



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

:: Present ::

Vinnakota Venkata Prasad
Former District & Sessions Judge
Vidyut Ombudsman

Date: 04-08-2022

Inward No.113 dated 19-07-2022

Between

K. Venkata Ramaiah, S/o. K. Subbaramaiah, 25/I/838(A), 8th Street, Nethaji Nagar, Podalakur, Nellore Dt. Complainant

And

1. The Superintending Engineer, S.P.D.C. of AP Ltd, Assessment Circle, Tirupati
2. K. Aadiseshaiyah, Superintending Engineer, S.P.D.C. of AP Ltd, Assessments Circle, TirupatiRespondents

This representation having come up for hearing on its maintainability before me on 01-08-2022 at the office of the Vidyut Ombudsman-AP, Vijayawada in the presence of the complainant, and stood over for consideration till this day and the Vidyut Ombudsman delivered the following:

ORDER

1. Having been aggrieved by the orders dated 27-06-2022 rendered by the Forum for Redressal of Grievances of the Consumers in Southern Power Distribution Company of A.P Limited, Tirupati in Inward No.3403/2022-23/Nellore Circle, the complainant therein presented the present representation under clause 18 of Regulation No.3 of 2016 seeking Redressal of his grievance as regards the Appeal Order passed by the Superintending Engineer, Assessments, APSPDCL, Tirupati in D.No.203/2022 dated 25-02-2022, where under the representationist was directed to pay Rs.23485/-.

2. The CGRF rejected the complaint presented by this representationist on the ground that the complaint presented against the orders under section 126 of the Electricity Act, 2003 is liable for rejection in view of clause 10.2 (b) of Regulation No.3 of 2016, and also in accordance with the provisions of Order II Rule 2 read with Section 10 and 11 CPC and by placing reliance on the ratio laid down in the case in between "Gammon India Ltd and another Vs National Highways Authority of India" reported in AIR 2020 Delhi 132, where in it was held by the Hon'ble High Court of Delhi, ' It would be impermissible for adjudication process In India to allow claims to be raised at any stage and refer to multiple arbitral tribunals, sometimes resulting in multiplicity of proceedings and also contradictory awards."

3. This office of ombudsman *inter alia* raised an objection as regards the maintainability of this representation in view of clause 19.3 (b) of Regulation No.3 of 2016, since the dispute relates to assessment contemplated under section 126 of the Electricity Act, 2003 for unauthorized use of electricity.

4. Thereupon this representationist re-presented the representation asserting its maintainability before this Ombudsman and complying certain other objections. The other objections raised are not germane for consideration of the maintainability of this representation before this Ombudsman and as such the same are not set out .

5. As regards to maintainability of this representation, the complainant / representationist submitted in his re-presentation that the inspection notes dated 22-08-2019 connected to Service Connection No.3311208137158 discloses that the said service connection was being utilized for domestic service under Category-I; that the said inspection notes was fabricated without obtaining the signature of the consumer, distribution officer and

witnesses; that as the inspection notes was prepared on 23-08-2019, and as the orders of department do not contain the mention of the section 126 of the Act, this dispute does not fall under section 126 of the Electricity Act, 2003. It is further stated that the CGRF delivered the order without examining the complaint under Inward No.3402/2022-23/Nellore Circle and Representation inward No.28 dated 27-04-2022, which was returned on 29-04-2022 and delivered on the material under Inward No.3403/2022-23/Nellore Circle and the Representation under inward No.33 dated 29-04-2022. It is further contended that the name of the inspecting authority is not written in Block Letters and that the inspection report is left with blanks and that the appeal order does not contain the reference to section 126 of Electricity Act and that the name of the consumer is mentioned differently in the inspection report and that the inspection report also reads that the service connection was used for the one that was granted.

6. As such, a notice was issued to the representationist to appear before this authority for hearing on the maintainability of the representation. He was directed to be present either in person or through video conference at 11 AM on 01-08-2022 for advancing his contention as regards the maintainability of this representation before this Ombudsman.

7. Pursuant thereto, the representationist was physically present and advanced his arguments. He contended the same objections as written in the representation endorsement.

8. Now the point for consideration is whether this representation is sustainable in view of the proscriptions contemplated under clause 19.3 (b) of Regulation No.3 of 2016 ?

