



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 Nineteenth Day of December 2016

Appeal No. 52 of 2016

Preferred against Order Dt. 25-07-2016 of CGRF In

CG.No: 54/2016-17 of Nalgonda Circle

Between

**Sri. T. Ramesh, Chamalapally Village, Nampally Mandal, Nalgonda Dist. 508373.
Cell: 9652550019.**

... Appellant

AND

- 1. The AAE/OP/Nampally/TSSPDCL/Nalgonda Dist.**
- 2. The ADE/OP/Nampally/TSSPDCL/Nalgonda Dist.**
- 3. The DE/OP/Devarakonda/TSSPDCL/Nalgonda Dist.**
- 4. The SE/OP/Nalgonda Circle/TSSPDCL/Nalgonda.**

... Respondents

The above appeal filed on 14.09.2016 coming up for hearing before the Vidyut Ombudsman, Telangana State on 24.11.2016 at Hyderabad. The Appellant was absent and Sri. P. Jana Reddy - ADE/OP/Nampally was present 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. 4431500339 LT- 1 Domestic. The Appellant stated to have a flour mill and cool drink shop in his house. The DPE officials inspected the house of the Appellant on 17.10.2009 and levied penalty of Rs 3682/-, which he paid on 20.5.2016 for utilising the supply other than sanctioned purpose and getting supply directly without meter, resulting in theft of energy.

- 2. The 1st Respondent AAE/O/Nampally through his letter dt.16.7.2016 stated that the DPE officials booked a case of theft of electricity under Section 126 of the Electricity Act,2003 for unauthorised extension of supply to another premises and the infraction was finally assessed at Rs 720/- and the Appellant paid the amount on 20.09.2014.**

3. Later, DPE officials inspected the premises on 23.09.2014 and found the Appellant availing supply for commercial(Flour mill and cool drink shop) purpose which is otherwise than authorised purpose. The Appellant was levied penalty of Rs 16,032/- which was finalised as per the orders of the DE/Assessments dt. 5.11.2014. The Appellant paid an amount of Rs 2000/- (part payment) on 31.1.2016 as part of this final assessment amount.

4. The Appellant claimed that he has kept the flour mill idle, has not used the supply for any unauthorised purpose and sought waiver of penalty.

5. Before the CGRF, the Appellant orally pleaded for dropping of the theft case amount on the ground that he has not utilised the flour mill and that he used the supply for his personal domestic purpose only and that he has not received any preliminary assessment notice and that the theft amount has been included in the CC bill. He admitted that he has been utilising the power in the cool drink shop in his house since about 3 or 4 years.

6. The 1st Respondent/AAE/O/Nampally stated that the Provisional Assessment notice was issued and directions were given to the Appellant to pay the assessed amount and that later the DE/Assessment has finalised the assessment, which the Appellant is liable to pay.

7. Based on the material on record, the CGRF came to a conclusion that the Appellant is not entitled to any relief and disposed of the complaint through the impugned orders.

8. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal contending that there was no unauthorised use of power supply which was released under the Domestic Category and that he has been paying the CC bills regularly, purchased a second hand old flour mill with burnt wiring and that he was planning to get it repaired and operate it from September,2009 but kept it idle as he had no finances to get it repaired. He claimed that then the field staff of the DISCOM during their visit saw the old broken down flour mill and the connected material and without examining it and also about his business, booked a case of theft of energy in the year, 2009 and imposed a penalty of Rs 3682/-. He stated that again in the month of November,2012 the officials inspected the service and on the pretext of unauthorised usage of power other than sanctioned purpose, imposed penalty of Rs 895/-. He stated that later in the month of January,2014 the

officials of the DISCOM threatened disconnection demanding payment and that he paid the money in the same month and thereafter, he sought change of category of supply as he was going to get the flour mill repaired and opened and that no action has been taken on it and that thereafter, finally in the month of September, 2014 the officials booked the service and imposed penalty of Rs 16,032/- and that by that time, the flour mill was not opened and not repaired.

