

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 31-03-2010

Appeal No. 18 of 2008

Between

Sri. Voona. Chandrasekhara Rao,
S/o. Late. Satyanarayana,
Komati Street, Palasa, Srikakulam Dist – 532 221.

... Appellant

And

1. The Assistant Engineer / Operation / APEPDCL / Palasa / Srikakulam
2. The Assistant Divisional Engineer / Operation / APEPDCL / Palasa
3. The Assistant Accounts Officer / ERO / APEPDCL / Kasibugga
4. The Divisional Electrical Engineer / Operation / APEPDCL / Tekkali

....Respondents

The appeal / representation dated 07.09.2008 received on 15.09.2008 of the appellant has come up for final hearing before the Vidyut Ombudsman on 26.03.2010 in the presence of Sri T.Vinod Kumar, Advocate for appellant and Sri A.Jayaraju, Advocate present for respondents and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following:

AWARD

Aggrieved by the order passed by the Forum in C.G.No.146/2008 of Srikakulam dist dated 14.08.2008, the appellant preferred this appeal dated 07.09.2008 received on 15.09.2008.

2. The complainant is a consumer having SC No. 1265 under Category-I situated in Palasa Town, Srikakulam Dist. A notice dated 03.09.2005 was issued stating that on 03.09.2005, the electricity service connection was inspected and the complainant committed pilferage of energy and loss of energy provisionally estimated at Rs.63,408/- and that he paid the provisional assessment amount and also an amount of Rs.4000/- towards compounding fee. He sent a representation dt.16.09.2005, but there was no response from the respondents. There was no pilferage or misuse of electricity or tampering with the meter by the appellant. The meter might have been damaged or went wrong due to mechanical defect. He requested the Forum to issue a direction to declare that the action of the respondents is not correct; and that they are not entitled to collect an amount of Rs.31,704/- included in the electricity consumption bill dated 08.01.2008 and also for a direction to refund an amount of Rs.35,904/- paid by the complainant on previous occasion.

3. The respondent No. 2 filed his counter stating that electricity connection was inspected on 03.09.2005 in the presence of complainant's son and noticed that the incoming phase and outgoing phase in the meter terminal block jointed with single white colour copper wire bypassing the meter and hence there was pilferage of energy. The provisional assessment notice was made for an amount of Rs.63408+Rs.150+ Rs.50+Rs.4000 and a notice was issued to the complainant. The respondent Nos. 1, 3 and 4 filed memo adopting the counter filed by the respondent No.1. Both parties filed their affidavits. Exs. A1 to A5 were marked on behalf of the complainant. Exs. B1 and B2 were marked on behalf of the respondents.

4. After hearing both sides and after considering material placed before the Forum, the Forum dismissed the complaint without costs and Interim order dated 25.01.2008 passed in IA No. 15/2008 was also vacated.

5. Aggrieved by the said order, the appellant preferred this appeal to this authority questioning that there is no tampering or misuse of energy. The

complainant is a small trader and not well educated nor having knowledge in electrical wiring to tamper the meter and is no way connected with pilferage of energy bypass mode as was described by the authorities. He has also filed a case in District Consumer Forum, Srikakulam. The Forum granted a direction but dismissed the same on technical reasons and inadvertent representations, the Forum passed its order in favour of the department. Basing on the said order, the Consumer Grievance Redressal Forum also dismissed while passing an order on 14.08.2008 against him. At the time of inspection total load observed as 3308 W in the outside hall and calculation of electricity consumption should be as:

- a. Heater 1x2000 watts = 2000watts (per day one Hour)
- b. Motor 1x373watts = 373watts (per day one Hour)
- c. Grinder 1x500watts = 500watts(per day one Hour)

and the above said 3 items are not used for one hour but they calculated the same as if they were using for 24 hours and fixed an amount of Rs.63,608/-. The calculations may be made for one hour per day basis and calculate energy amounts as per Government Rules and consider the same. He preferred FA 972/08 before the A.P.State Consumer Commission, Hyderabad against the order passed in CD No. 8/2008 passed by the District Forum and the same was withdrawn in view of his filing petition before the Consumer Grievance Redressal Forum, APEPDCL and also by filing the appeal against the orders on 14.08.2008 before this authority and that the order may be revised as per the above said norms and by allowing the appeal preferred by him.

6. Now the point for consideration is, “whether the impugned order, dt.14.08.2008, is liable to be set aside? If so, on what grounds?”

7. Sri T.Vinod Kumar, Advocate for the appellant argued that the calculation made by the department through out the 24 hours is against to the principles of natural justice, but also against to the electricity regulation. There is no material to show that the appellant has committed theft of electricity and that the appeal preferred by him is to be allowed by setting aside the impugned order.

8. Whereas, the respondents are represented by Sri A.Jayaraju, Advocate and stated that this Forum has no authority to decide the merits of the case booked against the appellant for pilferage of energy (theft of energy), as separate Forum is constituted for the said offences and this Forum is not vested with the power to entertain the appeal and is liable to be dismissed.

9. The contention of the appellant is that he sent a representation on 16.09.2005 to the respondents, but there is no response from them. Ex.A4 is the copy of the representation dated 16.09.2005, but he has not filed any acknowledgment in proof of sending the document by Registered Post or to presume receipt of the said notice. As per provisional assessment notice (theft of energy dated 03.09.2005) inspected the premises by AE/O and found tampering of electricity meter of the complainant and estimated the value of the energy misuse by the appellant and Ex.B2 is the notice prepared by him. He has not questioned the provisional assessment issued by respondent No.2. It is also clearly mentioned that the inspection was made in the presence of the son of the appellant and the same is not denied by him specifically.

10. When a case of theft of energy is booked, it cannot be said that there is a deficiency of service, since the tampering is at the end of the appellant but not at the end of the respondents. Further more, the Electricity Act, 2003 clearly envisages to deal with the case of theft of energy u/s 126 by the said Act and Appeal provision is incorporated in the said Act. When a separate provision is incorporated and he proceeded against the orders of the department approaching the Forum on the ground of deficiency of service is against to the cannons of law. When it is specifically asked about the maintainability of the petition, the Learned Counsel for the appellant stated that he would file written arguments before this authority and he was permitted to file the same on or before 29.03.2010. He has not filed any written arguments to substantiate his contention. So this authority has to treat that there are no grounds for him to contend that the Forum has got the authority to entertain the complaint vis-a-vis

appeal by this authority. The approach to the Forum after to this authority is against to the provisions of The Electricity Act, 2003 (S.126 & 127 of the Act).

11. The formula of one hour usage of electricity as mentioned in the grounds of appeal, may be reasonable or not, this authority is not competent to decide the issue. He might have approached the competent authority seeking redressal of his grievance. This formula mentioned in the grounds of appeal cannot be treated as deficiency of service, since the AE(Assessments) has already served a notice of his conclusions and that can be questioned and agitated before the competent authority envisaged under The Electricity Act, 2003, but not before the Forum or before this Authority.

12. In the light of the above said discussions, there are no grounds to interfere with the same as there is no deficiency of service and the appellant has not rightly approached the authorities envisaged under the Act but approached the authorities like District Consumer Forum and appealed to the State Commission, CGRF and appeal to the Vidyut Ombudsman which are not vested with the power to deal with the cases of theft of energy.

13. I am of the opinion that there are no grounds to interfere with the findings given by the Forum and the appeal preferred by the appellant is liable to be dismissed.

14. In the result, the appeal is dismissed. No order as to costs.

This order is corrected and signed on this day of 31st March 2010

VIDYUT OMBUDSMAN