Point:

9. It is contended by the representationist/complainant that for various lapses committed by the authorities concerned, the assessment or assessment order does not fall within the ambit of section 126 of the Act. Even if there is any lapse on the part of the inspecting authority or the appellate authority contemplated under sections 126 and 127 of the Electricity Act, 2003, the same cannot change the nature of the assessment made by the officer or appellate authority.

10. As stated in the inspection report, it is made for the unauthorized use of electricity for water treatment plant though the service connection was obtained for domestic purpose. Consequently, this assessment was made. The truth or otherwise of the same does not fall for consideration while considering the maintainability of this representation before this authority.

11. Evidently, the final assessment was made under DPE/NELT/NEL1/7090/19 in connection with the service connection number 33112208217619 under 126 of the Act for unauthorized use of electricity as is seen from the Final assessment order. Thereupon this consumer is also said to have filed an appeal against the said order. Appeal is provided under section 127 of the Act against the order made under section 126 of the Act. Copy of the inspection report also carries mention as regards the unauthorized use of electricity in consequence of which, the final assessment was made by the assessing authority and questioning the same, the representationist also preferred an appeal as is provided under section 127 of the Act and it was disposed on 25-02-2022.

12. Unauthorized use of electricity is defined under Explanation (b) (iv) of section 126 of the Electricity Act, 2003 which reads that usage of electricity for the purposes other than sanctioned one amounts to unauthorized use of

electricity. Thus, as is defined under section 126 of the Act, change of user amounts to unauthorized use of electricity and for the same, the same section enunciates the procedure for making provisional assessment and later final assessment and against the said order an appeal is also provided under section 127 of the Electricity Act, 2003.

13. As seen from the final assessment order and the appellate order filed by the representationist would go to show that during inspection, it was noticed that there was malpractice by way of the usage of power from domestic service connection for the purpose of some water treatment plant.

14. Thus the breach as pointed out in the inspection report falls within the ambit of unauthorized use of electricity for the purpose other than the one for which it was sanctioned. If there is any lapse in following the procedure contemplated under those sections for assessment, such lapses or the discrepancies if any cannot take out the orders of provisional assessment or final assessment or the order of the Appellate Authority from out of the ambit of section 126 and 127 of the Electricity Act, 2003. Those lapses as contended by the complainant do not fall for consideration at this stage.

15. When the merits of the case are to be examined, merit of the lapses pointed out shall have to be looked into.

16. In case this question of the maintainability of this representation before this authority is found to be in the affirmative, there arises the occasion for consideration of such lapses pointed out by the complainant.

17. Thus, the fulcrum of the issue of the maintainability of this representation revolves around the purpose or interpretation of the word 'may' occurred in clause 19 (3) of the Regulation 3 of 2016. This clause lays down certain proscriptions and contemplates the rejection of the representation where the matter falls under sub clauses (a) to (c).

18. As such it is beneficial for incorporation of the said clause hereunder.

Clause 19.3 of Regulation No.3 of 2016 reads as follows:

“19.3 The Vidyut Ombudsman may reject the representation at any stage under the following circumstances:

- a) in cases where proceedings in respect of the same matter and between the same Complainant and the Licensee are pending before any court, tribunal, arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority:**
- b) in cases which fall under Sections 126, 127, 135 to 139 and 152 of the Act:**
- c) in cases where the representation**
 - i) does not disclose a cause of action:**
 - ii) appears ex-facie to be barred by any law : or**
 - iii) is re-presented without rectifying the defects for the correction of which it was returned or beyond the time specified in the endorsement of return.**

Provided that no representation shall be rejected unless the complainant has been given an opportunity of being heard”.

19. For consideration of the proscriptions contemplated under the clause 19.3 of the Regulation 3 of 2016, the interpretation of 'may' couched in clause 19.3 becomes pivotal for consideration. It is well settled in law that while considering any provision, where the word 'may' couched in such provision of law, cannot always be construed as discretionary.

20. The word 'may' used in any clause or Act shall have to be interpreted in the context that occurred in the said provision. Thus, depending upon the

context of its use in the provision, it shall have to be interpreted whether the 'may' couched in the said provision is only discretionary or directory.

