



**BEFORE THE VIDYUT OMBUDSMAN
Andhra Pradesh :: Hyderabad**

:: Present ::

C. Ramakrishna

Date: 30-10-2015

Appeal No. 8 of 2015

Between

Sri. G. Sambasiva Rao, S/o. G. Venkateswara Rao, D.No. 9/103, Library Street,
Ventrappragada Village, Pedaparupudi Mandal, Krishna District

... Appellant

And

1. The AAO/APSPDCL/Gudivada Rural
2. The AE/Operation/APSPDCL/Pedaparupudi
3. The ADE/Operation/APSPDCL/Gudivada Rural
4. The DE/Operation/APSPDCL/Gudivada
5. The SE/Operation/APSPDCL/Vijayawada

... Respondents

The above appeal filed on 10-06-2015 has come up for final hearing before the Vidyut Ombudsman on 26-10-2015 at Vijayawada. The appellant, as well as respondents 1 to 4 above were present. Having considered the appeal, the written and oral submissions made by the appellant and the respondents, the Vidyut Ombudsman passed the following:

AWARD

2. The appeal arose out of the complaint of the consumer about the demand for special annual minimum guarantee raised by the DISCOM and the threatened consequential action for non-payment thereof.

3. The appellant stated in his appeal that he is the proprietor of M/s. Sri Venkateswara Trading Company; that he was demanded to pay an amount of Rs. 25,152/- under threat of disconnection of his domestic service; and that he need not pay the arrears demanded of him as the demand is barred by limitation and also is not legal. He enclosed copies of the correspondence in support of his contention.

4. Notices were issued for hearing the matter. The respondent AAO stated in his written submission that the service to the appellant was released on 13-02-2007 with a contracted load of 30 HP with special annual minimum guarantee of Rs. 1195/- per HP per year for a period of 5 years; that the shortfall on account of this guarantee for the years 2007 to 2008 amounting to Rs. 26,452/- was demanded in the month of June, 2009; that the consumer had then approached the CGRF and the CGRF vide its order in CG No. 62/2009-10 dated 25-01-2010 held that the consumer is liable to pay the amount demanded; that the consumer had paid these charges in the month of February, 2010 but left the regular CC charges of Rs. 12,679.32 unpaid as at the end of February, 2010; that the shortfall on account of special annual minimum guarantee for the years 2009 to 2011 amounting to Rs. 21,530/-, Rs. 22,530/- and Rs. 18,630/- respectively was demanded in the months of March, 2010 and March, 2013 respectively; that as the consumer did not pay these demands as well as the regular CC charges from July, 2009 onwards and hence the service was disconnected in the month

of September, 2009; that the consumer had ultimately to pay an amount of Rs. 87,752/- after adjusting the Security Deposit; that against this outstanding amount, the consumer had approached the SE seeking installments and paid three of the five installments granted, the fourth installment partially and defaulted on the fifth installment altogether; that thus an amount of Rs. 25,152/- was ultimately outstanding after accounting for the installments paid and the delayed payment charges; and that the DISCOM is acting in accordance with the regulations laid down by the APERC for enforcing payment of this outstanding arrear.

5. The other respondents did not file any separate written submission and instead supported the submissions made by the AAO.

6. During the course of the hearing, the appellant and the respondents confirmed what they stated in writing. The appellant questioned the demand on account of special annual minimum guarantee during the course of the hearings. The key points that arose for consideration in this appeal are:

- a. Whether or not the appellant is liable for the payment of special annual minimum guarantee; and
- b. Whether or not the CGRF's order needs to be interfered with in this case.

7. Coming to the first issue, it is observed that the consumer was released the service on 13-02-2007. The agreement relating the supply was entered into between the consumer and the DISCOM on 19-12-2006. Clause 11 of this agreement spoke of special annual minimum guarantee to the tune of Rs. 1195/- per HP. Though the

period for which this guarantee needs to be paid is not specifically mentioned, the respondents showed during the course of the hearings that the period was for five years in accordance with the GTCS. The GTCS being relied upon by the respondents was the old GTCS that was issued by APTRANSCO. The Hon'ble Commission had approved the GTCS in the year 2006 itself and the DISCOM ought to have entered into agreements of supply in conformity with the new GTCS that was approved by the Commission. Be that as it may, when the DISCOM and the consumer entered into the agreement, it was clear that there is a special annual minimum guarantee that is provided for. The consumer had paid the same for two years i.e., for 2007-08 and 2008-09 after an unsuccessful contest before the CGRF. It is only later on, apparently out of the economic difficulties faced by the consumer, that the issue of non-payment relating to the subsequent years arose. Mere economic difficulties faced by the consumer cannot be a reason for his reneging on the contract entered into by him.

