



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 Sixth day of March 2017

Appeal No. 3 of 2017

Preferred against letter Dt. 30-12-2016 of CGRF

D.No: 1864/16-17 of Greater Hyderabad Area

Between

Smt. Bajamma, Beneficiary M.A.Fahed, #22-6-732, Punjaysha,
Charminar, Hyderabad - 500 002.

... Appellant

AND

1. The ADE/OP/TSSPDCL/Charminar/Hyderabad.
2. The AAO/ERO-III/Salarjung/TSSPDCL/Hyderabad.
3. The DE/OP/Charminar/TSSPDCL/Hyderabad.
4. The SE/Hyd. South Circle/TSSPDCL/Hyderabad.

... Respondents

The above appeal filed on 12.01.2017 coming up for final hearing before the Vidyut Ombudsman, Telangana State on 02.02.2017 at Hyderabad in the presence of Sri. Ravi - on behalf of the Appellant, Sri. A. Kailas - ADE/OP/Charminar, Sri. Nageshwara Rao - AAO/ERO-III/Salarjung 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. R1-000771 with contracted load of 1KW. The Appellant is aggrieved about the issue of the Provisional Assessment for Rs 1,30,485/- claimed in the CC bill of October 2016, dt.5.10.2016, sought refund of Rs 30,000/- paid by him vide receipt dt.24.11.2016 and Rs 7,000/- paid by him under receipt dt.7.11.2013 towards compounding fee. The Appellant claimed that the provisional assessment is made for the period from October,2014 to October,2016 and a disconnection notice issued for non payment of the said amount is not valid and legal in view of the bar to recover the amount under Section 56(2) of the Electricity Act,2003.

2. When the Appellant lodged a complaint under Clause 2.32(e) and 2.33 of Regulation 3 of 2015, the CGRF by letter dt.30.12.2016 rejected the grievance at the stage of admission on the ground that under Clause 2.37 of Regulation 3 of 2015, the cases falling under section 126,127,135 to 139, 152, and 161 of the Electricity Act,2003 are not within the purview of the Grievance redressal mechanism before the CGRF.

3. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal on the ground that an opportunity of hearing was not given to him before rejecting his grievance, the provisional assessment and recovery of the compounding fee are not legal and that the provisional assessment is hit by Section 56(2) of the Electricity Act, 2003.

4. The 1st Respondent through a letter dt.30.1.2017 stated that SC No. R1-771 is a non domestic service, which was inspected by AE/SD-II of DPE/Hyd/South and that during the inspection, he found that the side seal bits of the energy meter of SC No. R1-771 were found tampered with and hence, he transferred the meter to MRT lab for testing.

5. The 1st Respondent further stated that the MRT test report revealed that the condition of side seal bit were tampered with and on opening the meter cover, a copper wire was found inserted in between the incoming phase and outgoing phase terminals and in neutral terminals and thus, the Appellant was found having indulged in the theft of energy intentionally, dishonestly and caused loss to the DISCOM.

6. The inspecting officer AE/DPE/SD-II found out from the above that the Appellant has indulged in the theft of electricity and was guilty of theft of electricity as per Section 135 of the Electricity Act and that one FIR was registered in this case and that the Appellant has paid Rs 7,000/- towards compounding fee, to drop the criminal proceedings and further paid only Rs 30,000/- towards the preliminary assessment, instead of the entire amount Rs 1,30,310/-.

7. During the Appeal proceedings, the Appellant when confronted with Clause 2.37(b) of the Regulation 3 of 2015 to the effect that a matter covered by Section 135 and other provisions of the Electricity Act,2003 is not within purview of the grievance redressal mechanism of CGRF and consequently of the Appellant jurisdiction of the Vidyut Ombudsman, submitted an award of this office dt.26.10.2016 and passed in Appeal No. 39 of 2016 in support of his contention that the grievance is within the

jurisdiction of CGRF for a decision.

8. There could be no mediation, in view of the nature of the allegations. Hence the matter is being disposed of on merits.

9. Based on the record and rival contentions, the following issues arise for determination:

1. Whether the Appeal is maintainable, since the subject matter pertains to Section 135 of the Electricity Act,2003 which is barred under Clause 2.37 (b) and consequently appellate jurisdiction of the Vidyut Ombudsman under Clause 3.19(e) of the Regulation 3 of 2015?
2. Whether the demand under the provisional assessment is barred under Section 56(2) of the Electricity Act,2003 ?
3. Whether the impugned orders are liable to be set aside?

Arguments heard.

