

BEFORE THE VIDYUT OMBUDSMAN

:: Present ::

C. Ramakrishna

Date: 29-05-2014

Appeal No. 110 of 2013

Between

Sri P. Naresh Kumar, H. No. 10-5-825, Tukaram Gate, Secunderabad 500 017

... Appellant

And

1. The Asst. Engineer, Operation, Clock Tower, APCPDCL, Secunderabad
2. The Asst. Divisional Engineer, Operation, James Street, APCPDCL,
Secunderabad
3. The Asst. Accounts Officer, ERO, Paradise, APCPDCL, Secunderabad

... Respondents

The above appeal filed on 31-10-2013 has come up for final hearing before the Vidyut Ombudsman on 05-05-2014 at Hyderabad. The appellant, as well as respondents 1 to 3 above were present. Having considered the appeal, the written and oral submissions made by the appellant and the respondents, the Vidyut Ombudsman passed the following:

AWARD

2. The appeal arose out of the grievance of the appellant that the CGRF had not considered his complaint favourably. The grievance of the appellant

is that he is being levied 3 times the CC charges every month because of non-production of Occupancy Certificate from the local authorities.

3. The appellant stated in his appeal that he along with a few others purchased shops in the ground floor of a building whose construction was legally sanctioned by GHMC; that as per G.O. Ms. 86 of 2009, the construction of the building as Ground and First floors is permitted by the GHMC without asking for mortgage as the total plot area is 287 meters which is below the 300 Sq. Mts stipulated in the said G.O; that they are also paying Property Tax to GHMC; that the GHMC is demanding penal property tax from the occupants of the illegally constructed 2nd and 3rd floors of the same building; that they are aggrieved of the receipt of huge electricity bills -- three times the normal CC charges collectible; and that in view of their floors actually having been legally sanctioned, levying three times the CC charges on them is usurious.

4. The respondents were issued a notice for hearing the appeal. The respondent AAO filed his written submission on 09-01-2014 stating that the service of the appellant is being billed 3 times the CC charges as the consumer has not produced Occupancy Certificate. During the course of the hearing on 18-01-2014, it has come to light that the respondent officers are relying on the Circular Memo No. CMD/CGM(C)/SE(C)/DE(C)/ADE-1/D.No. 720 dated 05-06-2012, issued by the DISCOM to the effect that in all such cases where Occupancy Certificates are not produced by the consumers from the local authorities, 3 times the CC charges shall be levied and collected. Having noticed that such a dictat encroaches on the tariff setting power of the Hon'ble Commission, and is beyond the competence of a DISCOM, it was decided to make the DISCOM also a party to the proceedings and a notice to the GM(RAC)

of APCPDCL was accordingly ordered. In spite of the notice, no representative of the DISCOM's Corporate Office appeared in the hearings. Hence the matter was decided based on the material available.

5. On 06-03-2014, the respondent ADE filed his written submission stating that one M/s. G.K.P. Constructions had applied for a number of connections in the building being constructed by them on 11-11-2010; that the estimate for the extension of supply was sanctioned by the SE, Hyderabad North Circle on 07-07-2011; that in the estimate so sanctioned, it was clearly mentioned that no permanent connection would be released for multi storied buildings and complexes unless occupancy certificate from MCH and NOC from fire services are produced; that their Corporate Office had given instructions vide Memo No. CMD/CGM(C)/SE(C)/ADE-I/D. No. 720/12 dtd: 05-06-2012 regarding collection of 3 times the normal CC charges for non-production of Occupancy Certificate; that consequent to the estimate sanction, the applicant consumer had paid all the amounts and submitted a letter dtd: 17-04-2012 stating that all electrical works are completed and requested to release the services; that the applicant consumer had also filed WP 15344 of 2012 (May, 2012) in the Hon'ble AP High Court for release of services; that the Hon'ble Court had given orders on 12-10-2012 to release services as per the sanction letter dated 07-07-2011; that in the mean time the consumer had given a consent letter for paying 3 times the CC charges and sought release of the service connections; and that after taking the legal opinion (November, 2012), service connections were released (January, 2013) intimating the respondent AAO to implement 3 times the CC charges levy.