9. The Appellant further claimed that on his request, the category of the supply was changed from Domestic to Commercial Category II on 1.11.2014 and after the change of category, he got the mill repaired in August, 2015 and opened it on 11.9.2015 for commercial purpose.

10. In view of the case history, prayer for waiver of the assessment amount and the nature of contention of the Respondents, the efforts at mediation have not succeeded. Hence the matter is being disposed of on merits.

11. On the basis of the material on record, the following issues arise for disposal:

- i. Whether the Appellant is entitled to waiver of penalty of Rs 16,032/- booked under Section 126 of the Electricity Act?
- ii. Whether the Appellant is entitled to get the Category I (Domestic) changed to Category II (Commercial)?
- iii. Whether the final assessment for Rs 16,032/- assessed by the DE/Assessment dt. 5.11.2014 for unauthorised use of supply relating to inspection of the service connection LT I (Domestic) by DPE officials on 23.9.2014 is not legal?
- iv. Whether the impugned orders are liable to be set aside?

Heard.

Issues i to iv

12. The Appellant has service connection No. 4431500339 LT 1 (B) Domestic Category. He sought withdrawal of cases booked under Section 126 of the Electricity Act imposing penalty for user of the energy for other than the sanctioned purpose on the ground that he was running a flour mill. He claimed that he purchased the flour mill in secondhand and it was in a broken condition and that he used the mill only for domestic purpose/personal use and not for commercial purpose and that the CGRF

had wrongly mentioned the cases as theft of energy, instead of unauthorised usage of energy. The details of cases the Appellant was booked against are noted below:

S. No	Date of inspection	Incrementing points	Booked under section	Amount provisionally assessed	Amount finally assessed	Payment made
1	17.10.2009	1.Utilizing supply other than sanctioned purpose. 2.Using supply directly without meter- Theft of energy.	126 of Electricity Act	3682	3682	Paid Rs.3682 Vide PR No.4311820056 Dt:20.05.2016
2.	26.11.2012	Unauthorised extension of supply to another premises	126 of Electricity Act	495	720	Paid Rs.720 Vide PR No.43088200552 Dt:20.09.2014
3.	23.09.2014	Utilizing supply other than sanctioned purpose	126 of Electricity Act	16031	15857	Paid Rs.50 vide PR.No 2128089 Dt:31.01.2016 Paid Rs.2000 Vide PR.No.430011600 53

13. In all the above three cases, the allegation is that the Appellant having Category I (Domestic) service was using the service for Category II (Commercial) usage and this usage falls within the purview of Section 126 of the Electricity Act, 2003. The other important aspect is that in the first case, the load was directly connected through the service wire, by passing the meter and therefore, the case No.1 amounted to theft of energy punishable under section 135 of the Electricity Act,2003 and not to be dealt under S.126 of the Electricity Act,2003 as was done.

14. It is to be noted that the assessing officer, relating to the 1st case of inspection on 17.10.2009, had wrongly quoted Clause 7.5.1 read with Annexure XII(VII)(C) of GTCS relating to defective meter and made assessment under Section 126 of the Electricity Act,2003 and levied Rs 3682/-. The assessing officer ignored the fact that the supply was directly connected through service wire going around the meter, which amounts to theft of energy as defined under section 135 of the Electricity Act. The final assessment of Rs 3682/- was however paid by the Appellant on 20.5.2016. The final assessment bears date 14.3.2016 and why it took seven long years for disposal of the matter is not explained and not known.

15. Regarding the case No.2 mentioned above, while the service was Domestic, Category I, the user was Commercial (Shop purpose) the supply was extended to another premises of different category and therefore, the Case was booked under Section 126(v) of Electricity Act and assessed the loss at Rs 720/-, which the Appellant paid on 20.9.2014.

