BEFORE THE VIDYUT OMBUDSMAN

::Present::

C.Ramakrishna

Date: 14-02-2014

Appeal No.125 of 2013

Between

Sri. B. Rama Rao,

D.No.7-3-12, 1st Line (Sub Lane),

Lawyerpeta, Ongole, Prakasam Dist.

... Appellant

And

1. The Assistant Accounts Officer, ERO, Town, Ongole.
2. The Assistant Engineer, Operation, D-3, Ongole.
3. The Assistant Divisional Engineer, Operation, Town, Ongole.
4. The Assistant Engineer, DPE-I, Ongole.
5. The Divisional Engineer, Operation, Ongole.
6. The Superintending Engineer, Operation, Ongole.

... Respondents

The above appeal filed on 20-01-2014 has come up for final hearing before the Vidyut Ombudsman on 11-02-2014 at Ongole. Sri. B. Rama Rao, the appellant as well as all the respondents except respondent 4 were present. Having considered the submissions of the appellant, the respondents and the material available on record

the Vidyut Ombudsman passed / issued the following:

AWARD

The appeal arose out of the fact that the appellant's power supply was disconnected on 12-10-2011 on the ground that the appellant's agricultural service connection is in an area getting 24 hours power supply. Again it was disconnected on 14-03-2013 holding that the consumer was indulging in malpractice -- viz., that of using supply for a purpose than for which it was originally sanctioned.

The appellant in his appeal against the orders of the CGRF, APSPDCL submitted (in writing as well as during the hearings) that he is a ryot having 4.5 acres of agricultural land; in 3 of the acres, he was growing lemon trees since the year 2002; in 1.5 acres of the remaining land, he was growing para grass to feed his cattle; he was having a free agricultural service connection bearing number 37356 for more than 18 years; on 12/10/2011, the 2nd respondent disconnected the power supply on the ground that the agriculture connection is in a 24 hour supply zone without giving any sort of notice whatsoever; the 5th respondent had ordered the fixing of ALMU to the service on 30-11-2011 but that the 2nd respondent did not carry out the instructions of the 5th respondent till 7 months later; the delay in the carrying out the instructions of the 5th respondent by the 2nd respondent led to the destruction of his lemon trees in 3 acres and growth of unnecessary natural grass; within 10 months of fixing the ALMU i.e., on 14-03-2013, the meter was disconnected on the ground of unauthorized use by treating the activity of growing para grass in his 1.5 acres as commercial activity being carried out in all of his 4.5

acres, wrongly mentioning as 5 acres in the notices therefor; while the final Assessment by the DE, Assessments is under appeal before the SE, he approached the forum for redressal of his grievance; the forum has taken note of the destruction of lemon trees in his land due to disconnection of power supply to his agriculture service without showing any human consideration and without giving notice to the appellant; he has been getting annual income of Rs. 60,000/- from the 180 lemon trees planted on his agricultural land; since the disconnection in the year 2011, he suffered an approximate annual loss of Rs. 60,000/-; he needs to be compensated for this loss not only from the year 2011-12 but up to 2016-17 in view of the fact that lemon trees take approximately 5 to 6 years to start giving yields; the disconnection second time has led to a loss of approximately Rs. 50,000/- for not enabling him to grow fodder in his 1.5 acre land; nobody grows lemon trees with grass as an intercrop because grass will hinder the growth of lemon trees and will not make it amenable for harvesting the lemon trees too; he never grew grass as an intercrop in the 3 acres of land meant for lemon cultivation but that the disconnection of the supply in the year 2011 led to the destruction of his lemon trees and growth of natural grass, not para grass which is distinct from the former; calling / terming the disposal as normal grass or para grass as commercial activity is far fetched; he suffered loss of reputation and livelihood because of the accusation of malpractice and disconnection of power supply; and ultimately prayed for restoration of the power supply and for payment of reasonable compensation. The appellant enclosed a number of photographs buttressing his claims / assertions.

