

BEFORE THE VIDYUT OMBUDSMAN

Present

**K.Sanjeeva Rao Naidu, Director (Law) and
Vidyut Ombudsman**

Dated: 26-02-2010

Appeal No. 8 of 2009

Between

M/s. SSSVK Cold Storage (P) Ltd.
Gajularega, D-1 section,
Vizianagaram Dist.

... Appellant

And

The Addl.Asst. Engineer / Operation / APEPDCL / D-1/Vizianagaram
The Asst. Divisional Engineer / Operation / Town/APEPDCL / Vizianagaram
The Asst. Accounts Officer / ERO/ Town/APEPDCL / Vizianagaram
The Divisional Electrical Engineer / Operation / APEPDCL / Vizianagaram

....Respondents

The appeal / representation dated 29.01. 2009 received on 31.01.2009 of the appellant has come up for final hearing before the Vidyut Ombudsman on 02.02.2010 in the presence of Sri M.Venkatachalam, Director, Sri B.Satyanarayana, Advocate for appellant and Sri. K.Gopal Rao Naidu, ADE/Dist/VZM, Sri G.Chiranjeevi Rao, DE/Op/VZM, Sri L.V.Ramana, AAE/D1/VZM, Sri D.Seshu Kumar, JAO/ERO(Town)/VZM present on behalf of 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.292 / 2008 of Vizianagaram Dist dated 30.12.2008, the appellant herein preferred this appeal dated 29.01. 2009 received on 31.01.2009.

2. The appellant has filed a complaint before the Forum through its Director to investigate the case and accord justice. The procedure to be adopted as per clause 7.5.1 of GTCS is not scrupulously followed.

3. The service of M/s. SSSVK Cold Storage Pvt. Ltd S.C.No.55633, LT Cat-III (A), Gajularega in D1, Vizianagaram section is attended on 25.09.2008 for replacement of the failed metering cubicle. The new MC is tested and available consumer load and performance found to be satisfactory. The MRI data is collected and on analysis, it is observed that R&Y phase voltage to the meter became low at 10-35 Hrs on 28.05.2008 and normal phases voltages restored at 16-06 Hrs on 25.09.2008. Copy of the MRI print out for load survey of average energy, cumulative tamper status, import energy & MD histories are enclosed, while giving evidence by the 2nd respondent and requested for back billing of above service.

3. On examination of the inspection report of the Divisional Engineer/DPE / Vizianagaram, observed the following points and suggested for back billing.

"The service of M/s. SSSVK Cold Storage Pvt.Ltd ., was inspected on 19.09.2008 and found that MC is defective and the service was inspected by Assistant Divisional Engineer HT meters 25.09.2008 or replacement of the failed metering cubicle as per Lr.No. Assistant Divisional Engineer/HTM/Vizianagaram / F.Backbilling/320/08 dt.01.10.08 the new MC is tested and found satisfactory and is charged. The voltages and current in the secondary side of the MC as observed in the meter display are found to be normal. The meter is tested on available at consumer load and performance is found to be satisfactory.

MRI data of the meter is collected and on analysis it is observed that the R&Y phase voltage to the meter became low at 10.35 hours on 28.05.08 and normal phase voltages restored at 16.06 hours on 25.09.08 so back billing was levied for the MC defective period.

The designated officer has issued a PA notice dt.25.10.08 for Rs.2,02,910.58. However, in accordance with para 5 of PA notice. The complaint consumer is at liberty to file his representation before the designated officer within 15 days of the notice. There is also a change for

appeal before the appellate authority, if he is aggrieved by the orders of the designated officer. Thus, the consumer has not exhausted channels.”

4. On the above said aspects, the Forum directed the complainant to represent the final assessing authority as advised in the PA notice. “However, the complainant may not avoid payment of dues of the Discoms as assessed by the Appellate Authority as the case may be. The respondents are directed to collect the assessed amounts as per rules in vogue. The CG No. 292/08 is disposed off accordingly.”

5. The appellant preferred this appeal against the order in CG No. 292/08 alleging the following grounds:

- (i) The back billing is made without following relevant electricity laws or GTCS of APEPDCL.
- (ii) The procedure as per clause 7.5.1 of GTCS is not scrupulously followed in the case of consumer dispute and levy of assessment as per rules in vogue.
- (iii) The format prescribed in Appendix-IV A is not served on the consumer by the authorized inspection officer. The CT meter installed is still available and the department has not thought of removal of the meter while application of the rule of defective meter as per GTCS.
- (iv) The MC equipment is fixed abetment to the compound wall, properly sealed by the thick cover of the meter even unable to know the quantum of usage of energy unless the AE records the consumption for issue of monthly bill.
- (v) There is no possibility or accessibility or by any means to the meter and it cannot be tampered and meddled with.
- (vi) The inspection by the authorizing inspecting officer during the month of September 2008 an idea of assessment from May onwards is unimaginable deterrent action.

