

BEFORE THE VIDYUT OMBUDSMAN

::Present::

C.Ramakrishna

Date: 18-03-2014

Appeal No. 133 of 2013

Between

Sri N. Prakash Babu

% Ratnam Petroleum Agencies

Hindustan Petroleum Corporation

Bhakarapeta Village, Post & Mandal

Chittoor Dt 517 194

... Appellant

And

1. The Asst. Accounts Officer, ERO, Piler
2. The Additional Asst. Engineer, Operation, APSPDCL, Operation, Chinagottigallu
3. The Asst. Divisional Engineer, Operation, APSPDCL, Piler
4. The Divisional Engineer, Operation, Piler

... Respondents

The above appeal filed on 07-02-2014 has come up for final hearing before the Vidyut Ombudsman on 15-03-2014 at Tirupati. The appellant as well as respondents 1 to 4 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 grievance of the appellant herein is that the 2nd respondent herein has deliberately delayed replacing his meter that has gone out of order and has

caused him lot of pecuniary loss. The appeal arose out of the letter dated NIL/08/2013 that is addressed by the 2nd respondent to the Vidyut Ombudsman against the order issued by the CGRF, APSPDCL, Tirupati in C.G.No. 98/2013-14/Tirupati Circle dated 25.07.2013, duly marking a copy of the same to the appellant herein. The letter written by the appellant herein consequent to the letter from 2nd respondent herein is taken on file as appeal.

3. Before delving into the appeal proper, it is felt by this authority that the curious course of this appeal calls upon it to observe that the behaviour of the 2nd respondent herein either because of ignorance or because of insouciance is far from satisfactory. First of all, being an authority at the field level, he ought to be in the know that he cannot make an appeal against the order of the CGRF. He is bound to simply implement the orders issued by the CGRF. If he, or the DISCOM feels that the order issued by the CGRF is against their interests, the only recourse available to them is pursuing the available legal options, but not approaching the Vidyut Ombudsman in appeal as the Regulations issued by the Hon'ble APERC are very clear that the orders of the CGRF cannot be appealed against before the Vidyut Ombudsman. They have to be just implemented. Secondly, his demeanour during the course of the hearing did not betray any remorse in the face of evidence that his official behaviour was far from consumer friendly.

4. The issue in brief is that the meter of the appellant herein was noticed as malfunctioning in the month of October, 2012. The respondent AAE did not replace the malfunctioning meter with a properly functioning one in spite of repeated pleas of the appellant herein. The appellant accuses the 2nd respondent of not doing it, because the appellant refused to budge in to paying

the illegal gratification demanded of him by the 2nd respondent. Though there is no incontrovertible evidence other than the firm assertions from the appellant, the recorded behaviour of the 2nd respondent does not help in any way his own cause of getting the benefit of doubt that normally an accused would be entitled to. The CGRF too, having taken note of the abnormal delay in the fixing of a properly functioning meter, ordered for payment of compensation of an amount of Rs. 10,500/-. Instead of causing the payment of the compensation to be paid, the 2nd respondent herein went about filing an appeal, wrongfully, before this authority.

5. The 2nd respondent in his letter referred to above, stated that display failure was noticed in the meter of the appellant in the month of October, 2012; that the meter was replaced with a healthy one on 08.12.2012; that this replaced meter also developed the same malfunction on 14.12.2012 after recording just 79 units; that hence, it was also replaced with a new one on 28.04.2013; that this replaced meter also developed the same malfunction in the month of May, 2013; that a new meter was installed on 18.06.2013 after renewing the earth points at the consumer's premises; that since then the meter has been functioning normally; that he has not demanded any illegal gratification from the appellant; that the appellant herein refused to attest the replacement of meters on all instances except for the one done on 18.06.2013; that the demand on the consumer based on average units consumed is done as per the programme fed into the billing machines; that he has joined in the month of September, 2012; that it is not the first time that meters in the consumer's premises are developing malfunction and that meter replacement happened once in the month of November, 2011 also during his predecessor's tenure; that the finding of the CGRF in its order that the load in the

consumer's premises could have touched 25 Amps in each phase at full load in balanced conditions or 75 Amps if all the load is put on one phase, is only an imaginary figure as it is borne on record that the load in the consumer's premises has never crossed 6.34 kW since the date of supply; that the meter's capacity is sufficient to meet the contracted load / connected load; and that the finding of the CGRF that respondents should have corrected the bad earthing of the transformer in the consumer's premises is factually incorrect, as the issue is not one of bad earthing of the transformer at the consumer's premises, but bad earthing for the purpose of installation of meter at the consumer's premises. He marked a copy of this appeal to the appellant herein also for information.