Consequent to the disconnection on 14-03-2013, the DE, Assessments,

APSPDCL, Tirupathi concluded the proceedings finally on 22-06-2013 holding that there was unauthorized use of the supply by the appellant. Thereupon, the appellant appears to have addressed a letter of grievance to the CMD, APCPDCL which was taken up as an appeal before the SE, Assessments, Tirupathi. While the appellant apparently is not aware of the procedure of appeal in assessment cases before the SE, Assessments, he approached the CGRF on 04-10-2013 praying for restoration of power supply and seeking to be enlightened about the procedure for claiming compensation for the loss sustained by him. The CGRF, while disposing of the complaint on 19.12.2013, held that the assessment made by the 4th respondent needs to be revised by treating the appellant's connection as belonging to LT Category V(C) and that the appellant complainant needs to be compensated for the disconnection of service. However, it did not mention the amount of compensation that needs to be paid.

The respondents were called upon to file their written submissions, if any, while supplying them with copies of the appeal filed by the appellant. While the respondents are prompt in submitting their written and oral submissions, their ignorance of the necessity of submitting duly served written submissions is on full display during the hearing conducted on 11-02-2014. In their written submissions, the respondent DE, Operation, Ongole and the AE, Operation stated that:

- on 14-03-2013, a malpractice case was booked against the consumer for utilizing his agriculture supply for commercial purpose, viz., that of growing grass for selling, which is a commercial activity;
- the DE, Assessments, Tirupathi finalized the assessment on 22-06-2013 for an

amount of Rs. 60,264/-;

- the consumer appellant did not pay 50% amount for appealing against the assessment made by the DE, Assessments and hence his service remained under disconnection till date;
- the consumer represented to CGRF, Tirupathi which had directed the respondents to revise the assessment by treating the connection as falling under LT Category V(C) instead of Category II;
- the AAO, Ongole had accordingly revised the demand and intimated the same to the consumer on 05-02-2014;
- instead of paying the revised amount, the consumer appellant approached the Vidyut Ombudsman; and
- there is no deliberate harassment of the consumer by the DISCOM or its officers and they acted as per the GTCS only.

At the time of final hearing on 11-02-2014, both the appellant and the respondents submitted their written submissions as well as oral submissions elaborating their written submissions. From these submissions it could be gathered that the respondents have not denied any of the submissions made by the appellant except saying that the appellant was in arrears with regard to payment of customer charges before his service was disconnected the first time in the year 2011 and that he also did not pay the expected 50% of the disputed amount on final assessment made by the DE, Assessments before making an appeal before the SE, Assessments. The facts as could be gleaned from the submissions are as under:

The appellant is a farmer engaged in farming on his land of 4.5 acres. Out of these 4.5 acres, 3 acres was being used by him for growing lemon trees and the remaining 1.5 acres was used by him for growing para grass i.e., grass meant to be used as fodder. He was having a free agricultural service connection for the last 18 years. Within three years of giving connection, the conductor wires between 12 of the poles supplying power to it, were stolen twice. It's this which has led the connection being shifted to a transformer located in Samata Nagar Road, which happened to fall in an area that supplies power for 24 hours. Thereby, though an agricultural service connection, this service connection came to be in an area which had supply round the clock.

As things stood thus, the respondent AE noticed this fact of existence of an agriculture connection within an area that was being supplied power round the clock and also happened to notice that the customer had not been paying customer charges for years together. The respondent AE disconnected the supply without serving notice of any kind whatsoever on the appellant. The appellant alleges that the respondent AE went ahead with the disconnection without even bothering to know that there are live trees which would die if denied water supply consequent to power disconnection. The respondent AE did not deny this allegation during the hearing and confirmed that after having noticed that the service is in an area of 24 hr supply, he went ahead and disconnected the supply on 12-10-2011. The appellant says that he never knew that customer charges had to be paid as there was no demand from the DISCOM's officers at any time and that he paid the same without much ado as soon as he came to know about the same. The moment his higher

authority, the DE came to know of this fact, he directed the lower authorities to fix an ALMU to the connection, duly realizing the arrears of charges, if any, and release supply. In spite of DE's instructions on 30.11.2011, the respondent AE did not fix the ALMU to the appellant's service till 7 months later i.e., on 23.05.2012 by which time the damage to the lemon trees has been done and all of them in the 3 acres have died. Though the respondent claims that the delay was due to lack of stock of ALMUs in the stores, why no alternative to restrict the supply for seven hours was thought of, is not explained. It's this lack of foresight that led to keeping the service connection without supply. The appellant's efforts at reviving the lemon trees did not bear any fruit. In the seven months that the power supply remained disrupted, natural grass grew between the lemon trees which led the respondent officers to think that the appellant is engaged in growing grass as an intercrop.

