



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

:: Present ::

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

Date: 29-12-2020

Appeal No.25 of 2020-21

Between

G.Munirathnam, Sri Ajanthy Foods, 2-1-122/79, T.R.Kandriga, M.Kothur Post,
Nagari- 517 590 Chittoor District., A.P

... Appellant

And

1. CGM/RAC/APSPDCL/Tirupati/APSPDCL
2. CGM/O/APSPDCL/Tirupati/APSPDCL
3. Superintending Engineer/O/Tirupati/APSPDCL
4. Executive Engineer /O/Puttur/APSPDCL

....Respondents

ORDER

The above appeal- representation came up for final hearing, by way of Video Conferencing, before me at the office of the Vidyut Ombudsman, Vijayawada on 21-12-2020. The appellant, the concerned GM (RAC) on behalf of the first respondent, the concerned GM (Operation) on behalf of the second respondent, the concerned DE (Technical) on behalf of the third respondent, and the fourth

respondent were present. Having considered the appeal-representation and submissions of the above parties present, the Vidyut Ombudsman passed the following:

1. This appeal-representation has been preferred by the appellant-complainant against the order dated.03-11-2020 in C.G.No. 323/2017-18/Tirupati 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 passed an order, after remanding the case by this authority to it for fresh disposal on a particular point framed, dismissing the complaint filed by the complainant expressing his grievance against the collection of cubical charges of Rs.1,91,010/- by the licensee while providing a new electricity connection and praying the relief for refund of those cubical charges with interest besides another relief refused even by this authority.

2. At the outset, I would like to say that the Forum rejected the complaint initially on the ground that it is not competent to entertain the complaint, and this authority set aside that rejection order on the ground that the rejection order was not in accordance with the provisions of the clause No.10(2) of the Regulation No.3/2016 besides a specific finding that the above view of the Forum is not correct as the complainant was questioning the fault of the licensee in collecting charges within the meaning of 'grievance' given under the above Regulation and that the Forum dismissed the complaint earlier with the same reason assigned while rejecting the complaint. The complainant preferred an appeal against that order, and I set aside that order of the Forum regarding the right of the licensee about the collection of cubical charges collected from the

complainant and remanded the case to the Forum for fresh disposal to give a clear finding with reasons on merits regarding the right of the licensee to collect cubical charges in this case by mentioning the provision of law under which the licensee is entitled to collect cubical charges from the consumer while providing a new electricity connection without disturbing its order confirmed on point No.2, but the Forum dismissed the complaint without mentioning or citing the provision of law under which the licensee is entitled to collect cubical charges from the consumer while providing a new electricity connection. It is sufficient to remand this case again. I feel no useful purpose will be served if this matter is again remanded to the Forum, and as such, I am inclined to decide this case on merits.

3. The case of the appellant as per his complaint dated.5.6.2017 is clear that the licensee is not entitled to collect any amount towards cubical charges. The previous order of the Forum shows that there was only one respondent (first respondent), but now the respondents 2 to 4 are added as per the letter dated.13.11.2019 from the first respondent. The first respondent, original respondent, filed additional pleading stating that the word "cubicle charges" means CT,PT set which is allied equipment of meter and that the letter dated.9.9.2016 by way of examples given by the Hon'ble Commission following its guidelines dated.29.5.2015 touching the provisions of Sections 45 and 46 read with 62 of the Electricity Act,2003 and the APERC Regulation No.4/2013 is not applicable as the sanctioned estimate dated 22.01.2015 in this case was prior to 9.9.2016,the date of the above letter of the Hon'ble commission. He also sent a letter to the Forum stating that the above amount of Rs.1,91,010 as cost of erection of supporting structure for CT,PT sets was collected under the head "cubical Charges". A new plea has been taken on behalf of the first respondent.

There is no material to say that the complainant was given any opportunity to file any rejoinder on the above new plea taken by the first respondent. The second respondent filed his written submission stating that consumer seeking electricity supply has to pay cubical charges as per sub-clauses 1 and 2 of clause 7 of the Regulation No.4/2013. The third respondent did not file any response. The fourth respondent sent his letter to the Forum enclosing an estimate coupled with annexure with cost data-1 and cost data -2 by replacing the word 'cubical Charges' with the word "11 KV metering arrangements" mentioned in the cost data -2.