- (vii) The representations submitted for consideration are within the time limit only and exhausted all statutory channels as envisaged in the Electricity Act, 2003.
- (viii) However, the stipulated time for preferring appeal is 30days, but he received the order on 13.12.2008 as 30days was expired by 11.01.2009.
- (ix) The written submissions made by the ADE are one sided, partial vengent and untenable.
 - a. No responsible person is there for replacement of failed cubical except paid manager of the concern.
 - b. MRI data was submitted to the Chairperson but not to the consumer.
 - c. The observations of the DE/DPE for recommending back billing are not indicated in column 13 of format-IV A and no format of IV-A is served nor the space provided for filing nor attestation of the consumer is obtained.
 - d. The analysis is unimaginable. The R&Y phases to the meter becomes low at 10-35 Hrs on 28.05.2008 without inspection for arriving back billing period.

Month-Year	Units consumed	Month-Year	Units consumed
May-2007	16257	May-2008	9308
June-2007	10785	June-2008	6701
July-2007	13138	July-2008	7282
Aug-2007	10905	Aug-2008	5185

- e. The final assessment order is not seen the light of the day except confirming the PA order.
- f. The observations of Chairperson on the MRI data is not in correct lines.

- g. The departmental judicial set up is not correctly checked either by the forum of audit or thrust and thereby ignoring the consumer who is the important person to feed the company.
- h. The finding of the Chairperson with regard to the conclusion is sufficient to set aside the same by this authority and appeal filed is to be allowed by setting aside the impugned.

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

7. The appellant is represented by Sri B.Satyanarayana, Advocate and he represented that the procedure adopted by the Forum or by the authorities are not on correct lines and they are not rightly hearing appeals and they are not doing justice to the consumer in particular the appellant herein. It is also further argued that the provisional order itself is confirmed even without passing any final order and without assigning any reasons by the ADE/DPE, and that there is no data as how it worked out to 28483 units; in particular when there is no fault, on the part of the consumer and when it is a mechanical defect, he should not be penalized with the back billing and the appeal preferred by him is to be allowed by setting aside the impugned order.

8. Whereas, Sri G.Chiranjeevi Rao and others who appeared before the Forum on the date of hearing for the respondents submitted that the MRI data has sufficiently proved and established sufficient material for back billing and the authorities have nothing to say about the data as it is recorded by the meter itself. It is not a case of meter defect and it is not a case of theft of energy and it is only a defect in the meter cubicle. How the data is recorded is imbibed in the meter itself and there is nothing to pass any order again on the said finding and the appeal is liable to be dismissed as there are no grounds to interfere with the same.

9. Though, it is vehemently argued on the technicality in particular on the MC by the appellant but he has not stressed about the appeal preferred by him before the Superintending Engineer who is the appellate authority on the orders of the DE that too in pursuance of the direction given by the Forum. The consumer though mentioned about delay in the grounds of appeal at point No. (4) but he is not very clear and nothing can be culled out from the ground mentioned therein. Whether he has preferred any appeal and what happened to that appeal is also not clearly mentioned therein. The very ground mentioned by him shows that he received the order of the Forum after expiry of the 30days and when there is a delay not on his part but on the lapse of administration, he can as well file a petition to condone the delay before the Superintending Engineer. Even if the delay is not condoned and the appeal filed by him is rejected by Superintending Engineer, he would have approached the Forum for redressal of grievance.

10. On the other hand, the record shows that he has approached the appellate authority i.e, the Superintending Engineer. The Superintending Engineer considered his contentions and passed an elaborate order on 21.03.2009 confirming the orders of the DE and it is subsequent to the order of the Forum. The Superintending Engineer finally confirmed the orders of the DE(Operation), Vizianagaram. While prosecuting the appeal, the appellant has also filed appeal before this authority which is forbidden under law.

11. The appellant ought to have approached the Forum on the final orders of the Superintending Engineer, instead approached this authority. If he files the appeal without approaching the Superintending Engineer, it is sustainable otherwise it is not sustainable. When the Forum ordered him to approach the appellate authority (SE) he would have waited till passing of the order and then, he would have approached the Forum on the ground of deficiency of service.

12. In the light of the above said observations, I am of the opinion that an opportunity has to be given to the appellant to approach the Forum by filing a petition against the orders of the Superintending Engineer within 30days from the receipt of this order and the Forum has to receive the same and dispose of the same on merits as he cannot seek redressal at one time before two authorities, as it is against to the principles of law.

13. At this juncture, it is necessary to order that the opinion expressed on the merits of the case by the Forum cannot be looked into at the time of hearing the application by the Forum. Even if any opinion is expressed it is nonest in the eye of law since the direction is given to dispose of the application afresh on merits.

14. In the light of the above said observation, the finding of the Forum is set aside without keeping any observations made by the Forum and with a directions to the consumer to file an application within 30days from the date of receipt of the order against the orders of Superintending Engineer and the Forum is directed to dispose of the same after hearing the consumer and the respondents on merits. No order as to costs.

This order is corrected and signed on this day of 26th February, 2010

VIDYUT OMBUDSMAN