Within 10 months of restoring the power supply on 23.05.2012, i.e., on 14.03.2013 the 4th respondent inspected the connection that resulted in the issuance of a notice accusing the appellant of unauthorized usage of power supply. The notice dated 14.03.2013 mentions that the appellant was utilizing the power supply for grass production and sale in 5 acres, which is a commercial activity that does not fall under agriculture activity. What the respondent officers have failed to appreciate is the fact that growing fodder grass -- even if it be for sale -- is an activity which still falls under 'agriculture.' A reading of the tariff order for the relevant year -- especially the tariff schedule -- makes it so clear that LTV Category covers the broad category of agriculture. Under it are further sub-classifications viz., LT V(A) for Agriculture with DSM Measures, LT V(B) for Agriculture without DSM

Measures and LT V(C) for Others which enumerates two further sub-classifications viz., Salt farming units up to 15 HP and Rural Horticulture Nurseries up to 15 HP. This classification makes a connection that is fitted with ALMU as an agriculture connection with DSM measures without fail. The further point that none of the respondent officers as well as the CGRF failed to understand is that LT Category V(C) is not an inclusive entry, but an exhaustive one. There are only two activities which are enumerated therein and the activity of the appellant is not one which falls under either of the two activities enumerated therein. They have failed to see that LTV(C) is not a residual category, into which all other unclassified items can be put. Not only this, by no stretch of imagination can growing fodder grass be called a commercial activity not falling under the definition of agriculture. The respondent officers have shown over enthusiasm in their interpretation of the definitions given in the tariff order and all of the higher authorities amongst the respondent officers -- unfortunately this extends to the CGRF too -- have displayed an attitude that borders on eagerness to appear to be on the right side of revenue while deciding an issue than being truthful to the situation. It's this attitude which has caused unnecessary and unavoidable hardship to the appellant.

Therefore, having seen all the material available on record, the written and oral submissions made during the hearings and having noticed the facts available therefrom, this authority holds that:

1. the respondent AE erred in disconnecting the power supply on 12.10.2011 without giving any notice whatsoever, a clear violation of

clause 5 of Regulation 7 of 2000;

2. the appellant ought to have been afforded an opportunity of being heard before the disconnection as to why his connection cannot be disconnected on the ground that it is located within a 24 hour supply zone;
3. the location of the appellant's connection within a 24 hour supply zone was not his fault as it was kept so by the DISCOM's officers only a few years back;
4. the respondent officers have erred in categorizing the service of the appellant as belonging to LT-II i.e., LT Non-Domestic/Commercial; in fact, a notice has to be served even for this as per clause 8 of Regulation 7 of 2000;
5. the disconnection of the service of the appellant first in 2011 and then again in 2013 is wrongfully done;
6. the proceedings of assessment for unauthorized use are based on wrong premises (firstly classifying something as belonging to a category to which it does not belong and then holding that unauthorized use has resulted therefrom) and cannot by any stretch of imagination be deemed as proceedings initiated invoking the powers u/s 126 of the Indian Electricity Act; and
7. when the proceedings themselves cannot at all be deemed to be rightful proceedings, mere invoking of relevant powers and sections in the proceedings do not make them an exercise of rightful powers, and hence the proceedings are liable to set aside.

