

BEFORE THE VIDYUT OMBUDSMAN

Present

**K.Sanjeeva Rao Naidu
Vidyut Ombudsman**

Dated: 01-02-2012

Appeal No. 1 of 2012

Between

M/s. Gajanand Mills,
1-9-2, Plot No.19/4,
Azamabad Industrial Area, Hyderabad – 500 020

... Appellant

And

1. Asst Engineer/Operation/Musheerabad/APCPDCL/Hyderabad
2. Asst Divisional Engineer/Operation/Azamabad/APCPDCL/Hyderabad
3. Divisional Engineer/Operation/ City-II/Azamabad/APCPDCL/Hyderabad
4. Senior Accounts Officer/operation / Central Circle/APCPDCL/Hyderabad
5. Superintending Engineer/Operation/Central Circle/APCPDCL/Hyderabad

....Respondents

The appeal / representation filed on 19.12.2011 of the appellant has come up for final hearing before the Vidyut Ombudsman on 10.01.2012 at Hyderabad in the presence of Sri Kannaiah Lal Jawahar appellant, Sri Abdul Kannan Advocate for appellant present and Sri S.Ramanaik, SAO/Central circle, Sri A.P.B.Sampath, ADE/O/Azamabad, Sri A.Laxmaiah AE/O/Musheerabad, and Ms.A.Kalpana, Sr.Asst /HT/Central circle/Hyderabad 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 against the Respondents for Redressal of his Grievances and stated as hereunder:

"The appellant complainant had a H.T. Power supply (S.C.No.HYD-159) and the Mill was shut down on 3.2.1994 due to heavy financial loss. The Electricity Department has raised bill of Rs.1,94,055.00 at that time but at that point of time, he did not pay the same.

During 1984 he had applied for 130 KVA but the Electricity Department had installed 170 KVA and raised bills for 170 KVA. So, he paid excess amount of Rs.1,26,485.95 to the department for which he is entitled for refund with interest.

Furthermore, since disconnection was done on 3.2.1994 and there is no power supply but the Electricity Department raised bill of about 2.5 lakhs for minimum charges which need to be quashed by the forum as it amounts to violation of fundamental rights and principles of natural justice. The Security Deposit of Rs.1,45,500.00 standing at our credit as on 21.1.1991 is to be adjusted in the final bill and as there is no service connection he is entitled to maintain adjustment/refund application before the forum for redressal of our account with the APCPDCL.

They may be permitted to maintain that the time-barred arrears of electricity board are not recoverable as per Section 56 of Indian Electricity Act, 2003. Hence requested the Forum to settle their claim full and finally."

2. The AE/O/Musheerabad submitted his written submissions as hereunder:

"On 5.6.2010 Consumer applied for extension of LT Category.IIIA 10 HP supply in the name of M/s.RR Kushal Paper, at that time they came to know that huge arrears are pending in that premises i.e., around Rs.3,28,156.00 as on year 1998 in the name of Gajanand Oil Mill (H.T. Service) based on Court Case filed vide O.S.No.2510 of 2004.

As observed, it is found that there is no D.P. structure, Metering equipment of HT Service No.HYD 159 and found four numbers LT services existing viz., F1-7071, F1-7072, F1-20793 and F1-26565.

On contacting the consumer, he told that they have already represented to the Electricity Department to revise the bill and finally told that he is unable to pay the huge amount."

3. The ADE/O/Azamabad/Hyderabad submitted his written submissions as hereunder:

"The S.C.No.HYD 159 of M/s.Gajanand Oil Mill at H.No.1-9-2, Azamabad Industrial Area and the service was disconnected on 03.02.1994 for non payment of c.c. charges. The consumer approached the High Court for dispute in the bill regarding deration of CMD with W.P.No.8493 of 2000. And the consumer again filed an affidavit in the City Civil Court of Hyderabad vide OS No.2510 of 2004 and counter affidavit has been filed by APCPDCL and the matter is pending in the court. He contacted the concerned SLA for the status of the case but SLA required some time for enquiring the above case in the Court. On 5.6.2010, the Consumer applied for extension of LT Cat.IIIA 10 HP in the name of M/s.R R Kushal Paper in the same premises. At that time the application is not considered due to arrears pending at the same premises at around Rs.3, 28,156.00 as on 31.8.1998.

