

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 23 -04-2011

Appeal No. 11 of 2011

Between

Sri MS Kameswara Rao

Hon.Pre: Sri Kusume haranth Kshtrem

Hon.Co.Chairman: Senior Citizens Association

Former President Chamber of Commerce

Ex.Chairman Trust Board.Sri Kanyaka Parameswari Mahalaksmi Nilayam

5-16-6/7, Srinivasa Nagar, NCS Road,

Vizianagaram – 535001

... Appellant

And

1. Asst Engineer/Operation/ APEPDCL / D3 / Vizianagaram Dist.
2. Asst Divisional Engineer/Operation/ APEPDCL / Town/ Vizianagaram Dist.
3. Asst. Accounts Officer/ERO/ APEPDCL / Town / Vizianagaram Dist.
4. Divisional Engineer/Operation/ APEPDCL / Vizianagaram / Vizianagaram Dist.

....Respondents

The appeal / representation filed dt 15.03.2011 (received on 21.03.2011) of the appellant has come up for final hearing before the Vidyut Ombudsman on 06.04.2011 at Visakhapatnam, in the presence of Sri M.S.Kameswara Rao, appellant, Sri G.Chiranjeevi rao, DE/O/Vizianagaram, Sri K.Gopal Rao Naidu, ADE/O/Vizianagaram, Ms.M.Sarvamangala AAO/ERO/Town/Vizianagaram and Sri AE/O/D3/Vizianagaram for respondents present and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following :

AWARD

The appellant filed a complaint before the CGRF, Visakhapatnam for restoration of supply to his industrial service connection No. 274, V.T.Agraharam for

which the agreement was terminated illegally and the same has to be restored as it is his legitimate right to have the service connection and requested the Forum to make his grievance redressed.

2. The respondent No.2 filed his written submissions as hereunder:

“Sri Y. Ravi Kumar and K. Giri Partners of M/s Ganesh Plastic works have purchased the property from M/s Bhavani Industries represented by then its partner Sri M.S.Kameswara Rao and others, M/s Ganesh Plastic works, Vizianagaram has represented the APIIC, for change of ownership of the property. The application was considered by APIIC and issued orders. The proceedings of APIIC and property tax receipts are herewith enclosed.

The service No.03-0403-000274 was disconnected on 29-05-10 due to non payment of CC charges. Further the agreement of the service was terminated and bill stopped vide proceedings No.DE/O/VZM/AAO/JAO II/BS V/D.No.2720/10, Dt.13-10-10 as per GTCS NO.5.9.4.3.

Clause no:5.9.4.3:

Termination of LT Agreement and HT agreement on account of Disconnection: Where any consumer, whose supply is disconnected for non-payment of any amount due to the company on any account, fails to pay such dues and regularize his account within three months from the date of disconnection, the company shall after completion of three months period, issue one month notice for termination of the LT or HT agreement, as the case may be, if the consumer still fails to regularize the account, the company shall terminate the agreement with effect from the date of expire of the said one month notice. Such termination shall be without prejudice to the rights and obligations incurred or accrued prior to such termination.

Provided that where the company fails to issue notice or terminate the agreement as prescribed above, the consumer shall not be liable to pay the minimum charges for the period beyond 4 months from the date of disconnection and the agreement shall be deemed to have been terminated at the end of 4 months period from the date of disconnection.

Provided further, that where the minimum period of the agreement is not yet completed by the date of such termination, the consumer shall be liable to pay the minimum charges as other wise applicable calculated up to the date of completion of the period agreement.

Restoration of Power Supply is not feasible due to the following conditions:-

- 1) Sri M.S.Kameswara Rao is making the correspondence for the property which does not belong to him. The property of the M/s Bhavani Industries was sold to M/s Ganesh Plastics represented by this partners (1) Kadium Giri and (2) Yerra Ravi Kumar.

- 2) *APIIC Industrial Area local authority Vizianagaram has issued proceedings for change of name in the property tax records vide proceedings No.APIIC=IALA/VZM/2007, Dt.09-07-07.*
- 3) *The available security deposit was adjusted and pending arrears are NIL.*
- 4) *The service was disconnected due to non payment of CC charges on 29-05-10 as per the General Terms And Conditions of Supply clause No.5.9.4.3 the agreement was terminated, vide proceedings No.DE/O/VZM/AAO/JAOII/BS, V/D.No.2720/10, Dt.13-10-10.”*

3. After hearing both sides and after considering the material placed before the Forum, the Forum passed the following order:

- *“As the termination of agreement was done as per clause No.5.9.4.3 of General Terms and Conditions of Supply and it was in order, the complainant is no more a registered consumer as the property of plot No.21, M/s Bhavani Industries is also not belong to the Complainant.*
- *Therefore, the Complainant’s grievance for restoration of power supply against Sc.No.274 can not be considered.*
- *Hence, no merits in the complaint received by the Forum.”*

4. Aggrieved by the said order, the appellant preferred this appeal questioning the same, that M/s. Bhavani Industries is in existence and the same is very clear from the proceedings DE/O/VZM dt.01.05.2010 and is also clear from the bills raised by the AAO against SC No.274 in the name of the appellant. The bill was dt.25.07.2010, due date was 08.08.2010 and if the same was not paid one month notice had to be given and if the bill is not paid by 23.12.2010, the department can terminate the agreement. It is also further alleged that it is not shown as to how the DE/O/VZM had disconnected on 29.05.2010 and terminated the agreement on 15.09.2010 and the department has no right to terminate the agreement dt.05.07.1990 and requested this authority to make both the parties to hear on the above said issue. The matter was placed in the O/o. Chairperson, CGRF, APEPDCL, Visakhapatnam on 06.04.2011 and both the parties had attended and an effort was made to reconcile, but the parties failed to reconcile the matter. Thus, it is incumbent on this authority to dispose of the matter on merits.

