VIDYUT OMBUDSMAN
O/o: ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad – 500 004

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 04 -01-2013

Appeal No. 74 of 2012

Between

Sri. Mohd. Imamuddin,
H. No. 10-5-1 / 3,
Masab Tank, Hyderabad – 500 028 ***… Appellant***

And

1. Assistant Engineer / Operation / APCPDCL/ Vijayanagar Colony / Hyderabad
2. Asst. Divisional Engineer / Operation / APCPDCL / A.C. Guard / Hyderabad
3. Asst. Accounts Officer / ERO –IX / A.C Guards / APCPDCL / Hyderabad

…..Respondents

The appeal / representation dt. 07.09.2012 received by this authority on 10.09.2012 against the CGRF order of APCPDCL C..G. No. 444 / 2012-13 of Hyderabad Central Circle Dt. 09.07.2012. The same has come up for final hearing before the Vidyut Ombudsman on 04.12.2012 at Hyderabad. Sri. Altafur Rehman for the appellant present. Sri. Ch. Rajalingam, AE / O / V.N. Colony, Smt. A. Anjali Bai, AAO / ERO-IX / A.C Guards and Sri. D. Laxman, ADE / O / A.C. Guards on behalf of the respondents present. Heard the arguments of the parties and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following

AWARD

The petitioner filed a complaint before the CGRF against the Respondents for redressal of his Grievances. In the complaint, the appellant has mentioned about the grievances as hereunder:

> *" He is the owner of a small shop and obtained electricity supply for a portion of his house in the year 1995 through S.C.No.C1002860 under Category.II with a load of 5 H.P. He let out this portion to Sri Ashok, the owner of M/s.Sapna Wire Products in the month of June, 1996 and he vacated his house without his notice overnight. He came to know that the tenant made so*

mischief with the electricity department and hence left his premises without his notice. Later he learnt that the police arrested the tenant. And later on let him out. After that the premises has been used for domestic purpose and he cleared dues of the service and stopped using the service connection. Hence, the electricity department cancelled the service and stopped the bills, since the supply is not being used and the payments are cleared.

While it is so, during the month of January, 2012, a letter No.698 dt.27.01.2012 was issued by the AAO/ERO.IX/AC Guards/Hyderabad asking him to pay Rs.739894 for his S.C.No.C1002860. As he did not use the supply from 1996 onwards and cleared all the bills up to the vacation of his tenant, he need not pay any amount, and he informed this to the officials who gave the letter to him.

All of a sudden in March, 2012, the supply to his other residential portion was cut off. He is using the supply to his house through S.C.NO.C1002614 though an amount of Rs.3500.00 excess was paid by him to the end of February, 2012. No prior notice was issued to him before disconnecting the supply to his house, and the staff behaved with them rudely, and kept them in dark all these hot summer.

As the officials coming and disturbing him from January, 2012 onwards in the matter, he contacted his legal advisor in the matter. The domestic supply No.C1002614 was disconnected in the month of March, 2012 without giving any notice to them though there are no dues outstanding against the service.

As per Section 56(2) of Electricity Act, 2003, fifteen days clear notice is mandatory for disconnection of supply. Moreover, as per Section 56(2) of the Electricity Act, 2003, "No sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied."

The alleged amount said to have been relate back to the year 1996, payable by his tenant and the same cannot be demanded from him now, after a period of 16 years.

In view of the above, it is requested to :

i. Order for reconnection of supply to his S.C.No.C1002614 immediately;
ii. Instruct the officials of the electricity to stop demanding the above said amount relating to his tenant from him, that date back to 16 years;
iii. Allow them towards compensation for causing unnecessary inconvenience by disconnection of supply to his S.C.No.C1002614".

