

VIDYUT OMBUDSMAN
O/o: ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad – 500 004

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated 18 – 02 - 2012

Appeal No. 82 of 2011

Between
Sri M.Srihari
S/oM.Venkateswarlu
Door No.20-6-10, Anjayya Road, Ongole

... Appellant

And

1. Asst. Accounts Officer/ERO/ APSPDCL/Ongole
- 2 Asst.Engineer/Operation/D-1/APSPDCL/Ongole
3. Asst.Divisional Engineer/Operation/Town/APSPDCL/Ongole
4. Asst.Divisional Engineer/DPE-II/APSPDCL/Ongole

....Respondents

The appeal / representation dt.30.11.2011 (received on 02.12.2011) against the CGRF order of APSPDCL (in CG No.221/2011-12 of Ongole Circle dt.04.11.2011). The same has come up for hearing before the Vidyut Ombudsman on 04-02-2012. Sri M.Srihari, appellant present and Sri M.Bhaskar Rao, ADE/DPE-II /Ongole, and Sri A.Uday Kumar, AE/O/D1/Ongole on behalf of respondents present, heard and having stood over for consideration till this day, the Vidyut Ombudsman passed/issued the following:

AWARD

The petitioner filed a complaint against the Respondents for Redressal of his Grievances projecting mainly the following grounds:

1. *"He is tenant in the premises of SCNos:14640, 11630 and 22523 of Ongole town and running a mess from July/2010. The above services are under category –I domestic purpose. The electricity authorities inspected the premises of afore said services on 6-8-2010 and changed the category of all the services above from domestic to category-II (non-domestic) and they are paying the C.C.bills promptly.*

2. *The ADE/DPE-II/Ongole imposed penalty for the above three services taking the last one year consumption at non-domestic tariff.*
3. *Requested for waiver of penalty for the above services."*

2. The respondent No.4 has submitted his written submissions as hereunder:

"He, along with one Sri.D.Venkateswarlu, Line man, D-1 section had inspected the premises of SCNos:14640, 11630 and 22523 of Ongole town on 6-8-2010 and found that the services were being utilized for non-domestic purpose at the time of inspection. M.Sailaja, the beneficiary and who is running a ladies hostel in the premises, was present at the time of inspection and attested the Inspection Notes for all the three services but did not write any statement in the said inspection notes. But she had said that they are running the hostel since long time. He had prepared the inspection reports as per the GTCS and sent the same to the ADE/Operation/ Town/Ongole and also to other officials for taking further necessary action. The beneficiary, present at the time of inspection did not show any documental evidence regarding the opening of the hostel."

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

1. *"The Respondent-4 is directed to fill all the items of the Inspection notes without fail in future while preparing the inspection notes.*
2. *No directions for the respondents 1 to 3.*
3. *The complainant is advised to pay the assessed amounts without contesting further to avoid disconnection of the services.*
Accordingly the complaint is disallowed and disposed off."

4. Aggrieved by the said order, the appellant preferred this appeal questioning the same that they have been looking after the female children of his friends in their house along with their children; and that they are providing food and shelter by himself and his wife and due to the death of the appellant's father they shifted the same to an old house taken on rent. The respondents took the reading on 06.08.2010 and directed them to convert the service into commercial from domestic and converted the same into commercial service. They are sending the commercial bills since then and regularly paying the same and that they have sent notices imposing penalty and could not pay the same but the department stopped the service connection and they informed on 21.08.2010, the penalty was imposed and that the same was not paid. The service was stopped. Then they approached SE/Assessment/Tirupati, DE/Assessments/Tirupati and Chairperson/CGRF but could not get justice and they have filed this appeal questioning the same that the order

passed by the Forum is not valid under law and the penalty of Rs.90,284/- may kindly be cancelled.

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

6. The appellant appeared before this authority on 04.02.2012 at Tirupathi and stated that they have taken premises on lease for rent and that they are running hostel to the girls by providing food in their house but the department has erroneously converted the same into commercial and they have erroneously imposed penalty and the appeal preferred by him is to be allowed by setting aside the impugned order.

7. The respondents are represented by Sri M.Bhaskar Rao, ADE/DPE-II /Ongole, and Sri A.Uday Kumar, AE/O/D1/Ongole and stated that the appellant was running a hostel under the domestic service connection though it is commercial and the department has imposed penalty for the malpractice committed by him as per the provisions of the Act and the appeal preferred by the appellant is liable to be set aside.

8. It is an admitted fact that the appellant has taken the premises on lease for running a hostel. They have not filed the copy of the agreement to furnish all the particulars mentioned including the terms & conditions of the lease agreement. At least to fix up the date from which the hostel is being run by him. He has admitted that he was running hostel since 01.04.2010 but the inspection was made on 06.08.2010 four months after alleged occupation. There is no proof that he was running from 01.04.2010. The very nature of the occupation by the appellant discloses that it is a commercial operation and it is nothing short of malpractice. When a malpractice is committed the same is to be dealt with by making provisional assessment and final assessment and appellate authority is also contemplated therein questioning the said final assessment. He has been utilising 3 services and the final assessment is also made. The Superintending Engineer has also passed

an order on the appeal filed by him. If he has filed the copy of the agreement it can assess the period of occupation. So there is no possibility to fix up the occupation of the premises u/s 126(5) of EA 2003, when such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection. No contra evidence is placed by the appellant that his occupation is used by them is one year. So, the period of 12 months limited u/s 126(5) of EA 2003, is in accordance with law.

9. The appellant has not approached the Forum or this authority with clean hands proving his bona fides that he is not doing commercial activity. The running of a hostel for profit is nothing but a commercial activity. He cannot escape the liability by simply saying that he is providing food and giving shelter to his friends' children. In fact, there is no proof to that effect.

10. In the light of the above said circumstances I do not find any reasons to interfere with the order of the Forum and the appeal preferred by the appellant is liable to be dismissed.

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

This order is corrected and signed on this day of 18th February 2012

VIDYUT OMBUDSMAN