



VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA

First Floor 33/11 kV substation, Hyderabad Boats Club Lane
Lumbini Park, Hyderabad - 500 063

:: Present:: R. DAMODAR

Thursday, the Eleventh Day of February 2016

Appeal No. 83 of 2015

Preferred against Order Dt. 21-11-2015 of CGRF In

CG.No: 117/2015 of Nalgonda Circle

Between

M/s Indus Towers Limited, Orumadla (V), Chityala (M) Nalgonda District
Cell No. 9885499559.

... Appellant

AND

1. The AAE/OP/Chityala/TSSPDCL/Nalgonda Dist.
2. The ADE/OP/Ramannapet/TSSPDCL/Nalgonda Dist.
3. The AAO/ERO/Ramannapet/TSSPDCL/Nalgonda Dist.
4. The DE/OP/Nalgonda/TSSPDCL/Nalgonda Dist.
5. The SE/OP/Nalgonda Circle/TSSPDCL/Nalgonda Dist.

... Respondents

The above appeal filed on 29.12.2015 coming up for hearing before the Vidyut Ombudsman, Telangana State on 28.01.2016 at Hyderabad in the presence of Sri. S. Subramanian, on behalf of the Appellant and Sri. M.V. Surendra Naidu -AE/OP/Chityala and Sri. B. Mallikarjuna Chary - AAO/ERO/Ramannapet for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant has Service Connection No. 1102401125 at Orumadla Village, Chityal Mandal. The Appellant contended that the Respondents levied back billing amount of Rs 3,07,217/- for the period from October,2012 to March,2015 on the ground of multiplying factor (MF) difference and sought back billing period restricted to 12 months only. The ADE/OP/R2 sent a demand notice for Rs 3,07,217/- towards back billing on the ground that the meter installed was not functioning correctly and the MRT

report disclosed that the meter was recording less consumption and that the MF for the reading should be 2, but as per ERO records, the billing has been done with MF as 1 thereby showing lesser consumption than the consumed energy. The Appellant paid 50% of the demanded amount under protest to get the power restored to the service, which is an emergency service.

2. The 3rd Respondent/AAO by letter dt. 19.10.2015 pleaded before the CGRF that at the time of inspection, the consumer was availing power supply. He stated that the CT meter was fixed for the service on 30.10.2012 by the AE/M&P/Nalgonda. He gave the details of the meter make as HPL, SL.No. 1,03,861 and capacity 100/5A. He gave the CT particulars like TTC, capacity 200/5A with multiplying factor (MF) for the readings - 2. He claimed that as per the ERO records, the billing has been done from 30.12.2012 by taking MF as 1.0 instead of 2.0. The 3rd Respondent claimed that since there was shortfall in units due to taking wrong MF in the billing, he has provisionally assessed the electricity charges as per clause 7.5.1.4.4 of GTCS and the shortfall amount of Rs 3,07,217/- has been included in the CC bill, half of which was paid by the Appellant in August,2015. He stated that the AE/M&P-II/TSSPDCL/Nalgonda gave test report for the service revealing MF as 2 for the removed meter.

3. The CGRF, on the basis of the record, directed backbilling imposed by the DPE authorities and gave a free advise to the Appellant to approach the DE/OP/Nalgonda to get the back billing case finalised through the impugned orders.

4. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal alleging that the Appellant had not received MRT report and so also the assessment notice. The Appellant claimed that it has paid 50% of the demanded amount under protest to get the power restored as theirs is a essential and emergency service. The Appellant further claimed that as per Clause 7.5.1.4.4 of GTCS, the back billing should be limited to a maximum period of 12 months prior to the date of inspection and that the Appellant was not communicated the initial and final assessment orders, denying its right to Appeal before the appropriate forum and that there was a direction from CGRF to the DE/R4 to resolve the issue, while the order passed was totally different.