After inspecting the above premises in the yard, the transformer, HT metering equipment and DP structure are not available and the yard is empty. On enquiry, it is stated by the consumer that the HT metering equipment was removed and taken by the department at that time only. And also observed that there are 4 (four) services viz., F1-7071 (Cat.II), F1-7072 (Cat.I), F1-20793 (Cat.II) and F1-26565(Cat.III) in the premises."

4. The SE/O/Central Circle submitted his written submissions as hereunder:

"The H.T. Supply of M/s.Gajanand Oil Mills was released on 28.11.1969 with the CMD 87.19 KVA. The CMD of the above consumer was derated from 87.19 KVA to 70 KVA with effect from 9.2.1978. Further additional load of 100 KVA was released on 25.03.1980 to the existing CMD of 70 KVA thus making total CMD of 170 KVA.

The consumer has represented to the Board in their letter dated 24.8.1984 for deration of CMD from 170 KVA to 130 KVA with immediate effect and reminded the same again on 24.12.1984. The request of the consumer for deration of CMD from 170 KVA to 130 KVA with immediate was negatived by the Board and informed that one year notice is required for deration of the CMD any time after 4 years of the commencement of the agreement vide Lr.No.DE(Coml)1/65/76-431 dt.29.12.2984. Further the CPDCL erstwhile APSEB collected only the bill amount as per terms and conditions of supply. No excess amount has been collected. The consumer still outstanding the due amount of Rs.1, 58,990.00 to the CPDCL for which RR Act Notices were issued.

As per clause No.26.10. of Terms & Conditions of supply, the CPDCL has the right to disconnect the supply for non-payment of any amount due to the CPDCL on any account fails to pay such dues. As per the above provision minimum charges are raised from the consumer from the date of disconnection i.e., 3.2.1994 to the date of termination of agreement i.e., till the end of June, 1994 an amount of Rs.1, 58,990.00 is pending.

As per the terms and conditions of supply interest @ 6% P.A. will be allowed on the deposit available with the CPDCL on live services which will be credited in the month of April CC Bill for every financial year. But in the case of this consumer, the available deposit i.e., Rs.1,45,500.00 was adjusted against the arrears, and interest is allowed up to June 1994.

The CPDCL erstwhile APSEB collected only the bill amount as per terms and conditions of supply. No excess amount has been collected. Still the consumer is due to the CPDCL an amount of Rs.3,28,156.00 (surcharges included up to 31.8.1998) for which RR Act Notices were already issued.

As per Section 56 of Indian Electricity Act, any sum due from any consumer, under this shall be recoverable after the period of two years from the date when such sum because first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity. As per the above Section, the arrears have been shown continuously as recoverable charges as this office also issued RR Act Notices to the consumer to recover the above said dues. Hence, the dues may not be said as Time Barred arrears.

Further to submit that as per consumer's request 10 installments were sanctioned by the erstwhile APSEB Vide Lr.No.CE(Comml.)/I/22/87-1520 dt.23.2.1996 and instructed the

S.E. to process the L.T. application of the consumer of payment of 50% of the dues. But consumer has never paid the single installment. The consumer has not come forward for arranging the 1st installment amount even after repeated reminders from this Office.

The Court directed the APSEB in the W.P.No.8493 of 2000 to consider the case for supply of 130 KVA under LT to the petitioner unit and pass appropriate orders within three months from the date of receipt of the order. Then the Managing Director of CPDCL wrote a letter to the consumer on 29.12.2001 saying that the consumer shall clear the dues @ Rs.25000.00 per month for availing LT supply. Again on 5.1.2002, the office again reminded the consumer to pay Rs.25000.00 and requested the consumer to contact DE/O/C.II/Hyderabad along with small scale industries Registration Certificate and L.T. application for taking further necessary action. But the consumer did not pay any amount nor contacted the concerned Officer.

