

BEFORE THE VIDYUT OMBUDSMAN

Present
K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 25.11.2010

Appeal No. 47 of 2010

Between

M/s. Vijaya Durga Mini Modern Rice Mill
Vullibhadra,
Vizianagaram Dist, A.P

... Appellant

And

1. Assistant Engineer / Operation/ Garugubilli
2. Asst. Divisional Engineer / Operation / Parvathipuram
3. Divisional Engineer / operation / Bobbili
4. Asst. Accounts Officer /ERO/Parvathipuram

....Respondents

The appeal / representation dated 03.09.2010 (received on 06.09.2010) of the appellant has come up for final hearing before the Vidyut Ombudsman at Visakhapatnam on 16.11.2010 in the presence of Sri P. Dharmaraju the appellant, and Sri K. Chalapathi Rao, DE / O / Bobbili, Sri. K.Govindaraju, AE/O/Garugubilli and Sri M. Uma Maheswara Rao, AAO present for the 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 and the same was registered a CG No. 194 / 2010-11 of Vizianagaram with a request that he has filed a complaint that the surcharge of Rs. 56,237/- which was included in the notice issued to the complainant by the payment of balance of 50% of back billing amount is not liable to pay and requested the Forum to set a side to the

orders and not to disconnect the service connection, since there is deficiency of the service due to non testing of the meter in the presence of the consumer or his nominee.

2. The 2nd respondent has filed his written submissions as mentioned hereunder.

a) The service No. 77, Cat-III, Vallibadra in Garugubilli Section was inspected on 30.04.03 by ADE/CT/Meters/VZM and found that the meter error is -40.1% and observed Y-Ph C.T burnt and broken due to above fault Y-Ph potential wire melted and its phase voltage drops to 21.4 V, from normal value of 230 volts is also observed; and that other two phases C.T's are also partially melted. Insulation of the cable passing through the CT chamber completely burnt.

b) On account of meter error of 40.1% it issued a provisional assessment notice for Rs. 76,948/- (Seventy Six thousand and nine hundred forty eight only) to compensate the loss to the department by way of less energy consumption regard by the meter with all error of -40.1%.

c) According to the terms and conditions of supply, back billing is levied for a period of last 6 months prior to date of inspection.

d) The defect persisted in the meter is found during annual inspection, by ADE / CT / Meters / VZM and tested actual % of error, of the meter at that time by common meter reading instrument ("CMRI"). According to the CMRI data the error of the meters is -40%. According to that error, a notice relating to units miss-recorded by the meter was arrived and charged at the rate of norms tariff only. No extra charges were levied in the notice.

(Note: The copy of test report by ADE/CT/Meters/VZM along with a copy of CMRI report as severed the notice about the testing i.e., 30.04.2003. This copy was served to Sri P. Dharma Raju, Managing Partner, duly taking signature

on the test report. Later on ADE/O/PVP (T) has issued provisional assessment notice to the consumer on 22.05.03 PM receipt of the above notice and copy of test report consumer has paid 50% of provisional assessment amount was paid on 19.04.04. So there is no question of arising not issue of test report copy and provisional assessment notice. Moreover, the service meter itself tested by the MRT wing in the presence of consumer Sr. P. Dharma Raju who put his signature on the test report.

It is certified that the provisional assessment by ADE final assessment i.e., proceedings given DE & SE are correct as per departmental rules in force from time to time.

Again the consumer appealed to the Addl. District Court, Vizianagaram. As per the court order vide reference 2nd cited above “this special court has no jurisdiction to entertain the suit when the matter pertains to the assessment made by the defendants u/s 126 of the Act and when the order passed by the Superintending Engineer / Operation / Vizianagaram who is the appellate authority became final u/s 127 of the Act. There is no necessity to discuss these issues when the special court has no jurisdiction to the entertain the suit”.

Due to non-payment of remaining case amount, the service was disconnected on 30.07.2010.

3. After hearing both sides and after considering the material placed, the Forum held

The Forum itself is not vested with the power to entertain the complaint of Sri. P. Dharma Raju, Partner of Vijaya Durga Mini Modern Rice Mill, Vullibharda, Garugubilli Mandal, Vizianagaram Dist as the complaint approached special court, Additional District Judge and the same court delivered the judgment as no jurisdiction to entertain the suit when the matter pertains to the assessment made by the defendants u/s 126 of the Act.

In this result, the CG No. 194 / 10-11 is dismissed.

4. Aggrieved by the said order, the appellant preferred this appeal questioning the same, that the respondents have not followed the procedure contemplated under the Act and Regulations; and that they are not liable to pay any amount apart from the surcharge.

5. The appellant has also mentioned in the grounds of appeal that the Forum ought to have seen that the Additional District Judge returned the plaint to represent the same before the appropriate Forum. But did not observe that there were latches on the part of the appellant. The written submissions before the Forum filed by the respondents are not in accordance with the procedure contemplated under the law and the same is nonest in the eye of law. During the period from 19.04.2002 to 26.10.2002, the total consumption was 15088 units and total milled paddy bags were 10,392 and so the average electrical consumption per bag was 1.45 units. From 27.10.2002 to 30.04.2003 the total consumption was 31029 units and in this period, the total milled paddy bags were 18247 and so the average electrical consumption per bag was 1.61 units. The appeal preferred by the appellant is to be allowed by setting aside the impugned order.