21. Hon'ble Supreme Court of India in the case in between Mohan Singh and others Vs International Air port Authority of India and others, reported in 1997 (9) SCC 132 laid down that the directory or mandatory nature of the words 'may' or 'shall' would depend upon the language couched in the Statute under consideration and its object, purpose and effect.

22. The circumstances contemplated under the said clause leading to rejection of the representation are set out supra.

23. Thus when the same subject matter is pending or decided by some other court or forum, though the word 'may' is used, the Ombudsman cannot be expected to hear and decide the same whether in consonance with the decision of the court or repugnant to the said earlier decision rendered by such court or forum, and he cannot also entertain to decide the dispute when it is pending before any other Court or Forum. As such the word 'may' in the said circumstance evidently shall be construed as mandatory but not directory.

24. Similarly, where the grievance sought to be redressed is barred by law, in such a case also, the Ombudsman cannot hold that the word 'may' used in this provision is discretionary and he can entertain any representation barred by any law.

25. Sub clause (b) deals with the proscription where the matter falls under sections 126, 127, 135 to 139 and 152. As regards sections 135 to 139 is concerned, Special courts are constituted. As such the Ombudsman cannot entertain such dispute when the Statute mandated that it shall have to be decided by a special court. These sections 126 and 127 also occur in the same sub-clause. Sections 126 and 127 which deal with the assessment for

unauthorized use of electricity provides provisional assessment, final assessment and an appeal under the said act and the Act under section 127 (4) confers finality to the said order of appellate authority. Thus, the word 'may' occurred in this provision cannot be read differently for the issues relating to the sections referred in the same sub clause.

26. Sub clause 3 of Clause 3 of Regulation 19 also deals with the situations where there is no cause of action and where the same was represented to reject the representation.

27. Thus, as is demonstrated supra the word 'may' used in the said clause cannot but be construed as mandatory and no discretion is left.

28. In fact, the word had to be occurred in the said provision though all the proscriptions contemplated under the sub clauses there under are mandatory, some discretion is left with the Ombudsman **as regards the stage of the matter.** Even if it is numbered or even if it is coming for hearing or heard, it shall have to be rejected. In the light of this mandate for rejection of the representation touching the sub clauses under Clause 19 (3) of at any stage, the word 'may' appears to have occurred though there lies no discretion or authority in the Ombudsman except to reject the representations touching the sub clauses of Clause 19 (3).

29. In the light of the afore said discussion, I am of the humble opinion that this representation is unsustainable before the Ombudsman as the matter relates to section 126 and 127 of the Electricity Act. Of course for the mere reason that this Ombudsman cannot entertain this petition does not leave the complainant remediless as the prohibitions contemplated in this regulation under Clause 19 operates only when the jurisdiction of the Ombudsman is sought to be invoked. Naturally, the embargo contemplated under this clause

does not apply to the other Forums if any vested with the Authority to deal with these assessment cases.

30. Of course, it appears, my learned predecessor entertained certain representations against the orders relating to Section 127 by construing the word 'may' discretionary. But in my humble view, his view does not appear to be plausible in the circumstances narrated supra . Further his order cannot bind me or act as precedent much less in the light of the demonstration of the situations in which the word 'may' occurred in the said provision and its mandatory nature. As such this representation entails in rejection.

31. In the result, this representation is rejected. No costs.

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

Typed to my dictation by the Private Secretary, corrected, signed and pronounced on this the 4th day of August, 2022.

**Sd/- Vinnakota Venkata Prasad
VIDYUT OMBUDSMAN, AP**

Copy To

1. K. Venkata Ramaiah, S/o. K. Subbaramaiah, 25/I/838(A), 8th Street, Nethaji Nagar, Podalakur, Nellore Dt.

Copy of the order is not forwarded to the respondents as the representation is not taken on file by this authority.

Copy to

2. The Chairperson, CGRF, APSPDCL, 19/13/65/A, Srinivasapuram, Near 132 KV sub-station, Tiruchanoor Road, Tirupati - 517 503.
3. The Secretary, Hon'ble APERC, 11-4-660, 4th Floor, Singareni Bhavan, Red Hills, Hyderabad - 500 004.