



VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA

First Floor 33/11 kV substation, Hyderabad Boats Club Lane
Lumbini Park, Hyderabad - 500 063

:: Present:: R. DAMODAR

Monday, the Fifteenth day of May 2017

Appeal No. 14 of 2017

Preferred against Order Dt. 28-02-2017 of CGRF In

CG.No: 469/2016-17 of Nalgonda Circle

Between

Sri. K. Hari Krishna, S/o. Bixam, H.No.5-54, Nereda(V), Chityala Mandal,
Ramannapet Mandal, Nalgonda Dist. Cell: 9704625552.

... Appellant

AND

1. The AAE/OP/Chityal/TSSPDCL/Nalgonda Dist.
2. The ADE/OP/Ramannapet/TSSPDCL/Nalgonda Dist.
3. The AAO/ERO/Ramannapet/TSSPDCL/Nalgonda Dist.
4. The DE/OP/Nalgonda/TSSPDCL/Nalgonda Dist.
5. The SE/OP/Nalgonda Circle/TSSPDCL/Nalgonda.

... Respondents

The above appeal filed on 25.03.2017 coming up for final hearing before the Vidyut Ombudsman, Telangana State on 19.04.2017 at Hyderabad in the presence of Sri. K. Hari Krishna - Appellant and Sri. M.V.Surendra Naidu - AE/OP/Chityal and Sri. B. Mallikarjuna Chary - AAO/ERO/Ramannapet for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant has SC No. 1400 under powerloom category/cottage industry LT Category IV(subsidised) as per Tariff Order 2011. In view of the problems in the handloom industry, the Appellant claimed that he sold the business to others. The DISCOM officials, according to him have registered a case on 21.6.2013 and issued a Provisional Assessment notice. He claimed that he paid an amount of Rs 55,800/- towards 50% of the Assessed amount and on 28.4.2014 he paid an amount of Rs 3000/-

for personal hearing. He claimed that he has applied for a new service meter/new connection which is not being processed, stated to be in view of the arrears against the old service connection. He sought release of new service connection and filed a complaint on 9.2.2017 when no action was taken on his request and on that basis, the CGRF registered a case.

2. The 1st Respondent/AE/O/Chityal submitted a reply dt.17.2.2017 claiming that on 21.6.2013, AE/DPE/Nalgonda has inspected the Service Connection/premises and found the service under Category IV(Power looms), but the supply was being used for Commercial/water purification plant. Hence he claimed that a case of misuse/malpractice has been registered and an amount of Rs 1,11,751/- has been imposed by way of assessment on the Appellant, who preferred an Appeal, in which the same assessed amount was confirmed.

3. The 3rd Respondent AAO/ERO/Ramannapet through letter dt. 20.2.2017 submitted that after receiving Final Assessment Order for Rs 1,11,751/-, he included the amount in the CC bill of 11/2013. He stated that the Appellant has paid 50% of the amount (Rs 55,800/-) on 18.4.2014 while the remaining amount unpaid.

4. Before the CGRF, the Appellant pleaded that the water plant was started in May,2013 and sought revision of the assessment amount. He claimed to have submitted the water plant purchase bill, Gram Panchayat Letter and inauguration card in support of his plea.

5. The 1st Respondent/AE/O/Chityal stated that DPE registered a case for utilising supply for water plant, instead of for power loom for the period from June,2012 to July,2013 and that the Appellant has paid 50% of the assessed amount, with remaining the amount unpaid. He stated that the Appellant has applied for a new service and due to non payment of the balance amount, the new service has not been released.

6. On the basis of the material on record and claims of both the parties, the CGRF disposed of the complaint observing that it has no jurisdiction to decide the case, in view of the prohibition under Clause 2.37(b) of the Regulation 3 of 2015, as the case on hand was registered under Section 126 of the Electricity Act,2003.

7. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal stating that earlier there was SC No. 1400 in the name of his mother for running a powerloom and that since there was no viability in the business of powerlooms, he sold this service to others and that in this matter, the DISCOM officials registered a case on 21.6.2013 under which he paid Rs 55,800/- on 18.4.2014 and that further on 28.4.2014 he paid Rs 3000/- as penalty and that still there was no response from the DISCOM officials and that he has applied for fresh service connection, which has not been released and that his service connection was being used for water plant w.e.f. 5.5.2013 and whereas, the officials noted the date as 8.6.2012 with a false claim and that when there was assessment for Rs 1,11,576/- as penalty, he has paid half of the amount for preferring Appeal and that on 13.10.2013 the officials disconnected the service connection and that the new service connection is not being released.