2. The 3rd Respondent submitted his written submissions as here under :

"Against S.C.No.C1002860, Category. II of Sri Md. Imamuddin, H.No.11-1-1204/1/128, Habeeb Nagar, Hyderabad, a pilferage of energy case was booked by Sri S. Prabhu, ADE/DPE.I/Hyderabad on 26.12.1996. A Provisional

Assessment notice was issued by the ADE/O/A.C. Guards/Hyderabad vide Lr.No.305/96 dated 28.12.1996 for Rs.10,90,314.00 and the consumer was asked to pay 50% of Assessed amount of Rs.5,45,157.00 + Rs.150.00 towards supervision charges and Rs.50.00 Reconnection charges for restoration of supply.

The case was finalized by the DEE/Assessments/Hyderabad vide Lr.No.30526/8176 dated 21.09.2004 for Rs.8,36,339 and demand was raised in the current consumption bills in the month of November, 2004.

The consumer went for an appeal with the Superintending Engineer/Assessments/Hyderabad and the case was re-finalized for Rs.7,25,361.00 as per letter No.1246/2006 dated 28.12.2006 and as a result Rs.1,10,978.00 was withdrawn being the excess demand raised.

Due to non-payment, a Revenue Recovery Act Notice was issued to the consumer vide their Office Lr.No.29 dated 22.05.2010 and D.No.581/A dated 22.11.2011. Further, the link service No.C1002614 of the consumer was disconnected in March, 2012".

3. After hearing both sides and after looking into the material, the Forum passed the following order on 09.07.2012.

"As per the above observations, the theft of energy cases booked against the consumers does come under the purview of the Forum.

Hence, the Complainant is directed to seek alternate re-course to redress his Grievance.

The complaint is disposed off accordingly".

4. Aggrieved by the said order, the appellant preferred this appeal questioning the same on the grounds mentioned in the complaint filed before the Forum and attacked the impugned order on the following grounds.

(a) The Forum has ordered the appellant to seek alternate recourse to redress his grievance, which shows clearly the incapacity and ignorance of the Forum in passing the order. It ought to have discharged its duties properly and failed to discharge the same, though the issue is crystal clear. The Forum ought to have paid attention to S.56(2) of EA 2003, but erroneously the Forum knocked the door of S.135 of the said Act, which itself is a wilful mistake.

(b) The theft case is booked on the tenant of the premises. Sri K.Ashok in the year 1996 and he was taken in to task. The department has finalised the

case in the name of the tenant on 21.09.2004 and might have failed to collect the amount from him up to the year 2012.

(c) Once the case is finalised, the amount resulted will become the arrear of the CC bill. S.56(2) does not distinguish the outstanding dues as against theft or other charges. Whatever amount become due calls as arrear, and hit by S.56(2). The treatment of the theft case amount is different amount, more specifically, other than the arrear is not correct.

(d) The present case rightly falls under S.56(2) and not under S.135 of the said Act.

(e) The theft case is booked on the tenant 16 years back and finalised within 4 years thereafter and now insisting the appellant to pay the theft amount is inhuman. The department is after the appellant, leaving the real thief for the reasons best known to the officials.

(f) The appellant is a senior citizen of 75 years of age living with his old aged wife and they are facing mental agony and stress which may kill them mercilessly. The entire premises does not cost more than 4lakhs but officials are asking the appellant to pay 8 lakhs.

(g) It is therefore requested to take the issue in its right prospective to deliver favourable judgment which was robed by the Forum due to its lack of jurisprudence.

5. He has also filed the following supplementary grounds on 07.09.2012

(a) The officials submitted erroneous information, as if he has filed a case in a court of law for redressal of his (appellants) grievance.

(b) Suddenly the officials cut off the electric supply to his other residential portion of SC No. C1002614 in Feb/March 2012 without any notice to him. After a lapse of 16 years, the AAO/ERO IX/A.C.Guards, Hyderabad issued a letter for payment of Rs.7,39,894/- for SC No.C1002860.

(c) The department has not sent any bills to him to pay the arrears nor they have booked any case against him for the recovery of arrears for the last 16 years.