After 1 ½ years i.e., on 8.1.2004, the CPDCL issued Form C as the amount is recoverable as an arrears of land revenue under Section 5 of erstwhile APSEB (Recovery of Dues) Act 1984. Then the consumer filed a case i.e., OSNo.2510 of 2004. This office filed its counter affidavit.”

5. The Forum examined the complainant Sri Kanaiah Lal Jawahar and recorded his statement. Sri S.Ramanja Naik, SAO/Operation/City Circle / Hyderabad was examined on behalf of the respondents.

6. After hearing both sides and after considering the material placed before the Forum, the Forum passed the impugned order as here under:

“After careful examination of the case on the available records and matter also, the Consumer has to pay all due amount immediately.”

7. Aggrieved by the said order, the appellant preferred this appeal questioning the same that the order of the Forum is perverse, arbitrary and illegal and without any evidence. The Forum failed to see that the collection of respondents is barred by limitation. The Forum has failed to observe that the respondents have not filed any petition / claim for recovery of the amount and they are not entitled for any relief or less than the relief granted by the Forum. The Forum erred in giving a conclusion that applicant is liable to pay Rs.1,57,902/- without there being any basis. The Forum has failed to consider the inconsistencies of the amounts mentioned and observed erroneously and outstanding amount of Rs.1,12,061/- without any basis. The Forum also failed to credit the interest on the security deposit and failed to order

for refund of the amount. The Forum also failed to consider the interest that if security deposit is given credit, there will not be any amount liable to be paid. The Forum ought to have ordered to calculate the amount after adjustment of the amount. The Forum also erred in charging four months monthly minimum charges. The Forum failed to consider about the excess amount paid for 170kVA inspite of the request made for deration to 130kVA and the Forum also failed to observe that the respondents are liable to pay Rs.1,26,485.95ps together with interest and the impugned order passed by the Forum is liable to be set aside.

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

9. The learned advocate for the appellant argued that the observation made by the Forum by coming to a conclusion that Rs.2,59,061/- is the outstanding amount by the date of disconnection is an utter falsehood and the calculation made in the impugned order is also incorrect and no reasons or the basis for the same are assigned in the impugned order. The respondents are not entitled to take the plea contrary to the plea taken already earlier by them. They have said at one breadth that the appellant is liable to pay Rs.2,59,061/- and in another breadth, they say that the appellant is liable to pay Rs.1,58,000/-. They cannot take different pleas and they are estopped from taking such pleas.

a) It is also further argued that the claim made by the respondents is barred by limitation u/s 56 (2) of limitation Act as the said amount is not continuously shown and this aspect has been lost sight of by the Forum while considering the issue involved therein.

b) It is also further argued that the appellant has been insisting upon for de-ration to 130kVA from the beginning, but they have not done but the appellant is paying the same @ 170 kVA rate and he is entitled for refund of an amount of Rs.1,26,485.95ps.

c) It is also further argued that the respondents are not entitled to adjust the security deposit without giving any notice and that he is entitled for recovery of the said amount @ 6% interest and he has finally submitted that all the above said grounds are sufficient to set aside the impugned order and the appeal preferred by the appellant is to be allowed by setting aside the impugned order.

10. Whereas Sri S.Ramanaik, SAO/Central circle, Sri A.P.B.Sampath, ADE/O/Azamabad, Sri A.Laxmaiah AE/O/Musheerabad, and Ms.A.Kalpana, Sr.Asst /HT/Central circle/Hyderabad for respondents who appeared before this authority have submitted that the Forum has observed making a calculation for Rs.1,57,902/- and that is the amount demanded and that the de-rating cannot be given without one year notice and before expiry of the agreement period and the appellant has requested this authority even before expiry of the said period and the same was also informed to him long back.

i) It is also further argued that the arrears are continuously shown in the account. There is no time limit u/s 56(2) if the amount is continuously shown and it cannot be urged that the claim made against the appellant is barred by time.

ii) It is also further argued that the appellant's service connection was disconnected on 03.02.1994 and the bill was stopped after making minimum charges till cancellation of the period and it cannot be said that the claim made by the respondents is not covered by any terms & conditions of the board. The department has been issuing arrears of an amount of Rs.1,58,978.78ps after adjustment of the security deposit amount duly informing the appellant.

iii) It is also further argued by the legal officer of the respondent that the claim made by them is under APSEB (Recovery of Dues) Act, 1984 and it cannot be said that it is barred by time and the appeal preferred by the appellant is liable to be dismissed.

