



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

:: Present ::

N. Basavaiah, B.Sc, B.L.

Date: 22- 06-2020

Appeal No. 01 of 2020-21

Between

Sri E.Venkateswara Rao, D.No.6-148, 1st ward, Kamavarapukota, W.G.District
– 534 449

... Appellant-complainant

And

1. Assistant Engineer/operation/K.Kota/APEPDCL/K.Kota, W.G.District
2. Assistant Accounts Officer/ERO-Jangareddy Gudem/APEPDCL
3. Assistant Divisional Engineer/operation/K.Kota/APEPDCL
4. Divisional Engineer/operation/Jangareddygudem/APEPDCL

....Respondents

ORDER

The above appeal- representation came up for final hearing, by way of Video Conferencing, before the Vidyut Ombudsman at the office of the Superintendent Engineer (Electricity Operation), Vijayawada on 15-06-2020. The complainant and the respondents, except the fourth respondent, were present. Having considered the appeal-representation and the submissions of the above parties present, the Vidyut Ombudsman passed the following:

1. This appeal has been preferred by the appellant-complainant against the order **dated.14-10-2019 in C.G.No:385/2018/Visakhapatnam circle**, passed by the **Forum for Redressal of Consumer Grievances in Eastern Power Distribution Company of A.P Limited, Visakhapatnam**, whereby and where-under the above Forum dismissed the complaint filed by the appellant complainant questioning the manner of the distribution licensee in transferring the title of Agricultural electricity Service Connection No. 1975 of Kamavarapukota village standing in the name of one Sri.N.Rosaiah (father-in-law of the complainant) to one Smt. Batchu Usharani and praying to cancel the above transfer of title of the said agricultural service connection.

2. The facts leading to file this appeal representation are that one Nallamotula Rosaiah had obtained the above agricultural service connection for his land, an extent of Ac.3. 91 cents in survey no. 1/3 of Kamavarapukota village, and died on 09-01-2010 leaving behind him, his two sons and two daughters, and his two sons and one daughter alone executed a registered sale deed with respect to the above land in favour of one Smt. Batchu Usharani on 11-02.2012. Another daughter, Smt.E.N.V.Satyavathi, wife of the complainant, is not a party to the above sale transaction. Smt.Usha Rani got the title of the above service connection transferred in her name in the month of May,2014 as per Ex-A3. The wife of appellant complainant filed a suit in O.S.No. 308/2015 on the file of Principal Senior Civil Judge, West Godavari for partition of the above land besides other properties and for separate possession of her share. The complaint had been filed by the husband of Smt.Satyavathi ,before the Forum, alleging that as

the service connection was transferred without the consent of his wife, the transfer of title of service in this case is improper and as such, he sought for the relief claimed supra. The case of the respondents 1 & 2 is that the above service connection was transferred on a proper application and on the basis of the approval by the 4th respondent, DE/Operation. The order of the Forum shows that Smt.Usha Rani, who is not a party to the complaint, also filed objections stating that the complainant has no right to file this complaint. Thereafter, Smt.Satyavathi, wife of the complainant, filed a complaint for the same relief. The Forum mentioned in its order that as Earla Naga Venkata Sathyavati, the wife of the complainant, filed a separate complaint during the pendency of this matter before it for the same relief, the said complaint is merged with the case on hand.

3. No oral evidence was adduced on behalf of both parties. Ex-A1 to A4 were marked by consent. After considering the material available on record, the Forum dismissed the complaint on the basis of the alleged possession of the land in question as claimed by Smt.Usha Rani by quoting the provision of law laid down under sections 43 and 46 of the Electricity Act,2003. Not satisfied with the above order, the complainant preferred this appeal-representation. No further evidence had been adduced before this authority.

4. The appellant complainant submitted that Ex.A3, Application for transfer of title of service, signed by the sons of consumer(N.Rosaiah) alone before the first respondent, reads that Sri.Nallamotula Rosayya himself as a consumer transfers his service to Smt. Usharani, as if Sri.N. Rosaiah were alive as on that date and as such, the transfer of title of service under Ex.A3 is void, that at that time, the first respondent ought to have questioned why Sri.N. Rosaiah did not

sign Ex.A3 application, that though the department people were aware that the original consumer, Sri N. Rosaiah, was no more, yet the department people did not insist upon production of the legal heirs certificate of Sri.N. Rosaiah or the family member certificate of late Sri.N. Rosaiah, that the attestors column provided in Ex.A3 application is kept blank, that though the above aspects were raised by him before the Forum, it did not consider his submissions in the order and that the department people colluded with Smt. B.Usharani and got the service connection transferred in her name improperly and as such, the service connection transferred in the name of B.Usharani is liable to be set aside. He also submitted that there is no evidence that Smt. B.Usharani was an occupier of the said premises .

5. The respondents submitted that basing on the registered sale deed dated.11.02-2012 and the actual possession of the land, the service connection was transferred in the name of Smt. B.Usharani, that there is no documentary evidence available on record to show that B.Usharani was in actual occupation of the premises and that they are not the persons present at the time of transferring the service connection in the name of B.Usharani and that they will abide by the decision of this authority.

6. The following point is framed for determination:

Whether the representation can be upheld?