It is clear that the appellant suffered irreparable loss of livelihood and had also borne some social stigma of being accused of wrongdoing without there being any basis. The officers of the DISCOM are to be held accountable for this and the appellant needs to be compensated suitably for the loss suffered by him. However, in the absence of wherewithal for independently assessing the exact financial loss suffered by the appellant, the only recourse available to this authority is to rely on the assertions of the appellant -- especially so, as they are not denied by the respondents, and arrive at some figure based on the best of judgment. The appellant claims that he suffered a loss of Rs. 60,000/- per annum for the loss of lemon crops for two past years viz., 2011-12 & 2012-13 and for four future years viz., 2013-2016. As nobody could have guessed as to how a crop's future would have unfolded, the claims in so far as they relate to the future years, barring 2013-14 which is almost is nearing fag end, are ignored. In so far as the claims relating to the past year are concerned, they are treated as rightful claims, but because of the lack of wherewithal for an independent verification, the claim is equally being divided between the DISCOM and the appellant. In other words, only 50% of the claim being made by the appellant is being allowed. In so far as the claim relating to para grass cultivation loss is concerned also, the same formula is adopted and 50% of the claim of Rs. 50,000/- being made by the appellant is allowed.

Therefore, it is hereby ordered that:

- the supply to the appellant's connection shall be restored forthwith;
- the assessment proceedings initiated against the appellant are all

declared illegal and the SE, Assessments, Tirupathi is directed to give a proper closure to the illegal proceedings pending before him without further ado, as this is not a case falling u/s 126 of the Electricity Act, 2003;

- the supply to the appellant shall be categorized as LTV(A); and
- the DISCOM shall compensate the appellant by paying an amount of Rs. 1,02,500/- towards the loss suffered by him on account of losing his lemon crop for three years and para grass cultivation for one year;

If the appellant is in agreement with the decision given above, he shall communicate within 15 days from the date of receipt of this order, the fact of his acceptance of the judgment and final settlement to the respondent officers in writing, duly marking a copy to this authority. Within 15 days from the date of receipt of such acceptance letter, the respondent officers shall pay to the appellant an amount of Rs. 1,02,500/- by way of DD under intimation to this authority. It goes without saying that the respondents are not bound to pay any compensation if the appellant does not communicate his acceptance of the orders in this judgment in writing to them as indicated above. They shall however, abide by all the other orders passed in this judgement immediately. As the financial loss to the appellant has resulted out of overzealousness displayed by the respondents, the DISCOM is being held responsible and the respondent officers -- especially the respondent AE-- is let off with a wrap on his knuckles. It's left to the DISCOM as to how it will deal with such overzealousness amongst its field officers.

One last observation that this authority cannot contain itself from making is the failure / ignorance of the respondent officers in knowing the importance and seriousness of served copies of written submissions by the respondent officers in the appeal matters before the Vidyut Ombudsman. They shall henceforth, without fail, submit served copies of their written submissions to the Vidyut Ombudsman in any appeal in which they are the respondents. As to what constitutes a served copy was explained to them during the hearings in detail, in the interest of transparency and fair play. To meet the ends of justice in any case, submission of served copies of written submissions to the Vidyut Ombudsman only can be considered as proper written responses of the respondents. This, they shall bear in mind without fail.

This order is corrected and signed on this **14th** day of **February, 2014**.

VIDYUT OMBUDSMAN

To

1. Sri. B. Rama Rao, D.No.7-3-12, 1st Line (Sub Lane), Lawyerpeta, Ongole, Prakasam Dist.
2. The Assistant Accounts Officer, ERO, Town, Ongole.
3. The Assistant Engineer, Operation, D-3, Ongole.
4. The Assistant Divisional Engineer, Operation, Town, Ongole.
5. The Assistant Engineer, DPE-I, Ongole.
6. The Divisional Engineer, Operation, Ongole.
7. The Superintending Engineer, Operation, Ongole.
8. The Chairman & Managing Director, APSPDCL, Tirupathi -- to ensure that the

compensation as ordered above, is released promptly to the appellant in time

9. The SE, Assessments, Tirupathi with a direction to give a proper closure to the illegal proceedings pending before him.

Copy to:

1. The Chairperson, CGRF, APSPDCL, 19-13-65A, Kesavayanagunta, Tirupati.
2. The Secretary, APERC, 11-4-660, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad-04.