



BEFORE THE VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA

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

**PRESENT : SRI MOHAMMAD NIZAMUDDIN
VIDYUT OMBUDSMAN**

WEDNESDAY THE FOURTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY TWO

Appeal No. 40 of 2020-21

Between

Md. Abdul Hadi, 17-4-601, Yakuthpura, Hyderabad - 500 023.
Cell: 9642501305 & 7036205211.

.....Appellant

AND

1. The Assistant Divisional Engineer / Operation / Santosh Nagar / TSSPDCL / Hyderabad.
2. The Assistant Accounts Officer / ERO / Chanchalguda / TSSPDCL / Hyderabad.
4. The Superintending Engineer / Operation / Hyderabad South Circle / TSSPDCL / Hyderabad.

..... Respondents

This appeal is coming on before me for final hearing on 24.08.2022 in the presence of Kumari Nishtha, authorised representative of the appellant and Sri Vinod Kumar - ADE/OP/Santosh Nagar and Sri P. Hanumanth Reddy - DE/OP/Azamabad 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/ Gr. Hyd / D.No.672/2020-21 dt.15.03.2021
rejecting the complaint on the ground that it has no jurisdiction.

CASE OF THE APPELLANT BEFORE THE FORUM

2. The appellant is the consumer of the respondents vide domestic Service Connection No. R3005153 for supply of energy of (1) KW situated at 17-4-601, Yakuthpura, Hyderabad. The appellant has received a Provisional Assessment Notice bearing letter No. ADE/Op/Santosh Nagar / D No.1396 dt. 06.02.2021 from respondent No.1 demanding Rs. 76,214/-. The appellant has no knowledge about the alleged inspection dt.04.02.2021. The appellant paid Rs. 3,000/- towards compounding fee vide challan No. 300480202572 dt.08.02.2021. The respondents claimed Rs. 76,214/- vide bill cum notice No. 758 dt.10.03.2021 towards the loss sustained by them due to the alleged theft of energy.

3. When the respondents accepted the compounding fee, the Special Court only has to determine the civil liability under Section 154(5) of the Electricity Act 2003 (in short 'the Act'). Therefore it is prayed to withdraw the amount of Rs. 76,214/- claimed in the bill stated above and to direct the respondents to send the revised bill of March 2021.

AWARD OF THE FORUM

4. 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 Regulation No. 3 of 2015 of the Hon'ble Telangana State Electricity Regulatory Commission (in short 'the Regulation').

5. 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.

GROUND OF THE APPEAL

6. In the grounds of appeal it is reiterated that when respondent No.1 accepted the compounding fee, it is the Special Court that has to fix the amount of civil liability. Therefore, it is prayed to set aside the order of the Forum rejecting the complaint, to set aside the claim of the respondents and also to direct the respondents to issue revised bill duly withdrawing the theft case amount and not to disconnect the power supply.

WRITTEN SUBMISSION OF RESPONDENT No.1

7. In the written submission of respondent No.1, before this Authority, it is, inter-alia, submitted that the Service Connection of the appellant was inspected and it was found that the appellant has indulged in theft of energy. Subsequently a theft case was booked under Section 135 of the Act.

Therefore it is prayed to reject the appeal.

8. In the rejoinder filed by the appellant, it is, inter-alia, submitted that the impugned Award/Order of the Forum is unsustainable which is without reasons.

ARGUMENTS

9. The authorised representative of the appellant submitted that the alleged inspection is not in the presence of the appellant; that the amount claimed by the respondents is not correct 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. In the additional arguments, it is submitted that the respondents have to follow Section 154 of the Act. Therefore, it is prayed to set aside the order of the Forum rejecting the complaint, to set aside the claim and also to issue revised bill withdrawing the theft amount.

10. On the other hand, it is submitted by the respondents, that the inspection was conducted and it was found that the appellant has committed theft of energy by tapping it directly bypassing the meter and the amount of Rs. 76,214/- was assessed which the appellant is liable to pay.

POINTS

11. The points that arise for consideration are:-
- i) Whether the Provisional Assessment is valid?
 - ii) Whether recovery process is properly implemented as per the Electricity Act 2003 and the provisions of GTCS?
 - iii) Whether the civil liability has to be determined by following the procedure under S.135 and S.154 of the Electricity Act 2003?
 - iv) Whether the impugned order is liable to be set aside? and
 - v) To what relief?

SETTLEMENT BY MUTUAL AGREEMENT

12. Both the parties have appeared before this Authority on 24.08.2022. 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

13. 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) to (iv)

ADMITTED FACTS

14. It is an admitted fact that the appellant is having electricity Service Connection No. R3005153 of Category - I released by the respondents. It is

also an admitted fact that the power supply is not disconnected so far.

