



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

:: Present ::

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

Date: 04-09-2020

Appeal No.03 of 2020-21

Between

A.Venkata Adinarayana Reddy, S/o A.Narayana Reddy, Sree 7 convention Centre, Gutti Road, Anantapuram

... Appellant

And

1. Assistant Accounts Officer / APSPDCL/**Anantapuram Town**
2. The Assistant Executive Engineer/O/APSPDCL/**Anantapuram D6**
3. The Deputy Executive Engineer /O/APSPDCL/**Anantapuram Town-II**
4. The Executive Engineer / Operation / APSPDCL/**Anantapuram**

....Respondents

ORDER

The above appeal- representation came up for final hearing, by way of Video Conferencing, before the Viduyut Ombudsman at the office of the Superintendent Engineer (Electricity Operation), Vijayawada on 28-08-2020. Sri.B.V.Krishna Reddy, advocate for the appellant-complainant, and the respondents, except the fourth respondent, were present. Having considered the appeal-representation and submissions of the above parties present, the Viduyut Ombudsman passed the following:

1. This appeal-representation has been preferred by the appellant-complainant against the order **dated.04-02-2020 in C.G.No. 159/2019-20/Anantapur Circle,** passed by the **Forum for Redressal of Consumer Grievances in Southern Power Distribution Company of A.P Limited, Tirupati,** whereby and where under the above Forum dismissed the complaint by stating in its order "There is no evidence on the record to disbelieve the version of the inspecting officer that he found the consumer is using domestic service for non-domestic use" with an observation that the Forum may also reject the complaint at any stage in cases which fall under sections 126, 127,135 to 139 and 152 of the Electricity Act,2003, as per the clause 10.2 of the APERC Regulation No.3/2016..

2. The undisputed facts are that in Anantapur Town, the appellant complainant has a building with 4 floors, besides a ground floor, and he, on 14-05-2018, obtained three commercial service connections bearing service numbers : 711301-166291, 711301-166293 & 711301-166294 to the ground. first and second floors, respectively, for running a lodge / convention Hall', besides a domestic service connection bearing No. 711301-166292 with a contracted load of 15 KW to a duplex house in the third and fourth floors, of the above building and that the house warming, with respect to the above building, was held on 16-06-2018.

3. The case of the appellant complainant is that the domestic service connection No. 711301-166292 was never used for any commercial purpose and as such, a case of malpractice booked against him by the inspecting officer may be withdrawn.

4. The case of the respondents is that on 05-03-2019 at 10:30 AM, the second respondent inspected the premises of the above domestic service connection and found that the electricity supply from the above domestic service connection was being utilized for an air water heat pump motor of the lodge and also, for building construction purpose of the 3rd & 4th floors, that provisional and final assessment orders were served upon the complainant and that thereafter, the SE/Assessment/Tirupati also dismissed the appeal of the appellant complainant.

5. No oral or documentary evidence was adduced by both parties. After considering the material available on record, the Forum dismissed the complaint as stated supra. No satisfied with the above order, the complainant preferred this appeal representation.

6. The advocate for the appellant complainant submitted the undisputed facts of the case stated supra, and he also further submitted that after house warming ceremony, the appellant complainant took-up work for modification in the premises for VAASTU purpose and as such, it is purely a domestic work and it is not at all a commercial purpose ; that the Forum without any evidence dismissed the complaint and that the appellant complainant was not present at the time of the inspection. The respondent submitted that the air water heating pump was connected to domestic service connection and the water from it was being utilized for lodge purpose, that the electricity supply from the above domestic service connection was connected for hand grinding machine and hand cutting machine in the 3rd & 4th floors and thus, the appellant complainant used electricity from domestic connection for commercial purpose ; that the son of the appellant complainant by name Sri A.Arjun Reddy was present at the time of

inspection, and he signed the inspection report prepared by the second respondent and that the appellant complainant did not exhaust his statutory remedies provided in the Act before approaching the Forum and as such, it can be inferred that there is a truth in the case of respondents that the appellant complainant indulged in unauthorized use of electricity. The counsel for the appellant complainant in his reply submitted that in the Order of the Forum, it is clearly mentioned that the complainant exhausted his statutory remedies available before he approached the Forum, and there is no merit in the submission made by the respondents. After verifying the order of the Forum, the respondents conceded that the complainant exhausted his remedies available in the Electricity Act.

7. The following points are framed for consideration :

1. Whether the view of the Forum " there is no evidence on the record to disbelieve the version of the inspecting officer that he found the consumer is using domestic service for non-domestic use" is not correct and sustainable in law?