8. For the sake of clarity and reasonableness, the *raison d'être* of this special annual minimum guarantee was looked into. Whenever a consumer applies for supply of power, the DISCOM prepares an estimate of all the charges for extension of supply. This estimate will include among other things, the cost of lines, the DTr etc. If a consumer pays this total cost before availing supply, then the DISCOM will not seek the special annual minimum guarantee. But if the consumer, instead opts to pay only a part of the estimate and avails the supply, the DISCOM will demand the special annual minimum guarantee, if and when the consumer's CC charges fall below the guaranteed minimum. In this case, the total estimate was for Rs. 1,79,090/-. But the consumer had paid only an amount of Rs. 62,300/- and availed the supply after entering into the agreement mentioning the special annual minimum guarantee. Thus, right from day one, the consumer is aware of his liability to this special annual minimum guarantee.

He had paid the same for the first two years viz., 2007-08 and 2008-09. It's only later on, that he started approaching the DISCOM for waiver of this amount. This authority sees no merit in the contention of the appellant here. Hence the issue is settled in favour of the DISCOM.

9. Before moving on, the contention of the appellant that the demand is barred by limitation is examined. The outstanding amount arose out of the non-payment of the demand on account of special annual minimum guarantee that was raised properly on the consumer in time. So, the question of it being barred by limitation does not arise. The contention of the appellant that the DISCOM cannot demand the arrears on account of res judicata also is totally flawed. The appellant approached the Forum first in January, 2010 contending among other things the demand on account of special annual minimum guarantee. The Forum had then clearly ruled in favour of the DISCOM. So the question of the respondent's demand for special annual minimum guarantee for the subsequent periods will not be covered by res judicata. The appellant, it is clear, is only raising the issue without any merit.

10. Coming to the CGRF's order, it is seen that the CGRF had correctly upheld the action of the DISCOM as it was in accordance with the regulations laid down by the Hon'ble Commission. Therefore, there is no need to interfere with the order issued by the CGRF.

11. Coming to the issue that the consumer is being threatened with disconnection of his domestic service for non-payment of the arrears relating to his business service, it is to be seen that the Hon'ble Commission had clearly laid down in the regulations that the DISCOM is entitled to do so. The relevant portion of Clause 4.8.1 of the

Supply Code, needs to be referred to in this regard:

Where any consumer defaults in payments of Charges for the supply of electricity, and / or any other sums payable to the Company under the contract of supply agreement, the Company, may, without prejudice to its other rights cause to disconnect all or any of the other services of the consumer within the area of supply of the Licensee, though such services be distinct and are governed by separate agreements and though no default occurred in respect thereof.

12. A plain reading of the above makes it clear that the safeguard is provided for to protect the DISCOM from unscrupulous people who keep logging up arrears on one connection and keep enjoying the service on other connections. In the present case also, the consumer was engaged in running a rice mill. He logged up arrears on the service connection for the mill. Now when the DISCOM is threatening him with disconnection of his residential service for non-payment of the arrears relating to the rice mill, he is seeking relief from the coercive action of the DISCOM. There is no merit in the plea raised by the appellant. The appellant is liable to pay the outstanding arrears.

13. Therefore, the appeal filed by the appellant fails and is dismissed in toto. The DISCOM is free to recover the outstanding arrears -- even by threatening to disconnect the residential service of the appellant, as such a course of action is well within the limits of law.

14. This order is corrected and signed on this 30th day of October, 2015.

15. A digitally signed copy of this order is made available at www.vidyutombudsman.ap.gov.in.

VIDYUT OMBUDSMAN

To

1. Sri. G. Sambasiva Rao, S/o. G. Venkateswara Rao, D.No. 9/103, Library Street, Ventrapragada Village, Pedaparupudi Mandal, Krishna District
2. The Assistant Accounts Officer, Electricity Revenue Office, Rural, APSPDCL, Gudivada, Krishna District - 521 301
3. The Assistant Engineer, Operation, APSPDCL, Pedaparupudi, Krishna District -521 263
4. The Assistant Divisional Engineer, Operation, APSPDCL, Gudivada Rural, Krishna District - 521 301
5. The Divisional Engineer, Operation, APSPDCL, Gudivada, Krishna District - 521 301
6. The Superintending Engineer, Operation, APSPDCL, Near PWD Ground, Opp. Rythu Bazar, Vijayawada 520 002

Copy to:

7. The Chairman, C.G.R.F., APEPDCL, P & T Colony, Seethammadhara, Near Gurudwara Junction, Visakhapatnam - 530 013
8. The Secretary, APERC, 11-4-660, 4th Floor, Singareni Bhavan, Red Hills, Hyderabad - 500 004