

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 23-06-2010

Appeal No. 17 of 2010

Between

Sri Y.S.S.V.B.Sarma
Pasarlapudi - 533247
Vaya Nagaram, Mamidikuderu (M)
Rajole Taluk, E.G.Dist.

... Appellant

And

1. Asst. Engineer / Operation / APEPDCL / Nagaram
2. Asst. Divisional Engineer / Operation / APEPDCL / Razole
3. Divisional Engineer / Operation / APEPDCL / Amalapuram
4. Asst.Accounts Officer/ERO/APEPDCL/Razole

....Respondents

The appeal / representation dated 11.05.2010 (received on 13.05.2010) of the appellant has come up for final hearing before the Vidyut Ombudsman on 31.05.2010. Sri YSSVB Sarma, appellant present and Sri D.Sridhar Varma, ADE/O/Razole, on behalf of respondents present and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following:

AWARD

The appellant filed a complaint before the Consumer Grievance Redressal Forum (for short 'Forum'), APEPDCL to the effect that the respondents are threatening him of disconnecting the power supply to his premises for default in payment of finally assessed amount 10 years back and requested the Forum not to disconnect the service.

2. The ADE/O/Razole submitted his written submissions as hereunder:
- (i) Adverting to the above reference cited, it is submitted that, a Malpractice case was booked against service No. 25243, Pasarlapudi, Nagaram Section by ADE/DPE2/Rajahmundry during his inspection on 22.09.96 at 17.30hrs as the agricultural service is partially being used for coir industry purpose and assessed for an amount of Rs.950/- accordingly Divisional Engineer/Assessments/Visakhapatnam was given final order for an amount of Rs.950/- vide proceedings No. DE/A/VSP/ADE/Doc No. AMP42/D.No.1246/97, dt. 29.12.97.
- (ii) But again on 29.01.2000 at 11.30hrs the premises of SC No. 25243 was inspected by ADE/DPE2/Rajahmundry and a malpractice case was booked as the consumer is utilizing the agricultural service motor exclusively for wetting up the coir shells existing in the same premises and assessed the amount of Rs.57508/- accordingly a show cause notice was issued by the Divisional Engineer/Assessments/ Visakhapatnam on 05.02.2000 for an amount of Rs.57508/-.
- (iii) The consumer filed a case before the Hon'ble High Court, Hyderabad vide W.P.No. 25944/2000 and the Hon'ble High Court disposed the case on 27.12.2000 and directed the petitioner to file his objections to the impugned notices and the respondents shall consider and dispose of the same on merits expeditiously. In the mean time pending enquiry into the matter, directed the respondents not to disconnect power supply to the petitioner's service connection No. 25243/V on condition that the petitioner pays a sum of Rs.5000/- to the respondent and as per the court order the Divisional Engineer/Assessments issued final order on 18.06.2001 vide proceedings No. 834 for an amount of Rs.57508/- and the consumer did not pay the above said amount till to date.
- (iv) From the above, it is submitted that, the premises of SC No. 25243 of Pasarlapudi distribution was inspected by the same sub-division by different officers. But after the first inspection, the category change was not effected,

hence again MP case notice was issued after the second inspection to the consumer and at now the service was billed under Cat-III with contracted of 5HP.

The appellant has filed 10 documents in support of his contention, Whereas the respondents filed 7 documents in support of their respective contentions.

3. As per the information furnished by the respondent No.4, the consumer has paid security deposit of Rs.700/- on 28.06.2001. As on today, the total SD available against this service was Rs.5230/-. The category has been changed from 5 to 3 on 27.09.2001.

