



VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA
First Floor 33/11 kV substation, Hyderabad Boats Club Lane
Lumbini Park, Hyderabad - 500 063

:: Present:: Smt. UDAYA GOURI

Saturday the Twenty Second Day of June 2019

Appeal No. 72 of 2018

Preferred against Order dt:28.02.2019 of CGRF in
CG No. 3224/2019 of Warangal Rural Circle

Between

Sri.Ch.Mukunda Rao, M/s.Narayana Rathna Industries, H.No.2-311, Mallampally
Road, Narsampet, Warangal Rural - Dist. Cell: 9866972777.

... Appellant

AND

1. The ADE/OP/Town/Narsampet.
2. The AAO/ERO/Narsampet.
3. The DE/OP/Narsampet.
4. The SAO/CO/Warangal Rural.
5. The SE/OP/Warangal Rural.

... Respondents

The above appeal filed on 22.03.2019, coming up for final hearing before the Vidyut Ombudsman, Telangana State on 13.06.2019 at Hyderabad in the presence of Sri. D. Ramesh - On behalf of the Appellant and Sri. Zakir Ali Danish - Council for the Respondents and having considered the record and submissions of both parties, the Vidyut Ombudsman passed the following;

AWARD

This is an Appeal against the order of the CGRF Warangal Rural Circle in CG No. 324/2019 dt.28.02.2019.

2. The Appellant stated that he lodged a complaint before the CGRF/Warangal Circle seeking a direction to the Respondents to issue a 'No Due Certificate' to his industry styled as M/s. Narayana Ratna Industries, Narsampet and to refund the Security Deposit apart from writing off the demand raised for three months

minimum bill FSA collectible surcharge and the learned the CGRF failed to appreciate his contentions and directed the Respondents to issue the 'No Due Certificate' after receiving the payment of Rs 5,07,369.20 ps payable within 15 days along with the delayed payment surcharge of 18% P.A. and the outstanding amounts compounded annually and disposed the matter. As such aggrieved by the same the present Appeal is filed.

3. The Appellant herein i.e Ch. Mukunda Rao who is the proprietor of M/s. Narayana Ratna Industries, Narsampet, was allotted SC No. HT WGL 69, sought for issuance of 'No Due Certificate' without any payment of Rs 5,07,369.20 ps to the DISCOM as directed by the CGRF - I, by setting aside the said order.

4. The Appellant in support of his contentions submitted that when he has approached the CMD/TSNPDCL for issuance of "No Due Certificate" by giving representation dt.29.12.2018 under acknowledgement. As there was no response the Appellant approached the CGRF-I, Waranagal. During the course of proceedings, the SAO stated that they gave notice in 2014 to pay Rs 5,77,000/- after adjusting the security deposit.

The Appellant stated that though he has not received the said notice, even if the notice is true the claim is barred by time by 2016 U/s.56 (2) of the Electricity Act,2003. The vital legal aspect was not considered by the CGRF-1 on the other hand the forum has directed the Appellant to pay Rs 5,07,369.20 ps being arrears of at the end of July,2012 Rs 1,62,056/- as FACA charges collectable by September,2013 of Rs 3,74,113.20 ps. Therefore the grave injustice is caused to the Appellant.

It is out of place to mention here that the impugned order passed by the 6th Respondent dt.28.02.2019 the same was received by the Appellant herein on 06.03.2019 by registered post. In the said order the 6th respondent given 30 days time to the Appellant to prefer an appeal against the impugned order as specified in Clause 2.63 of Regulation 3 of 2015 of TSERC. The forum further observed in the said order that there is a delay of 5 days in deciding the petition, the reason for delay in non-receipt of reports from the Respondents in time.

The Appellant making efforts to challenge the impugned order passed by the CGRF before this authority, surprisingly the 5th Respondent issued a notice vide SE/OP/WGL/SAO/AAO/JAO/HT/D.No.638/2018 dt.07.03.2019 stating that the Appellant is liable to pay an amount of Rs 5,07,369.20 ps within 15 days the payment

is made after the due date, the Appellant is liable to pay delayed payment surcharge @18% per annum on the outstanding amounts compounded annually though the legal remedies available to the Appellant for filing an appeal, the Appellant is filing the present appeal within a period of limitation as prescribed in the order.

There is an apprehension to the Appellant that he 5th Respondents may enforce the order passed by the 5th Respondent. Therefore the Appellant is filing a separate petition to stay of all further proceedings against the orders passed by the CGRF dt.28.02.2019.

Any other grounds will be urged by the Appellant at the time of hearing of the Appeal.

Therefore the Appellant submitted that the Appellant authority may be pleased to set aside the order demand of Rs 5,07,367.20 ps as decided by the CGRF-1, Warangal dt.28.02.2019 and direct the Respondents to issue "No Due Certificate" to the Appellant in the interest of justice.