(d) The department has booked a case against Mr.K.Ashok, the owner of M/s. Sapna Wire Products who was his tenant in 1996 and a Criminal case

was booked against him and he was punished by the court and the appeal is to be allowed as prayed for.

6. Now, the point for consideration is, “whether the impugned order is liable to be set aside by wiping out the claim made by the respondents as prayed for? If so, on what grounds?”

7. The matter was posted for hearing on 04.12.2012. Mohd. Altaf Ur Rehman representative of the appellant appeared before this authority and stated all the grounds mentioned in the grounds of appeal and also stated that the claim made by the respondents is barred by limitation under S.56(2) of EA 2003 and this fact has not been considered by the Forum and the appeal preferred by the appellant is to be allowed by setting aside the impugned order and also the claim made by the respondents is to be waived in to-to.

8. Whereas, the respondents are represented by Sri Ch.Rajalingam, AE/Op/Vijaya nagar colony, Smt.A.Anjani Bai AAo/ERO IX/A.C.Guards, Sri D.Laxman, ADE/Op/A.C.Guards present and submitted that the Forum has rightly considered the issue by holding, that it has no jurisdiction to entertain the case as it is a case of theft and they have also requested time to submit their written submissions.

9. The respondents have submitted their written submissions on 13.12.2012 narrating the following grounds:

(a) The inspection was made by Sri S.Prabhu ADE/DPE-I Hyd and found that the meter terminal cover seals were found tampered. All the three seals of meter cover were also found tampered and the sealing wire was coming out from the seal bits easily. The meter was not working in R & B phases when tested with heater load and working in Y phase. Thereupon a case was registered under Crime no.69/96 on the file of IIIrd MM court, Nampally, Hyderabad.

(b) The provisional assessment notice was issued on 28.12.1996. The final assessment order was issued demanding Rs.8,36,339/-.

(c) On 21.09.2004, on the representation of the consumer, the SE has finalised the appeal and fixed an amount of Rs.7,25,326/- + Rs.150/- towards supervision charges.

(d) Notices were given time to time, demanding the amount. The CGRF has disposed the case on 09.07.2012, rejecting the claim of the claimant. The department is continuously pursuing the matter with the consumer; and that they are entitled to collect the same.

10. Soon after receiving the written arguments from the respondents, the same was served on the appellant. The appellant submitted his written submission on 18.12.2012. In his written submissions it is clearly mentioned that the department has left the tenant, the person who is actually liable for punishment and also for payment. It is also mentioned that the appellant is being harassed by the department when no action is taken against the tenant for a period of 16 long years, the respondents have no right in any manner to demand the amount from the appellant.

11. It is an admitted fact that the inspection was made on 26.12.1996 and the final assessment was made on 21.09.2004 by the DE/Assessments. The SE/Assessments while disposing of the appeal no. 6254/2006 passed the order for payment of Rs.7,25,361/- on 28.12.2006.

12. It is also an admitted fact that one Sri K.Ashok, who was the tenant on the said premises had executed a lease deed on 28.06.2006. Only after six months of the said lease the inspection was made and booked a case of theft against the tenant. It is no where mentioned that the appellant herein was present either at the time of inspection or at the time of alleged theft pointed out by the respondents. The respondents have assessed the estimation right from 27.12.1995 to 26.12.1996 i.e, for a period of one year. It is six months prior to the occupation of the premises by the tenant (i.e., 29.06.1996). The Appellate Authority (SE/Assessments) passed orders on 28.12.2006 nearly after 10 years from the date of alleged offence.

