

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 29-03-2010

Appeal No. 37 of 2009

Between

Sri Y.Narayana Murthy
Chinnakapavaram, Akiveedu (M)
W.G.Dist

... Appellant

And

The Additional Assistant Engineer / Opt / APEPDCL / Akiveedu
The Asst. Divisional Engineer / Opt / APEPDCL / Akiveedu
The. Divisional Engineer / Opt / APEPDCL / DPE / Eluru
The Asst. Accounts Officer / ERO / APEPDCL / Bhimavaram

....Respondents

The appeal / representation received on 13.10.2009 of the appellant has come up for final hearing before the Vidyut Ombudsman on 26.03.2010 in the presence of Sri Y.Narayana Murthy, appellant and his brother Sri Y.V.V.Srinivasa Rao, and Sri D.V.S.S.Muralidhar, ADE/O/Akiveedu, Sri Y.Srinivasa Rao, AAO/ERO/Bhimavaram and Sri Y.A.R.Gupta, UDC/ERO/Bhimavaram present for respondents and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following:

AWARD

Aggrieved by the order passed by the Forum in C.G.No.49/2009-10 of W.G.dist dated 24.09.2009, the appellant preferred this appeal on 13.10.2009.

2. The complainant filed a petition before the Forum for redressal of his grievance, that he was having a Category-I to his premises and a malpractice is registered and shortfall demand has been raised and on the pressure of the officers paid Rs.1.40lakhs in two installments and again demanded for payment of another one lakh and threatening with disconnection, if he failed to pay the said amount; and that he is not utilizing the service for any commercial activity.

3. Whereas, the respondents submitted their written submissions contending *interalia* that the petitioner obtained domestic Cat-I with contracted load of 3720W with 3-phase on 28.03.2005; and that the premises was inspected by Sri T.Venkateswara Rao, ADE/DPE II/Eluru along with staff. He found that the meter disc is rotating forward direction with consumer load. On verification from the CC bills for the month of September 2008 the final reading was mentioned as 15000 instead of 31042 as on 11.11.08. Thus, there was suppression of 16042 units. Hence, back billing was booked, the consumer also utilizing the same for fish tank purpose and unauthorized use of supply case is booked.

4. Basing on the report provisional assessment was made for Rs.1,57,167/- (towards malpractice charges) and Rs.88,231/- (towards shortfall). The service was disconnected on 16.12.2008 with FR 00002. The DE/Assessments/RJY passed an order u/s 126 of the Electricity Act, 2003. The consumer did not come forward to pay the final assessment amount. The consumer has paid some amounts and some cheques issued were bounced and there was still balance of Rs.1,10,099/-. Though he was permitted to file an appeal, he neither paid the balance amount nor he appealed to the SE.

5. The respondent No.2 filed written submissions with regard to MRT Lab Test Report, Provisional Assessment Order and consumption particulars apart from test report, etc.

6. After hearing both sides and after considering the material placed before the Forum, the Forum opined that it is not a fit case to hear by the Forum as the case is registered u/s 126 of The EA 2003. There is also suppressed units and there was unauthorized use of supply to the fish tank. The complainant is liable to pay the demand raised by the licensee without fail.

7. Aggrieved by the said order, the appellant preferred this appeal questioning the same that he has paid more under domestic Cat-I than the commercial Cat-I and the department has unnecessarily booked the cases i.e, back billing and malpractice. When he is paying the highest tariff there is no question of any malpractice as such, nor back billing and the appeal preferred by him is to be allowed.

8. Whereas the respondents are represented by Sri DVSS Muralidhar, ADE/O/Akiveedu, Sri Y.Srinivasa Rao, AAO/ERO/Bhimavaram and Sri Y.A.R.Gupta, UDC/ERO/Bhimavaram stated that this Forum has no authority to enquire into this matter as remedies given u/s 126 of The EA 2003 have to be exhausted and the appeal preferred by the appellant is liable to be dismissed.

9. Now the point for consideration is, “whether the impugned order, dt.24.09.2009, is liable to be set aside? If so, on what grounds?”

10. The Forum is vested with the power to enquire into the matter when there is any deficiency of service and if a person is found indulging in unauthorized use of electricity, he shall provisionally be assessed to the best of his judgment, the electricity charges payable by such person or by any other person benefited by such use as per section 126 of The EA 2003. If any person is aggrieved by the final order made u/s 126 and booked with a case of unauthorized usage of electricity, he can prefer an appeal to the Appellate Authority u/s 127 of the Act.

11. The Final Assessment made by the DE and is not appealed to SE but simply made an appeal to the Forum and the Forum has rightly rejected the order as it is not vested with the power about unauthorized usage of electricity or theft of energy or back billing,etc.

12. It may be a fact that he may pay the highest tariff, but he cannot be absolved from the liability of the cases of back billing and malpractice i.e, unauthorized usage of electricity by supplying power to the fish tank and by suppressing actual billing when the meter is tested it is in working condition. If it is working, the shortfall in the billing is only due to the management with the reader or door locking etc. It is nothing but back billing due to suppression of the actual consumption. The purpose of taking the service connection is for domestic usage but has been using for commercial purpose. The tariff for commercial purpose is less than the domestic consumption, but he cannot be exonerated on that ground. Ignorance of law cannot be an excuse, and the penal action to be taken against them. When there is no deficiency of service on the part of department, when the Forum itself has no power to enquire into the matter as there is a separate authority to enquire into, this authority is also not competent to entertain the appeal as such. Hence, the appeal is liable to be dismissed.

13. In the result, the appeal is dismissed. No order as to costs.

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

VIDYUT OMBUDSMAN