

BEFORE THE VIDYUT OMBUDSMAN

Present

**K.Sanjeeva Rao Naidu
Vidyut Ombudsman**

Dated: 25-08-2010

Appeal No. 33 of 2010

Between

Sri Burada Adinarayana
S/o Late Appayya
Kothuru (M), Kadumu (village)
Nivagam Via, Srikakulam Dist.

... Appellant

And

1. Assistant Engineer/Operation/APEPDCL/ Kothuru
2. Asst. Divisional Engineer / Operation / APEPDCL / Srikakulam
3. Divisional Electrical Engineer / Operation / APEPDCL / Srikakulam

....Respondents

The appeal / representation dated 20.07. 2010 received on 24.07.2010 of the appellant has come up for final hearing before the Vidyut Ombudsman on 16.08.2010 at Visakhapatnam in the presence of Sri P.L.Narayana, Advocate for the appellant and the appellant present and Sri Ch.Satyanarayana Reddy, DE/Op/Srikakulam, Sri D.Phani Kiran Kumar, ADE/O/Amadalavalasa and Sri K.Hari Krishna, AE/O/Kotturu 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 to the effect that the amounts were paid for release of agriculture service, but no service had been

released to his premises inspite of his request. He incurred heavy loss and also enclosed copies of DDs and prayed for release of service by filing a complaint before the Forum. The Forum registered the same as CG No. 322/09 and notices were sent to the respondents. In spite of the adjournments granted by the Forum, the respondents did not respond to the notices and the respondents remained experte.

2. The Forum observed that there was total delay of 59 months i.e, 1770 days and directed the respondents to pay @ Rs.50/- per each day delay amounting to Rs.88,500/-.The amount shall be suitably increased @Rs.50/- per each day of delay up to the date of release of supply.

3. The Forum also ordered the appellant to produce (a) LT application details in token of having registered his application, (b) proof that the DDs mentioned are handed over to the department for his agricultural service only, (c) proof of having a bore well at the time of filing LT application, (d) copy of the intimation letter for payment of the charges for his agricultural connection. It also directed the respondents to approach the bankers to know the fate of the instrument, if they could not trace them in their offices concerned.

4. It appears that the respondents have not complied with the same nor paid the compensation to the appellant. Thereupon, the appellant approached this authority for implementation of the order dated 15.05.2010. In compliance of the directions given by the authority, he has submitted a certificate of Panchayat Secretary dated 07.02.2005 (Xerox copy) to the effect that a bore well in S.No. 171/5 along with xerox copies of the DDs. So far as the compliance of other aspects are concerned, it is not in dispute about the submission of LT application as the respondents have not denied the same, when they appeared at the time of hearing of the appeal at Visakhapatnam on 16.08.2010. It is also not in dispute about the submission of DDs. They received the DDs when that is not in dispute,

there is no question of any intimation for payment by the parties to the effect that it is for the agriculture connection.

5. The respondents, viz, Sri Ch.Satyanarayana Reddy, DE/Op/Srikakulam, Sri D.Phani Kiran Kumar, ADE/O/Amadalavalasa and Sri K.Hari Krishna, AE/O/Kotturu present before this authority and produced the xerox copy of the letter dated 28.07.2010 and also certificate of the Panchayat Secretary to the effect that there is no building to facilitate the fixation of the meter, etc and also about the letter showed by the appellant that he would provide the same within 15 days along with capacitors, etc. They have also produced the photographs to show their effort for fixation of the meter.

6. It is only a subsequent event, but not prior to the order of the Forum. The delay is for 5 years and the same is not explained by the respondents. It is not their case that they have gone earlier i.e., prior to the approach made to the Forum and the delay is caused due to the negligence of the appellant about his failure to provide the accommodation for fixation of the meter, etc. Had they approached immediately after sanction, if there are any latches on the part of the appellant it can be attributed to him. But that is not the case here in since, they slept over the matter all the time even after the order passed by the Forum.

