

BEFORE THE VIDYUT OMBUDSMAN

::Present::

C.Ramakrishna

Date: 03-04-2014

Appeal No.127 of 2013

Between

Sri. G. Anil Kumar,
Suryaraopeta, Rajanagaram (M),
E.G. District - 533 294

... Appellant

And

1. The Assistant Engineer, Operation, APEPDCL, Rajanagaram, (V) & (M)
2. The Assistant Divisional Engineer, Operation, Rural, APEPDCL,
Mallayyapeta, 33/11 kV SS, Rajahmundry
3. The Divisional Engineer, Operation, APEPDCL, Ullithota Street, Near
Godavari Bund, Rajahmundry - 533 101

... Respondents

The above appeal filed on 24-01-2014 has come up for final hearing before the Vidyut Ombudsman on 29-03-2014 at Rajahmundry. The appellant as well as the 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 appellants that the respondent officers have been refusing to release electricity supply to him and that the CGRF also did not come to his rescue as it dismissed his complaint on 24-01-2014.

3. The appellant appeared before this authority in person and filed an appeal stating that he made an application for supply of electricity on 02-02-2013; that the respondents have not supplied electricity till date; that he constructed a house in a panchayat approved layout whose approval was given as per Government norms; that his building is at superstructure level and that he paid all the required fee for the plan approval; that as per G.O.No.67 he had already paid an amount of Rs.200/- per sq.yard to the Government; that a couple of other people who constructed buildings in the same layout were already supplied electricity while refusing the same to him; that the CGRF, Visakhapatnam also while rejecting his complaint had suggested that he get the electrification done through the layout owner, but that the person who laid the layout is refusing to cooperate in the matter; that because of this he along with a few others who have constructed buildings in the layout are suffering from lack of electricity supply; that when he tried his level best to bring together all the other building owners in the layout on a common platform for getting electricity supply, his efforts proved futile as the other building owners are refusing to come together for the common cause; and that he is not able to repay the loan he contracted from nationalized banks for the construction of the building as he is not able

to let it out on rent to anybody. He enclosed quite a few documents proving that the layout has been approved and that the CGRF also has refused to intervene in the matter.

4. On receipt of this appeal, a notice was issued for hearing the matter on 03-03-2014 at Rajahmundry with a direction to the respondent officers to file their written submissions, if any, before this authority along with proof of having served the same on the appellant. _

5. In the hearing, respondents 1 to 3 above filed written submissions stating that the appellant applied for a new service connection for his house on 02-02-2013; that during the site inspection, it was observed that the building of the appellant is located in the layout; that in the layout are unauthorizedly erected 29 numbers of 8 meter CC poles, LT single phase 3 wire line cross arms for 53 plots without any departmental approval; that the application made by the appellant is rejected as per the guidelines issued by their corporate office dated 30-03-2010; that hence the service could not be released; that the two services that are being referred to by the appellant as having been released were released well before their corporate office came out with the guidelines in the year 2010; and that at the time of release of those two service connections, no unauthorised polls or network was existing in the said layout. The respondents expressed their inability to release the service to the appellant in view of the guidelines issued by their corporate office. They enclosed a copy of the guidelines to their written submissions.

6. The respondent DE submitted copies of the correspondence to prove that her higher authorities have directed for strict compliance of the guidelines issued by their corporate office.

7. On a perusal of all the written and oral submissions of the appellant as well as the respondents, and the material placed before this authority by both the parties, it is clear that the appellant purchased a residential plot on 19.03.2012. The Collector, East Godavari District had regularized the layout through his proceedings dated 14-02-2012. The appellant's application for building permission had been approved by the Gram Panchayat, Rajanagaram on 08-01-2013. The respondents have refused to release the service connection to the appellant in view of the guidelines issued by their corporate office.

8. A perusal of the guidelines issued by the respondents' corporate office reveals that the guidelines were basically meant for electrification of layouts. A reading of the guidelines gives an impression that the guidelines are meant for development of the network in the new and upcoming layouts. No where do the guidelines say that individual plot owners in the layout, will be refused release of service connection because of their layout developer not undertaking the electrification of the layout as laid down therein. The said guidelines also did not specify under what authority are the guidelines being issued. The reasoning given for coming out with the guidelines reads as under:

- a. That the layouts electrified are remaining as they are for years together and this has made it difficult for the DISCOM to safeguard the lines and equipment;
- b. That the DTrs and Lines are not yielding any revenue to the DISCOM and instead the DISCOM is forced to maintain them for years together;
- c. That there is no agreement between the developer (of the layout) and the DISCOM for maintenance of lines and equipment till the houses are constructed and supply is used by individual residents; and
- d. That in view of the absence of restrictions on the minimum number of streetlights to be provided in the layout, the developers are proposing one or two streetlights for each new DTr to be erected while the number of LT poles are around 40 per DTr.

9. After thus reasoning about the shortcomings in the upcoming layouts, the DISCOM went about laying detailed guidelines as to how developers of layouts shall make an application for electrification of the layouts, how the DISCOM's officers shall process such applications and ensure the development of the system for the layout. Nowhere is it mentioned in the said guidelines that they relate to or regulate the release of service connections for the individual plot owners in the layout. Had they mentioned also, that would have surely run counter to the duties and obligations laid down by the Constitution of India, the Electricity Act, 2003 and the regulations made thereunder. The guidelines relate to a scenario wherein a layout developer wants to provide common electrification for his layout or where the DISCOM

sees the need for developing the electrification system for a given layout. The guidelines have not provided for a situation like the present one where the developer of the layout is not interested or has not undertaken development of the electrification network for his layout. Curiously, the respondent officers opine that the guidelines are preventing them from releasing new service connections in the layout. When faced with the responsibility of interpretation, their superior officers also appeared to hold a similar view. Nowhere do the guidelines expressly say that requests for release of new service connections from such of the layouts where their developers have not taken up the responsibility of developing the electrification system / network, should be rejected. Even if such a mention were to be made, that would have run counter to the individual rights provided and guaranteed by the Constitution of India, the Electricity Act, 2003 and the regulations made thereunder.

