city surroundings at various colleges depending upon their study courses. On 01.08.2020, they received a notice to pay Rs.3,59,912/- for the reason not known to them as there exists ambiguity in the notice.

They have obtained electricity service connection on 21.01.2014 bearing SC No.1113300355911 under LT Cat-II and continued under same category up to 16.06.2016. Later they came to know that charitable trust and its activities would come under Cat-VII and they have applied for change of category by submitting relevant

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documents and the category of the service was changed from Cat-II to Cat- VII and continued up to 02/2019. Since 03/2019 they are receiving their current bills under category-IV though they have not changed their line of activity and paying bills regularly.

In the notice received by them there are following discrepancies:

i) In Para No.2 it was written as

“At the time of inspection the supply utilizing for boys hostel. On verification this service is billing in Cat-IV C (IV/15) instead of Cat- IV B (IV/14). Hence back billing proposed for actual tariff order for difference of tariff from 07/2016 in 08/2016 onwards.

Hence back billing case was booked.

ii) In para No.3, it was written as

“Nature of defect reported

The above observations clearly establish that the meter installed at your service connection is not functioning correctly. The MRT report reveals that the meter was recording less energy consumption. Hence short billing was done for your service owing to defective meter.”

iii) In para No.4 Assessment calculation provision shown as

Charges payable to the company for un -authorized use.

On careful consideration of all the relevant aspects, I have provisionally assessed the electricity charges due to the company in accordance with Clause No. 7.5.1 of the General Terms and Conditions of Supply at Rs. 3,59,912/- . The calculation sheets for the same are enclosed for your reference”.

The contents in para 2 contradicts with contents of para 3 in the notice. In para No.4 the assessment said to have been calculated as per provisions of Clause No. 7.5.1 of GTCS and it applies for only meter defects short billing cases. Cases where the back billing for defective meters and malpractices, the assessment shall not exceed more than 12 months but in this case assessment was arrived for a period of 4 years which is very objectionable.

They have received a sudden notice to pay a penalty of Rs.3,60,000/- for no fault and demanded to pay 50% of the assessment amount with a threat of disconnection. This is a death blow for a trust. Hence requested to set aside the assessment notice.

2. Respondent No.3 i.e. Executive Engineer/O/Guntur filed written submission stating that service is in the name of M/s. Bommidala Charitable trust, LT Cat- IV C with USC No.1113300355911 with a contracted load of 15 KW under D-6 Section, Guntur. The service is billed under LT Cat –IV (C) {previously under LT Cat –VII (B)} which is applicable to religious places. But the supply is being utilized for boys hostel purpose. The eligibility under LT Cat –IV (B) shall also to be ensured as it is subsidized category applicable to charitable institutions run on ‘No profit’ basis as no documentary evidence to that extent was produced by the complainant. On verification of billing category of the service by AE /DPE-II/Guntur, it was found that the service is being billed under religious sub category i.e. Cat- IV C (04/15) instead of general purpose sub category- IV B (IV/14). On verification of billing data, the service is being billed under wrong sub category from June’ 2016 i.e. from the date of change of main category from LT Category –II to LT Cat - VII. Hence, the inspecting officer recommended for back billing from June’ 2016 to July’ 2020 for the wrong sub-categorization period.
3. A personal hearing was conducted through Video Conferencing on 07.01.2021. Muralidhar Rao, Office Manager is present on behalf of the complainant. Respondent No.3 present. Heard both parties.
4. The point for determination is whether the back billing notice issued to the complainant for an amount of Rs. 3,60,012/- is liable to be revised?

According to the complainant, it is a charitable trust providing subsidized food and accommodation under ‘No Profit’ basis to the rural poor students who are pursuing their higher education in surroundings of Guntur city at various colleges. On application, category of its service was changed from LT Cat-II to Cat-VII after 16.06.2016. Complainant filed a copy of the registered trust deed, amended deed, ITR Acknowledgement for assessment years 2018-19 & 2019-20, Audit Report issued by partner of M/s. Brahmaiah & Company, consolidated income & expenditure account, receipts & Payment account & consolidated statement of affairs as on 31st March 2018 & 2019 to show that it is a charitable trust. Admittedly, initially the service was released

under LT Cat-II and on their application only the service was re-classified. Service will be re-classified only on production of proper and appropriate documents.

The contents of the written statement clearly shows that the officer who re-classified the service of the complainant made a mistake while re-classifying the sub category of the service in the month of June' 2016. The mistake was not detected till July' 2020.

Respondents issued back billing notice relying on Clause 3.4.1 of GTCS.

Clause No. 3.4.1 of GTCS is as follows:

“Where a consumer has been classified under a particular category and is billed accordingly and it is subsequently found that the classification is not correct (subject to the condition that the consumer does not alter the category/ purpose of usage of the premises without prior intimation to the Designated Officer of the Company), the consumer will be informed through a notice, of the proposed reclassification, duly giving him an opportunity to file any objection within a period of 15 days. The Company after due consideration of the consumer’s reply if any, may alter the classification and suitably revise the bills if necessary, even with retrospective effect, the assessment shall be made for the entire period during which such reclassification is needed, however, the period during which such reclassification is needed cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.”