6. Though, the appellant is represented through an Advocate Sri. B. Satyanarayana but the said advocate has not appeared at the time of hearing of the appeal and one Sri.P.Dharma Raju, Managing Partner representing the rice mill appeared and argued that they are illiterates and the non-functioning or malfunctioning of the meter is not with in their knowledge and they are paying the bills accordingly and that the department has not followed the procedure and they filed a suit before the Additional District Judge and when he stated that Civil Court had no jurisdiction and there after, they filed a petition before the Forum and the Forum with out looking in the real facts dismissed on technical grounds and the appeal preferred by them is to be allowed by setting aside the impugned order.

7. Whereas, the Divisional Engineer (Operations), Bobbili appeared and stated that the appeal preferred by the appellant is devoid of merits and the appellant has to pay all the amounts charged against him. AE (O), Garugubilli stated that the penalty is levied for 6 months as per regulation 22.3.3.3 and the appeal preferred by the appellant is liable to be dismissed.

8. It is clear from the record that inspection was made on 30.04.2003 and back billing was made for a period of 6 months. The respondents are at liberty to collect delayed payment surcharge on the outstanding amounts. Whether there is any delay in paying the amount is another point to be looked into by this authority.

9. The forum has simply rejected the petition on the ground that it is a case falls u/s 126 of Electricity Act, 2003 and it has no jurisdiction to entertain the same. Let us see Section 126 which says

126. Assessment – (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

10. The above said section clearly says that if any person is indulged in unauthorized use of electricity, he shall be provisionally assessed the electricity charges. Against the said appeal is provided to SE (Assessments) u/s 127 of Electricity Act, 2003. The case of the appellant is not an unauthorized usage of electricity. It is a case of non functioning of meters and the error recorded is 40% due to burning of % phase CT. The distinction between the error of recording the meter and unauthorized usage of electricity is lost sight of by the Forum. The Forum was to exercise its powers by stretching its helping hands to the

consumers, but not by folding the same by narrow interpretation of the provisions.

11. It is pertinent to note that the provisions of Electricity Act, 2003 are not applicable to the case of the appellant, since the Act came in to force with effect from 10th June 2003. Where as, the inspection was made on 30.04.2003, which is prior to the advent of the Act. Hence provisions of Electricity Act, 1910 are applicable and Section 39 to 47 are the relevant provisions under which proceedings have to be initiated with regard to the theft of energy or other related usage of power. These provisions also do not cover the case of the appellant.

12. Thus the only related provision applicable to the case of the appellant is the relevant terms and conditions of supply dated 30.01.1999 since General Terms & Conditions of Supply dt. 04.03.2006 are not applicable as the alleged inspection was prior to the said GTCS of 2006.

13. Now coming to the terms & conditions of supply dt. 30.01.1999, the method of assessment of similar cases is discussed. Even according to the respondents, the assessment was made under clause 22.3.3.3 the relevant portion of the notice dated 22.05.2003 is extracted as hereunder.

“The above observation clearly establish that the meter installed for your service connection is not functioning correctly and is recording less energy consumption.

In view of the above I assess the energy consumption during the period of defect in the meter as per clause 22.3.3.3 of terms & conditions of supply and the details of the assessment are indicated in the annexure enclosed”.

14. As per the enclosure, the case was treated as back billing. The period of assessment was made for 6 months. As per the said terms the SE (O) has no jurisdiction to entertain the appeal since the appellant service connection is only HT category and the concerned Zonal Chief Engineer (Electricity) is vested with

the power to receive hear, and the dispose of the appeal and whose decision shall be final. The entire procedure adopted by the department is against to the provisions of the Act as well the terms & conditions of supply dt. 30.01.1999.

15. Clause 22.3.3. deals with the procedure for arriving at consumption when the meter is defective.

22.3.3 - Where supply to the consumer has been given without a meter or where the meter fixed is found defective or to have ceased to function and no pilferage of energy or malpractice is suspected, the quantity of electricity supplied during the period when meter was not installed or the meter installed was defective, shall be assessed as mentioned hereunder.

22.3.3.1 - The quantity of electricity supplied during the period in which the meter ceased to function or became defective, shall be determined by taking average of the electricity supplied during the preceding three months the month in which the said meter ceased to function or became defective provided that condition in regard to use of electricity during the said three months were not different from those which prevailed during the period in which the meter ceased to function or became defective.

22.3.3.2 - If the conditions in regard to use of electricity during the periods as mentioned above were different, assessment shall be made on the basis of any consecutive three months during the preceding 12 months when the conditions of working were not different.

22.3.3.3 - Where it is not possible to select a set of three months as indicated in sub-clause 22.3.3.1 or 22.3.3.2 or if meter is not at all installed, quantity of electricity supply shall be assessed by the Assistant Divisional Engineer / Divisional Engineer of the area on the basis of connected load and hours of usage of electricity by the consumers. However in the case of industrial consumers due

regard shall be given to the production figures and conditions of working in the period under question.