10. Guidelines are at best what they are -- mere guidelines. They do not take away or obliterate the duty cast on the respondent officers / DISCOM from providing electrical service connection on application made by individuals. The kind of argument / defence taken by the respondent officers and officers in their Corporate Office, who have issued clarifications that resulted in the appellant not getting electricity supply, is violative of article 14 of the Constitution of India. Just because an individual happens to buy a house plot in a layout, it doesn't make him ineligible for supply of electricity, because the developer of the layout had not electrified the whole layout by approaching the DISCOM concerned. In coming out with the guidelines, the DISCOM has clearly gone beyond its core business and forayed into the territory of regulation. A DISCOM, being a licensee is just bound to implement what is laid down by the

enactments and the regulations made by the Hon'ble Commission. It cannot foray into rulemaking or regulation of the electricity sector.

11. Section 43 of the Electricity Act, 2003 lays down the duty and responsibility of supplying electricity to an applicant, by the licensee in its area of operation. The Hon'ble APERC has framed regulations -- Regulation 4 of 2013 -- clearly laying down that electricity shall be supplied to applicants on request, provided they pay all the required fees and fulfill other conditions of supply laid down, if any. The Hon'ble Commission has not laid down any condition to the effect that those of the applicants having plots in such layouts whose developers have failed to take up the development of an electrification network in their layout, shall be refused supply by the licensee. It's not for any DISCOM to lay down such conditions. The DISCOMs can at best ask for certain basic information, expect to be compensated for the service they are going to render and provide electricity to each and every applicant. That's all and no more.

12. In its anxiety to ensure proper electrification of the upcoming layouts, the DISCOM, not only went beyond what is required of it viz., that of providing electricity to those who ask for it, but it has also in the process trampled upon the individual and fundamental rights of the citizens by clarifying that the guidelines have to be strictly followed even for release of individual service connections to those of the plot owners who apply for electrification from such layouts. It's not DISCOM's business to regulate the development of layouts. Its business is to just provide electricity that is asked for. If any reasonable restrictions can be imposed on the citizenry and / or layout developers while giving them electricity that is asked for, imposition of such reasonable

restrictions within the framework provided by the Constitution of India and the Electricity Act, 2003, shall be looked into by the Hon'ble APERC as deemed fit by it. It's not for the licensees to assume such a regulatory role. Being entities, impacted, if at all, by the irregular layout development, they (the licensees) can always bring the facts before the Hon'ble APERC which will act on the same, as deemed fit by it.

13. Section 42 of the Electricity Act, enjoins the distribution licensee to develop and maintain an efficient and economical distribution system in his area of supply. The licensee has no power to redistribute or delegate this responsibility to somebody else. Section 43(1) of the Electricity Act lays down that every distribution licensee shall on an application made by the owner or occupier of any premises, be given supply of electricity to such premises within one month from the date of receipt of the application requiring such supply. Refusal of supply, in the name of compliance to some guidelines laid down by their corporate office is nothing but a violation of this section. Any guidelines issued by the corporate office of the distribution licensee cannot run counter to the obligation or duty cast upon the licensee to supply electricity. Contravention of the provisions of this section attracts a penalty of Rs.1000/- for each day of default. The distribution licensee is obligated to supply the electricity asked for, within one month from the date of receipt of the application in case of LT supply.

14. The CGRF, Visakhapatnam while dismissing the complaint of the appellant herein failed to notice the duty of cast on the DISCOM to supply electricity to the appellant. Hence the order issued by the CGRF in C.G.No.241/2013, dated 17-12-2013 is liable to be set aside.

15. Having considered the material on record, the written and oral submissions made by the appellant and the respondents, it is hereby ordered that:

a. the guidelines issued by the corporate office of the APEPDCL are liable to be set aside as they are running counter to the letter and spirit of the Electricity Act, 2003 in so far as they are imposing some restrictions on citizens' ability to secure civic services. Such restrictions can at best be imposed in the case of electricity either by the Hon'ble APERC, being the sole body responsible for regulation of the electricity sector in the State of Andhra Pradesh or at best can be imposed by the Government of Andhra Pradesh, being the executive authority; but by no means can they be imposed by a licensee. Hence they are accordingly set aside;

b. the respondent officers shall release supply to the appellant herein within 15 days from the date of receipt of this order; and

c. within 10 days from the date of release of their supply, the respondent officers shall submit a compliance report to this authority.

16. The appeal is disposed of accordingly. No orders as to costs / compensation.

This order is corrected and signed on this 3rd day of April, 2014.

VIDYUT OMBUDSMAN

To

1. Sri.G. Anil Kumar, Suryaraopeta, Rajanagaram (M), E.G. District - 533 294.
2. The Assistant Engineer, Operation, APEPDCL, Rajanagaram, (V) & (M)
3. The Assistant Divisional Engineer, Operation, Rural, APEPDCL, Mallayyapeta, 33/11 kV SS, Rajahmundry.
4. The Divisional Engineer, Operation, APEPDCL, Ullithota Street, Near Godavari Bund, Rajahmundry - 533 101.

Copy to:

1. The Chairperson, CGRF,APEPDCL, P & T Colony, Seethammadhara, Near Gurudwara Junction, Visakhapatnam - 530 013.
2. The Secretary, APERC, 11-4-660, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad-04.