15. A perusal of the Provisional Assessment Notice dt.06.02.2021 issued by respondent No.1 herein to the appellant, it is manifest that one SATYA PRASAD PETWAL, AAE/SD-I/DPE/Hyd-South inspected the Service Connection involved in this case on 04.02.2021 at 12.20 PM and he detected theft of energy by tapping the service wire directly. The record also shows that the Assistant Divisional Engineer had provisionally assessed the loss of Rs. 76,214/- through a Provisional Assessment Notice. There is no dispute that the appellant paid Rs. 3,000/- as compounding fee. However the assessed amount is not paid.

16. In the copy of reply dt.09.02.2021 the appellant has denied the entire case of the respondents and prayed to withdraw the notice.

CRUX OF THE MATTER

17. The material on record, as already stated, goes to show that on inspection of the Service Connection in this case on the relevant date it was prima-facie found that the appellant has committed theft of energy by way of directly tapping the service wire before meter.

18. As far as the Provisional Assessment calculation in this case is concerned, this Authority will not go in deep as it has no jurisdiction to deal with the matter arising out of Section 135 of the Act and it is only the Special Court which has to deal with the subject especially in determining the civil

liability. However basing on the material available on record this authority prima-facie finds that there was theft of energy in this case.

19. It is the argument of the appellant that the respondents cannot collect the assessed amount, which is, in fact, a civil liability to be determined by following the procedure under Section 135 and 154 of the Act. As far as the criminal liability is concerned, when once the compounding fee is paid under Section 152 of the Act, it is extinguished. In this case the compounding fee was paid. The payment of compounding fee amounted to admission of the offence of theft of energy as specified in Section 135 (1)(b) of the Act. The civil liability under Section 154(5) of the Act, should be determined finally by the Special Court, which shall not be less than an amount equivalent to thrice the time of the tariff rate applicable for a period (12) months preceding the date of theft of energy. In the present case there is no record to show that the civil liability has been determined by the Special Court under Section 154(5) of the Act or there is any such claim by the respondents. Thus, the argument of the appellant that the civil liability has to be determined by the Special Court and till then no course of action to recover the 50% of the assessed amount can be taken is not correct. The Provisional Assessment under Clause 10.2 of GTCS in this appeal demanding the amount is valid and enforceable.

20. One of the contentions of the appellant is that the recovery process is not legal and it is not as per the provisions of the Act and the provisions of GTCS. As per Clause 10.3.2 of GTCS, under the heading **Assessment for cases for theft of electricity by LT consumers**, the procedure for assessment is explained and as per Appendix XII(VII)(B) of GTCS, the guidelines for assessment of cases of theft of electricity are as follows:

Type of load	Unit of measurement	Formula
Heavy usage load	KW	A
Moderately Heavy Usage Load	KW	B
Infrequent Usage Load	KW	C
Total Connected Load	KW	D=A+B+C

The assessment period may have to be split into multiple periods owing to the following:

- Different tariff rates during the assessment period
 - Seasonal variations in the consumption
- For each of the periods, the units assessed must be calculated.

The load utilisation factor, working hours per day and working days in a month for the concerned period can be referred to in Appendix 1, II, and III of this notification.

Effective hours of usage in a month in a load type = Load Utilisation factor * number of working hours per day of each load type * Number of days of usage in a month.

Period : From ----- to -----”

The formula under this Appendix is the total connected load plus three components for arriving at assessment of loss.

21. It is clear from a perusal of the assessment made by the officer that he followed the above formula for arriving at the provisional assessment amount which is found to be valid and legal. Thus the provisional assessment amounting to Rs. 76,214/- is prima-facie found to be correct and it is based on the loss sustained by the DISCOM.

22. The record shows that the power was not disconnected soon after discovery of theft of energy, as required under Clause 10.2.3(iii)(a) of GTCS. The reasons for disconnection of the service connection have to be given and the consumer has to be informed about the disconnection under Clause 10.2.3 of GTCS. In this case, the Provisional Assessing Officer has informed the appellant that if he desired restoration of supply, he should deposit at least 50% of the provisionally assessed amount of loss of revenue, in addition to other charges and pay the rest of the amount in two instalments. Further, in the event of failure on the part of the consumer to deposit at least 50% of the amount provisionally assessed, the appellant was informed that the service may remain disconnected through the notice. There is further provision to the Licensee that if the consumer does not pay the amount as per the instalments granted, the Licensee may disconnect the supply as per the provisions of Section 56(1) of the Electricity Act. Still there is no record that either the payment was made or the power was actually disconnected (based on EBS billing and payment sheet).

