



BEFORE THE VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA

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

**PRESENT : SRI MOHAMMAD NIZAMUDDIN
VIDYUT OMBUDSMAN**

TUESDAY THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY THREE

Appeal No. 22 of 2022-23

Between

Md. Ibraheem Khan, (Beneficiary: Sameer Khan), 21-4-1167, Moosa Bowli,
Hyderabad - 500 064. Cell: 9701015805 & 70362 05211.

.....Appellant

AND

1. The Assistant Divisional Engineer /OP/Charminar/TSSPDCL/Hyderabad.
2. The Assistant Accounts Officer/ERO/Charminar/TSSPDCL/Hyderabad.
3. The Divisional Engineer/OP/Charminar/TSSPDCL/Hyderabad

..... Respondents

This appeal is coming on before me for final hearing on 22.02.2023 in the presence of Kumari Nishtha, authorised representative of the appellant and Sri Vijay Kumar - ADE/OP/Charminar representing the respondents and having stood over for consideration till this day, this Vidyut Ombudsman passed the following:-

AWARD

This appeal is preferred aggrieved by the Award / Order passed by the Consumer Grievances Redressal Forum - Greater Hyderabad Area, Hyderabad - 45 (in short 'the Forum') of Telangana State Southern Power Distribution Company Limited (in short 'TSSPDCL') vide Lr.No.Chairperson /

CGRF-II/ Complaint return/ TSSPDCL / D.No.232 /2022 dt.30.07.2022 returning the complaint under Clause 2.37 of Regulation 3 of 2015 Hon'ble Telangana State Electricity Regulatory Commission(in short 'the Regulation').

CASE OF THE APPELLANT BEFORE THE FORUM

2. The case of the appellant is that the respondents have released Service Connection No. M1002097, Cat-II B to the appellant at H.No 21-4-1167, Moosa Bowli Hyderabad. The appellant has received a Provisional Assessment Notice in respect of DPE/HYS/SD01/12336/17 along-with a letter No. ADE/Op/D-IX/C-III/CHRM/Thft/D.No.183 dt. 15.05.2017 (in short 'the impugned notice') from respondent no.1 demanding to pay Rs. 1,85,337/- (Rupees One Lakh Eighty Five Thousand Three Hundred Thirty Seven) on the ground of violating Sec.135 of the Electricity Act (in short 'the Act').The respondents are threatening to disconnect the power supply of the subject Service Connection of the appellant if the above said amount is not paid. The respondents have not conducted any panchanama at the relevant time. The appellant paid a compound fee of Rs 32,000/- on 15.5.2017. The claim is barred by limitation. Therefore it is prayed to set-aside the impugned notice.

AWARD OF THE FORUM

3. The learned Forum has rejected the complaint on the ground that it has no jurisdiction to entertain the complaint which falls under Section 135 of

the Act in view of Clause 2.37(b) of the Regulation.

4. Aggrieved by the Award passed by the Forum, the present appeal is preferred, contending among other things, that the learned Forum has returned the complaint without applying its legal mind properly on the facts on record and without properly considering the provisions of the Act.

WRITTEN SUBMISSION OF RESPONDENT

5. In the written reply of respondent No.1, before this Authority, it is, inter-alia, submitted that on 07.02.2017, the subject Service Connection of the appellant was inspected and the meter was found in tampered condition. Subsequently a theft case was booked under Sec.135 of the Act. The meter was tested in the Meter Relay Testing (in short 'MRT') which confirmed the tampering of the meter and the seal bits were tampered with and also that inside the meter 'R' phase potential wire was in open condition. The appellant was indulging in theft of energy. Therefore it is prayed to reject the appeal.

6. In the written reply of respondent No.2, he too made similar contents like respondent No 1.

ARGUMENTS

7. The authorised representative of the appellant submitted that the alleged inspection dt. 07.02.2017 is not in presence of the appellant; that the amount of Rs. 1,85,337/- claimed by respondents is not correct; that the meter

was not tested in the presence of the appellant and that when once the appellant paid compounding fee as stated above, it is only the Special Court that has to determine the quantum of civil liability. Therefore, it is prayed to set aside the order of the Forum rejecting the complaint and to set aside the claim of the theft case amount.

8. On the other hand, it is submitted by the respondents, that the inspection was conducted in the presence of representative of the appellant; that the meter was tested in the presence of the representative of the appellant and since it was found that the appellant has tampered with the meter and committed theft of energy, the amount of Rs. 1,85,337/- was assessed which the appellant is liable to pay.

POINTS

9. The points that arise for consideration are:-
- i) Whether the appeal is maintainable in view of Clause 2.37 of the Regulation?
 - ii) Whether the Award passed by the learned Forum is liable to be set aside? and?
 - iii) To what relief?

SETTLEMENT BY MUTUAL AGREEMENT

10. Both the parties have appeared before this Authority on different dates. Efforts were made to reach a settlement between the parties through the process of conciliation and mediation. However, no

settlement could be reached. The hearing, therefore, continued to provide reasonable opportunity to both the parties to put-forth their case and they were heard.

REASONS FOR DELAY IN DISPOSING OF THE APPEAL

11. Since I took charge as Vidyut Ombudsman on 01.07.2022 and since there was no regular Vidyut Ombudsman earlier, the appeal was not disposed of within the prescribed period.