13. It is also an admitted fact that a criminal case was booked under CC 237/97 against the tenant on the file of IIIrd MM Hyderabad. In the said complaint, the appellant herein was cited as LW 7 (List witness). So no case was booked against appellant on the ground of committing theft. The theft case was booked against tenant in which he was shown as a witness being the owner of the premises. The said criminal case was compounded and collected the compounding fees as per the notice served on 28.12.1996 on the appellant and the same was disposed during the year 1998. What were the amounts they have collected from the tenant at the time of compounding the offence is not borne out from the record nor spelt out in any one of the orders passed by the respective authorities i.e., either in the order of the final assessment or in the order of Appellate Authority (SE/Assessments).

14. So far as the applicability of S.56(2) is concerned, it is a provision incorporated under EA 2003, which has come into force with effect from 10.06.2003. So, it is evident that the said Act is prospective but not retrospective. Hence, the said provision is not applicable to this case on hand.

15. The inspection was made on 26.12.1996 and it is prior to the advent of Act 36 of 2003 (EA 2003). The provisions of Electricity (Supply) Act, 1948 (54 of 1948) are only applicable to the facts of this case as it is prior to the EA 2003 and subsequent to The Electricity Act, 1910. S.60 (A) of Electricity (Supply) Act, 1948 reads as follows:

> **S.60-A. Period of limitation extended in certain cases. - Where the right to recover any amount due to the State Government for or in connection with the consumption of electricity is vested in the Board and the period of limitation to enforce such right has expired before the constitution of the Board, or within three years of its constitution, then, notwithstanding anything contained in the Indian Limitation Act, 1908 (9 of 1908), or any other law for the time being in force relating to limitation of action, the Board may institute a suit for the recovery of such amount,-**
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> > **(i) where it has been constituted before the commencement of the Electricity (Supply) Amendment Act, 1966 , (30 of 1966) within three years of such commencement; and**
> > **(ii) where it has been constituted after such commencement, within three years of its constitution.**

16. S.60(A) is a new provision incorporated under Act 30 of 66. It is open to the Board to file suit for realisation of amount in question within 3 years from the Act coming into force of (amending Act 30 of 1996). It is applicable only to the amounts which fell due to State Government and recovery rights in respect of which vest in the Electricity Board.

17. While dealing with S.60-A, the Hon'ble High Court of Rajasthan has delivered a judgment reported in AIR 1986 Rajasthan 131. In this it was held that

> **S.60-A of the Electricity Act 1948 as amended by S.12 of the Act No. XXX of 1966 provides that the Board may institute a suit for the recovery of the amount due to the State Government for and in connection with the consumption of the electricity, the right of recovery of which is vested in the Board and the limitation whereof has been expired before the constitution of the Board or even three years of the commencement of the Electricity Supply Amendment Act 1966 and where the Board has been constituted within three years of its constitution under cl.(i) of S.60-A. The suit thus could be filed within three years from the date of the commencement of the Electricity Amendment Act, 1996 (Act No. XXX of 1966). Thus where a suit was filed against petitioner for recovery of arrears of dues after expiry of extended period of limitation under S.60-A of Amended Act (1966) the suit was time barred. Consequently the dues recovery of which was time barred, provisions of Ss.3 and 4 of Dues Act could not be resorted to recover the same.**
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> **Action under the Dues Recovery Act, 1960, can be taken only when any sum is payable. If the recovery of the energy charges is barred by law of limitation, then it cannot be said that such time barred amount is in any way payable. It is significant to note that for the recovery of the dues the Dues Recovery Act as well as the Electricity Supply Act make a specific provision for limitation. Had there been no such specific provision under that Act, the ordinary law of limitation would have been applicable. Only those dues can be recovered which are within limitation and only such dues which are within limitation can be said to be payable and in respect of such sums or dues which are payable summary procedure for recovery can be resorted to under the Dues Recovery Act.**

This decision is rendered relying on the principle laid down in AIR 1976 SC 1637.