11. It is an admitted fact that the appellant was given supply of 170kVA as it was increased from time to time up to 170kVA but on 24.08.1994, the appellant requested for de-ration from 170kVA to 130kVA but the same could not be done as the expiry of one year notice was not over as contemplated in the agreement and expiry of four years agreement was not completed.

12. It is also an admitted fact that the service connection was disconnected for non-payment of charges and the HT agreement was terminated from 03.06.1994. The appellant herein filed WP 8493 of 2000 in the Hon'ble High Court of Andhra Pradesh for grant of 130 kVA under LT and also questioned the disconnection order dated 03.02.1994 as arbitrary and illegal. The Hon'ble High Court passed its order on 15.11.2000 directing the respondents to consider the request of the petitioner to supply 130 kVA and pass appropriate orders within 3 months. The appellant has also filed OS 2510/2004 on the file of IX Additional Senior Civil Judge, City Civil Court, Hyderabad for the relief of rendition and settlement of accounts and the same was dismissed on 02.06.2008.

13. The important aspect which is to be looked into by this authority is the "Limitation Aspect" . The learned advocate for the appellant relied upon the following rulings:

- (1) The order in LPA 329 of 2007 in the High Court of Jharkhand at Ranchi M/s. Tata Steel Limited vs. Jharkhand State Electricity Board & ors.
- (2) Representation No. 60 of 2009 before the Electricity Ombudsman, Mumbai M/s. SS Industries vs Maharashtra State Electricity Distribution Co. Ltd
- (3) Order passed in Appeal No. 21 of 2011 dated 17.06.2011 passed by this Authority.

The above said decisions are in respect of S.56 (2) of EA 2003. Section 56(2) reads as follows:

“(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity:”

14. He has also relied upon another ruling reported in CDJ LJ 2005-APHC-719. This decision is only with regard to the pleading only on the aspect that a party cannot take a different stand than the stand taken earlier. There is no dispute with regard to this aspect and the party is not entitled to rescind from the earlier statement already made before the court.

15. So far as 56(2) of EA 2003 is concerned, it is a provision incorporated under the EA 2003. It has come into force w.e.f 10.06.2003. Whereas the claim made by the appellant is in the year 1994 as the disconnection was made on 03.02.1994. On the same day, the agreement in between the parties was also cancelled by 03.06.1994. The EA 2003 is not with retrospective effect , it is only with prospective effect. Therefore, the above provision of said Act including S.56(2) are not applicable to any of the cases prior to 10.06.2003. Hence, I am of the considered opinion that S.56(2) is not applicable to the present case. The above said rulings under S.56(2) are of no avail.

16. So, now the provisions of law applicable to the facts of the case are Electricity (Supply) Act, 1948 and Indian Electricity Act, 1910.

S.60-A of Electricity (Supply) Act, 1948 reads as follows:

[60-A. PERIOD OF LIMITATION EXTENDED IN CERTAIN CASES. –Where the right to recover any amount due to the State Government for or in connection with the consumption of electricity is vested in the Board and the period of limitation to enforce such right has expired before the constitution of the Board, or within three years of its constitution, then, notwithstanding anything contained in The Indian Limitation Act, 1908 (9 of 1908) or any other law for the time being in force relating to limitation of action, the Board may institute a suit for the recovery of such amount,-

(i) Where it has been constituted before the commencement of The Electricity (Supply) Amendment Act, 1966 (30 of 1966), within three years of such commencement; and

(ii) Where it has been constituted after such commencement, within three years of its constitution.]