8. The 3rd Respondent AAO/ERO/Ramannapet through letter dt.11.4.2017 stated in the Appeal to the effect that at the time of inspection by AE, it was found that the service was released under Category IV (Cottage Industry) and that there was no power loom in the premises and thus, he came to a conclusion that the consumer was using power unauthorisedly for other than sanctioned purpose and thus, he assessed the loss provisionally in accordance with Section 126 of the Electricity Act,2003 to Rs 1,11,576/- and a Final Assessment Order confirming the amount on Appeal has been passed. He further stated that as per Clause 2.37(b) of Regulation 3 of 2015, CGRF has no jurisdiction to decide a case registered under Section 126 of the Electricity Act, 2003.

9. In view of the material on record and contentions, mediation has not succeeded and therefore, the matter is being disposed of on merits.

10. In view of the facts and rival contentions, the following issues arise for determination:

1. Whether the service connection to the premises of the Appellant originally issued for power loom (Category IV) was used for the Water purification plant (Category II) unauthorisedly?

2. Whether the case registered by DPE wing on 21.6.2013 during inspection under Section 126 of the Electricity Act,2003 and passing of Preliminary and Final Assessment orders are legal?
3. Whether the CGRF has no jurisdiction to entertain the complaint in view of prohibition under Clause 2.37(b) of Regulation No. 3 of 2015?
4. Whether the impugned orders are liable to be set aside?

Heard.

Issues 1 to 4

12. The Appellant is not disputing about discovery of the irregularity on 21.6.2013 by the DPE wing regarding unauthorized usage of power supply for other than sanctioned purpose. The DISCOM officials have taken the assessment period for unauthorised consumption of energy w.e.f. 8.6.2012 till the date of inspection on 21.6.2013. He pleaded that in view of non viability of the power loom industry, the water plant was erected on 5.5.2013 and not on 8.6.2012 as alleged and that he filed certain documents like purchase bill for RO machine, Gram Panchayat certificate, invitation card for the inauguration of the plant, in support of his plea. The plea of the Appellant for withdrawing the assessment for unauthorised utilisation of power and also his plea that the copies of certificates filed by him and issued by the Gram Panchayat Office are not considered by the CGRF.

13. The DISCOM officials pointed out that the present matter is not subject matter of review by the CGRF, as taking cognizance of the consumer dispute is barred by Clause 2.37(b) of Regulation 3 of 2015 when a matter falls within the purview of Section 126 of the Electricity Act,2003.

14. The Appellant service SC No. 1400 was released initially for power loom on 10.1.2011. The service connection usage of supply was changed from power loom (category IV) to water purifying plant (the category of water treatment plant was under Category II (Commercial/Non Domestic) until declared as under LT- III in the FY 2016-17 Tariff Order).The billing category of the service was not changed simultaneously and it remained in the same category i.e under category IV, which is a subsidised category.

15. The DPE wing detected the irregularity on **21.6.2013** and it registered a case of unauthorised usage of supply, for other than sanctioned purpose under Section 126 of Electricity Act,2003.

16. For the irregularity, the DISCOM officials have Provisionally Assessed the loss to Rs 1,11,576/- levied for the period from 8.6.2012 to 21.6.2013. The Appellant paid 50% of the assessed amount on 18.4.2014 pending Final Assessment Proceedings. Further he paid Rs 3000/- on 28.4.2014 for personal hearing. He stated that though the officials have assured of withdrawal of the case, there was no response from them.

17. When the Appellant has applied for a new service connection on 16.1.2017, the request was denied, citing pending arrears including payment of 50% balance assessed amount towards the case booked. He asserted that he gave the (disposed of) service connection for starting a water purifying plant on **5.5.2013** and not as alleged by the Respondents. The service is under disconnection since 13.10.2013 for non payment of balance arrears.

18. The SE/Assessment, the appellate authority under section 127 of the Electricity Act 2003 has finalised the case (booked under section 126) by orders dt:02-09-2013 confirming the provisionally assessed amount of Rs 1,11,576/-. Further it is stated therein that the Appellant was afforded personal hearing on 23.08.2013 and a notice for hearing was also acknowledged by the consumer representative on 20.08.2013. Further it is stated that the appellant did not attend the hearing and therefore, the case was finalised citing no objection to the case from the consumer.