7. Point:At the outset, I would like to say that the Forum ought to have returned the complaint of Sri E.Venkateswara Rao, and it ought to have made an independent enquiry on the complaint of Smt.E.N.V.Satyavathi and disposed of it alone, as per the prescribed procedure laid down in the APERC Regulation

No.3/2016, as Sri E.Venkateswara Rao, who filed the complaint, will not come within the meaning of the 'complainant' given in the Regulation No.3/2016, and as merging the complaint of Smt.E.N.V.Satyavathi, without following the prescribed procedure up to filing the responses by the respondents, with another complaint at the time of dictating the order after conclusion of the enquiry in the first complaint, is not legally sustainable. To substantiate the above view of mine, we have to see first whether Sri. E.Venkateswara Rao, who filed the complaint, will come within the meaning of the word "complainant" given in the Regulation No.3/2016 or not. In view of the above, it is necessary to go through the meanings of the words "grievance" and "complainant", given under rules 2.7 and 2.4. of the Regulation 3/16 and they are as follows

2.7 "Grievance" means consequence (s) of any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance or failure of performance of a duty under the Act or the Reform Act or the Rules or the Regulations made there-under or any policy directions or orders of the Commission or any other law for the time being in force, by the distribution licensee by which a complainant is aggrieved.

2.4 "Complainant" means and includes the following who have a grievance as defined in the Regulation

- a) A consumer as defined under Clause (15) of Section 2 of the Act*
- b) An applicant for a new electricity connection*
- c) Any registered consumer association*
- d) Any unregistered association or group of consumer, where the consumer have common or similar interests and*
- e) An occupier of a premises to which electricity is or has been supplied by a*

Licensee:

f) In the case of death of consumer, his/her legal heir(s) or representative (s).

In view of the above sub-clause(a), it is necessary to go through the definition or meaning of the word "consumer" given in section 2(15) of the Electricity Act, 2003 and it runs as follows:

"Consumer" means any person who is supplied with electricity for his own use by licensee or the Government or by any other person this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;

Sri. E.Venkateswara Rao, is not the person, who is supplied with electricity for his own use by the distribution licensee. It is not his case that his premises are connected for the purpose of receiving electricity with the works of the licensee. So, we can hold that Sri. E.Venkateswara Rao, is not a consumer as per the meaning given under section 2(15) of the Electricity Act, 2003 and as such, we cannot treat him as "complainant" within the purview of the clause 2.4 (a) of the Regulation 3/2016. There is no material available on record to hold that he will fall under any one of the sub clauses from (b) to (f) of the Clause 2.4 of the Regulation 3/2016. Therefore, we can safely conclude that Sri. E.Venkateswara Rao, will not fall within the meaning of the word "complainant" given under the above clause of the Regulation No.3/2016. Once it is held that Sri. E.Venkateswara Rao, who filed the complaint, will not come within the meaning of the word "complainant" as stated supra, his alleged grievance cannot be redressed by the Forum or by this authority. Smt.Satyavathi being a legal heir of late Sri.N.Rosaiah will come within the definition of the 'Complainant' as stated

in the sub-clause(f) of the clause 2.4 of the above Regulation No.3/2016.

8. Now, we have to see whether merging the complaint of Smt. Satyavati is correct or not. Merging the complainant like in this case is not contemplated in the Regulation No.3 /2016. As per the Clause No.12.7 of the above Regulation, the Forum may regulate its own procedure, but it is subject to the provisions of that Regulation. As per the provisions of the above Regulation, the secretary of the Forum has to make scrutiny of the complaint and obtain the orders of the Forum for admission of the hearing, the Forum has to issue notices to both parties, the respondents shall file the responses; the parties have to lead evidence and on conclusion of enquiry, the Forum has to pass reasoned orders. The procedure, after filing the complaint before the Forum, to be followed up to the responses being filed by the respondents as stated supra, is not followed in this case, and merging the complaint of Smt.Satyavathi with the complaint of her husband without following the above stated procedure is not legally sustainable.

9. So far as the submissions of parties are concerned, I am of the view that they need not be considered in view of my opinion that Sri. E.Venkateswara Rao will not fall within the meaning of the word "complainant" given under the Regulation No.3/2016 and in view of no finding given by the Forum on the above aspects. Apart from it, the reasons of the Forum for dismissing the complaint are not legally sustainable. Sections 43 and 46 of the Electricity Act,2003 coupled with the alleged possession of Smt.Usha Rani were mainly relied upon by the Forum in its order to dismiss the complaint, but they have no application to the present facts of this case because they are relevant only for obtaining supply of electricity from the licensee but are irrelevant considerations for transfer of title of service

as in this case. The questions to be seen in the complaints of this nature are (1) whether the transfer of title of service has not been made in accordance with the prescribed procedure, if any, and (2) whether the transfer of title of service can be cancelled on the ground that the prescribed procedure was not followed, but those questions were not considered by the Forum. Without considering the above questions by the Forum, considering those aspects for the first time by the appellate authority is not proper. For the above reasons, I hold that the appeal-representation can be upheld. This point is, thus, answered.

10. In the result, I allow the appeal-representation, set aside the order of the Forum and direct it to return the complaint to Sri.E.Venkateswara Rao, the alleged complainant, in this case, and I further direct the Forum to dispose of the complaint of Smt. Erla Naga Venkata Satyavati alone as per the provisions of the APERC Regulation No.3/2016 coupled with the observations made by this authority in the order stated supra.

11. A copy of this order is made available at
www.vidyutombudsman.ap.gov.in

This order is corrected and signed on 22nd June,2020.

Sd/- N.Basavaiah

VIDYUT OMBUDSMAN

To

1. Sri E.Venkateswara Rao, D.No.6-148, 1st ward, Kamavarapukota, W.G.District – 534 449
2. Assistant Engineer/operation/K.Kota/APEPDCL/K.Kota, W.G.District
3. Assistant Accounts Officer/ERO-Jangareddy Gudem/APEPDCL

4. Assistant Divisional Engineer/operation/K.Kota/APEPDCL
5. Divisional Engineer/operation/Jangareddygudem/APEPDCL

Copy To:

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

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