2. Whether the representation can be upheld?

8. **Point No.1:** At the outset, I would like to say that the Forum passed the order not in accordance with the provisions of APERC Regulation No.3/2016. The Forum has to determine the complaint on merits on the pleadings and evidence available on record, as per the clause 12.3 of the Regulation No.3/2016, and pass reasoned orders, as per the clause 13 of the above Regulation. Even this authority has to settle the representation on merits on the pleadings and evidence available on record and has to pass reasoned orders. In this case, only pleadings besides

submissions of both sides are available without any evidence. The Forum in its order stated "there is no evidence on the record to disbelieve the version of the inspecting officer that he found the consumer is using domestic service for non-domestic use". But the nature of evidence expected from a consumer to disbelieve the version of the inspecting officer stated supra is not stated by the Forum in its order. I am unable to understand what type of evidence can be adduced by a consumer like the complainant in this case to prove that he is not using the electricity for commercial purpose from domestic service connection. It is the case of the respondents that the complainant was indulging in unauthorised use of electricity, whereas the complainant denied the same. The assertion of the respondents is positive. So, it is for the respondents, who alleged that the complainant was indulging in unauthorized use of electricity, to prove that the complainant was indulging in unauthorised use of electricity. Therefore, I am of the view that the above view/ finding/observation of the Forum is absurd. Except the alleged inspection report, there is no other material placed by the respondents to accept their case. Even the report of the inspecting officer is not marked by consent as an exhibit, and as such, it has no evidentiary value. The Forum did not cite any provision of law to hold that the report of the inspecting officer can be used and read as evidence without examining the maker of it or without marking it as an exhibit by consent. In my view, unless the maker of the inspection report is examined, we cannot look into the contents of it. Thus, there is no evidence on the above aspect. The main submissions made on behalf of the respondents touching this point cannot be appreciated without any evidence, but I hold that there is some merit in the submission made on behalf of the appellant complainant by his advocate that the forum decided the complaint without any

evidence. The advocate for the appellant did not place any authority to support his other submission that after house warming ceremony, the appellant complainant took-up work for modification in the premises for VAASTU purpose and as such, it is purely a domestic work and it is not at all a commercial purpose. The above submission is made for the first time before this authority without any pleadings. Hence, it is difficult for this authority, at this stage, to appreciate the above submission .However, It can be understood that the Forum did not properly answer the point whether the complainant was indulging in unauthorized use of electricity or not. Therefore, I am of the view that the order of the Forum is not a reasoned order and is not correct and sustainable in law. The first point is thus answered.

9. **Point No.2:** There is no dispute that the Forum has got discretion to reject the complaint as stated by the Forum, but the Forum also has to assign reasons even for rejecting the complaint. However, in this case, the complaint was only dismissed but not rejected. This is not the case where the appellant is only challenging the order of final assessment or the order of the appellate authority under section 127 of the Act while admitting the unauthorised use of electricity so that it can be held that the Forum may reject the complaint, as observed by it. Unless a clear finding on the disputed fact on the basis of evidence that the consumer was indulging in unauthorised use of electricity is given, the Forum cannot reject the complaint. The view of the Forum in that regard is also incorrect. The submission made on behalf of the respondents and by the counsel for the complainant touching the statutory remedies needs no consideration. For the above reasons coupled with my finding on Point No.1, I am of the view that this representation is to be upheld and the order of the Forum is liable to be set

aside and that this case is to be remanded to the Forum for fresh disposal of the case on merits on all aspects. This point is, thus, answered.

10. In the result, I allow the appeal- representation, set aside the order of the Forum and remand this case to the Forum with a direction to dispose of the case afresh on merits on all aspects including the aspects pointed out supra in this order in accordance with the relevant Regulations made under the Electricity Act. The Forum shall take this case to its original number on its file, issue notices to both parties and give an opportunity to both parties to file additional pleadings and lead evidence, if parties want to do so, before the case is decided on merits. Considering the facts and circumstances of this case, I direct both parties to bear their respective costs. This representation is thus disposed of.

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

s/d. N.Basavaiah
VIDYUT OMBUDSMAN

To

1. A.Venkata Adinarayana Reddy, S/o A.Narayana Reddy, Sree 7 convention Centre, Gutti Road, Anantapuram
2. Assistant Accounts Officer / APSPDCL/**Anantapuram Town**
3. The Assistant Executive Engineer/O/APSPDCL/**Anantapuram D6**
4. The Deputy Executive Engineer /O/APSPDCL/**Anantapuram Town-II**
5. The Executive Engineer / Operation / APSPDCL/**Anantapuram**

Copy To:

6. The Chairman, C.G.R.F., APSPDCL, 19/13/65/A, Srinivasapuram, Near 132 kV substation, Tirchanoor Road, Tirupati- 517 503.
7. The Secretary, APERC, 11-4-660, 4th Floor, Singareni Bhavan, Red Hills, Hyderabad - 500 004 .

//CERTIFIED :: TRUE COPY//

//FORWARDED :: BY ORDER//