

BEFORE THE VIDYUT OMBUDSMAN

Present

**K.Sanjeeva Rao Naidu
Vidyut Ombudsman**

Dated: 25 -01-2011

Appeal No. 60 of 2010

Between
Sri Gullanki Veerraju
S/o.Laxmana Swamy
Magantivari Street,
RRPeta, Eluru, WG Dist

... Appellant

And

- 1.Asst Engineer/Operation/D1/Eluru
2. Asst Divisional Engineer/Operation/T/Eluru
3. Asst. Accounts Officer/ERO/T /Eluru
4. Divisional Engineer/Operation/ Eluru

....Respondents

The appeal / representation filed on 24.12.2010 of the appellant has come up for final hearing before the Vidyut Ombudsman on 13.01.2011 at Visakhapatnam in the presence of Sri G.Veerraju appellant present and Sri D.Raja Babu, ADE/O/Town/Eluru, Sri B.V.Krishna Raja, AE/O/North and Sri G.Bhaskara Rao, AAO/ERO/ Eluru for respondents present 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 stating that the services to the flats in the apartment were released in the name of the builder without the

consent of the land owner and requested to release the services in the UDC premises of the flats owned in his name.

2. The respondent No.4 filed his written submissions as hereunder:

"It is to submit that Sri J.Amulya, W/o Satish Kumar has applied for 13 nos. 3 ph domestic services in the apartment of M/s. Venkata Subbu Towers at RR Peta, Eluru, North section, Eluru on 30.07.2009 vide CSC ELR D.No.1194/2009 dt.30.07.2009. The AE/O/N/Eluru prepared the estimate and got sanctioned under SDR No.59/09-10. Sri J.Amulya paid the amount of Rs.169590/- vide CSCER 13783/22.08.2009 vide PCB No.64782/22.08.09. The capital work completed and 13 nos. services were released on 16.10.2009 in the name of Smt. J.Amulya (Regd. Contractor) after receipt of the occupancy certificate vide ROC.No.2578/09/G2. The service nos. are 77032 to 77045 where in 7 nos. services transferred to respective flat owners, consequently on 28.04.10 Sri J.Amulya registered complaint at call centre, Eluru for dismantlement of 4 nos. services are 77034, 77043, 77038 and 77036. As per the call centre intimation the AE/O/North/Eluru disconnected the above said 4 nos services on 03.05.10 and wrote a letter to AAO/ERO/T/Eluru that the SC Nos. 77034, 77043, 77038 and 77036 are disconnected as per the request of Smt J.Amulya and the services to be made NB and issue the clearance certificate vide Lr.No.AE/O/N/ELR/D.No.1608/10, dt.03.05.10.

Sri G.Veeraju, registerd 4 nos. Lt applications at call centre, Eluru on 04.05.10 vide NSC No.20713, 20714, 20715 and 20716 for those flats having the disconnected services are 77034, 77043, 77038 and 77036. Meanwhile Sri J.Amulya given a representation to AAO/ERO/T/ELR to restore the supply for the above said 4 nos. services.

Sri G.Veeraju applied a letter to AAO/ERO/T/ELR for the clearance certificate to take new services in the same premises.

Based on the above, the AAO/ERO/T/ELR has not issued the clearance certificate vide Lr.No. AAO/ERO/T/ELR/D.no.694/10, dt.19.05.10 in view of GTCS the tariff guarantee is for 2 years.

It is also to submit that the 7 nos. consumers out of 13 nos. services have applied for name transfers and effected. But the 4 nos. new applications registered at call centre in the same premises of SC Nos. 77034, 77036, 77038 and 77043 of North, Eluru and Sri G.Veeraju not come forward to apply the name transfer.

As per GTCS 3.5.2 each separate establishment shall be given a separate point of supply and the AAO/ERO/T/ELR not issued a clearance certificate hence the services were rejected and the same was orally intimated to Sri G.Veeraju".

3. After hearing both sides and after considering material placed before the Forum, the Forum passed the following order:

"The name transfer in the name of the complainant consumer is not effected as there is no occupancy certificate in his name against 4 nos. of services as well as

he has register in call centre for name transfer duly producing relevant records as required.

The builder is an unauthorized occupant of the building as per the occupancy certificate vide ROC No.2578 of 2009/C2. Hence, as per clause 5.2.3 of the GTCS, the services were released.

Clause 5.2.3: An applicant who is not the owner of the premises he occupies and intending to avail of supply shall submit an Indemnity Bond drawn by the owner of the premises in favour of the company whereby the owner of the premises undertakes to indemnify the company for any loss caused to the company by the applicant (who is the tenant/ occupant of the Premises) arising out of the release of service to the tenant/ occupant. Otherwise he shall be required to pay three times the normal security deposit apart from providing proof of his being in lawful occupation of the premises.

As the 2nd service of the same category in the same premises should not be given as per clause 3.5.3 of the GTCS is under obligation to supply electric energy but not where electricity connection has been disconnected under section 24 of the Act, 1910 analogous law to S.6 of IE Act, 2003.