5. Now, the point for consideration is, "Whether the complainant is entitled for service reconnection and also for restoration of the agreement as prayed for?"

6. It is very clear from the record that Sri Y.Ravi Kumar and Sri K.Giri and partners have purchased the property from M/s. Bhavani Industries represented by the then Sri M.S.Kameswara Rao, the appellant herein. M/s. Ganesh Plastic Works have represented the same to APIIC for change of ownership of the property. The application was considered by APIIC and also issued orders accordingly. The service connection was disconnected on 29.05.2010 due to non-payment of CC charges. The agreement of the service was also terminated on 13.10.2010 as per clause 5.9.4.3 of GTCS. The said SC No.274, M/s. Bhavani Industries was utilized continuously upto May 2010 paid regularly CC bills up to November 2008 without any dues. Thereafter, some of the CC bills were paid through cheques and they were dishonoured but the same were paid later by cash. When the CC bill for the month of April was not paid, disconnection was effected on 29.05.2010 after the due date.

7. The contention of the appellant is that the proceedings dt.01.05.2010 was received by the appellant on 23.07.2010. But there is no proof to that effect. The service was disconnected on 29.05.2010 after expiry of the due date. It is also his contention that the bill was issued on 25.07.2010 and the due date was 08.08.2010. Disconnection date must be 23.08.2010. Thereafter one month notice is to be given and after expiry of the three months, termination has to be effected. He relied upon the bill dt.25.07.2010, in which the arrears were shown as Rs.2,18,560/- and net amount was Rs.2,23,865/-. It was not a bill for running the factory but it included arrears plus Rs.2516 (Fixed charges) and Rs.2691 (Surcharges). So, it is not a running bill since the units were shown as "zero". This is only after disconnection effected by the respondents.

8. On the other hand, clause 8(1) shows the mode of service. The property was purchased on 28.08.2006 and the same was also approved by the APIIC by its

proceedings dt.09.07.2007. Hence, the documents filed by the respondents have clearly established that the appellant has no right in the property and he cannot continue the service connection in the same premises. If he wants the service connection to be restored, he can pay the arrears if any and get the service connection restored, in accordance with the GTCS. However, the respondents have committed a mistake, by not showing the arrears due on the said service connection and the amount outstanding on the said service connection and about the particulars of the Security Deposit and its adjustment. As per the letters addressed by the appellant, the Security deposit was Rs.71,342/- and Rs.8343/-.

9. They have not clearly mentioned in the form of reply to the appellant about the amounts due and also the amounts adjusted from the security deposit. Furthermore, the very letter dt.11.10.2010 addressed by DE/O/VZM to DE(T)/ shows that SC No.3795 was released in favour of Sri K.Giri of M/s. Ganesh Plastics under Cat-III(B) on 27.02.2010 and by letter dt. 05.02.2011 shows that on the said service connection No. 3795 CC bills are going to be issued from 27.02.2010 i.e, from the date of supply. The appellant has addressed a letter not to transfer the service connection in the name of purchaser due to property disputes and that may be the reason to obtain a new service connection to the purchaser.

10. The respondents have issued a notice dt.01.05.2010 showing the back billing amount of Rs.99,134/-. If that is so what is the outstanding amount on the service connection and what is the amount due towards minimum charges till the termination of the agreement etc., are not shown anywhere. If the property is transferred, how the service connection in the name of the complainant till 29.05.2010 is continued in his name is also not borne out from the record. If that is so, who paid the bills up to that date and who utilized the service connection till that date are the aspects clearly placed by the authority.

11. The above said discussion clearly shows that the appellant is kept in dark without furnishing the details and it is necessary for this authority to pass an order by giving clear cut directions to both the parties in the above said matter.

- (i) The respondents are directed to place the details of the amounts due in the above said service connection including minimum charges after disconnection together with the particulars of back billing, etc.
- (ii) The particulars of payment of arrears of Rs.2,23,865/- whether the same is paid or not, if paid who has paid the amount, whether it is in the name of the appellant's service connection.
- (iii) The calculations have to be made categorically and in clear terms by serving a notice on the appellant within 15 days from the date of this order.

12. It is also necessary at this juncture to give a direction to the appellant as hereunder:

- (i) he is not entitled for restoration of the service connection in that premises as the department cannot solve the dispute in between the appellant and the purchaser.
- (ii) If at all if he has any grievance against the purchaser, he can workout his remedy in a different Forum before a competent authority in accordance with law.
- (iii) The appellant if he wants restoration of service connection and restoration of agreement, he can pay the arrears outstanding and the amounts to be paid for restoration of agreement as per GTCS, but he can get it restored on some other premises but not in the premises purchased by Sri Y.Ravi Kumar and K.Giri and approved by APIIC.

13. The respondents are also further directed that if there are any arrears to be refunded, they shall be ordered to be refunded to him. At the same time, they are also at liberty to collect, if there are any arrears which are to be paid by him in the above said service connection in the name of the appellant.

14. With the above said observations, the appeal is disposed accordingly. The compliance of the order should be sent to this authority within 30 days from the date of receipt of this order. No order as to costs.

This order is corrected and signed on this day of 23rd April 2011

VIDYUT OMBUDSMAN