23. It is surprising to note that the respondents have not complied with Clause 10.2.3 of GTCS for collection of the assessed amount in the present case and on the other hand, they are silent after issue of the Provisional Assessment Notice without taking any action. The respondents are satisfied to get the matter compounded with collection of a small amount. They have not even approached the Special Court under Section 154(5) of the Act simultaneously to determine the civil liability to enable the DISCOM to collect two times or more of the tariff rate.

24. As regards showing the theft amount in the C.C. bill for the relevant month is concerned, it is to be shown only after the Final Assessment (determining of civil liability) by the Special Court, as mentioned in Clause 10.6.1.2 of GTCS. But in the present case the said amount was shown as case amount in the bill which is not correct.

25. The learned authorised representative of the appellant has relied on the judgement of a Division Bench of our own Hon'ble High Court in W.A.No.60 of 2022 dt.11.03.2022, wherein it is held that the respondents (Licensee) shall follow the provisions of Section 154 of the Act. There is no dispute about the proposition laid down in the said judgement. In the instant appeal, as already stated, the respondents have been following the provisions of the Act and GTCS in inspecting the premises of the appellant to check tapping of electricity involved in this case and preparing a provisional report

etc. In the case relied on by the appellant, the Hon'ble High Court has passed consent order directing the respondents not to disconnect the power supply of the consumer, subject to depositing 50% of the amount assessed and in respect of the remaining dues, the respondents were directed to follow the procedure prescribed under Section 154 of the Act. In the present appeal, the power supply was not disconnected and 50% of the amount assessed is not deposited. Therefore this judgement is not useful to the appellant.

26. The learned authorised representative of the appellant has also relied upon the judgement of our own Hon'ble High Court in W.P.No.34495 of 2021 dt.23.12.2021 and W.P.No. 7785 of 2019 dt.15.04.2019, wherein also the Hon'ble High Court has directed the consumer to deposit 50% of the assessed amount for reconnection without expressing any opinion on the demand made. In the present case, as already stated, the said 50% of the assessed amount was not deposited, still the appellant is using the power supply. Further the Forum has no authority to deal with the matter arising under Section 135 of the Act. However, the Forum in view of Clause 2.37 of Regulation shall reject the complaint only after giving opportunity to the complainant to put-forth his case. This is not followed in the present case.

27. 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.

28. 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 CrI.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.

29. 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.

30. 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.

31. This authority is not going into the merits of the case. At the cost of repetition, it is the Special Court which has to determine the civil liability when the respondents approach the Special Court. Further either the Forum or this Authority have no jurisdiction to entertain any grievance or complaint like the present one involved under Sec. 135 of the Act. This authority is considering the provisions of the Act, Regulation and GTCS etc., only to prima-facie find out whether any case is made out. The material on record goes to show that the consumer (appellant) was found committing theft of energy by way of tapping it directly and the appellant has paid the compounding fee. Accordingly, I hold that the Provisional Assessment Order is valid; that the recovery process is not properly implemented as per the provisions of the Act and the GTCS; that the civil liability is to be determined by the Special Court under Sec. 135 and 154 of the Act and the Award of the Forum is liable to be set aside as no opportunity of hearing was accorded as required. These points are decided accordingly.

POINT No. (v)

31. In view of the findings on point No. (i) to (iv), the Award of the Forum is liable to be set aside for want of reasons.

RESULT

32. In the result, the appeal is rejected and the provisional assessment issued by the 2nd respondent is found valid and the appellant is liable to pay this amount. This Authority has no jurisdiction to interfere with the said assessment as per Clause 2.37 of Regulation 3 of 2015. The provisions of Clause 10.2.3 of the GTCS regarding disconnection of power supply when theft of electricity is noticed are not followed by the respondents. The impugned order of the Forum is found to be unsustainable for want of reasons. The civil liability has to be determined by the Special Court under Section 154(5) of the Electricity Act, 2003 on request made by the DISCOM. The impugned order is answered accordingly.

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

Typed to my dictation by Office Executive-cum-Computer Operator, corrected and pronounced by me on this the 14th day of September 2022.

Sd/-

Vidyut Ombudsman

1. Md. Abdul Hadi, 17-4-601, Yakuthpura, Hyderabad - 500 023.
Cell: 9642501305 & 7036205211.
2. The Assistant Divisional Engineer / Operation / Santosh Nagar / TSSPDCL / Hyderabad.
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4. The Superintending Engineer / Operation / Hyderabad South Circle / TSSPDCL / Hyderabad.

Copy to

5. The Chairperson, Consumer Grievances Redressal Forum- GHA, Erragadda, Hyderabad.

APPEAL NO. 40 OF 2020-21