6. On receipt of the copy of the so called 'appeal' by the 2nd respondent herein, the appellant made out an appeal, which was received by this authority on 07.02.2014, stating that he could not respond to the CGRF's order dated 27.07.2013 as he met with an accident on 31.07.2013; that he has complained to the CGRF against the 2nd respondent herein; that without implementing the orders of the CGRF, the 2nd respondent herein had appealed to the Vidyut Ombudsman by deliberately sending totally unconnected information; that the 2nd respondent herein had sent the Lineman Sri. Ravi twice to the appellant demanding an illegal gratification of Rs. 3,000/- for replacing the malfunctioning meter with a healthy one; that his Company (he is an authorized dealer of HPCL) directed him not to pay any amount so demanded except on receipt of a proper notice and securing a receipt for payment made; that because of this refusal to pay illegal gratification, the respondent herein had not replaced the meter; that he met the higher ups in the Department viz., the ADE, Piler and apprised him of the issue; that he also

apprised them of the problem in writing through registered post; that the 2nd respondent herein, in spite of his being present in the office, refused to receive the registered communication sent to him (he enclosed photocopies of the returned cover with Postal Department's endorsements to the effect); that it will be clear that the malfunctioning of the meter has cropped up only after the 2nd respondent has joined duty and not as is trying to be portrayed by him that there were meter malfunctioning problems earlier too in the consumer's premises and that this can be gleaned from the account statement available with the Department; that never did the respondent AAE inform anything about the earthing problem near the transformer, nor is he aware of such an issue nor was it ever rectified by the respondent AAE; that it is evident that the meter remained in a malfunctioning state since October 2012 from the account statements available with the Department; that his Petrol Bunk, which runs on a 24 Hour basis, had to depend on diesel genset during all this period of meter malfunctioning during which time load shedding was more, due to which he had to bear heavy losses; that the Department levies penalties amounting to lakhs of Rupees if it finds a consumer stealing power, but the very same Department's officers in spite of knowing that one among them had not performed the small duty of replacing a malfunctioning meter deliberately for months together takes no action against the said officer; that he is refusing to accept the orders issued by the CGRF for payment of a compensation of Rs. 10,500/- as he is deeply hurt financially and mentally, and had to waste lot of time and demanded a compensation of Rs. 200,000/- towards the same. He enclosed all the material that he could marshal to substantiate his assertions in the form of photocopies.

7. A notice was issued for hearing the case on 15-03-2014, directing the respondents to submit their written submissions, if any, within 10 days from the date of receipt of the notice, duly serving copies of the same on the appellant. None of the respondent officers submitted their written submissions. Instead, on the date of hearing, the 2nd respondent filed his written submissions before this authority. The same was got served on the appellant too and he was asked to go through and submit his counter, if any, either orally or in writing. He preferred to make oral submissions during the hearing itself and the same were taken on record.

8. The CGRF noted in its order noted that the frequent malfunctioning of the meters could be due to installation of meters of insufficient capacity; that as it is not the fault of the consumer, asking him to pay meter replacement charges is not correct; and that as the respondent officers have acted with inordinate delay for replacement of malfunctioning meters, the consumer needs to be compensated by an amount of Rs. 10,500/-.

9. During the hearings, the respondent AAE filed his written submissions, stating that a representation was already submitted to this authority for justice; that the consumer had requested him orally several times for replacement of the LT CT meter with 3-Phase electromechanical meter and that he was informed that there is no such possibility; that a letter dated 03.03.14 was addressed to the 4th respondent on the matter; that as per departmental orders, LT Trivector meters have to be necessarily provided for all services having contracted load of 10 kW and above under LT Category II; that there is no possibility of replacing the present meter of the appellant consumer as the contracted load is 15 kW; and that the present LT Trivector

meter was provided to the consumer on 18.06.2013 and that the same has been functioning without any hitch ever since. He enclosed a copy of the letter dated 03.03.2014 addressed by the consumer to the respondent DE herein requesting for replacing the existing meter with the old one as he has noticed that his monthly bills have gone up ever since the old meter is replaced with the new one. The respondent AAE requested that justice be meted out to him in the circumstances.

10. Hearing was conducted at Tirupati on 15-03-2014. Both the respondents as well as the appellant were present. Perused the various records maintained by the respondent officers, as well as the evidence preserved and produced by the appellant. The appellant as well as the respondent AAE reiterated their contentions. The respondent DE stated and proved with his record that he had ensured that the malfunctioning meter is replaced on three occasions within a reasonable period of two to three days soon after receiving letters from the appellant herein. The incumbent ADE is clueless about the issue as he was not present at the time the whole issue took place and has taken charge only after June 2013.

11. The appellant's contention that he could not respond to the CGRF's order in time is buttressed by him by producing a copy of the medical certificate issued by a hospital. He reiterated that the respondent AAE had demanded illegal gratification of Rs. 3,000/- from him for replacing the malfunctioning meter with a working meter; that he refused to pay the same and because of that the respondent AAE had deliberately caused delay in ensuring that a working meter is installed in his premises. The appellant also brought to the notice of this authority the fact of the respondent AAE not

receiving the letter sent by him even through registered post by producing original proof of the respondent AAE's unavailability at his official address. He produced copies of the same and the same was taken on record. He also explained as to the fact, and the same was confirmed by other respondents too, that there never was an issue of malfunctioning of the meter in his premises before the present respondent AAE joined the station. He also effectively presented as to how the Department's officialdom which is always so eager to punish erring consumers, is so slow in setting right one of their blacksheep. As for his letter dated 03.03.2014 requesting for replacement of the present meter with the old electromechanical meter, he confirmed that he did in fact request for it, as he found that his bills have gone up ever since the new meter is fixed in June 2013. He further went on to add that, this issue has nothing to do with the present appeal in question as this is a thing which has cropped up only now in the present month. Ultimately he said that he is not for money and that he is actually not seeking any compensation -- be it the Rs. 10,500/- that is ordered for by the CGRF or the Rs. 200,000/- that he has demanded in his appeal before this authority and that he just wants the respondent AAE to own up his mistake and change for the better in future.