S.24 of Electricity Act, 1910 reads as follows:

24. Discontinuance of supply to consumer neglecting to pay charge.

(1) Where any person neglects to pay any charge for energy or any [sum, other than a charge for energy], due from him to a licensee in respect of the supply of energy to him, the licensee may, after giving not less than seven clear days' notice in writing to such person and without prejudice to his right to recover such charge or other sum by suit, cut off the supply and for that purpose cut or disconnect any electric supply-line or other works being the property of the licensee, through which energy may be supplied, and may discontinue the supply until such charge or other sum, together with all expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer.

(2) Where any difference or dispute [which by or under this Act is required to be determined by an Electrical Inspector, has been referred to the Inspector] before notice as aforesaid has been given by the licensee, the licensee shall not exercise the powers conferred by this section until the Inspector has given his decision:

[Provided that the prohibition contained in this subsection shall not apply in any case in which the licensee has made a request in writing to the consumer for a deposit with the [Electrical Inspector] of the amount of the licensee's charges or other sums in dispute or for the deposit of the licensee's further charges for energy as they accrue, and the consumer has failed to comply with such request.]

These two sections have enabled the department the method for collection of arrears. It is only by filing a suit for recovery of the said amount. No other provision is incorporated nor brought before this authority to show the method of recovery of amount. The respondents have submitted the provisions of APSEB (Recovery of Dues) Act, 1984, making stress under S.5 which deals with right of the consumer to file a suit after paying all the dues within 6 months period. In this no procedure is contemplated as to how an amount is to be recovered by invoking the provisions of Revenue Recovery Act. Even otherwise no notice is served on the appellant under Revenue Recovery Act within the period of 3 years. The notices served by the respondents are after expiry of 3 years period. Even the notice from the MRO is

also after expiry of 3 years limitation period. Infact, it was issued in the year 2004 which is long after expiry of the cause of action.

The learned advocate for the appellant relied upon a ruling reported in CDJ 2000 Law Journal APHC page 319. (N.Radha vs. state of Andhra Pradesh Revenue Department)

“the claim of the respondent-Corporation that the petitioners are due an amount of Rs.2,46,218.70 pursuant to the term loan advanced to them in the year 1971 is barred by limitation and cannot be recovered under the provisions of the A.P.Revenue Recovery Act.”

17. In the above said ruling the FCI made a claim for Rs.2,46,218.70ps pursuant to the term loan advanced in the year 1971. The corporation sought to enforce its dues by the notice dated 05.10.1988 and 05.11.1988 against the petitioners. It is after expiry of 17 years, the said notices were issued. The Hon'ble High Court held that it is barred by time as the period of limitation was 12 years (mortgage debt or otherwise charged upon immovable property) under Art 62 of the Limitation Act.

The question that arises whether the claim of the respondent is barred by limitation and that question has to be adjudicated by this authority. In this case, the appellant has submitted a letter dated 24.12.1984 requesting the authorities to de-rate from 170 kVA to 130kVA with immediate effect from 28.08.1984. He addressed another letter dated 05.11.2001 with a request to enable him to pay 10 monthly equal installments of Rs.1,58,990/-. He also filed another letter addressed to the SE dated 05.01.2002 for de-ration from 170KVA to 130 kVA by putting some conditions including clearance of dues, etc. No record is placed before this authority that he has cleared arrears. Another letter was addressed by SE to the appellant to the effect that he has not responded even after a lapse of one and half year by complying conditions imposed earlier after ordering for de-ration, etc.

18. The SE submitted another letter dated 12.08.1996 permitting the appellant to pay the amount in 10 monthly equal installments. The respondents have submitted another letter dated 11.07.2007 addressed by SE to the District Collector to issue instructions to MRO/Musheerabad to take necessary action to recover the dues

under RR Act as early as possible. Another letter was addressed by SE on the same lines to the District collector. A copy of the order of WP 8493 of 2000 delivered on 15.11.2000 under which a direction is given to the respondents to consider the case of the petitioner for supply of 130 kVA under LT to the petitioner unit and pass appropriate orders within 3 months from the date of receipt of this order. Another letter dated 07.12.1995 was addressed to the appellant stating that the adjustment of Rs.1,45,000/- towards arrears and directed the appellant to pay the balance amount otherwise they would initiate the proceedings under RR Act.