18. It is also an admitted fact that the service connection was disconnected long back. No steps were taken for its revival by the appellant and the agreement itself was terminated. Now the respondents are making efforts to collect the amounts by

disconnecting other service connection of the appellant. He is not the person who had committed theft. He was not present at the time of inspection. How theft has taken place and how the methodology is arrived is not within his knowledge. He is not shown as a co-accused along with K.Ashok (tenant) and he is simply cited as LW 7 in the criminal case. It is no where mentioned that he has also played mischief in the alleged offence conspiring with the tenant.

19. Furthermore, what is the amount they have collected while compounding the offence from the tenant as per the notice served on the appellant is not borne out from the record. When the very offence itself is compounded what is the liability that is left over is not borne out from any one of the documents filed by the respondents. In addition to this, how estimation is made with effect from 27.12.1995 though the lease was from 28.06.1996 on which date the said M/s. Sapna Wire Products established its shop in the premises. So, the very methodology even otherwise on the liability is taken into account is not in accordance with procedure and not in accordance with rules and principles of natural justice. In case of estimation, if it is not barred by limitation, it is to be with effect from 28.06.1996 up to the date of inspection, but not prior to that date. This is a grave error committed by the respondents in calculating the amount.

20. So far civil liability is concerned, it is urged that it can be proceeded by resorting other methods like disconnection of the service connection. The service connection in question is already disconnected. Now, they are trying to disconnect other service of the land lord ignoring the tenant against whom a criminal case is lodged. They have compounded the same and now taking steps for recovery on the owner. This shows the active connivance of the officials with the tenant. The very initiation of criminal case against the tenant and initiating proceeding on the owner, as if the civil liability is on the owner of the premises is against to law. If action is taken on the tenant on both the heads, there may be some force in the contention. Whereas the steps in criminal law on the tenant and recovery part on the owner is nowhere contemplated. The officials have misinterpreted the law on the point and initiating proceeding on the owner is not valid and tenable.

21. The claim itself is barred by limitation. The question of liability on the part of the appellant is unknown to law. The Forum has simply passed an order by holding that it is a case of theft and the Forum has no jurisdiction to entertain the same. The appellant is not the person who committed theft and it is K.Ashok the tenant who committed theft of energy and whose case was also compounded. He has not personally approached the Forum and it is the owner of the premises, who has approached the Forum. He is no way connected with the theft of power. The approach made by the respondent raising demand against him is against to law and the assessment cannot be raised against him. The Forum has erroneously rejected the claim made by the appellant though he is no way connected with the theft. The Forum has committed a grave error in disposing the claim of the appellant at the threshold; by holding that it is a case of theft they have no jurisdiction to entertain the complaint. The appellant has not committed the alleged theft. It is the tenant who has committed theft. The department has also booked a case against him and left him after collecting compounding fee. When the criminal action is taken against the tenant, how they let him off without resorting to civil liability; shows the partisan attitude on the part of the respondents. Though a duty is cast upon the Forum to enquire into the same, but simply closed its eyes. The Forum has failed to appreciate the said aspects and rejected the appeal without looking into the realities and the things happened in between the tenant and the officials of the respondents for their silence on the civil liability. The very issue with regard to disconnection of power supply to the other service connection of the appellant is not only against to the principles of natural justice but also against to law and he is not the person who has committed theft of electricity and they have simply lodged criminal case against the tenant and the civil liability is shown against the owner. If it is entertained, no premises can be leased out by any owner of a building. Infact every owner of the building will be afraid of giving premises to a tenant. The very approach in asking the appellant to pay the amount is unknown to law and is also inhuman. The respondents are also directed not to disconnect the other service connection of the appellant and they are also precluded from collecting the amounts raised against the said notice as the same is barred by limitation. The very disconnection if made without giving prior notice is against to the provisions of law.

22. In the result, the appeal is allowed and the impugned order is set aside and the respondents are directed not to disconnect the other service connection of the appellant and not to raise any demand against the appellant. If it is disconnected already the respondents are directed to restore the same forthwith.

This order is corrected and signed on this 4th day of January, 2013.

Sd/-
VIDYUT OMBUDSMAN