5. The Appellant was granted an interim relief of restoration of power supply, till disposal of the main Appeal. The Appellant had already paid Rs 1,53,608/- on 30.08.2015 to the DISCOM in the present claim.

6. The 4th Respondent in this Appeal claimed that the meter was not erratic and that the back billing was raised because MF 1 of instead of 2 was taken for calculating consumption.

7. The 3rd Respondent filed a reply dt. 4.1.2016 reiterating that the back billing was done for the shortfall units not billed due to taking of wrong Multiplying factor, at the same time stating that the present controversy is not about the defective meter, but the multiplying factor.

8. The AE/M&P- II, TSSPDCL through covering letter dt.2.4.2015 submitted LT CT meter test report of the service showing various details and also the details of Multiplying factor as 2 while the MF taken was 1.

9. The 2ND Respondent vide his letter dt.31.3.2015 addressed the Appellant regarding the short billing due to taking the MF as 1 instead of MF as 2 with details.

10. The 3rd Respondent submitted a reply dt.22.1.2016 reiterating what has been stated by the 2nd Respondent that the present controversy is not about the defective meter, but it is about application of wrong MF.

11. Efforts at mediation could not succeed, because both sides remained firm with their respective stands in the Appeal and therefore, the matter is being disposed of on merits.

ISSUES

12. Based on the record and stand of the both parties, the issues that arises for determination are:

i) Whether the back billing for Rs 3,07,217/- for the period from 30.12.2012 to 30.3.2015 on the ground that billing was done with MF - 1 instead of MF- 2 as alleged by the Respondents is tenable?

ii) Whether the Respondents cannot resort to back billing for more than 6/12 months as per clause 7.5.1.4.4 of GTCS as alleged by the Appellant?

iii) Whether the impugned orders are liable to be set aside?

ISSUES 1 to 3

13. The Respondents back billed the service of the Appellant from 30.10.2012 to 30.3.2015 on the ground that on 30.3.2015, the service was inspected by

AE/DPE/Nalgonda and he found that the billing was done by taking MF as 1 instead of 2. The AE/M&P-II TSSPDCL Nalgonda gave the test report which also revealed the MF as 2 for the meter. It is not controverted that the MF for the service has been 2 and not 1. That is why the Respondents assessed the service by taking recourse to back billing for the period from 30.10.2012 to 30.3.2015 raising the bill for Rs 3,07,217/-.

14. Through the impugned orders, the CGRF instead of deciding the controversy, directed the 4th Respondent to finalise the back billing case, which is nothing but evading and avoiding to decide the matter in controversy at their end finally.

15. The Appellant has relied on Clause 7.5.1.4.4 of GTCS pleading to limit the maximum period of back billing to 12 months prior to the date of inspection and not for the entire period. The Appellant and so also the 3rd Respondent relied on this clause as shown below:

Clause 7.5.1.4.4 of GTCS

The assessment shall be made for the entire period during which the status of defective meter can be clearly established subject to a maximum period of 3 months prior to the date of inspection in the case of Domestic and Agriculture and 6 months in the case of other categories.

16. This is not the correct position now. The Clause 7.5.1.4.4 of GTCS underwent amendment vide proceedings of the APERC/SECY/96/2014 dt. 31.5.2014 and the amended clause is as follows:

Clause 7.5.1.4.4: 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."

17. The above amended clause of GTCS removed the restriction of the limited period prescribed for taking recourse to back billing. Therefore, the contention of the Appellant that the back billing should be limited to 12 months, cannot be accepted as valid and tenable. At the same time, the failure of the Respondents to controvert the claim of the Appellant shows their ignorance about the correct position of the GTCS.

18. The Appellant contended that the arrears from 30.10.2012 to 30.3.2015 which is beyond the period of 2 years, cannot be recovered by resorting to back billing, which is prohibited under Sec 56(2) of the Electricity Act, 2003. Section 56(2) is extracted below for clarity:

“No sum due under the section shall be recoverable after the 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”.