4. No evidence was adduced before the Forum by both parties even after remand. After considering the material available on record, the Forum again dismissed the complaint as stated supra with the following five reasons:

(i) that the Forum can intervene to pass orders only if the field officers collect any amounts under any head which is not mentioned in the cost data book and cannot intervene as the cubical charges are mentioned in the cost data book, and once the cost data is published, it has to be presumed that the Hon'ble Commission has authorised the licensee to collect amounts under various heads for release of new service;

(ii) that the complainant also cannot question the policy decisions of the licensee and compare with policies of other public corporations before the Forum;

iii) that if the complainant wants to question about the price under various heads under the cost data book, his remedy is elsewhere and not before the Forum;

iv) that all exemptions and remissions announced by the Government or public authority will be generally in prospective in nature unless it is specifically stated that they are retrospective, and the complainant is not entitled to seek refund of cubical charges as the above charges were paid prior to the proceedings of the Hon'ble commission dated.29.5.2015; and

(v) that the complainant is liable to be rejected as per the clause 10.2 (c) of the Regulation 3/2016 as the complaint was filed beyond two years after the date on which the cause of action has arisen.

Not satisfied with the above order of the Forum, the complainant preferred this representation before this authority. No oral or documentary evidence is adduced even before this authority.

5. The appellant submitted that as per clause-7(1) of the Regulation No.4 of 2013, the Licensee has to exclude the cost terminal and metering arrangements at the premises of the consumer while estimating the cost of service line; that as per the example given under Case-1(e) pertaining to HT connection in the letter of the Hon'ble APERC dated 09-09-2016 at page-5, no charges shall be collected towards metering and allied equipment such as CT,PT, connecting cables, meter box and supporting structure of metering, that the licensee took the cubicle box back on 16-03-2020 to the store of the Licensee and that he paid the cost of cubicle box under protest vide letter dated 24-01-2015 and as such, the appeal may be allowed. The respondents supported the order of the Forum and also, submitted that as there is no direction given in the letter of APERC dated: 09-09-2016 directing the Licensee to refund the cost of the cubicle charges collected from the consumer and as the letter of the Honble APERC is subsequent to

release of the connection, the appellant is not entitled to seek the relief for refund of the above amount collected. When this authority asked the respondents whether there is any regulation made by the Hon'ble Commission authorizing the Licensee to collect the amount towards either the cubicle charges or the cost of supporting structure, they submitted that they are unable to produce any such regulation made by the Hon'ble APERC.

6. The following point is framed for consideration:

Whether the finding of the Forum that the licensee is entitled to collect cubical charges from the complainant in this case is not correct?

7. Point: Either the Electricity Act,2003 or the clauses 6 or 7 of the Regulation No. 4/2013 does not contain any word to indicate that the Licensee is entitled to collect cubical charges from consumer while providing a new electricity connection to him. The phrasal word 'cubical charges' as mentioned in the cost data, or the meaning of that phrase is not found in the Act,2003 or in the Regulation No.4/2013 or in the GTCS-2006.The relevant provision of law to settle the complaint is Section 46 of the Electricity Act,2003, and it says that the State Commission may, by regulations, authorise a distribution licensee to charge from a person requiring supply of electricity in pursuance of section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply. It is clear from the above section that authorisation from the Hon'ble APERC, by regulations, is necessary to collect the expenses incurred by the license towards either cubical charges or the cost of supporting structure of metering, from the consumer while providing supply. The respondents are unable to produce any such regulation made by the Hon'ble

APERC authorising the licensee to collect the above amount from the appellant towards either cubical charges or the cost of supporting structure of metering. Clause 7 of the Regulation No.4/2013 gives power to the licensee to collect the estimated cost. The above Regulation does not contain any words to infer that the licensee is authorised to collect any amount either towards cubical charges or the cost of supporting structure of metering from the consumer. I find some merit in the submissions made by the appellant. Clause 7(1) of the Regulation No.4/2013 says that the licensee shall estimate the cost of service line excluding the cost of terminal and metering arrangements at the premises of the consumer and estimate the cost of service line as per the latest cost data on actual survey and line length. As per the illustrative example given under Case-1(e) pertaining to HT connection in the letter of the Hon'ble APERC dated 09-09-2016 at page-5, no charges shall be collected towards metering and allied equipment such as CT,PT, connecting cables, meter box and supporting structure of metering. It is clear that the licensee is not authorised by the Hon'ble APERC to charge any amount from the consumer towards supporting structure of metering while providing a new connection. In the above letter, it is not mentioned that the amount collected prior to 9.9.2016 towards cubical charges from the consumer could be retained by the licensee. Hence, I find no merit in the submission made by the respondents that there is no direction given in the letter of the APERC dated: 09-09-2016 directing the Licensee to refund the cost of the cubicle charges collected from the consumer, and as such, the appellant is not entitled to seek the relief for refund of the above amount collected.