Written submissions of the Respondents

5. That the Respondents have read the Appeal filed and deny the various averments made therein except those which are specifically admitted herein.

That the present appeal is filed aggrieved by the orders of the CGRF/Warangal dt.28.02.2019 contending that the claim of the Respondents herein is barred by limitation. At the outset it is submitted that Appellant have approached this Hon'ble Forum by filing the present Appeal is wholly misconceived and same is liable to be rejected.

That the contention of the Appellant herein that he did not receive any notice issued by the Respondent dt.28.02.2019 and even if such a notice is issued it is time barred claim therefore the claim for the Appellant shall be allowed, the contentions of the Appellant herein is wholly misconceive and contrary to the facts of the case.

That the Appellants herein obtained the electricity connection vide SC No. HT WGL-69 by entering into an agreement dt.13.11.1989 for the contract load not exceeding 120 KVA with the Respondents herein with the following amount other conditions.

a. Determination of the agreement

I/we shall be at liberty to determine the contract by giving in writing one year's notice expressing such intention at any time after a period of four years. I/we agree that the AP State Electricity Board may terminate this contract at any time giving one weeks notice if, I/we violate the terms of this agreement or the terms and conditions of supply notified by the AP State Electricity Board from time to time or the provisions of any law touching this agreement including the Electricity (Supply) Act, 1948 the Indian Electricity Act 1919 and rules there under. This agreement shall remain enforce until it is terminated as above indicated. In computing the period of 5 years and 4 years referred to above period or periods for which the annual minimum guarantee has or have been waived or reduced shall be excluded.

b. Obligation of consumer to pay all charges levied by board.

From the date of this agreement comes into force I/we shall be bound by and shall pay the Board Maximum demand charges, energy charges, surcharges, meter rents and other charges, if any, in accordance with the tariffs applicable and the terms and conditions of supply prescribed by the Board from time to time for the particular class of consumers to which I/we belongs.

c. Boards rights to vary terms of agreement

I/We agree that the board shall have the unilateral right to vary from time to time, tariffs, scale of general and miscellaneous charges and the terms and conditions of supply under this agreement by special general proceedings.

In particular, the Board shall have the right to enhance the rates chargeable for supply of electricity according to exigencies.

Further submitted that in view of the above agreement appellants herein was supplied with the HT connection as referred above, on 28.07.2012 appellants herein submitted a letter stating that he is unable to run the industry as such requested to disconnect and dismantle the service to SC No. HT 69. Accordingly the SE/OP by its letter dt.11.09.2012 approved the dismantling of service connection with a direction to the

ADE/OP/Narsampet to inspect the service and furnish the final reading with meter particulars and disconnect the service, he was further directed to collect the arrears if any. It is further submitted that the DE/OP/Narsampet by letter dt.03.11.2012 issued the memo to the Appellants herein with a request to pay a sum of Rs 5,295/- towards dismantling/shifting charges to dismantle the connection towards SC No. HT 69. The said charges were only for dismantling the service connection which do not exonerate the appellants herein from the charges applicable as on the date of dismantling the service connection or till it is paid by him.

It is submitted that as per the terms of agreement dt.13.11.1989 and the GTCS contemplated under Clause 5.9.4.2 it is mandatory that in case of termination of the contract the consumer is liable to pay all sums due under agreement and as per GTCS as on the date of termination, which included fuel surcharge adjustment (FSA) and by considering the same the learned CGRF passed a comprehensive order and directed the Appellant herein to pay a sum of Rs 5,07,369.2 ps and directed the Respondents herein to issue 'No Due Certificate' after receiving such amount.

That in compliance of the same the Appellant herein was requested to pay the amount as directed by the CGRF vide notice Lr.No.SC/OP/WGL/SAO/JAO/HT/D.No.638/2018 dt.07.03.2019 instead of paying the same in compliance with the direction the Appellants herein approached this forum and by an interim order dt. 22.03.2019 this Hon;ble Forum directed the Respondents not to take any coercive action until disposal of the Appeal subject to payment of Rs 2,53,685/- by the Appellants, but the Appellants failed to obey the said orders therefore the Appeal is liable to dismiss on this ground alone.

That before the learned CGRF the Appellant herein admitted the fact of issuance of notice in Feb,2014 having the knowledge of the notice for payment of arrears the Appellants now cannot say that the claim of the Respondent is time barred. In fact on 03.11.2012 proceedings were issued for collecting the charges for dismantling the service connection and the notice was issued for arrears etc on 28.02.2014 i.e. well within time. Therefore the contention of the Appellants is that the claim of the Respondents is time barred is not tenable. In fact it is an afterthought to cause loss to the Respondents Company.