The concerned Asst. Divisional Engineer (Operation), of the area shall issue the assessment notice to the consumer (Appendix – XII) with in a week from the date of receipt of the inspection report from the Inspecting Officer. The Assistant Divisional Engineer operation shall indicate the details based on which the assessment was made, in the said notice. The consumer shall be advised to file his representation if any to the concerned Divisional Engineer (Operation) in the case of LT services and Superintending Engineer (Operation) in the case of HT services with in fifteen days from the date of receipt of the notice. The Divisional Engineer (Operation) / Superintending Engineer (Operation) as the case may be, shall permit the consumer to represent his case in person, if the consumer so desires.

After due consideration of the material furnished in the reply to the Assessment notice, representation made available if any, during personal hearing and the facts and material of the case on record, the Divisional Engineer (Operation) / Superintending Engineer (Operation) as the case may be, shall then pass an aorder in the case which shall be a speaking order. The amount payable by the consumer towards short billing on account of defect in meter, pursuant to the said order of the Divisional Engineer (Operation) / Superintending Engineer (Operation), shall be payable by the consumer within 30 days from the date of issue of the order, by cash or by DD drawn in favor of the concerned AAO (ERO) in case of LT services and SAO of circle office in case of HT services.

22.3.3.4 - The consumer, if aggrieved by the order of the Divisional Engineer (Operation) / Superintending Engineer (Operation), may appeal to the Superintending Engineer (Operation) in case of LT services and to the concerned Zonal Chief Engineer (Electricity) in

case HT services within thirty days from the date of the order or within such further time as the Superintending Engineer or Chief Engineer (as the case may be) as may in his own discretion deem fit to allow and his decision shall be final. Provided however that no such appeal by any such aggrieved person is maintainable unless he deposits with the concerned AAO (ERO) in case of LT services and SAO of circle office in case of HT services, the full amount as assessed in the order passed by the Divisional Engineer (Operation) and in the event of the appeal being allowed in full or in part, the consumer is entitled for adjustment of the amount lying in deposit (with the Divisional Engineer (Operation) / Superintending Engineer (Operation), against future cc bills of the consumer.

16. No distinction is drawn on the period of assessment for LT & HT consumers separately, unlike clause 7.5.1. 4.4 of GTCS dt. 04.03.2006 which reads follows.

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.

17. The respondents though issued notice under 22.3.3.3 on 22.05.2003, but followed the procedure contemplated under section 126 and 127 of Electricity Act, 2003 and clause 7.5.1.4.4 of GTCS dt. 04.03.2006. In fact both the provisions are not applicable to this case of the appellant. The learned Additional District Judge as well CGRF of APEPDCL have lost sight of the said distinction in between the provisions of the Acts as well as the regulations.

18. The appellant has been presenting the matter soon after receiving the orders of the respective authorities all through with a bonafide belief that injustice is caused to him. No doubt surcharge can be levied to the case of delayed

payment if is not paid with in the stipulated time. This analogy is not applicable to the case of the appellant, as he has been prosecuting the matter all through by going from pillar to post.

19. In fact, there is no provision to take the reading preceding six months in any one of the sub-clauses of clause 22.3.3. The relevant sub-clause fit into the case of the appellant is 22.3.3.1. But not clause 22.3.3.3, which is applicable to the cases where 22.3.3.1 or 22.3.3.2 are not applicable. Even this clause also does not speak about the reading to be taken preceding the six months of the meter ceased to function or became defective. Hence the assessment of six months is against to the above said clause relied upon by the respondents. Hence the said order is unenforceable, beyond 3 months.

20. However, the relevant clause 22.3.3.1 is made that the billing has to made by taking average of the electricity of the supply during the proceeding 3 months, the month in which the meter ceased to function or became defective. Whereas in this case 6 months calculation is made and it is represented that the appellant has already paid half of the amount. If that is so, he has paid 3 months average electricity consumption and the said clause 22.3.3.1 has been complied and there is no need to order for further payment.

21. When 3 months average is paid as per the orders of the authorities he is not liable for any additional surcharge delayed payment and also the balance of remaining half of the amount (3 months average) as the provision contemplates only 3 months average electricity preceding the meter ceased to the function or became defective. The said 3 months average had already been paid.

22. In the light of the above said discussion, I am of the consider opinion that the Forum has failed to appreciate the relevant provisions of the law and erroneously rejected the appeal by invoking section 126 of the Electricity Act, 2003 by simply following the dictum made by the Additional District Judge, Viziananagram ignoring the relevant provisions of law applicable to the case of

the appellant. Hence, the appeal filed by appellant is allowed by holding that the appellant is not liable to pay any surcharge, including half of the balance amount (3 months average), as he has already complied the clause 22.3.3.1 (3 months average).

23. The respondents are also further directed to restore the service connection within 7 days from the date of receipt of this order.

No order as to costs.

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

VIDYUT OMBUDSMAN