

BEFORE THE VIDYUT OMBUDSMAN

Present

**K.Sanjeeva Rao Naidu
Vidyut Ombudsman**

Dated: 29-04-2010

Appeal No. 32 of 2009

Between

M/s. Sudalagunta Hotels Ltd
Represented by Managing Director,
209, TP Area,
Tirupati, Chittoor Dist

... Appellant

And

APSPDCL
Represented by CMD, Tirupati, Chittoor Dist
Chief General Manager / Finance / C.O./ APSPDCL / Tirupati
Superintending Engineer / Op / APSPDCL / Tirupati

....Respondents

The appeal / representation received on 20.07.2009 of the appellant has come for final hearing before the Vidyut Ombudsman at Tirupathi on 23.04.2010 in the presence of Sri Ch.S.V.B.V.Prasad Sarma, Legal officer, Sri C.Jayaramaiah, Estate Manager of the appellant present, Sri C.Radha Krishna, SE/O/Tirupati, Sri A.Venugopal, CGM(Finance), Sri V.V.G.Kudi Murthy, GM(Revenue), Smt.K.Jayapradamma, SAO, present for respondents and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following:

AWARD

The appellant filed a complaint before the Forum, that he purchased the land and building along with machinery relating to M/s. Akhil Ceramic Ltd.Kayam

village (in liquidated) from the HC of A.P in the open auction and properties were also registered in his favour. Previously there was one HT service bearing No.150 and the service was dismantled due to non-payment of arrears and the arrears still remain. When the complainant applied for agriculture connection in the same premises to the AE/O/Vadamalpet advised, the complainant to get a clearance certificate from the SE/O/Tirupati so as to release the agriculture service. Even though the letter issued by the liquidator on 03.1.2008 was produced before the respondents, wherein the liquidator clearly stated that the complainant is not liable for the dues prior to the date of confirmation of the sale, but the respondents did not turn up and did not release the agriculture service in the same premises. The respondents instead of releasing the agriculture service in the above premises are frequently reminding the official liquidator for payment of dues available against the dismantled service and it is also observed that the respondents are not intended to provide agriculture service, unless the arrears are paid which is not justified. Finally, requested to cause necessary instructions for agriculture service or else, the complainant has no option to seek redressal before the court of law for proper remedy including costs and liquidated damages against the respondents.

2. The SE/O/Tirupati furnished his written remarks as hereunder:

- (i) The HT Sc.No.150 of M/s. Akhil Ceramics Ltd, Kayam (V) of Vadamalapeta (M) was released on 23-12-1991 with a CMD of 500 kVA and the service was disconnected on 26-11-1996 for non-payment of CC charges subsequently the agreement was terminated w.e.f 25.03.1997 and service was also dismantled.
- (ii) It is to submit that the existing security deposit of Rs.4,28,590/- was adjusted towards the arrears of the CC charges vide RJNo.6/9-2000 and after adjustment of the security deposit, an amount of Rs.7,18,562/- was outstanding towards the arrears of CC charges upto the date of termination of the agreement of the service.

- (iii) The said service is under liquidation vide CA No.559 of 2007 in CA No.409 of 2006 in RCC No. 12 of 2001 and the claim for the said arrears of CC charges of Rs.7,18,562/- has been preferred to the official liquidator, High Court of A.P. Hyderabad vide Lr.No.SE/O/TPT/SAO/HT/JAO/9233/02, dt.22.10.2002. The copy of the same is herewith submitted for kind perusal.
- (iv) It is to submit that a representation dt.27.07.2007 was received by this office from M/s. Sudalagunta Hotels Limited, Tirupati wherein M/s. Sudalagunta Hotels Ltd, Tirupati has stated that the land and building along with plant and machinery of M/s. Akhil Ceramics Ltd, was purchased by them from the Hon'ble High Court of A.P. through the official liquidator and requested this office for issue of clearance certificate against the HT Sc.No.150 of M/s. Akhil Ceramics Ltd Kayam (V) so as to get one LT agricultural service in the same premises.
- (v) Soon on receipt of representation from M/s. Sudalagunta Hotels Ltd, Tirupati a letter was addressed to the official liquidator High court of A.P Hyderabad vide this office Lr.No.6351/07, dt.27.07.07, duly enlightening the fact of outstanding arrears and requested for clearance of outstanding arrears of CC charges of Rs.7,18,562/- against the HT Sc No.150 of M/s. Akhil Ceramics Ltd Kayam (V), the copy of the Lr.no. Lr.No.6351/07, dt.27.07.07 is herewith submitted for kind perusal.
- (vi) The form No.66 and allied documents in connection with claiming the outstanding arrears of CC charges of Rs.7,18,562/- and interest @2% per month was submitted to the official liquidator High Court of AP Hyderabad vide this office Lr.No.8282/07, dt.05.10.07. The copy of the Lr.No.8282/07, dt.05.10.07 is herewith submitted for kind perusal, and remainders were also made with the official liquidator vide this office Lr.No.79/08, dt.02.01.08.
- (vii) The corporate office vide Lr.No.CGM(Expr)/GM(R)/SAO(R)/AAO/JAO/HT/D.No.147/08, dt.28.01.2008 has also requested the official

liquidator for clearance of the outstanding arrears of CC charges against the HT SC No.150 of M/s. Akhil Ceramics Ltd Kayam (V) the copy of the same Lr.no.147/08, dt.28.01.08 is herewith submitted for kind perusal.