That the Appellants herein submitted a letter on 28.12.2018 to the CMD/TSNPDCCL with a request to write-off the demand and FSA collectable charges,

which clearly shows the appellants were aware of dues payable to the Respondents and requested to write off dues therefore, the contention that the notice on 28.02.2014 is time barred is not tenable.

That the notice dt.28.02.2014 and earlier notices including notice dt.03.11.2012 for dismantling the service connection was dispatched to the Appellants herein by post by the concerned authorities therefore the contention of Appellants that he did not receive any notice is only an afterthought to avoid payment of dues to the Respondents herein more particularly after admitting before the learned CGRF about the knowledge of the notice which clearly shows that the Appellant deliberately avoided the payment in spite of having knowledge in order to cause loss to the Respondents company.

That the above stated facts it is thus clear that the Appellants herein is liable to pay Rs 5,07,369.20 ps as decided by the CGRF-1/Warangal (CGRF) dt.28.02.2019 which is well considered order, passed in accordance with law as such the Appeal 72 of 2019 is devoid of merit and is liable to be dismissed.

6. On the basis of the said averments by both sides the following issues are framed:-

1. Whether the Appellant's HT Service Connection pertaining to his firm M/s. Narayana Ratna Industries, Narsampet with HT SC No. WGL 69 is entitled for an issuance of 'No Due Certificate' from the Respondents without any payment, refund of Security Deposit and Write Off the demand raised for three months minimum bill FSA Collectible surcharges by the Respondents? And
2. To what relief?

Heard Both sides.

Issue No.1

7. A perusal of the evidence both oral and documentary go to show that the Appellant is seeking for 'No Due Certificate' for his HT Service Connection No. WGL 69 claiming that he is not due any amount to the Respondents either by way of refundable security deposit and is also claiming that the Respondents have to write off the three months minimum bill demanded and FSA collectible charges. The Respondents on the other hand contended that they have approved the request of the

Appellant dt.28.07.2012 for dismantle of his HT service and demanded to pay sum of Rs 5,295/- towards dismantling charges which does not exonerate the Appellant from paying the charges on the date of dismantling the service connection or till it is paid by him.

8. The Appellant further contended that even the CGRF failed to appreciate its contention and directed the Respondents to issue the 'No Due Certificate' on payment. Notwithstanding the above the Appellant preferred this appeal stating that he has not received any notice for payment of the arrears and even if the notice is true the claim is barred by time under Section 56(2) of the Electricity Act 2003. It was held that out of total Rs 5,07,369.20 ps demanded Rs 1,62,056/- being arrears are at the end of July,2012 and Rs 3,47,113.20 is collectable by Sep,2013 and hence they are not liable to pay any amount as per the Section 56(2) of the Electricity Act 2003, since the liable 2 years two period had lapsed. In support of his claim the Appellant has submitted various judgements which are related to Section 56(2) of the Electricity Act 2003.

9. The Respondents on the other hand contended that at the time of release of the HT service entered into an agreement with the Licensee on 13.11.1989 towards contracted load not exceeding 120 KVA and produced the relevant clauses in the HT agreement executed by the Appellant as follows:-

a. Determination of the agreement

I/we shall be at liberty to determine the contract by giving in writing one year's notice expressing such intention at any time after a period of four years. I/we agree that the AP State Electricity Board may terminate this contract at any time giving one weeks notice if, I/we violate the terms of this agreement or the terms and conditions of supply notified by the AP State Electricity Board from time to time or the provisions of any law touching this agreement including the Electricity (Supply) Act, 1948 the Indian Electricity Act 1919 and rules there under. This agreement shall remain enforce until it is terminated as above indicated. In computing the period of 5 years and 4 years referred to above period or periods for which the annual minimum guarantee has or have been waived or reduced shall be excluded.

b. Obligation of consumer to pay all charges levied by board.

From the date of this agreement comes into force I/we shall be bound by and shall pay the Board Maximum demand charges, energy charges, surcharges, meter rents and other charges, if any, in accordance with the tariffs applicable and the terms and conditions of supply prescribed by the Board from time to time for the particular class of consumers to which I/we belongs.

c. Boards rights to vary terms of agreement

I/We agree that the board shall have the unilateral right to vary from time to time, tariffs, scale of general and miscellaneous charges and the terms and conditions of supply under this agreement by special general proceedings.

A perusal of the said terms and conditions of the agreement as mentioned above clearly contemplates under Clause 5.9.4.2 that it is mandatory that in case of termination of the contract the consumer is liable to pay all sums due under the agreement which includes Fuel Surcharge Adjustment (FSA). In compliance to the CGRF order the Appellant was requested to pay the amount vide notice Lr.No.SC/OP/WGL/SAO/AAO/JAO/HT/D.No.638/2018 dt.07.03.2019. The Appellant obtained the interim order dt.22.03.2019 from this authority, wherein it was directed not to take any coercive action until disposal of the Appeal, subject to payment of Rs 2,53,685/-, but the Appellant failed to obey the said orders and therefore the Appeal is liable to be dismissed on this ground alone.