19. The MD/APCPDCL addressed a letter dated 29.12.2001 to the appellant rejecting the request made by the appellant for de-ration due to the inaction of the appellant. The appellant has addressed a letter dated 11.09.1998 under which he requested Member Secretary to permit him to pay the outstanding amount of Rs.1,58,990/- in 10 equal monthly installments and with a request to provide service connection of LT supply in the place of terminated HT supply. The respondents have filed the copy of the judgment in OS 2510/2004 filed by the appellant against the respondents for rendition and settlement of accounts and the suit was dismissed on 02.06.2008 without costs. So, it is evident that the respondents have not filed any suit for recovery of the amount. There is no document filed before this authority showing the acknowledgment of the liability before expiry of the limitation of 3 years. In respect of the letter addressed by the appellant on 11.09.1998 with a request to permit him to pay for Rs.1,58,990/- in 10 monthly equal installments is concerned the claim for the amount is already barred by limitation. The cause of action has arisen on 03.02.1994 and 3 years period is expired by 01.02.1997.

The counsel for appellant has insisted about the variations in the figures assessed by the respondents. There may be some changes due to adding of some surcharges, etc but the appellant himself has also accepted the claim of Rs.1,58,990/-. So, there is no need to answer this aspect as it has become set at rest.

20. Furthermore, the respondents have not initiated proceedings under RR Act nor made any effort on those lines before expiry of 3 years period of limitation. Though they have not filed any suit for recovery of the amount, the limitation period prescribed under the above said Act is only to safeguard the interest of the licensees for recovery of the amount. So, it can be treated as a sword for recovery of the amount before expiry of the 3 years period. The same limitation period would become a shield to the respondents to avoid liability after expiry of 3 years period. It is a benefit enured for both the parties to invoke the provisions of the Act for recovery of the amount on either side, since the appellant is also claiming some amounts for recovery of the amounts. No effort is made by the appellant by filing a suit for recovery of the amount within the period of limitation of 3 years. When once a particular provision is incorporated for recovery of the amount, he cannot invoke RR Act ignoring the very limitation prescribed under the Act after expiry of the said period of limitation.

21. When the facts of the above said decision is looked into it is very clear that when once limitation is prescribed that cannot be bypassed by claiming that there is no limitation under the RR Act. If at all it has to be invoked, it should be before expiry of the limitation. The MRO has issued notice in the year 2004 for payment of Rs.3,28,155.50ps which is contrary to the claim made by them i.e, Rs.1,58,990/-. It is also long after expiry of 3 years limitation.

22. The principle enunciated and the facts of the above said case are akin and are almost similar to this case on hand. Under these circumstances, it is not possible for this authority to come to a conclusion that the claim made by the appellant is survived. No doubt, there is a litigation in between the parties at the behest of the appellant from 2000 to 2008. Even after disposal of the said suit, no effort is made by the respondents to invoke the above said RR Act or atleast to protect their benefits no effort is made by the respondents even after the disposal of the suit.

23. Except addressing letters by the respondent to the District Collector and letter addressed by MRO for Rs.3,28,155.50ps nothing is moved from the side of the District Collector. Had they initiated the proceeding before expiry of 3 years and if District Collector initiated action under RR Act, there may be some force in the contention raised by the appellant. No material is placed before this authority on those lines and therefore they are not entitled to claim the benefits under RR Act.

24. The claim is barred by limitation as the cause of action has arisen on 03.02.1994 or even 03.06.1994 on which date the termination of agreement was made. The period of 3 years is expired by 01.02.1997 or 02.06.1997. No action is initiated as per the Act. Therefore, the claim made by the appellant is barred by limitation. At the same time, the appellant is also not entitled for any amount since the same principle of limitation of 3 years is applicable *mutandis mutandis* to his claim.

25. In the result, the appeal is allowed and the impugned order is set aside and the claim made by the appellant is also rejected as barred by time. No order as to costs.

This order is corrected and signed on this day of 1st February 2012

VIDYUT OMBUDSMAN