Issues 1 to 3

10. The service connection of the Appellant was inspected on 27.6.2013 at 1.40 PM by the AE/SD-II/DPE/Hyd.South wherein he found the following:

“During inspection it is found that the side seals of the energy meter are found tampered. Hence the meter referred to MRT lab for testing. The MRT test results revealed as follows: The condition of the seal bits are tapered and after opening the meter cover it is observed that a copper wire shorted in between incoming phase to outgoing phase terminals and neutral terminals.

Thus the consumer is indulging in theft of energy intentionally, dishonestly and caused loss of revenue to APCPDCL.”

11. From the points noted in the Provisional Assessment notice, it is clear that the matter falls within the purview of the offence defined under Section 135 (b) of the Electricity Act,2003 which makes it clear that whoever “tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is

stolen or wasted;” and the Appellant/beneficiary thus stated to have committed theft of electricity.

12. The Appellant was booked for the offence of theft of electricity under Section 135 of the Electricity Act and he paid Rs 7,000/- towards compounding fee and also paid Rs 30,000/- towards part of the provisionally assessed amount of Rs 1,30,310/-.

13. The Appellant is now seeking withdrawal of the Provisional Assessment notice, refund of the amount paid by him towards compounding fee and part of the Provisionally Assessed amount.

14. The defence of the Appellant is that without hearing him, the CGRF has rejected his complaint. It is clear from the impugned orders dt.30.12.2016 there is no mention about affording hearing to the Appellant before rejecting the complaint, which is regrettable. The CGRF ought to have given an opportunity to the Appellant to present his grievance. Though the CGRF had rightly rejected the grievance on the ground that taking cognizance of the complaint in a case involving an offence under Section 135 of the Electricity Act is barred under Clause 2.37 of Regulation 3 of 2015, an opportunity of hearing to the Appellant before rejecting the complaint would have been in order.

15. The Appellant is claiming that the Provisional Assessment is not legal in view of the fact that the arrears for more than 2 years have been subject matter of the Provisional Assessment which is barred under Section 56(2) of the electricity Act. On this aspect, it is necessary to read Section 56(2) of the Electricity Act,2003 which is as follows:

Disconnection of supply and default of payment:

“ Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section 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 and the Licensee shall not cut off the supply of the electricity.

16. A perusal of the record shows that the demand through Provisional Assessment has been made beyond the period of two years from the date of inspection

on 27.06.2013 and therefore, the provisions of Section 56(2) of the Electricity Act are not applicable to the present case. Section 56(2) is applicable only when disconnection is sought for non payment of the energy charges. It is specifically used for collection of the due amount only. Therefore, the contention of the Appellant that Section 56(2) is a bar for recovery of the arrears for more than 2 years is not correct.

17. The Hon'ble Supreme Court in Kusumam Hotels Pvt.Ltd Vs Kerala state Electricity Board and Others (AIR 2008 SC 2796) posed a question as follows:

“In view of the provisions in Section 56(2) of the electricity act,2003 no bill could have been raised after a period of 2 years?

and answered the question as follows:

We, however, are not in a position to accept the contention that the bills could not have been issued having regard to Sub Section(2) of Section 56 of the Act, Appellants herein have incurred liabilities.”

Thus Section 56(2) of the Electricity Act,2003 cannot be used to bar recovery of the Electricity dues for more than 2 years.

18. The reliance placed on the Award dt.26.10.2016 in Appeal No. 39 of 2016 on the file of the of Vidyut Ombudsman, Telangana is of no help to the Appellant, because no relief was granted to the Appellant therein and the questions raised were merely answered. Thus the Provisional Assessment issued by the ADE/OP/Charminar/R1 is found to be valid and the Appellant is found liable to pay the demanded amount. The recovery of the Provisional Assessment amount is not hit by Section 56(2) of the Electricity Act,2003. The impugned orders are found to be unsustainable for want of notice of hearing to the Appellant. The issues are answered accordingly. The Appeal is disposed of holding :

- a. that the recovery of Provisional Assessment amount is not hit by Section 56(2) of the Electricity Act,2003.
- b. the provisional assessment dt.6.11.2013 of ADE/O/Charminar is sustainable.
- c. the impugned orders are found to be unsustainable for failing to give an opportunity of hearing to the Appellant.
- d. The impugned orders are set aside.

19. The licensee shall comply with and implement this order within 15 days from 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 6th day of March, 2017.

Sd/-

VIDYUT OMBUDSMAN

1. Smt. Bajamma, Beneficiary M.A.Fahed, #22-6-732, Punjaysha, Charminar, Hyderabad - 500 002.
2. The ADE/OP/TSSPDCL/Charminar/Hyderabad.
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Copy to:

6. The CGRF, TSSPDCL, Greater Hyderabad Area, Vengal Rao Nagar, Erragadda, Hyderabad.
7. The Secretary, TSERC, Singareni Bhavan, Red Hills, Lakdikapool, Hyderabad.