4. On 22.03.1996, a case was registered against the complainant for unauthorized use of electricity supply for SC No.25243 and the complainant paid Rs.950/-towards the amount assessed by the DE/Assessments. Again, on 29.01.2000 another case was registered for unauthorized use of electricity and an amount of Rs.57508/-. Thereupon, complainant filed WP No.25844/2000 in the Hon'ble High Court of A.P. which was disposed on 27.12.2000 with directions to the petitioner to file his objections to the impugned notices and the respondents shall consider and dispose of the same on the merits expeditiously and also further directed not to disconnect the power supply to the petitioners service connection on the condition that the petitioner pays a sum of Rs.5000/- to the respondents. The DE/Assessments finalized the assessment for Rs.57708/-. There is a chance for appeal to SE/Assessments/Visakhapatnam against the orders of the DE/Assessments/Visakhapatnam. The complainant has stated that the orders were finalized without his knowledge. The Forum observed that as the case has already been decided by the Hon'ble High Court on 27.12.2000 and the matter was disposed of by the DE/Assessments and there is nothing to interfere at this distant juncture and further, it comes under the purview of Section 126 of the EA 2003. This Forum has no jurisdiction over the issues settled by the concerned statutory authorities. Hence, the licensee may take

action to collect the dues which has been delayed already for about 10 years by following all due procedures and acts.

5. Aggrieved by the said order, the appellant preferred this appeal questioning the same that the ADE/DPE-II, Rajahmundry who inspected the premises on 29.01.2000 insisted him to write some papers stating that he is utilizing the agricultural power for purpose of coconut husk wetting i.e, one hour per day. But surprisingly, they have charged for 8 hours per day. The High Court directed DE/Assessments /Rajahmundry to consider his objections. But he did not consider, even one of his objections Ex: wetting of coconut husk during rainy season. They have not deducted power consumption for agricultural usage. The DE/Assessments failed to intimate the Final assessment order. This can also be considered as default of service to the consumer. Some how, he came to know, orally, from ERO Razole about final assessment order. Then he appealed to the SE/Assessments/Vizag but till today, he has no information whether his appeal has been accepted or rejected and therefore the impugned order is liable to be set aside.

6. Now, the point for consideration is, “whether, the impugned order dt.23.04.2010 is liable to be set aside? If so, on what grounds?”

7. The assessment was made on the ground of mis-use of load and estimated loss sustained by the Board to an amount of Rs.57708/-. The appellant who appeared before the authority has submitted that his industry is based on agriculture and they have not deducted minimum Horse Power charges. The respondents have been booking cases without any material and without discharging their duties and inspite of direction given by Hon'ble High Court sending communication about hearing by DE/Assessments or appeal by SE/Assessments. When no opportunity is given to hear his case, he has every right to workout his remedies by approaching concerned authorities.

8. Whereas the respondent, ADE/O/Razole who appeared before this authority has submitted that notice was served duly following the procedures and the appellant has failed to pay the same and the Forum has rightly considered the same and appeal is liable to be dismissed.

9. It is clear from the record that the appellant has submitted an appeal against the assessment order passed by the DE after coming to know about the same. Even in the DE orders also there is nothing to show that he (complainant) was heard or considered the objections submitted by him. There is no record to show whether the appeal preferred to SE is disposed or not. Further, when the Forum has come to a conclusion that it is a case comes within the purview of Section 126 of EA 2003, the remedy available is to approach SE and the SE has to consider his case after going through the material placed before him. As there is no such order before this Forum even if passed, it is behind the back of the appellant. Even if any order is passed the same has to be set aside as it is against to the decision given by the Hon'ble High court. Instead of considering the merits by this authority which is within the purview of S.126 it is proper and justifiable to direct the SE to restore the appeal if disposed or to hear the appellant's objections if not disposed by giving an opportunity to represent his case in person after serving a notice on him.

10. With this direction, the appeal is disposed and the impugned order, if any, passed by the Superintending Engineer is hereby set aside with a direction to dispose of the same on merits by restoring the same on to his file in the presence of the appellant. No order as to costs.

This order is corrected and signed on this day of 23rd June 2010

VIDYUT OMBUDSMAN