

BEFORE THE VIDYUT OMBUDSMAN

::Present::

C.Ramakrishna

Date: 21-01-2014

Appeal No. 93 of 2013

Between

Dr. Arifhusen A. Waqif
8-2-608/52, Road No. 10
Banjara Hills
Hyderabad 500 034

...Appellant

And

1. The Assistant Engineer, Operations, Banjara Hills, APCPDCL, Hyderabad.
2. The Assistant Divisional Engineer, Operations, Banjara Hills, APCPDCL, Hyderabad.
3. The Asst. Accounts Officer/ERO, Banjara Hills, APCPDCL, Hyderabad.

...Respondents

The above appeal filed on 29-09-2013 has come up for final hearing before the Vidyut Ombudsman on 18-01-2014 at Hyderabad. Dr. Arifhusen, the appellant as well as respondents 1 & 3 above were present, while respondent 2 sought exemption from hearing on the ground that some official review meeting had to be attended to and authorized respondent 1 to represent on his behalf. 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 disposal of the complaint before the CGRF, APCPDCL (Greater Hyderabad Area), Hyderabad in C.G. No: 939/2013-14/ Hyderabad North Circle dtd: 25.07.2013. The appeal was heard on 18.01.2014. The grievance of the appellant, which could be ascertained only during the hearing is that the respondent officers failed to collect the electricity dues in time from their tenant, thereby allowed arrears to accumulate and finally he was made to foot the entire bill of tenant due to inaction from the respondent officers in time. Further, the respondent officers who were quick to convert the Category of the service connection from residential to commercial merely by a physical observation and without reference to the appellant are not showing the same alacrity for changing the Category from commercial to residential even after repeated representations from his side.

2. The facts of the case are: the appellant is the owner of House No. 8-2-608/ 51, Plot 88, Gaffar Khan Colony, Road No. 10, Banjara Hills, Hyderabad - 500 034. The house is given electricity supply with SC No: A2009255. He let out the house on rent to one Sri. A.K. Srikant Reddy on monthly rent through an agreement dated April 7, 2012. Clause 5 of the rental agreement provides for payment of electricity dues, among other dues, directly to APCPDCL by the tenant. The same clause also provides for production of receipts by the tenant to the appellant landlord for his verification on demand. The tenant, within two months into the tenancy had stopped paying the electricity dues every month to the respondent officers. In spite of continuous default for about four months, the respondent officers did not initiate any action to collect the mounting arrears. As is borne by the record produced by the respondent officers at the time of hearing, it is clear that the

tenant had not been in regular in his payment of electricity dues even for a single month during the course of his entire tenancy. Yet, the respondent officers did not take action in enforcing collection as expected of them. Unable to bear with the defaults in payment of his rent and other statutory dues to the various authorities by the tenant, the appellant had filed a civil suit for eviction of the tenant on 19-10-2012 i.e., within seven months into the rental agreement. The appellant had been very meticulous in informing the respondents about the non-payment of electricity dues by the tenant from time to time, as evidenced by the carefully preserved copies of the correspondence along with proof of acknowledgments. He was asking the respondent officers to collect the dues from the tenant. He informed the respondent officers from time to time about the disconnection for non-payment and reconnection of supply by the field staff without fully collecting the arrears. His complaints to the respondent officers about the existence of some unscrupulous elements in their field staff did not elicit any response from them. The appellant was also repeatedly informing the respondents that he would not be responsible for the payment of overdue bills as the tenant is not paying what he has to pay and the authorities are not enforcing the collection due to connivance at field level. Such meticulousness on the part of the appellant doesn't leave any room for doubting his oral averments that he had been in constant touch with the respondent officers verbally on phone and in person and entreating them to disconnect the supply to the rented premises to prevent accumulation of arrears. With the kind of attitude and negligence that was on display by the respondent officers, arrears electricity dues got accumulated, eviction of the tenant was ordered by the Court (though not yet implemented), the premises in question is reportedly under lock on Court orders and the appellant owner paid all the arrears to ensure that the service connection is not in payment default.

3. The appellant prayed for the following reliefs:

- To provide for a satisfactory explanation of the excessive overdue amount of Rs. 34,270/- by 24-10-2013;
- To consider ordering refund of overpayments made by him;
- To make the respondent officers liable for the accumulated arrears in view of their inaction in collecting the arrears from the tenant; and
- To direct the authorities to change the category of his service connection from commercial to residential forthwith.

4. In reply to the appeal, the written submissions by the respondent officers are that:

- the appellant was aggrieved of the acceptance by the respondents of part payments from the tenant and hence filed an appeal before the CGRF requesting the CGRF to direct the respondents to accept only full payments as his tenant is a habitual defaulter in making payments;
- on being informed of the reasons for the acceptance of part payments, the CGRF disposed of the complaint of the appellant by directing that the respondents shall ensure disconnection of service for non-payment of CC charges after due notice and to not accept part payments.
- the part payments were accepted only due to the request made by the 'consumer' that he is receiving abnormal bills;
- the cheque given for Rs. 5,200/- was dishonoured on 28-05-2013, but in the mean time the 'consumer' made payment for Rs. 10,000/- in APONLINE on 25.05.2013;

- on being approached by 'consumer' they had found out that the meter reader erred in taking the readings for the months of June & July 2013 in noting the reading as 22999 instead of 22327;
- in view of bill revision affected on 18-07-2013 for the wrong billings for the months of June & July 2013, an amount of Rs. 5,601/- was credited by way of journal entry on 30.07.2013 to the consumer's account;
- the consumer made all the payments upto December 2013 and no arrears are pending against the said service connection;
- after the directions by the CGRF, they are not accepting part payments from consumers except in exceptional cases;

5. There was no proper explanation from the respondents for the negligence shown in not collecting the electricity dues from the tenant in time. The respondent AE filed a copy of the Memo dated 05.11.2012 issued to one ALM instructing him not to repeat non-disconnection of supply even when arrears are pending. With the issuance of the Memo he feels that his responsibility is over. It is very unfortunate that field officers are showing such gross dereliction of duty in full public glare.