19. Firstly, the present controversy arose because of the wrong noting of MF by the concerned meter reader and there is consequently the institutional negligence on the part of the concerned. This defect of noting MF-1 instead of MF-2 was discovered only in the inspection on 30.3.2015 and this defect in short billing was only due to the mistake and negligence of the meter readers and the concerned staff of the DISCOM. The arrears were not hidden and discovered and therefore, not shown continuously for application of this provision. The amended clause 7.5.1.4.4 of GTCS clearly permits the back billing for the entire period, if it is clearly known from what time the wrong calculation was discovered. The application of this provision is not being resorted to by the DISCOM by way of threat of Disconnection. Therefore, the contention of the Appellant that back billing cannot be done in the present case for more than 2 years, cannot be accepted since this provision is not applicable to the present matter in controversy.

20. The record clearly shows that because of the negligence of the meter reader and the concerned at the ERO, the calculation of the units on the basis of MF 1 took place resulting in loss to the DISCOM the present dispute. The Appellant is also not alleging any malafide in issuing the back billing assessment. The Appellant is being burdened at one time because of the negligent and irresponsible acts of the staff of the DISCOM and therefore, it is apt to compensate the Appellant for the unnecessary litigation that has been created in the matter. Across the bench, the representative of the Appellant clearly stated that they were not at fault in the matter and that it was the duty of the staff of the DISCOM to inspect the meter and note the readings correctly and then the Appellant would have paid the bill fromtime to time promptly.

21. Keeping in view the facts and circumstances of the case, the DISCOM is directed to pay compensation of Rs 10,000/- to the Appellant for the negligent manner its staff acted burdening the Appellant with huge bill at one time and further for dishing out the threats of disconnection. The CGM commercial shall conduct an enquiry into the matter, fix the responsibility on the concerned who acted negligently and irresponsibly in the matter in noting down MF wrongly and recover the amount of compensation from them. The compensation now being awarded shall be given credit to the Appellant in the arrears bill/current bill from March, 2016 bill.

22. The CGRF by noting down who said what separately and giving a bald direction to the 2nd Respondent to finalise the back billing case, is nothing but a totally irresponsible act of avoiding to give a finding in a laid back manner in 3 lines which is unsustainable on the face of it and thus, the impugned orders are liable to be set aside. The issues 1 to 3 are answered accordingly.

22. In the result, the Appeal is disposed of directing;

i) Payment of compensation of Rs 10,000 by the DISCOM to the Appellant for the trouble and great inconvenience it suffered in the hands of staff of the DISCOM, to be adjusted either in the future bills or in the arrears.

ii) The CGM commercial is directed to initiate enquiry against the concerned members of the staff responsible for the wrong noting of the MF, fix responsibility and recover the compensation awarded to the Appellant from them.

iii) The back billing resorted to by the Respondents on the ground of taking MF 1 instead of MF 2 is upheld as valid.

iv) The impugned orders are set aside as devoid of any meaning and direction.

23. This award shall be implemented within 15 days of its receipt at the risk of penalties as indicated in clauses 3.38, 3.39, 3.42 of the Regulation No. 3/2015 of TSERC.

Typed by cco, Corrected, Signed and Pronounced by me on this the 11th day of February, 2016.

Sd/-

VIDYUT OMBUDSMAN

1. M/s Indus Towers Limited, Orumadla (V), Chityala (M) Nalgonda District
Cell No. 9885499559.

2. The AAE/OP/Chityala/TSSPDCL/Nalgonda Dist.

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Copy to:

7. The CGM, Commercial, Corporate office, TSSPDCL, Mint Compound, Hyderabad.
8. The Chairperson, CGRF - 1, TSSPDCL, GTS Colony, Erragadda, Hyderabad.
9. The Commission Secretary, TSERC, 5th Floor, Singareni Bhavan,
Red Hills, Hyderabad.