10. In the face of the above it is clear that the Appellant herein admitted the fact of issuance of notice in February,2014 for payment of arrears during the course of hearing in the CGRF and hence cannot now claim that the demanded amount is time barred. That the Appellant vide Letter dt.28.12.2018 represented to the CMD/TSNPDCCL with a request to write off the demand and FSA collectable charges which clearly shows that he is aware of the dues payable to the Respondents and the contention of the time barred is not tenable. The notices for payment of the dues were issued on 03.11.2012 and 28.02.2014 by post and therefore the contention of the Appellant that he did not receive any notice is only an afterthought to avoid the payment of dues, he is deliberately avoiding the payment in spite of having knowledge in order to cause loss to the Respondent company. Hence requested to pass an order in accordance with the law and dismiss the Appeal of the Appellant.

11. The facts in the judgement cited by the Appellant i.e. Avadesh S. Pandey Vs Tata Power Company Ltd. and others also goes against the Appellant as “ *Submission of counsel for the petitioner is that the provisions of Section 56 do not empower Respondent No.1 to recover any amount if the period of two years has elapsed no can electricity supply be cut off for non-payment of those dues. In other words what is sought to be contended is that of the demand or part of the demand is time barred the provisions of Section 56 would not be attracted. We are afraid, we cannot subscribe to that proposition. Section 56(1) is a special provision. Enabling the generating company or the Licensee to cut-off the supply of electricity until such charges or sum as demanded under Section 56(1) is paid. Relying on sub section (2), it was strenuously urged that Section 56(1) cannot be restored after a period of two years from the date when such demand became first due. In our opinion, subsection(2) only provides a limitation, that the recourse to recovery by cutting of electricity supply is limited for a period of two years from the date when such sum became due. As long a sum is due, which is within two years of the demand and can be recovered, the licensee or the generating company can exercise its power of coercive process of recovery by cutting off electricity supply. This is a special mechanism provided to enable the licensee or the generating company to recover its dues. Apart from the above mechanism, independently it can make recovery by way of a suit. In our opinion, therefore the impugned order passed by the Electricity Ombudsman does not suffer from any error apparent on the face of the record and consequently there is no merit in this petition.*”

12. A perusal of the above, states that Section 56(1) is a special provision which envisages the Licensee to cut off the supply of electricity until such charges or sum as demanded is paid. But the Section 56(1) cannot be restored after a period of two years from the date from when such demand became first due, means Sub section (2) only provides a limitation that the recovery by cutting of electricity supply is limited for a period of two years from the date when such sum became due. Here in this case the Appellant request is for issuance of ‘No Due Certificate’, the supply was disconnected on the request of the Appellant for dismantlement of the service and liable charges pending as per the GTCS Clause 5.9.4.2 were informed to the Appellant vide letter dt.03.11.2012 and 28.02.2014. There is initiation from the Appellant itself to disconnect/dismantle the HT Service in the year 2012. Since then he has not turned up for completion of the procedure by not paying the liable amounts. The Section 56(2) does not substantiate such cases. Hence the claim of the Appellant that the issue

is hit by Section 56(2) is not tenable. The Appellant is liable to pay the demanded amount vide notice Lr.No.SC/OP/WGL/SAO/AAO/JAO/HT/D.No.638/2018 dt.07.03.2019 for issuance of “No dues certificate”. Hence in the said circumstances this issue is accordingly decided.

Issue No.2

13. In the result the Appeal is disposed directing the Appellant to pay the amount due under the notice bearing Lr. No. SC/OP/WGL/SAO/AAO/JAO/HT/D.No. 638/2018 dt. 07.03.2019 for issuance of ‘No Due Certificate’.

TYPED BY Office Executive cum Computer Operator, Corrected, Signed and Pronounced by me on this, the 22nd day of June, 2019.

Sd/-
Vidyut Ombudsman

1. Sri.Ch.Mukunda Rao, M/s.Narayana Rathna Industries, H.No.2-311, Mallampally Road, Narsampet, Warangal Rural - Dist. Cell: 9866972777.
2. The ADE/OP/Town/Narsampet.
3. The AAO/ERO/Narsampet.
4. The DE/OP/Narsampet.
5. The SAO/CO/Warangal Rural.
6. The SE/OP/Warangal Rural.

Copy to :

7. The Chairperson, CGRF-I,TSNPDCI,Nakkalagutta, Hanamkonda, Warangal.
8. The Secretary, TSERC, 5th Floor Singareni Bhavan, Red Hills, Lakdikapul,Hyd.