- (viii) The official liquidator vide Lr.No.OL/AP/RCCNo.12/2001/claims /2008, d.No.764/08 dt.17.06.2008 has stated to submit the certified copy of High court orders granting relief for delay of submission of claim from 31.08.2007 to 08.10.2007. Accordingly, this office filed C.No.780/2008 in the Hon'ble High court of AP and got orders dated 31.07.2008 for condonation of the delay and the copy of the condonation orders of the Hon'ble High Court of AP was submitted to the official liquidator vide this office Lr.No.6603/08, dt.29.08.08. The copy of the Lr.No.6603/08, dt.29.08.08 along with copy of orders dated 31.07.2008 of the Hon'ble High Court of AP are herewith submitted for kind perusal.
- (ix) The Chief General Manger (Fin) vide Lr.No.1167/08, dt.26.09.2008 and Lr.No.273/09, dt.16.03.2009 also pursued the claim with the official liquidator. The copy of the same is herewith submitted for kind perusal. Further it is to submit that the above facts was intimated to the representative of M/s.Sudalagunta Hotels Ltd, Tirupati when he approached this office.

3. The CGM(Fin), furnished his written remarks as hereunder:

- (i) the complainant of the M/s.Sudalagunta Hotels Ltd is that the consumer has purchased M/s.Akhil Ceramics Ltd in auction and requested to release agriculture service in the same premises, but the service was not released since the arrears are not realized to the extent of Rs.7,18,562/- against HT SC NO.150/TPT of Ms. Akhil Ceramics Ltd.
- (ii) In this connection it is to submit that an amount of Rs.7,18,562/- is outstanding against M/s.Akhil Ceramics Ltd. The claim petition was also filed with official liquidator by the SE/O/TPT vide his

Lr.No.SE/O/TPT/SAO/JAO/HT/D.No.79/08 dt.02.01.2008. The SE/O/TPT and his office have been frequently requesting the official liquidator to arrange the CC charges arrears of Rs.7,18,562/- along with interest @2% per month at an early date.

- (iii) The official liquidator, Hon'ble High Court of AP, stated in the letter dt.03.01.2008 that the assets of the company situated at Sy.No.9 Kayam village, Vadamalapet mandal Chittoor Dist were taken possession by the official liquidator and sold to M/s.Sudalagunta Hotels Ltd, Tirupati with the permission of the Hon'ble HighCourt of AP. The assets of the company comprising of land, buildings and plant & machinery were handed over to the M/s.Sudalagunta Hotels Ltd on 22.01.2007 and further stated that the purchaser i.e M/s.Sudalagunta Hotels Ltd is liable to pay the electricity charges from the date of confirmation ie. 22.01.2007 only and further state that your dues prior to the date of confirmation, you may note that the claim filed by you with this office will be adjusted as per the provisions of the Companies Act, 1956 and orders of the Hon'ble High Court.
- (iv) This office consistently addressing the official liquidator for release of arrears of Rs.718562/- along with interest @2% per month, but so far the amount is not released by the official liquidator.
- (v) Further, it is to submit that as per GTCS, clause No. 5.9.6 on the termination of the LT or HT agreement, the company is entitled to dismantle the service line and remove the materials, Meter, cut out etc. After termination of the agreement, the consumer shall be treated as a fresh applicant for the purpose of giving supply to the same premises when applied for by him provided there are no dues against the previous service connection.

4. After hearing both sides and after considering the material placed before the Forum, the Forum held that the action of respondents in insisting clearance of the old dues is in order, accordingly, disallowed the complaint.

5. Aggrieved by the said order, the appellant preferred this appeal questioning the same that the Forum has not observed the facts of the case and the entitlement of the service connection to the complainant. He ought to have considered that the complainant has no liability towards arrears of erstwhile Akhil Ceramics, which was liquidated prior to purchase of the said property and purchased the property through the auction proceedings by the HC of A.P. The respondents ought to have approached the official liquidator for arrears, but not the complainant. The respondents did not file any objections or claims before the official liquidator or A.P.HighCourt while conducting auction, nor attempted for the recovery of arrears. The clause 5.9.6 of the GTCS is no way applicable to the case of the appellant . Hence, the impugned order is liable to be set aside.

