

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 31-08-2012

I.A. 03 of 2012

In

I.A. 05 of 2011

in

Appeal No. 22 of 2011

Between

- 1.Sri P.Satyanarayana Raju
S/o. Appala Raju,
H.No.48-1-32/3, Srinagar Colony,
Visakhapatnam – 20.
2. Chandana Brothers Shopping Mall
Rep. by its Managing Partner
M.Venkata Ramana
53-33-16, K.R.M.colony, Visakhapatnam.

... Petitioner

And

Superintending Engineer/operation/APEPDCL / Visakhapatnam.

....Respondent

ORDER

The 2nd Petitioner herein submitted an application to this authority projecting the following grounds:

- (i) the premises was constructed in S.No.1013/1A1 of Gopalapatnam village was taken on lease at Rs.7,20,000/- per month and applied HT permission after paying all the necessary charges to the concerned authorities.

- (ii) The HT service connection was provided to the building by virtue of interim orders in I.A 5/2011 in Appeal No. 22/2011 dated 16.12.2011 for a period of three months by this authority.
- (iii) In the petition filed by One Kalla Satyanarayana in WP No. 33431/2011, the Hon'ble High Court passed an interim order directing the Commissioner, GVMC to seize the complex and accordingly, Commissioner, GVMC seized the complex.
- (iv) The 2nd petitioner also filed a petition WPMP No. 9142/2012 to implead him as respondent in the above said proceedings and he was also impleaded as party to the proceedings as respondent no. 8. Subsequently on 06.08.2012, the Hon'ble High Court dismissed the writ petition 33431/2011 and also vacated all the interim orders.
- (v) Hence, he requested this authority to pass final orders in the above said matter as early as possible and also order the respondent to refund the minimum charges paid during the period from the date of seizure by GVMC i.e, from 12.03.2012 to 06.08.2012.

2. After receiving the said application, this authority called for the remarks of SE/O/Visakhapatnam on 16.08.2012. The SE/O/VSP submitted his remarks on 20.08.2012.

3. In the remarks, he has narrated the entire history of the case. The consumer is paying CC charges to APEPDCL as per Tariff order as issued by APERC. The monthly minimum charges cannot be waived during the closure period as per the HT agreement entered by the consumer with APEPDCL. The consumer shall pay minimum charges every month as prescribed in the Tariff order and GTCS even if no electricity is consumed for any reason whatsoever and also if the charges for electricity actually consumed are less than the minimum charges. The minimum charges shall be payable by the consumer even if electricity is not consumed and also supply was not disconnected by the company. Even after seizure by Commissioner, GVMC, no request is made to

disconnect the supply or by any Govt. agency or even by the consumer. Even if supply is also disconnected, the consumer has to pay monthly minimum charges for a period of three months as per HT agreement entered. During the period of seizure monthly charges are also paid by the consumer regularly. Hence, it is not possible to waive monthly charges as requested by the consumer.

4. Now, the point for consideration is, “whether the 2nd petitioner is entitled for restoration of service connection as prayed for, and whether he is entitled for any refund of the amount as claimed?”

5. It is clear from the record, that this authority passed an order directing the respondents to release the service connection forthwith without insisting upon occupancy certificate giving liberty to take other necessary bonds in the regular process of releasing the service connection, by looking into the material and the proceedings between the parties, in particular the order of the Civil Court in I.A.1103/2011. This authority has also directed the respondents to release HT service connection enabling the tenant to proceed with inauguration and the same shall be continued for a period of three months from the date of issue of service connection or till further orders issued by this authority.

6. The CEO, Zilla Parishad, VSP filed a suit for declaration of title over some portion of land on which the building was constructed. The suit is still pending on the file of VI Additional District Judge at Visakhapatnam. The CEO, ZPP also filed IA 1103/2011 with a request to grant interim injunction to restrain APEPDCL from releasing the enhanced power supply to the said building. The said petition was also dismissed by VI Addl. District & Sessions Judge, VSP. This authority called for the remarks from the respective parties i.e., ZPP and others including GVMC and after considering the entire material, passed the order in I.A. 5/2011 on 16.12.2011.

7. One Kalla Satyanarayana filed WP No. 33431/2011 against the respondents including the owner of the building, who constructed the building. The Hon'ble High Court passed an interim order on 12.03.2012 directing Commissioner, GVMC to seize the complex and accordingly the Commissioner, GVMC seized the complex.

8. DE/O/ APEPDCL/VSP is also a party to the proceeding i.e, WP No. 33431/2011 as respondent no.5. So, the respondents cannot say that they have no knowledge about the passing of the order by the Hon'ble High Court. The Commissioner, GVMC seized the complex in pursuance of the orders of the Hon'ble High Court. So, the petitioner is not only prevented from using the building, but also the power appended to it. While the things stood thus, finally, the Hon'ble High Court dismissed the above said writ and vacated all the interim orders already granted. The operative portion of the order passed by the Hon'ble High Court is extracted as hereunder:

“under these circumstances, the writ petition entertained by this Court in public interest, has become diluted by the action on the part of the parties. We, therefore, do not intend to pass any order in this taken up writ petition at this stage.