6. On 15-03-2014, the appellant submitted in writing that as per G.O. Ms. No. 86, a high rise building is one which is more than 18 meters in height and

whose minimum plot size is 2000 Sq. Mts and that the building of which his service is a part is not a high rise building by that definition.

7. On 19-03-2014, the respondent AE filed his written submissions essentially reiterating what was stated by the respondent ADE.

8. The final hearing was conducted on 05-05-2014. The key facts relating to the appeal are that the appellant purchased a shop in the building constructed by one M/s. G.K.P. Constructions. The said builder applied for a number of service connections in the then upcoming building on 11-11-2010. The estimate for extension of supply was sanctioned by the SE, Hyderabad North Circle on 07-07-2011. The said estimate basically permits the applicant to procure and supply material and to execute works in respect of the extension of service applied for by laying down a number of conditions. The most crucial of the conditions is mentioned in a note at the end of the sanction letter. The said note is extracted below:

“Note: No permanent service connection shall be released for multistoried building and complexes unless occupancy certificate from MCH and NOC from fire services are issued by respective authorities and same may be submitted to this office for verification and record purpose pending sanction accorded.”

Having received the estimate sanction in July, 2011, the applicant builder submitted a letter to the respondent ADE on 17-04-2012 stating that he has completed all the electrical erections as per the sanction letter and requested

release of meters to his premises. When the respondent officers did not release the service connections, he approached the Hon'ble AP High Court in May, 2012 (WP No. 15344 of 2012) seeking orders for release of service connections. But, by October, 2012 the applicant builder withdrew the writ petition and the same was dismissed as withdrawn on 12-10-2012. The written submission of the ADE that the Hon'ble AP High Court had ordered release of services as per the sanction letter dated 07-07-2011 is not correct. The Hon'ble AP High Court had dismissed the case as withdrawn. It appears from the record that the respondents have not released the service connections till the applicant builder submitted another letter (undated) expressing his willingness to pay 3 times the CC charges. After obtaining a legal opinion before releasing the service connections, the respondents went about the release of the service connections authorizing collection of 3 times the normal CC charges from those service connections, based on their Corporate Office's directions dated 05-06-2012.

9. The CGRF gave a detailed and well reasoned order but stopped short of ordering alternate rates. Instead, the CGRF asked the respondents to obtain the approval of APERC to levy 3 times the CC charges in all such cases where occupancy certificates are not produced.

10. The appellant's contention that his tenement is legally sanctioned by the GHMC is not correct as correctly held by the Forum. When the GHMC has given permission to construct only Ground and First floors for domestic purpose, the applicant builder went about constructing a cellar and 3 other floors. This makes the building a non-permitted structure. The next contention that since the plot size of building is less than 300 Sq. Mts. the

GHMC had issued permission to the building as per GO Ms. 86 and that by definition the building is not a highrise building etc., need not be gone into here because the condition laid down by the SE did not mention a highrise building but was speaking of multistoried buildings and complexes, and the complex in which the appellant has his premises falls within that definition. The fact that the appellant is paying normal property tax and that the GHMC is collecting property tax at penal rate from the owners of the 2nd and 3rd floors of the same building also is of no relevance. If the Ground and First floors of the building are permitted by the GHMC, nothing prevents the appellant from producing an Occupancy Certificate from GHMC as his premises is located in the permitted floors of the building. During the hearings, it has come to light that GHMC has not been releasing the Occupancy Certificate in favour of the appellant herein. That the appellant is aggrieved of receiving huge electricity bills which are 3 times the normal CC charges is understandable but he is as much responsible for the same as all the other actors in the affair. Nothing stopped him from staying away from purchasing the shop in such a building which was being constructed without proper permission from the proper authorities. Having purchased the same, obviously in spite of knowing that the building was being constructed without proper permission, he cannot escape the consequences that follow. As long as such people as the appellant herein abound, builders like the applicant of the service connections will keep acting with impunity in defying the law of the land.

