

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 27 -04-2010

Appeal No. 19 of 2009

Between

Sri B.Venugopala Rao
S/o.Laxmana Rao, C/o.Vijaya Durga Poultries
Tiruvuru Road, Nuzividu – 521 201
Krishna Dist.

... Appellant

And

The Asst. Accounts Officer / ERO / APSPDCL/Nuzvid/Krishna Dist
The Accounts Officer / Revenue/CO / APSPDCL/Vijayawada/Krishna Dist
The Divisional Engineer / Rurals / APSPDCL/Gudiwada
General Manager/Audit/APSPDCL/Corp.office/Tirupati
Senior Accounts Officer/Internal Audit/APSPDCL/Central Office/Vijayawada.

....Respondents

The appeal / representation dated 13.04. 2009 received on 17.04.2009 of the appellant has come up for final hearing before the Vidyut Ombudsman on 08.04.2010 at Kakinada in the presence of Sri B.Venugopala Rao, appellant present and Sri A.Ramdas, SAO(I.A), Vijayawada, Sri G.Jai Kishore Babu, DE/Op/Nuzividu and Sri B.Venkateswara Rao, AAO/ERO/Nuzividu present for respondents and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following :

AWARD

The appellant filed a complaint before the Forum, that he is having a poultry farm bearing SC No. 6244 in Nuzividu town and he received a notice from

AAO/ERO/Nuziveedu for shortfall of amount for two spells for Rs.59,230/- and Rs.1,67,440.35ps, respectively to the effect that the lighting load is exceeded over and above 10% of connected load and this is to be billed under commercial category as per the tariff conditions. Though, there are several poultry farms in and around, similar to his poultry farm, but the complainant is served with a notice and the poultry farm unit is basically running on lighting load. Apart from lighting load, the complainant is having a CL of 40 HP + 14.8KW. Out of which 40HP is for feed mixing plant and the balance 14.8KW was meant for lighting purpose to the poultry sheds. As per the tariff conditions, poultry farms having more than 1000 birds shall be classified under Cat-III.

2. The respondents submitted that the amounts were levied by the internal auditors as per the tariff conditions mentioned under LT Cat-III. The respondents have also, furnished the recommendations of the ADE, with regard to the particulars of the connected load, etc on ground.

3. The AAO gave remarks to the complaint with a baseless and without any proper justification.

4. The SAO has simply forwarded the copy of letter no.485/09, dt.03.03.2009 addressed to CGM(Finance) together with enclosures.

5. After hearing both sides and after considering the material placed before the Forum, the Forum is of the firm opinion that the action of the audit wing raised the short fall with the ignorance of the guidelines of APERC vide Letter dated 02.01.2007 for Rs.59,230/- for the period from 11/05 to 11/06 and for Rs.1,67,441/-for the period from 12/07 to 10/08 is illegal. But ultimately held that the payments made by the complainant towards the said notices prior to the filing of the complaint is not liable to be refunded.

6. Aggrieved by the said order, the appellant preferred this appeal questioning the same, that failure to refund is against to the principles of natural justice on the ground that when the demand is declared as illegal, the same has to be refunded irrespective of payment prior to the complaint or subsequent to the complaint. The view expressed by the Forum with regard to the non-refund of Rs.59,230/- is liable to be set aside.

7. Now, the point for consideration is, “whether the impugned order, dated 17.03.2009, is liable to be set aside? If so, on what grounds?”

8. The Forum has arrived at a conclusion that the levy of amounts for 2 spells is illegal, but refused to refund the amount, already paid by the complainant. It is against to the principles of natural justice. Merely, because he paid the amount it does not mean that he has conceded the claim made by the respondents. If it is not paid the service connection will be disconnected. So that payment cannot be treated as admission. Furthermore, when the competent authority clearly declared that the demand itself is illegal, there is no other option for the Forum except to order for refund of the amount, either by way of adjustment in future CC bills or on some other mode facilitating the petitioner to receive the said payments.

9. In the light of the above said discussion, the impugned order with regard to rejection of refund of paid amount alone is hereby set aside and the respondents are directed to adjust the same in future CC bills payable to the complainants service connection.

10. In the result, the appeal is allowed with the above said direction. No order as to costs.

This order is corrected and signed on this day of 27th April 2010

VIDYUT OMBUDSMAN