6. In their written submissions, the respondents are using the word 'consumer' interchangeably to refer to the owner as well as the tenant. Their averment that part payments were accepted only at the instance of the 'consumer' that he is receiving abnormal bills is quite misleading and mischievous to say the least. Part payments were being accepted by the respondent officers right from the second month into the tenancy of the premises. In view of the constant persuasion made by the owner from time to time, treating the owner as the 'consumer' for the purpose of collecting all the outstanding dues against the SC and affecting

collections from him while not collecting the dues properly from the tenant in spite of persuasion from the owner is reprehensible. The respondent officers are liable to be charged with dereliction of duty on this count.

7. The ledger record filed by the AAO at the time of hearing shows that the service has been showing negative arrears of Rs. 183 from December 2011 to May 2012, the month when the tenant has entered the premises. From the month of June 2012, for four months, the collections against the service were shown as 'NIL'. There was no proper explanation coming from the respondent officers for these 'NIL' collections. Even for the latter months i.e., from October 2012 onwards, the payments made reflect an attitude of 'gratis' for the supply received by the tenant. The collections made are either lower than the demand or were non-existent. The record produced at the time hearing shows that the tenant had been paying only lower amounts than the demand raised. The only two times that he paid substantial amounts by way of cheque also ended up in bounced cheques. That explains the debit Journal Entries that are there in the account. The credit Journal Entry for Rs. 5,601/- was explained as towards wrong meter reading taken in the month of July 2013.

8. The appellant approached the CGRF, APCPDCL on 13/06/2013 complaining about the non-collection of dues from the tenant. The CGRF disposed of the complaint by directing that the service shall be disconnected for non-payment of CC charges and it also directed the respondent officers not to accept part payments of arrears. Aggrieved by the CGRF order in so far as it has not ordered an explanation for the apparently high amount of arrears shown against his service, the appellant approached this authority in appeal.

9. Having considered all the material that is placed before this authority during the course of the hearing -- oral as well as written submissions, it's hereby ordered that:

- The category of the service shall be treated as commercial category from 07-04-2012 to 03-06-2013 in view of the admission by the appellant that the premises had been let out on rent from April 7, 2012 and also the fact that the premises was being used for commercial purpose. The respondent officers shall calculate the electricity dues accordingly for the entire period. On and from 04-06-2013 till the owner appellant gets possession of his premises also the category of the service shall continue to be treated as commercial. It's these dues that are payable by the tenant. From the day the owner gets to possess his premises after evicting the tenant, the service shall be treated as domestic. As the respondents appear to have affected collection of the arrears from the owner already, the excess amounts collected, if any, shall be adjusted in the future bills relating to this service. On the contrary, if more amounts need to be collected, they can be collected from the appellant and the appellant in turn can lay a claim for mesne profits before the Court in the pending case. It's the responsibility of the owner appellant to keep the respondent officers informed in writing of the fact of the eviction of the tenant from his premises, to have the category of the connection changed from commercial to residential.
- The prayer of the appellant for refund of the amounts paid by him cannot be considered for the reason that the owner and the tenant are jointly and vicariously responsible for the electricity dues and there is a recourse available to the owner to recover the mesne profits from the tenant through Court proceedings. To enable him to claim the amounts correctly

and fully, an identification of the amounts due is ordered in the preceding paragraph herein.

- The respondent officers are ordered to explain in writing to the appellant as to how the amount of Rs. 34,270/- was the overdue amount till 24.10.2013. They are also advised to be more vigilant and affect collections without undue fear or favour from those responsible for payment.
- The respondent officers shall pay an amount of Rs. 500/- each to the appellant for all the heartburn and inconvenience caused to him by their dereliction of duty. They shall bear this out of their own pocket and the financial burden shall not devolve on the DISCOM.

10. The appellant shall acknowledge the receipt of this order and his willingness to accept the award, as it is, shall be communicated to the respondents within 15 days from the date of receipt of this order. The identification of the correct amounts due for the service from the tenant, the explanation (detailed in writing to the appellant) for arriving at Rs. 34,270/- as the overdue amount as on 24.10.2013 and payment of compensation to the appellant as ordered herein

above shall be complied with by the respondents within 15 days from the date of receipt of acceptance communique of this award from the appellant.

This order is corrected and signed on this **21st day of January, 2014.**

VIDYUT OMBUDSMAN

To

1. Dr. Arifhusen A. Waqif, 8-2-608/52, Road No. 10, Banjara Hills,
Hyderabad 500 034.
2. The Assistant Engineer, Operations, Banjara Hills, APCPDCL, Hyderabad.
3. The Assistant Divisional Engineer, Operations, Banjara Hills, APCPDCL,
Hyderabad.
4. The Asst. Accounts Officer/ERO, Banjara Hills, APCPDCL, Hyderabad

Copy To:

1. The Chairperson, CGRF, APCPDCL (Greater Hyderabad Area), -3-167/E/1,
Central Power Training Institute Premises, APCPDCL, GTS Colony, Vengal Rao
Nagar, Erragadda, Hyderabad - 500 045.
2. The Secretary, APERC, 11-4-660, 5th Floor, Singareni Bhavan, Red Hills,
Hyderabad - 500 004.