We make it clear that any observation made by this Court in the matter will not stand in the way of the Civil Court to decide the civil suit. The Civil Court will decide the matter before it in accordance with the provisions of law.

Respondent Nos. 6,7 and 8 may apply before the appropriate authority for their relief's, if any, for regularization of construction and for occupancy certificate and the competent authority shall consider the same and pass appropriate orders in accordance with the provisions of law.

With the above observations and directions, the writ petition stands dismissed. All interim orders are vacated. No costs.”

9. In the light of the above said order, the petitioner approached this authority for an order for continuation of the power together with refund of the minimum charges as the Hon'ble High Court issued a direction to the respondent nos. 6 to 8 (may apply for appropriate authority for their relief's, if any, for regularization of construction and occupancy certificate, etc.,) The respondent no. 8 is the 2nd petitioner herein.

10. Hence, there is no legal impediment as such to continue the service connection pending final disposal of the OS No. 297/2009 on the file of VI Addl. District & Sessions Judge, VSP. When the petitioner has approached this authority for continuation of service and it is a relief sought by the 2nd petitioner in pursuance of the direction given by the Hon'ble High Court. I feel that a duty is cast upon this authority to continue the service connection pending final disposal of the said suit.

11. The other point urged by the petitioner is refund of the minimum charges already paid by him.

12. It is the contention of the petitioner that inspite of the seizure made by the GVMC, he was forced to pay the minimum charges and he is entitled for refund of the amount.

13. The other plea raised by the 2nd petitioner is about refund of minimum charges paid during the period from the date of seizure by GVMC from 12.03.2012 to 06.08.2012.

14. When remarks from the respondent are called for, he has simply stated that Hon'ble High Court has issued orders for seizure of building and accordingly seized by GVMC, but not intimated to APEPDCL for disconnection of supply by any Govt. agency and also stated that it is not possible to waive minimum charges as requested by the consumer.

15. The respondent has taken the plea that the Government has not intimated to APEPDCL for disconnection of supply is not the fault of the 2nd petitioner and the respondent cannot say that they have no knowledge about the order pronounced by the Hon'ble High Court being a party to the said proceedings (respondent no.5). They would have issued a notice consequent on the interim

orders of the Hon'ble High Court and ought to have asked about the steps to be taken by GVMC with regard to service connection. This case is a very peculiar and also a class by itself, since it is rarest of rare case where the petitioner is asked to pay the minimum charges, though he is prevented from entering into premises, more in particular when it was seized by the GVMC in pursuance of the orders of the Hon'ble High Court. The very petitions filed by the petitioner before the Hon'ble High Court in WVMP No. 11676 of 2012 to 11678 of 2012, clearly disclosed that he is not permitted to enter into the premises and he sought permission to remove the furniture from the premises subsequent to the orders of the Hon'ble High court. This shows that he is not in occupation of the building and the building is in the custody of the GVMC.

16. No doubt, in the normal circumstances even if the premises is not used and if the service connection is disconnected, the party is liable to pay minimum charges for three months as per HT agreement entered as projected by the respondent. It is a very rare instance where the party is asked to pay minimum charges though he is not permitted to enter into premises by virtue of the orders of the Hon'ble High Court. It is an act beyond the control of the petitioner. The very agreement entered in between the parties i.e, between petitioner and respondent is suspended by virtue of the court's order since the premises is taken away from the petitioner and given to GVMC. When the contractual relationship is suspended temporarily by the orders of the Hon'ble High Court, there is no point in asking the petitioner to pay the minimum charges. Furthermore, it is the GVMC who stepped into the premises by virtue of the orders of the Hon'ble High Court, has to work out on the power supply and other liabilities on the building. The respondent ought to have demanded minimum charges or waive the minimum charges for the suspended period i.e, in between 12.03.2012 to 06.08.2012, if they are not willing to raise against the GVMC. As it is due to an order of the Hon'ble High Court, it is proper in the interest of justice to waive the minimum charges.

17. In the light of the above said circumstances, this authority feels that collection of minimum charges from the petitioner is not only against to the principles of natural justice but also against to the principles of equity and good conscience.

18. It is for the respondent to approach GVMC to pay the minimum charges or waive the minimum charges for the above said period, since the premises is in possession of GVMC and not in possession of the 2nd petitioner. Furthermore, it is only by virtue of the orders of the Hon'ble High Court, it is quite reasonable to waive the same if GVMC is not inclined to pay the minimum charges.

19. In the result, the petitions I.A.3/2012 and IA 5/2011 are allowed. The amount collected from the 2nd petitioner towards minimum charges shall be adjusted in the future bills. The respondent is further directed to restore the power supply, if disconnected till the final disposal of the suit OS No. 297/2009 on the file of the VI Addl. District Judge, Visakhapatnam.

This order is corrected and signed on this 31st day of August 2012

Sd/-

VIDYUT OMBUDSMAN