6. Sri Ch.S.V.B.V.Prasad Sarma, Legal Officer of the appellant, Sri C.Jayaramaiah, Estate Manager of the appellant appeared on behalf of the appellant and submitted that the appellant is no way concerned with the arrears of the company owner of the property; and that they purchased the property as and where basis and they are not liable to pay the same. They have also relied upon a ruling reported in 2006(2) Civ.C.R.344 (Guj) and the appeal preferred by them is to be allowed by setting aside the impugned order.

7. The SE submitted his written arguments that the official liquidator addressed a letter to submit the certified copy of the HC order granting relief for delay condonation of claim from 31.08.2007 to 08.10.2007 and the said order was submitted to official liquidator vide Lr.No.6603/08, dt.29.08.2008. They have also approached the official liquidator to clear the outstanding arrears of CC charges against SC No.150 of M/s. Akhil Ceramics Limited Kayam (Village). As per clause 5.9.6 of GTCS, the arrears have to be paid by the person who is in possession of the property and the appeal preferred by them is to be dismissed.

8. It is clear from the record that the appellant has purchased the property in an open auction by the official liquidator. It is also clear from the record, that the electricity department approached the liquidator for clearance of the arrears, when he insisted for delay condonation by the High Court, the respondents have approached and obtained the order from the High Court. In spite of this, the official liquidator has not made any effort to pay the amount nor included in the sale transaction or by keeping the liability to the banks or other organization like respondents.

9. The Legal officer appearing for the appellant relied upon a ruling reported in 2006 (2) Civ.C.R.344(Guj), Raipur (Rakhial) Commercial Co-op. Housing Society Ltd and Another Vs. Ahmedabad Electricity Co. Ltd and Another. In this it was held that

“Arrears of electricity dues – Petitioners auction purchaser – No condition imposed that petitioner would clear arrears of electricity in respect of power supplied to previous owner – Omission on part of respondent – company is not taking any steps for recovery of past dues at appropriate time would not make petitioner liable to pay amount of arrears – Respondent also did not object to auction of properties in view of huge revenue dues of erstwhile owners cannot take the advantage of their own mistake or omission at this stage – demand being unreasonable rejected”

10. No doubt the principle enunciated in the said ruling is not applicable to the facts of the case since the electricity department in that case has not approached the High Court or liquidation for recognition of its right. Whereas, in this case, the respondents have approached the liquidator and in turn to the High Court in recognition of its rights. The liquidator has addressed a letter on 03.01.2008 to the Chairman & Managing Director, APSPDCL to the effect that the claim filed by the respondents with his office will be adjudicated as per the provisions of the Companies Act and order of the High Court and M/s. Sudalagunta Hotels Ltd is not liable for any dues prior to the date of confirmation.

11. When they have approached the Hon'ble High Court in recognition of their rights and High Court condoned the delay in lodging the claim for recovery with

the official liquidator. The Hon'ble High Court has also observed that "the claim alleged by the appellant herein and processed in accordance with law and the company application is accordingly allowed."

12. The APERC has got its own Terms and conditions of supply as per clause 5.9.6. The application filed by the appellant is to be treated as fresh application and the said condition reads as follows:

"Dismantlement of Service Line after Termination of Agreement:
On the termination of the LT or HT Agreement, the company is entitled to dismantle the service line and remove the materials, Meter, cut out etc. After termination of the Agreement, the consumer shall be treated as a fresh applicant for the purpose of giving supply to the same premises when applied for by him provided there are no dues against the previous service connection."

13. It is evident from the above said clause, that there should be no dues and to be certified before the release of service connection in the same premises after dismantling the earlier service connection. This type of condition is not there in the regulations of the Gujarat State as it is not dealt within the said ruling. By the advent of EA 2003, IE Act, 1910 is repealed. So considering S.24 and I.E.Act, 1910 has no application to this case. When the Terms and conditions fixed by the APERC in collecting the dues directs it for collection, it is the duty of the owner who succeeds the property has to pay the same, since the official liquidator has not made any effort to clear the arrears, however, as promised to clear dues in his letter dt.03.01.2008.

14. Therefore, the complainant / appellant cannot plead to deny his liability to pay the amount. In spite of this, fixation of liability, the respondents have addressed a letter ignoring the claim of arrears to give connection on paying the amount of Rs.1,11,370/- and Rs.600/- by its letter dated 06.02.10. Even after filing the same, nothing is received from the respondents contrary to the said proceedings.

15. In the light of the above said document, it is to be construed that they have waived the claim of arrears through the impugned order dt.12.06.2009 is liable to confirmed. When the claim of arrears is waived by the department, there is no other go except to set aside the claim for arrears made by the respondents.

16. In the result, the appeal is allowed and the respondents are directed to act in accordance with the proceedings dt.06.02.2010 in giving connection to the appellant by collecting amounts mentioned therein.

This order is corrected and signed on this day of 29th April 2010

VIDYUT OMBUDSMAN