Clause 3.5.3: Notwithstanding the above provisions, the Company reserves the right, where it is reasonably established, that the consumers of the same group or family or firm or company who are availing supply under different service connections situated within a single premises by splitting the units, the Company may treat such multiple connections existing in the single premises as a single service connection and charge the total consumption of all the consumers at the appropriate tariffs applicable for a single service connection. Any officer authorised by the Company shall issue notices to the concerned consumers asking them to furnish a single application for all such services and to pay required charges for merging the services into a single service.

Hence, no merits in the complaint registered.”

4. Aggrieved by the said order, the appellant preferred this appeal questioning the same, that the appellant is the absolute owner of the said apartment and that they filed the complaint to the DE/Eluru on 8.10.2010 and also with the directions of CMD, APEPDCL Chairperson, CGRF conducted an eye wash enquiry and no justice is done to him and requested this Forum to conduct a detailed enquiry and direct concerned officials to provide electrical connections as they are suffering financially, mentally and physically.

5. Now, the point for consideration is, “whether the impugned order dt.26.11.2010 is liable to be set aside? If so, on what grounds?”

6. The appellant, Sri G.Veerraju present at the time of hearing of appeal and submitted that the said flats are in his name; and that he is in possession and inspite of the request made by him, the respondents have not changed the service connections in his name contrary to the provisions of the GTCS of APERC and the appeal preferred by him is to allowed by setting aside the impugned order.

7. Whereas the respondents are represented by Sri D.Raja Babu, ADE/O/Town/Eluru, Sri B.V.Krishna Raja, AE/O/North and Sri G.Bhaskara Rao, AAO/ERO/ Eluru present and submitted that AAO/ERO/Eluru has not issued clearance certificate hence, the service connections were rejected after intimation to the appellant and the appeal preferred by the appellant is liable to be dismissed.

8. As per the agreement, the appellant got 4 flats in the said construction and the remaining 8 flats were given to the builder. The only dispute is with regard to remaining 4 service connections. The said service connections are taxed in the name of G.Veerraju, the appellant herein and the xerox copies of the tax receipts are filed by him. Smt. J.Amulya, W/o/ Satish Kumar has applied for 13 nos. 3 phase connections in the apartment of M/s. Venkata Subbu Towers at R.R.Peta, North Section, Eluru prepared the estimate and got sanctioned and given in the name of Smt.J.Amulya on 16.10.2009 out of the 13 services, 7 services were transferred in the names of purchasers as per the occupancy certificate issued. Out of the remaining 4 service connections for which Smt. J.Amulya (regd. Contractor) registered complaint at call centre on 28.04.2010 for dismantling and accordingly AE/O/north/Eluru disconnected the above service on 03.05.2010. The appellant has registered 4nos. LT applications at call centre, Eluru on 04.05.2010 for those flats having the disconnected services. The appellant has addressed to AAO/ERO/T/Eluru to restore supply for the said 4 service connections. No clearance is issued on the ground that the tariff guarantee is for 2 years. The appellant / consumer have not registered for name transfer and the same would be done duly producing necessary documents. The Forum observed that the appellant is not a registered consumer against the 4 service connections and not issued clearance

certificate. In the mean time, Smt. J.Amulya has given a representation to respondent No.3 to restore power supply to the 4 services. Hence no merits are there in the complaint and the Forum has rejected the consumer's complaint.

9. The Forum has failed to understand the analogy and the distinction between the rightful owner in possession and lawful possession by an occupant. If a person in lawful possession, without title over the property he can take the service connection by producing an indemnity bond from the real owner of the building under which he has to indemnify the company for any loss caused to the company by the applicant. In such a case he shall be required to pay normal security deposit otherwise i.e, if he fails to produce indemnity bond from the owner, he has to pay three times the normal security deposit apart from providing proof of his being in lawful occupation of the premises. The appellant has categorically stated that he is in possession and thereby suffering without any electricity in the above said premises. So a heavy duty is cast upon the officials of the respondents to verify whether the owner is in possession of the property or the said builder is in possession of the property. Merely because the owner has paid tax, it does not mean that he is in possession and enjoyment of the property. A physical verification is necessary by the officials or verify the relevant record from the municipal authorities to prove their possession and enjoyment of the property by the appellant.

10. In the light of the above said discussions, the appeal preferred by the appellant is disposed with the following directions:

- (i) the respondents are directed to make personal inspection of the premises to verify the physical occupation of the premises by the appellant (either by him or his nominee).
- (ii) If the appellant is in personal occupation of the premises the respondents are directed to sanction service connection to the respective plots.

- (iii) If he is not in possession of the property and if the builder is in occupation of the premises, the service connection is to be given in her name on collecting three times the normal security deposit.

11. The respondents are further directed to comply the order within 15 days from the date of receipt of this order failing which the parties are at liberty to approach this authority for compliance of the order.

No order as to costs.

This order is corrected and signed on this day of 25th January 2011

VIDYUT OMBUDSMAN