7. Now, the point for consideration is, "whether the complainant / appellant is entitled for implementation of the order as prayed for?"

8. It is not a disputed fact that there is an abnormal delay and the delay is caused only at the end of the respondent. It is no where mentioned that they have gone earlier and the appellant has contributed for the delay. Sri B.Ravi Kumar, AE who received the application did not make any effort till 02.06.2007 i.e., till his transfer from that place. It is also clear that the sanction was made long back, but they did not fix the meter to the bore. Subsequent to the sanction the present AE i.e., respondent No.1, Sri K.Hari Krishna though joined on

02.06.2007 he never made any effort prior to 02.06.2010 to fix the meter. The subsequent conduct by the respondent No.1 about the efforts made by him in the month of July 2010 would not in any way improve the case of the respondents.

9. The Forum has directed the respondent Nos. 1 to 3 to pay the compensation @Rs.50/- per each day of delay amounting to Rs.88,500/-. It is not the case that there is no negligence on the part of the respondent Nos. 2 and 3, but the responsibility is directly shouldered on respondent No.1 and his predecessor, Sri B.Ravi Kumar. Both are directly responsible for their failure in fixing the meter to the premises of the appellant. Therefore, this authority feels that the respondent No.1 and his predecessor who are directly responsible for the delay are liable to pay the compensation and the same has to be recovered from their salaries equally.

10. There is another aspect which is brought to my notice at the time of hearing of the appeal i.e, whether the Forum is competent to impose penalty or compensation. The imposition of the compensation is in accordance with Section 43, clause 3 which reads as follows:

“(3) If a distribution licensee fails to supply the electricity within the period specified in sub section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.”

It is also in accordance with Clause 4 (1) of Regulation No. 3 of 2004 of APERC which reads as follows:

“4. Consequences of default

(1) The Distribution Licensee who fails to comply with the time frame for supply of electricity stipulated in clause 3 above shall be liable to pay penalty as may be decided by the adjudicating officer of the Commission in accordance with sub-section (3) of section 43 of the Act.

(2) The liability to pay penalty under this Regulation for default if any, does not absolve the distribution licensee from the liability to pay compensation to the affected person as per the regulation notified under sub-section (2) of section 57 of the Act. “

The above said Regulation clause 4(1) clearly empowers the adjudicating officer to impose the penalty or compensation. The adjudicating officer is the Forum at the initial level, thereafter the Vidyut Ombudsman in case of appeal filed before the appellate authority.

11. It is a case of deficiency of service u/s 14(1)(d) of Consumer Protection Act, 1986, the District Forum is competent to award compensation to the consumer for any loss suffered by the consumer due to the negligence of the party. The Consumer Protection Act is a general Act and the Electricity Act is a special Act under which the similar Forum is constituted, which is competent to award compensation on the same analogy provided under the Consumer Protection Act, 1986, since it deals with the deficiency of service by the employees of the licensee and in general under Consumer Protection Act by the opposite party.

12. Hence, the Forum is competent to impose penalty or compensation as and when there is any deficiency of service. Here, in this case, there is a clear cut negligence on the part of the AE i.e., respondent No.1 and his predecessor in fixing the meter as well in providing the service connection inspite of several representations by the appellant. So, the amount has to be recovered from the salaries of the respondent No.1 and also from the predecessor Sri B.Ravi Kumar, equally wherever he is working by the licensee after paying the same to the appellant by implementing the orders of the Forum and in accordance with the directions of this authority.

13. In the result, the appeal is allowed with a direction to the licensee to pay the amount to the appellant and collect the same from respondent No.1 Sri K.Hari Krishna, AE/Operation/Kottur and his predecessor Sri B.Ravi Kumar wherever he is working equally from their salaries. The respondents are also directed to pay the amount of Rs.1000/- towards costs to the appellant. The

compliance shall be reported within a month from the date of receipt of this order to this authority.

This order is corrected and signed on this day of 25th August, 2010

VIDYUT OMBUDSMAN