The above said clause shows that consumer has to be informed through a notice of the proposed reclassification by giving an opportunity to the consumer to file objections within 15 days and after considering the objections, reclassification can be done and suitably revise the bills if necessary, even with retrospective effect.

According to Respondents, issuing of Provisional Assessment Notice to consumer is itself amounts to issuing of notice under clause No. 3.4.1 of GTCS. According to the respondents since the period during which reclassification needed can be ascertained in this case, back billing was issued to the entire period i.e. from the date of changing of category of service from LT Cat -II to LT Cat-VII.

LT Cat- VII (A) is for General Purpose and 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 on a no profit basis, recognized service institutions and registered old age homes.

LT Cat- VII (B) is for religious purpose includes for supply of energy to places of worship such as Temples, Churches, Mosques and Gurudwaras in the Financial Years '2016-17', '2017-18' and '2018-19'.

L.T Cat VII (A) is re-categorized as LT Cat -IV (B) and LT Cat VII (B) is re-categorized as LT Cat -IV (E) in the F.Y 2019-20 and 2020-21.

The facts of the case clearly shows that the mistake in reclassifying the sub category of this service was committed by the Respondents and that mistake couldn't detected by them for about four years.

Respondents did not place any authority before this forum to show that issuing provisional assessment order is itself has to be treated as a notice under Clause 3.4.1 of GTCS. So the contention of respondents that issuing of provisional assessment order itself is a notice under Clause 3.4.1 of GTCS is not correct and not legally sustainable. Clause 3.4.1 of GTCS is provided only to facilitate the consumer to ventilate his grievances /objection for reclassifying the category.

Respondents, when they detected error in reclassifying the sub category of service, ought to have explained the facts and ought to have advised the complainant to request for payment of difference of the amount in installments. Instead of doing so, they have issued Provisional Assessment notice stating that if the consumer continues to have the supply, he has to pay half of the back billing amount Rs.1,79,947/- within 7 (seven) days and can appeal to Executive Engineer/Operation in case he did not agree for the assessment amount. It is not possible for any consumer to pay such a sum within 7 (Seven) days that too for difference amount of billing for four years. The written statement didn't show that what action was taken against the erring officer for reclassifying the service under wrong

sub category that too on the application of the complainant. It appear no calculation sheet was also provided to consumer to ascertain the exact amount liable to be paid.

The Final Assessment Order at para 5.3 shows that as per the Tariff order 2016-17, a tri – vector meter shall be provided for all the 10 KW and above load services and energy charges shall be billed on KVAH consumption for all 10 KW and above load services as per Clause. 1.7.1 at Page No.231 &232 of Tariff order 2016-17. So they have proposed KVAH back billing from June' 2016 to January' 2018. The above said fact clearly shows that KVAH billing was not done for about one and half year after tariff orders were issued by the Hon'ble Commission.

The written statement of Respondent No.3 shows that back billing notice is generated through MATS IT software application automatically spooling of the matter it was mentioned that back billing was raised due to defect in the meter and the same may be ignored. If a printed proforma notice is generated, the officer while issuing notice ought to have strike off the in appropriate contents in the notice and has to serve the notice. But notice containing contradictory versions could not be issued as it will cause more confusion and it will be very difficult for the consumer to give reply and if the notice contains inappropriate contents, the notice itself is not legal and valid.

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 Rahmatuallh 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.

During the personal hearing it was brought to the notice of the Forum that complainant has paid the entire amount.

According to the complainant, it is a charitable trust. Admittedly charitable trust will come under LT Cat –VII (A) up to F.Y 2018-19 and subsequently under Cat – IV (D). But Respondents issued bills under Sub category VII (B) up to F.Y 2018-19 and under sub category IV (E) from F.Y 2019-20 onwards. Admittedly the tariff for LT category VII (B) / IV (E) is meant for religious purposes. Service of complainant will not fall under sub category LT- VII (B) or IV (E). The service of complainant will fall under Cat VII (A)/ IV (E) general purpose only. Admittedly there is difference in tariff between general purpose and religious purpose. Since complainant paid less tariff than actual tariff to be paid, complainant is liable to pay the balance amount.

Clause 3.4.1 of GTCS enables the Respondents to reclassify the service and bills can be revised with retrospective effect for the entire period during reclassification is needed. In this case the mistake of wrong subcategorizing the service has taken place in the month of June'2016 and period is also ascertained. So, Respondents are entitled to

collect the difference amount of tariff on account of wrong sub categorization. There are no merits in the complaint. The point is answered accordingly.

It was 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.

Several cases came before this Forum complaining that field officers issuing back billing notices on the ground that they were billed under wrong category for several years (even for eight years) after the mistake is detected. Serving provisional assessment notice for payment of the back billing amount straight away without initially serving notice as per provisions of Clause No.3.4.1 of GTCS is not correct. 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 on the part 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, so that there will be no financial loss to the DISCOMs, hardship and inconvenience to the consumers.

5. In the result the complaint is dismissed.

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.

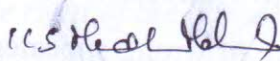
This order is passed on this, the day of 1st February'2021.

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.