11. The respondents are relying on two aspects for raising bills that reflect 3 times the normal CC charges in respect of the appellant herein. The first one is that the applicant builder of the building had been given the sanctioned estimate only subject to the condition of producing an occupancy

certificate and in case of failure to produce the same, he would not be released permanent connections. Instead of sticking to the non-release of permanent connections, the respondents went about raising and collecting 3 times the normal CC charges. The respondents relied on the instructions issued by their Corporate Office on 05-06-2012 for authorizing the levy and collection of 3 times the normal CC charges. The Corporate Office relied on clause 21 of G.O. Ms. 86 dtd: 03-03-2006 which authorized the levy of 3 times the normal CC charges. Such reliance on a G.O issued by the Government in matters relating to tariff setting is not correct. Tariff setting is the exclusive domain of the Hon'ble APERC. Unless and until such levy of 3 times the normal CC charges in such cases is authorized by the Hon'ble APERC, an administrative dictat of the Corporate Office of the respondent officers cannot direct such levy and collection. Hence the action of the respondent officers in levying and collecting 3 times the normal CC charges is liable to be quashed.

12. The second one is that the applicant builder has given an undertaking to pay 3 times the normal CC charges for release of the service connection; and that the builder seller having given that, the appellant herein cannot go back and seek levy of normal CC charges in view of the non-production of Occupancy Certificate. A prospective consumer will have no choice except to give any kind of undertaking that is asked of him in the situation of not having electricity connection released. Such consent letters are given under duress by citizens as they have no immediate recourse to the civic service they desperately want to have. Consent letters obtained under duress cannot bind the giver to the promise therein.

13. The CGRF was not correct in asking the respondents to obtain APERC's approval for levying 3 times the normal CC charges in this case. A quasijudicial forum cannot give guidance to respondents to regularize an illegality committed by them. Its job is to see whether or not an act that is assailed before it, is legal or not. If it is not legal, it has to be struck down. Hence, the order of the CGRF is set aside.

14. If a building is not be permitted to be constructed and in spite of there being such an express prohibition, if somebody constructs such a building, the proper course is to demolish the building and prevent possible loss of lives in future. Similarly, when Occupancy Certificate is not being given, the proper course for utilities would be not to release a service connection than maximizing their profit out of the misfortune of citizens who find themselves saddled with such buildings.

15. Therefore, it is hereby ordered that:

- the respondents' action of levying 3 times the normal CC charges in respect of the building is held illegal;
- the instructions issued by the Corporate Office of APCPDCL dtd: 05-06-2012, in so far as they relate to authorizing the levy of 3 times the normal CC charges in cases where Occupancy Certificates are not produced also are struck down;
- the respondent officers shall treat the service connection of the appellant as belonging to LT Temporary category till the time an Occupancy Certificate is produced in respect of his tenement;

- the respondent officers shall recalculate the consumption charges from the date of release of supply and adjust the excess collected from the appellant, if any, in his future bills;
- the respondent officers shall do the above recalculation and adjustment within 15 days from the date of receipt of this order; and
- the respondent officers shall communicate their compliance with this order within 30 days from the date of receipt of this order.

16. This order is corrected and signed on this 29th day of May, 2014.

VIDYUT OMBUDSMAN

To

1. Sri P. Naresh Kumar, H. No. 10-5-825, Tukaram Gate, Secunderabad 500 017
2. The Asst. Engineer, Operation, Clock Tower, APCPDCL, Secunderabad
3. The Asst. Divisional Engineer, Operation, James Street, APCPDCL, Secunderabad
4. The Asst. Accounts Officer, ERO, Paradise, APCPDCL, Secunderabad

Copy to:

5. The Chairperson, CGRF-2 (Greater Hyderabad Area), APCPDCL, H. No. 8-3-167/E/1, CPTI, GTS Colony, Vengal Rao Nagar Colony, Erragadda, Hyderabad - 500 045.
6. The Secretary, APERC, 11-4-660, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad - 500 004.