8. The above first and second reasons assigned by the Forum are irrelevant and do not stand up to careful scrutiny as the relevant consideration in this case is whether the Hon'ble APERC authorised the licensee to collect any amount towards cubical charges or supporting structure of metering from consumer and as I opined that the licensee is not authorised to collect the above amount towards either cubical charges or supporting structure of metering from consumer. Giving illustrative examples by the Hon'ble APERC in the letter dated.9.9.2016 is against those reasons. The third reason given by the Forum that the complainant's remedy is elsewhere and not before the Forum amounts to disrespect to the order of the appellate authority as already this authority held twice in the previous orders that the view of the Forum that the Forum has no jurisdiction in this case is incorrect. In this case, the Hon'ble commission did not announce any exemption or remission to the consumers seeking new connections. It is a clarification given by the Hon'ble APERC regarding the existing provision of law from 2003 as the licensee was not following the provisions of the Act,2003. Therefore, I find no merit in the fourth reason of the Forum or the submission of the respondents that the letter of the Hon'ble APERC is subsequent to the release of the connection and as such, the appellant is not entitled to the relief claimed. The fifth reason that the complainant is liable to be rejected as per the clause 10.2 (c) of the Regulation 3/2016 as the complaint was filed beyond two years after the date on which the cause of action has arisen, is not correct and legal. No time limit is prescribed for filing complaints by consumers in the Act,2003, and there is no provision in the Act as to the application of the provisions of the Limitation Act,1963. For the first time, the time limit of two years for filing complaints by consumers before Forum is prescribed in the APERC

Regulation No.3/2016, which came into effect from 1.3.2016. No provision was inserted touching the limitation aspect in the Act by way of an amendment so that it can be held that the periods of limitation are procedural in nature and could be applied retrospectively. The cause of action arose in this case prior to 1.3.2016. Under the present Regulation No.3/2016, the Forum may reject the complaint if it is submitted beyond two years after the date on which the cause of action has arisen. The above Regulation is silent regarding the limitation aspect for filing complaints after 1.3.2016 on the basis of cause of action arisen prior to 1.3.2016. The complaint was filed on 5.6.2017, within two years from the date of the commencement of the Regulation No.3/2016. The Forum dismissed the complaint but not rejected. Hence, there is no need to express any specific view in that regard.

9. It is for the Licensee to place material to say that it was authorized by the Hon'ble APERC to collect cubical charges etc from any consumer while providing a new connection to him. It did not place any such material before me to say that it was legally authorized to collect cubical charges or cost of supporting structure of metering from any consumer while providing a new electrical connection, or, that the contention of the complainant that the licensee, without any legal right, collected the cubical charges is incorrect. Therefore, I am of the view that the case of the respondent (now first respondent) as seen from the order of the Forum is that the complainant is not entitled to any relief, that the complainant sought for extension of supply at 11 KV potential from an existing line (11 KV industrial feeder emanating from 33/11 KV (Mittakandriga SS) and that the provisions of the Electricity Act,2003 besides the Regulation No.4/13 coupled with the Guidelines of the Hon'ble APERC authorise the licensee to collect cubical

charges from the complainant, is not proved. In my view, it is established that more than what is payable under the statute had been collected by the licensee from the consumer in this case, and as such, he automatically gets a right to get back that excess amount from the licensee. For the above reasons, I hold that the Forum had not passed a reasoned order on the complaint and as such, I am of the view that the finding on the above aspect is not correct, that the order is to be set aside and that the representation is to be upheld. This point is thus answered.

10. In the result, I set aside the order of the Forum, upheld the representation holding that the appellant complainant is entitled to the relief claimed and direct the distribution -company-licensee to refund the excess amount of Rs.1,91,010/ collected towards cubical charges forthwith to the appellant complainant with interest at 6% per annum from 30.6.2017, the date of the complaint, till the date of actual payment. Considering the facts and circumstances of this case, there is no order as to costs. This appeal-representation is thus disposed of.

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

This order is corrected and signed on 29th December,2020.

S/d.N.Basavaiah
VIDYUT OMBUDSMAN

TO

1. G.Munirathnam, Sri Ajanthy Foods, 2-1-122/79, T.R.Kandriga, M.Kothur Post, Nagari- 517 590 Chittoor District., A.P
2. CGM/RAC/APSPDCL/Tirupati/APSPDCL
3. CGM/O/APSPDCL/Tirupati/APSPDCL
4. Superintending Engineer/O/Tirupati/APSPDCL
5. Executive Engineer /O/Puttur/APSPDCL

Copy To:

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