12. The respondent AAE denied the allegation of demanding any illegal gratification from the appellant consumer. As for delay in replacement of malfunctioning meters, his feeble defence is that earthing problem at the consumer's premises resulted in frequent meter malfunctioning. There was no satisfactory response from him as to the delay in the replacement in the light of the frequent persuasion from the appellant consumer for the replacement of the meter. His attempts at making this authority believe that there were meter malfunctioning problems earlier too -- i.e., before he joined the station -

- fell flat in the light of the account statements that were perused at the time of hearing, which only showed that the meter was changed albeit without there being any disruption in meter readings. This only proves that his predecessor was efficient in taking timely action. That the meter change, in October, 2011 was due to malfunctioning was not proved conclusively by the respondent AAE. His efforts at portraying that the appellant consumer is asking for replacement of the existing LT Trivector meter with old electromechanical meter, only proves that he wants to divert the attention of this authority from the issue on hand with a new one only to escape from scrutiny in the present issue.

13. It was made very clear to the appellant and the respondents, during the hearing, that the issue of the consumer appellant seeking replacement of the present LT Trivector meter with an old electromechanical meter is a separate issue that is unconnected with the present issue on hand and that it be dealt with in accordance with the existing rules in vogue.

14. From all the information that is made available during the hearing, it became clear that the respondent AAE's behaviour in taking inordinate time to replace a malfunctioning meter with a working one is not at all supportable. There were no adequate reasons that were brought by him on record to support the delay. The other respondents -- especially the respondent DE has taken prompt action as soon as things came to his notice. Barring the contest raised by the respondents about the inadequacy of the reasoning given by the CGRF in estimating the load of the consumer, they could not really bring on record anything which can make this authority find something wrong with the ultimate finding and decision of the CGRF.

15. As for the contention of the respondents that the CGRF had erred in assuming that meters of insufficient capacity have resulted in frequent problems, this authority would not like to go into the merits or demerits of this contention for the simple reason that, whether or not there is any merit in the assumption so made by the CGRF, the end result is going to be the same. That is, the fact that malfunctioning meters remained without being replaced by working meters -- in time. Technical assumptions cannot alter this fact. Had the respondents found out that there is everything wrong with the earthing at consumer's premises and that is the only thing, that has resulted in the frequent burning of meters, they ought to have proved it to the consumer and asked him to undertake necessary action for ensuring proper earthing at his premises. Without informing the consumer of any such thing, their efforts at disproving the assumptions made by the CGRF do not yield any positive result for them.

16. This authority finds no reason to interfere in the order issued by the CGRF. But, having regard to the ultimate prayer made by the appellant herein, this authority is of the view that the appellant herein is free to reject the compensation awarded to him by saying so in black and white and informing the same to the CGRF. This authority finds that the respondent AAE is at fault for not replacing the malfunctioning meter with a working one in time. For this, he needs to be penalised for dereliction of duty.

17. Therefore, it is hereby ordered that:

- the appellant herein shall decide and make up his mind about refusing to accept the compensation awarded by the CGRF within 15 days from the date of receipt of this order, failing which it goes without saying

that the order of the CGRF stands as it is, and has to be implemented by all in toto;

- the respondent AAE shall pay a penalty of Rs. 3,000/- to the appellant herein within 15 days from the date of receipt of this order and this fact of payment shall be reported to this authority by the SE, Operations, Tirupati to whom a copy of this order is being marked for enabling him to report on its implementation.
- It further goes without saying that this being a penalty, it shall be borne by the individual concerned; not by the DISCOM. The compensation ordered for by the CGRF shall be paid by the DISCOM, if the same is not refused by the appellant herein. However, the DISCOM shall be at liberty to recover the same from the respondent AAE or any other officers by conducting a proper enquiry as it deems fit.

18. In the result, the appeal is allowed.

19. This order is corrected and signed on this 18th day of March, 2014.

VIDYUT OMBUDSMAN

To

1. Sri N. Prakash Babu, % Ratnam Petroleum Agencies, Hindustan Petroleum Corporation, Bhakarapeta Village, Post & Mandal, Chittoor Dt 517 194.
2. The Asst. Accounts Officer, ERO, Piler.
3. The Additional Asst. Engineer, Operation, APSPDCL, Operation, Chinagottigallu.
4. The Asst. Divisional Engineer, Operation, APSPDCL, Piler.
5. The Divisional Engineer, Operation, Piler.
6. The SE, Operations, Tirupati.

Copy to:

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