

VIDYUT OMBUDSMAN
O/o: ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad – 500 004

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 08-01-2013

Appeal No. 69 of 2012

Between

Sri. M. Daraswami & others
S/o. Venkataswami (Late),
Vaddekandriga (Village),
GMR Puram Panchayat,
S.R. Puram Mandal, Chittoor Dist

... Appellant

And

1. Asst. Engineer / Operation / APSPDCL / S.R. Puram / Chittoor Dist
2. Asst. Divisional Engineer / Operation / APSPDCL / Karvetinagaram / Chittoor Dist
3. Divisional Engineer / Operation / APSPDCL / Puttur / Chittoor Dist

.....Respondents

The appeal / representation dt. 06.09.2012 received by this authority on 10.09.2012 against the CGRF order of APSPDCL in C.G. No. 270 / 2011-12 Chittoor Circle dated 30.06.2012. The same has come up for final hearing before the Vidyut Ombudsman on 19.12.2012 at Hyderabad. Sri. P. Ravi Kiran, Advocate for appellant present on 05.12.2012 and requested time for filing Vakalat and posted to 19.12.2012. Sri. K. Kesavulu, Addl. Asst. Engineer / S.R.R.Puram / Chittoor Dist appeared on behalf of respondents on 05.12.2012 and addressed their arguments. Sri. P. Ravi Kiran, Advocate for appellant present on 19.12.2012. Heard the arguments of the petitioner and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following :

AWARD

The petitioner filed a complaint before the CGRF against the Respondents for redressal of his Grievances. In the complaint, the appellant has mentioned about the grievances as hereunder:

- i. They are residents of GMR Puram, Vaddikandruga of S.R Puram Mandal in Chittoor Dist.*
- ii. They are doing cultivation and have applied for electrical connection on 01.01.2009.*
- iii. Requested for release of services in their favour.*

2. The 2nd respondent filed his written submissions as follows :

- i. The consumer Sri. M. Doraswamy, S/o. M. Venkataswamy paid Rs. 5325.00 towards development charges, security deposit charges and LT application fees for 5.0 HP agriculture service connection, vide Pr. No. 285036, dt. 01.07.2010.*
- ii. The service consists open well vide SF. No. 108 / 2C and the service was released on 25.01.2011 with service number 5343110000491 under existing 25KVA DTR.*
- iii. Further Smt. V. Parimala, W/o Sampath registered LT application for agriculture service connection vide Pr. No. 254233, dt. 21.12.2009 in SF.No. 104 / 31 with a load of 7.5 HP.*
- iv. The development charges and security deposit charges were paid which is prior to the consumer Sri. M. Doraswamy.*
- v. The poles were laid and the supply was given to the consumer Smt. V. Parimala under existing 16KVA DTR.*
- vi. Later on Sri. M. Doraswami drilled a bore well, which is 100 meters away from the existing open well service.*
- vii. The consumer again registered LT application vide PR. No. 285470, dt. 28.09.2010 for 7.5 HP service at SF No. 108 / 2 C for agl service connection.*
- viii. This LT application priority number is 48 of SRR Puram Mandal.*
- ix. For the year 2011-12 SPDCL allotted only 49 Nos as quota for releasing of new agl services as per priority in SRR Puram Mandal*
- x. The consumer utilizing supply to this bore well under 16 KVA DTR and says for existing service supply taken from 16 KVA DTR .*

3. After careful consideration, the Forum passed the following order :

“No separate order need to be issued”.

4. Aggrieved by the said order, the appellant filed this appeal questioning the same by narrating the following grounds:

- (i) The findings of the Forum are against to law, facts, weight of evidence and probabilities of the case. The Forum ought to have considered that the application was only for transfer of SC No.491 from the adjoining open well which is about 50meters away from the newly dug borewell increasing the capacity from 5HP to 7.5HP. The appellatant dug the bore well without knowing that it is a poramboke land and drilled with good faith and got shifted the service connection from open well to be bore well.
- (ii) The Forum considered the allegations of 3rd party disgruntled persons in giving troubles to the appellatant.
- (iii) The Forum also failed to consider the temporary injunction granted by the Prl.Jr.Civil Judge, Chittoor in O.S.No.52 of 2011 in favour of the complainant against the 3rd party M.Desamma and others.
- (iv) The Forum also failed to consider the fact of raising of paddy and sugarcane crop by the complainant and there is no other source of irrigation except the bore well.
- (v) The Forum also failed to consider that the MRO officials never objected and obstructed in drilling the bore well.
- (vi) The Forum also failed to consider the record of the Tahsildar of S.R.Puram Mandal to the fact that the appellatant dug the bore well in Sy.No.108/1 and he is in possession and enjoyment of the same but not any body else.
- (vii) The Forum ought to have rejected the objections of the 3rd parties.
- (viii) The Forum ought to have considered the request for shifting the service connection from open well to be adjoining bore well.
- (ix) Hence, it is prayed to order the respondents to shift the service connection 491 from open well to the adjoining bore well by increasing capacity.