19. The Appellant changed the usage of supply from LT Category IV to LT Category II without any prior sanction from the DISCOM. This irregularity fell under the Unauthorised usage of Energy i.e, for the purpose other than for which the usage of electricity was authorised, falling within the ambit of Section 126(6)(iv) of the Electricity Act,2003.

20. The change of user of the Service Connection is not denied by the Appellant. The Appellant however is contesting on the duration of the unauthorised use i.e. one year resorted to by the DISCOM. The Appellant asserted that the water plant was started on 5.5.2013. He requested the officials to revise the assessment to one month duration.

The Appellant has submitted the following documents to claim that the water plant has started from 5.5.2013:-

- a) Gram Panchayat certificate showing that the License was issued for the period from 1.4.2013 to 31.3.2014.
- b) Invitation card of Sri Sai Purified Drinking Water showing that it was inaugurated on 5.5.2013.
- c) License dt.4.5.2013 from the office of Gram Panchayat for running Sri Sai Purified Drinking Water plant.
- d) Receipt dt.4.5.2013 issued by the Gram Panchayat towards payment of Rs 1000/- as Profession Tax for the year 2013-14.

All these documents have been issued by the Gram Panchayat office, which need further support like Purchase documents for the water purifying plant, to rely on them. Thus, in view of the facts and circumstances, these documents cannot be relied upon to accept the claim of the Appellant about starting of the water purifying plant on 5.5.2013, which is however subject to the jurisdictional question under Clause 2.37(b) of the Regulation No. 3 of 2015.

21. The restriction under Clause 2.37(b) of Regulation 3 of 2015 to take cognizance by CGRF where any case falls under Sections 126,127, 135 to 139, 152 and 161 of the Electricity Act,2003 prohibits any relief to be granted. Taking cognizance of any matter falling under the provisions is barred. For unauthorised use of Electricity, the relevant provision is Section 126 of the Electricity Act,2003. Under Section 126 of the Electricity Act, the unauthorised use of electricity U/s.126(6)(b) means “usage of electricity by any artificial means, by means not authorised by the authority or Licensee, through a Tampered meter or FOR THE PURPOSE OTHER THAN FOR WHICH THE USAGE OF ELECTRICITY WAS AUTHORISED etc.” The present case squarely falls within this last definition of unauthorised use under Section 126 of the Electricity Act,2003.

22. Further, Section 145 of the Electricity Act restricts the jurisdiction of any Civil Court to determine the liability in the matters covered by Sections 126 & 127 of the Electricity Act,2003.

23. a. In view of the admission of the Appellant that the Service Connection originally was issued under Category IV has been used for Category II (for running a water purification plant), the issue No. 1 is answered in favour of the DISCOM.

b. The CGRF has no jurisdiction to take cognizance of the dispute in view of Clause 2.37(b) of Regulation No. 3 of 2015.

c. There is no illegality when the case is registered on inspection by DPE wing, followed by passing of Preliminary and Final Assessment to recover loss, as required U/s.126 of the Electricity Act.

d. The impugned orders are confirmed.

24. In view of Clause 2.37(b) of Regulation 3 of 2015 prohibiting taking of cognizance of the dispute by CGRF and the above mentioned discussion, it is held that the CGRF has no jurisdiction to decide the dispute and therefore, the Appeal is disposed of confirming the impugned orders.

25. The licensee shall comply with and implement this order within 15 days for the date of receipt of this order under clause 3.38 of the Regulation 3 of 2015 of TSERC.

Typed by CCO, Corrected, Signed and pronounced by me on 15th day of May, 2017.

Sd/-

VIDYUT OMBUDSMAN

1. Sri. K. Hari Krishna, S/o. Bixam, H.No.5-54, Nereda(V), Chityala Mandal, Ramannapet Mandal, Nalgonda Dist. Cell: 9704625552
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Copy to:

7. The CGRF - 1, TSSPDCL,GTS Colony, Vengal Rao Nagar, Erragadda, Hyderabad.
8. The Secretary, TSERC, Singareni Bhavan, Red Hills, Lakdikapool, Hyderabad.