POINT No. (i) and (ii)

12. In view of the case put up by the parties, it is necessary to refer to Clause 2.37 of the Regulation, which reads as under:-

“The Forum may reject the grievance at any stage under the following circumstances:

xxxxx

b) Where the cases fall under Sections 126,127,135 to 139, 152 and 161 of the Act.

xxxxx

13. The material on record, prima-facie, establishes that the present case falls under Section 135 of the Act. Under Clause 2.37 of the Regulation, the Forum has no jurisdiction to entertain a complaint like the present one.

14. The learned authorised representative of the appellant has relied upon a 3 - Judge Bench judgement of the Hon'ble Supreme Court reported

in Executive Engineer v. Seetaram Rice Mill¹, particularly paragraph (17), which reads as under:-

“Therefore, there is a clear distinction between the cases that would fall under Section 126 of the 2003 Act on the one hand and Section 135 of the 2003 Act on the other. There is no commonality between them in law. They operate in different and distinct fields. The assessing officer has been vested with the powers to pass provisional and final order of assessment in cases of unauthorised use of electricity and cases of consumption of electricity beyond contracted load will squarely fall under such power.”

There is no dispute or quarrel about the proposition laid down in the said judgement. Sec. 126 and Sec. 135 of the Act deal with different situations. Further paragraph (58) of the said judgement makes it quite clear that the Hon'ble Supreme Court was dealing with the case of the consumer using the excess load of power than the contracted load, as such the Supreme Court dealt with Section 126 of the Act. In the instant appeal the material on record, prima-facie, shows that it is a case of theft under Sec. 135 of the Act. Therefore this judgement is not useful for the appellant.

15. The learned authorised representative of the appellant has relied upon the judgement of the Hon'ble High Court of Punjab and Haryana at Chandigarh in Crl.Misc.No. M-34370 of 2009 dt.17.01.2012 (Gunjan Kalra v. State of Haryana and anr), wherein it is held that when once the compounding fee was accepted in an offence punishable under Sec. 135 of the Act, the criminal proceedings cannot be initiated. There is no dispute

¹ (2012) 2 SCC-108

about the said proposition. The respondents have not initiated any criminal proceedings in the present case. Therefore this judgement is not useful to the appellant. More or less, for a similar proposition, the learned authorised representative of the appellant has relied upon the judgement of the Hon'ble High Court of Madras in CrI.R.No.338 of 2016 and CrI.MP No. 2299 of 2016 dt.14.03.2017 (L. Nallasivam v. State represented by the Inspector of Police, Erode North Police Station, Erode). This judgement is also not of much help to the appellant.

16. No doubt, as argued by the learned authorised representative of the appellant, it is the Special Court which has to determine the civil liability under Section 154 (5) of the Act, this Authority is only considering as to whether the order of Forum in rejecting the complaint without giving an opportunity of hearing is correct or not even if Sec. 135 of the Act is involved. It is necessary for the Forum to give an opportunity of hearing even in such cases.

17. It is the argument of the authorised representative of the appellant that in Appeal No. 41 of 2016, the Ombudsman has held that the Special Court has to determine the civil liability under Section 154(5) of the Act and the respondents have no right to issue Provisional Assessment Order and therefore, the respondents in this case also have no right to issue similar order. This argument of the learned authorised representative of the appellant cannot be accepted for two reasons. The first reason is that normally the

Award of the equivalent authority (Ombudsman) is not binding on this authority (Ombudsman). The second reason is that in Appeal No. 41 of 2016, in para No.24, it was finally held that the Provisional Assessment issued in that case is valid and the appellant was directed to pay the said amount. Therefore the learned Forum has rightly rejected the complaint under the said Clause. Accordingly, I hold that the appeal is not maintainable in view of Clause 2.37 of the Regulation and the Award/order passed by the Forum is not liable to be set-aside. These points are decided accordingly against the appellant and in favour of the respondents.

POINT No. (iii)

18. In view of the findings on point Nos. (i) and (ii), the appeal is liable to be rejected.

RESULT

19. In the result, the appeal is rejected, without costs.

A copy of this Award is made available at <https://vidyutombudsman-tserc.gov.in>.

Typed to my dictation by Private Secretary, corrected and pronounced by me on this the 14th day of March 2023.

Sd/-

Vidyut Ombudsman

1. Md. Ibraheem Khan, Beneficiary Sameer Khan, 21-4-1167, Moosa Bowli, Hyderabad - 500 064. Cell: 9701015805 & 70362 05211.
2. The Assistant Divisional Engineer /OP/Charminar/TSSPDCL/Hyderabad.
3. The Assistant Accounts Officer/ERO/Charminar/TSSPDCL/Hyderabad.
4. The Divisional Engineer/OP/Charminar/TSSPDCL/Hyderabad.

Copy to

5. The Chairperson, Consumer Grievances Redressal Forum of TSSPDCL- Greater Hyderabad Area, Door No.8-3-167/E/1, Central Power Training Institute (CPTI) Premises, TSSPDCL, GTS Colony, Vengal Rao Nagar, Erragadda, Hyderabad - 45.