5. Now, the point for consideration is, "whether the impugned order is liable to be set aside. If so, on what grounds?"

6. The counsel for the appellatant Sri P.Ravi Kiran appeared before this authority and reiterated the contentions mentioned in the grounds of the appeal and also

stated that he would file the documents showing the continuity of injunction order within a week. But no order is filed even till today.

7. Whereas, the respondents are represented by Sri. K. Kesavulu, Addl. Asst. Engineer / S.R.R.Puram / Chittoor Dist and stated that the request made by the appellant is not considered as there is no clearance from the Revenue Department and the said land is in possession of Smt.Desamma and the revenue officials have said that it is a Gutta poramboke and the appellant has not produced any documents to prove his title and possession over the said property and also submitted written submissions narrating the same grounds; and that the Forum has rightly considered and passed the impugned order and the appeal preferred by the appellant is liable to be dismissed.

8. It is an admitted fact that the appellant got an open well in SF.No.108/2C and the service was released on 25.01.2011. One Smt.V.Parimala applied for release of service connection prior to the application of the appellant. Poles were laid and supply was given to her under existing 16KVA DTR . The appellant dug bore well at a distance of 100 meters away from the existing open well. The appellant registered LT application on 28.09.2010 for 7.5HP at SF No.108/2C for agriculture service connection. It is in SRR Puram mandal. One Dessamma W/o.M.Chengalrayudu residing at Vaddikandriga (V) got issued a notice through her advocate Sri Seshachalam claiming that the said land was assigned to her and requested the respondents not to release the service connection to the appellant. The SRR Puram Mandal Tahsildar stated that the bore well was drilled by the appellant in Sy.No.108/1 of pathapalem village which is a Gutta poramboke.

9. Whereas, Smt. Dessamma claims that the said property was given to her and claiming that it was in her possession. The appellant has not paid any shifting charges and the motor was available at the open well. In the notice Smt. Dessamma got mentioned that she filed a civil suit in O.S.No.33/2011 on the file Prl.Junior Civil Judge court, Puttur on the ground that she was given a D.K.T.patta under D-Namona AM No.149/4/141 in her favour and the said notice was given by her to AE (Respondent No.1) not to release the service connection in the name of Doraswamy.

10. It appears that the appellant herein filed I.A.No.146/2011 in O.S.No.52/2011 and obtained injunction order till 11.04.2011. Whether the said order is still continued or not is not placed before this authority. The fact remains that there are two cases pending on the same subject matter scrambling for their respective rights over the property. In addition to this it is an admitted fact that the said land is a Gutta poramboke. The appellant is not entitled any title right over the said property since he has not filed any papers in support of his contention. So far as the rights of the property are concerned, this is not the Forum which can decide its respective rights. The consumer who approaches the department for release of his service connection, he has to satisfy the possession, title and payment of prescribed charges for the service connection etc. Whereas, in this case there is a dispute with regard to the property. In this connection, it is necessary to mention that the Commission has issued a circular on 07.07.2005. As per the said circular and as per clause 4.7, the Forum as well as this authority hence forthwith to reject the complaint, if there is any dispute over the property pending before any Court or Tribunal. The said clause reads as follows:

As per clause 4.7 of Lr.no.S.325/05.06, dt.07/07/05 of Hon'ble APERC "If the subject matter of the complaint is shown pending consideration before any court, tribunal or arbitrator or any other Forum or a decree or award has already been passed by a competent court of law, the Forum can forthwith reject the complaint."

11. In the light of the above said discussion and in view of the said clause, the Forum as well as this authority are not competent to probe into the matter and decide the respective rights of the parties. The appellant is not entitled for any relief as sought for. The Forum has rightly considered the said aspects and there are no grounds to interfere with the order of the Forum and the appeal preferred by the appellant is liable to be dismissed.

12. In the result, the appeal is dismissed. No order as to costs.

This order is corrected and signed on this 8th day of January, 2013.

Sd/-

VIDYUT OMBUDSMAN