16. In the case No.3 mentioned above, the billing was done under Domestic Category I while the Appellant was availing supply for Commercial (Cool drinks shop and Flour mill) purpose. For this deviation, a case was booked by the DPE Officials under Section 126 of the Electricity Act. The amount of loss was assessed at Rs 16,031/- including reconnection charges etc. Out of this amount, the Appellant paid Rs 2000/- on 16.10.2014. The Appellant pleaded that he has not utilised the power for other than domestic purpose under Category I and in support of his plea, he filed a copy of certificate issued by the Chamalapally Gram Sarpanch stating that the flour mill was inaugurated by her (Sarpanch) on 11.9.2015.

17. The Appellant pleaded that he has not used the flour mill at any time prior to 11.9.2015 and all the allegations made against him are not correct. The Appeal grounds itself show that the Appellant had a flour mill, may be with burnt wiring or an old unit, but he has been using it. He further pleaded that he was using the flour mill for his personal purpose and has not started any commercial business with the flour mill prior to these inspections. The Respondents pleaded that the case history of the Appellant disclosing three incidents clearly prove that the Appellant has been utilising the supply for unauthorised purpose/commercial purpose while having a Domestic service and thus he is liable to pay the assessed amounts.

18. It is clear from the inspections of 17.10.2009 and 26.11.2012, the Appellant quietly made payments accepting the allegations and when the amount became huge i.e. Rs 16,031/- through final assessment dt. 5.11.2014, he approached the CGRF for waiver. The Appellant is not correct when he pleaded that he has not utilised the supply unauthorisedly for commercial purpose. His admission that he used the flour mill for his personal use, clearly makes out that he has been using the flour mill unauthorisedly and his claim that the flour mill had defective wiring and it is not functional, is made only to avoid the assessed liability. His belated plea with the help of a certificate issued by his village Sarpanch that she had inaugurated the flour mill on 11.9.2015 indicating that the Flour Mill was started, is totally unconvincing and it can be said that it is created for the purpose of defence in this case. The unauthorised

user of supply for commercial purpose, which was intended for domestic purpose, is a clear violation of the supply terms and the Appellant is thus liable to bear the levy imposed by the DISCOM.

19. The CGRF has wrongly termed the unauthorised consumption of power as theft of energy and in fact, the case booked by the officials under Section 126 of the Electricity Act relating to user of supply for other than sanctioned supply is correct and the impugned order stands corrected to that extent. The issues are answered accordingly.

20. In view of the findings on issues i to iv, the following directions shall be issued:

- i. The Appellant is held not entitled to waiver of the levy amount.
- ii. The Appellant shall pay the balance assessed amounts to the DISCOM in 5 instalments starting from the month of February ,2017.
- iii. The Appellant is found entitled to get the category changed from Category I (Domestic) to Category II (Commercial).
- iv. The final assessment of DE/Assessments dt.5.11.2014 confirming the levy of Rs 16,032/- is upheld. The Appellant is permitted to pay the levied amount (balance) in 5 equal monthly instalments, starting from the month of February,2017. Failure to pay even one instalment, shall make the entire amount fall due with due consequences.
- v. The impugned orders are confirmed to the extent indicated.

21. This award shall be implemented within 15 days of its receipt at the risk of penalties as indicated in Clauses 3.38, 3.39 and 3.42 of the Regulation No. 3/2015 of TSERC.

TYPED BY CCO, Corrected, Signed and Pronounced by me on this the 19th day of December, 2016.

Sd/-

VIDYUT OMBUDSMAN

1. Sri. T. Ramesh, Chamalapally Village, Nampally Mandal, Nalgonda Dist.
508373. Cell: 9652550019.
2. The AAE/OP/Nampally/TSSPDCL/Nalgonda Dist.
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5. The SE/OP/Nalgonda Circle/TSSPDCL/Nalgonda.

Copy to:

6. The Chairperson, CGRF - 1, TSSPDCL, GTS Colony, Vengal Rao Nagar,
Erragadda, Hyderabad.
7. The Secretary, TSERC, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad.