



BEFORE THE VIDUYUT OMBUDSMAN
Andhra Pradesh :: Amaravathi

:: Present ::

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

Date:19.01.2021

Appeal No.27 of 2020-21

Between

Motupally Manohar, Rayalacheruvu, Yadiki (Mandal), Anantapur District

... Appellant

And

1. DEE/Tadipatri/APSPDCL
2. EE/Gooty/APSPDCL

... Respondents

ORDER

The above appeal came up for final hearing before me at the office of the Viduyut Ombudsman, Vijayawada through video conferencing on 12-1-2021. The complainant and the respondents 1 and 2 were present. Having considered the appeal and the oral submissions made by both parties present, the Viduyut Ombudsman passed the following:

1. This appeal has been preferred by the appellant-complainant against the **order dated.30-11-2020 in ID No.4732020/2020-21/Anantapur Circle,** passed by the **Forum for Redressal of Consumer Grievances in Southern Power Distribution Company of A.P Limited, Tirupati, whereby and whereunder the above Forum** rejected the complaint under the clause 10.2 (b) of the APERC Regulation No. 3 of 2016 ***before admitting it for hearing.***

2. The case of the complainant is that on 9-12-2019, the order of provisional assessment dated.21.10.2019 for Rs. 56,305/- alleging unauthorised use of electricity under section u/s 126(2) of the Electricity Act, 2003 was served upon him, that though objection stating that he never indulged in any unauthorised use of electricity, against the above provisional assessment order, was filed on 13-12-2019, before the second respondent, final assessing officer, he did not pass any final order, that the concerned AAO raised the bill for the above amount in the CC bill of January, 2020 during the pendency of his objection before the final assessing officer, and that therefore, he filed the complaint for a direction to withdraw the above amount of Rs.56,305/ from the cc bill. The Forum rejected the complaint as stated supra. Thereafter, the AAO, has issued a notice to the appellant complainant demanding him to pay the above amount with a default clause that the power supply will be disconnected if the above amount is not paid as stated in the notice. Not satisfied with the above order, the appellant complainant preferred a representation along with an application to grant an Interim Order restraining the respondents from disconnecting the service connection during pendency of the case before this authority. Interim order was passed.

3. The appellant complainant, after submitting his case as stated supra including the main fact that he never indulged in any unauthorised use of electricity, has further submitted that on 26.08.20, after the date of first hearing before the Forum on 25-08-2020, he received the final assessment order dated: 30-11-2019 from the second respondent through whatsapp message with seven months delay without giving him any opportunity of hearing as to his objection against the provisional assessment order by violating the principals of natural justice and that therefore, he prays to set aside the above final assessment order and pass appropriate orders in his favour .

4. The second respondent has submitted that he assumed charge recently, that as per office records, the premises of the appellant was inspected on 5.10.2019 and that though the provisional assessment order dated.21.10.2019 was served upon the appellant and the final order of

assessment was passed on 30.11.2019, there is no recorded proof as to the dates of service of the above two orders. He also submitted supporting the order of the Forum. Finally, he has also submitted that final order of assessment will be passed again after giving an opportunity of hearing to the appellant as per section 126(3) of the Act. After the matter was posted for orders, the respondents sent a model copy of the order of provisional assessment through email stating that as per point No.5 in the above order, the appellant has to pay 50% of the assessment amount plus supervising charges within 7 days from the date of service of the order if he wishes continuance of supply.

5. The following point is framed for consideration:

Whether the order of the Forum rejecting the complaint under the clause 10(2)(b) of the Regulation No. 3 of 2016 ***before admitting it for hearing***, is not legal and correct?

6.Point: As per the clause 10.2 (b) of the Regulation No.3/2016, the Forum may reject the complaint at any stage if it is a case falling under section.126 of the Electricity Act,2003. Normally, the word "may" means discretion and is not mandatory. The Forum did not assign any reason why the word 'may' in the above clause, should be read as 'must' or ' shall'. If it is proved or admitted that the consumer or any other beneficiary indulged in unauthorised use of electricity, I may say that the order of the Forum is legal to some extent. However, the above clause or provision will not come into play in this case as the consumer is denying the fact as to his indulging in unauthorised use of electricity. We have to consider the case of the appellant that though objection stating that he never indulged in any unauthorised use of electricity, against the above provisional assessment order, was filed before the final assessing officer on 13-12-2019, no final order was passed, coupled with his submission made before the Forum as well as before this authority that on 26.08.20, after the date of first hearing before the Forum on 25-08-2020, he received the final assessment order dated: 30-11-2019 from the second respondent through whatsapp message with seven months delay without giving him any opportunity of hearing as to

his objection against the provisional assessment order by violating the principals of natural justice. First, we have to see if the above case falls within the meaning of 'Grievance' given at the clause 2.7 of the APERC Regulation No.3/2016, and it runs as follows:

"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 Reforms Act or the Rules or 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." It is clear that failure of performance of a duty by the licensee under the Act falls within the meaning of "Grievance", as per the above clause. There is no dispute that section 126 of the Act deals with passing of assessment orders. The only question to be seen in this case is whether the second respondent being the final assessing officer failed to perform his duty as per the provisions of section 126 of the Act coupled with the clause 9.2.4 (ii) of the GTCS while passing the final order of assessment of the electricity charges? If it is answered in the affirmative, the final assessment order is liable to be set aside, and the appeal is liable to be allowed; otherwise, it is liable to be dismissed. Section 126(3) of the Electricity Act,2003 says that (final) assessing officer has to pass a final order of assessment of the electricity charges payable by the concerned person after affording a reasonable opportunity of hearing to him. The above clause says that the assessing officer shall give an opportunity of hearing. It is mandatory. Section 171 of the Act deals with service of notices, orders etc. Considering the submission of the second respondent at the time of hearing that though the provisional assessment order dated.21.10.2019 was served upon the appellant and the final order of assessment was passed on 21.10.2019, there is no recorded proof as to the dates of service of the above two orders, we can safely infer that there is truth in the case of the appellant complainant and that the second respondent being the final assessing officer failed to perform his duty as to his affording an opportunity of hearing to the appellant complainant as per the provisions of section 126 of the Act while passing

the final order of assessment of the electricity charges. The question is answered in the affirmative.

7. The submission of the second respondent touching the provisional assessment order as to 50% of the assessment amount is not a relevant consideration in this case as the grievances of the 'complainant', as per the meaning as stated under the clause 2.4 of the Regulation No.3/2016, are only to be redressed by either the Forum or this authority. Apart from it, no specific discussion or order by this authority regarding the above submission is necessary. The Licensee can proceed in accordance with law. The general rule is that non-compliance of mandatory requirement results in nullification of the action.

8. As per the clause 12.3 of the Regulation No.3/2016, the Forum has to determine the complaint on merits on the pleadings and evidence available on record. In this case, there is no pleading or response on behalf of the respondents, and there is no evidence available on record. The remaining is the complaint (pleading). It is the case of the appellant complainant that he never indulged in unauthorised use of electricity. A clear finding by the Forum on the basis of evidence that the complainant was indulging in unauthorised use of electricity, is necessary. Unless that finding by the Forum is given, the complaint cannot be rejected legally under the clause 10.2.(b) of the Regulation No. 3 of 2016 in the present facts of this case. The view of the Forum that in view of the detailed report of the AEE, the case of the complainant cannot be taken into consideration, is not legally sustainable without pleading and evidence on behalf of the respondents and without citing the provision of law as to the evidentiary value of the alleged Report of the AEE. Thus, there is no acceptable material available on record to hold that the appellant complainant indulged in un-authorised use of electricity. The Forum also assigned a reason that there is a provision for the complainant to prefer an appeal under section 127 of the Act. The above reason is not sound. As per the above section, appeal is to be preferred within thirty days of the final order. According to the appellant, he received the copy of the final order with abnormal delay after filing the

complaint. Section 127 does not contain any words to indicate that the appellate authority has got power to grant extension of the prescribed period for an appeal. The case of the appellant was not properly considered by the Forum. Hence, rejection of the complaint in this case by the Forum under the above clause is not legally sustainable. Considering the submission of the second respondent that final order of assessment will be passed again after giving an opportunity of hearing to the appellant as per section 126(3) of the Act , I am inclined to set aside the final order of assessment passed by the second respondent and direct him to pass order of final assessment again as per the provisions of section 126(3) of the Act. For the above reasons, I hold that the reasons assigned by the Forum for rejection of the complaint are not legal and as such, the order of the Forum as well as the order of final assessment is liable to be set aside and is set aside. The representation is, thus, upheld. This point is thus answered.

9. In the result, I allow the representation-appeal, set aside the order of the Forum as well as the order of final assessment and direct the second respondent to pass a final order of assessment of the electricity charges payable by the appellant after affording a reasonable opportunity of hearing to him as per section 126(3) of the Electricity Act,2003. I direct both parties to bear their respective costs. This representation-appeal is, thus, disposed of.

10. This order is corrected and signed on this 19th, January 2021.

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

S/d.N.Basavaiah
VIDYUT OMBUDSMAN

To

1. Motupally Manohar, Rayalacheruvu, Yadiki (Mandal), Anantapur District
2. DEE/Tadipatri/APSPDCL
3. EE/Gooty/APSPDCL.

Copy To:

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

