



VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA

First Floor 33/11 kV substation, Hyderabad Boats Club Lane
Lumbini Park, Hyderabad - 500 063

:: Present:: R. DAMODAR

Monday, the Fifth day of October 2015

Appeal No. 54 of 2015

Preferred against Order Dt. 21.04.2015 of CGRF In
CG.No 13 of 2015 of Medak Circle

Between

Sri. B. Manik Rao,
M/s. M.C. Engineering Industries,
Plot No. 20/B, Phase - III,
Pashamylaram (V), Patancheru Mandal,
Medak Dist. Cell: 9000301080.

..... Appellant

AND

- 1) The ADE/Operation/Sangareddy/TSSPDCL/Medak Dist.
- 2) The SAO/Operation/Medak/TSSPDCL/Medak Dist.
- 3) The SE/Operation/Medak Circle/TSSPDCL/Medak Dist.

..... Respondents

The above Appeal filed on 15.06.2015 came up for final hearing before the Vidyut Ombudsman, Telangana State on 25.08.2015 at Hyderabad in the presence of Sri. B Manik Rao - Appellant and Sri. CH Nageswara Reddy- J.A.O, for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant purchased an industry namely M/s RR Mouldings in a public auction conducted by ARM branch of Indian bank, Hyderabad, free from all encumbrance under a registered sale certificate dt. 8.12.2014 for Rs 82,10,000/-. When he applied for release of service connection, the first Respondent, ADE had not released the service on the pretext of arrears of Rs 13,42,829/-, by the previous consumer M/s RR Mouldings. Because of non-release of service connection, the

Appellant could not start his industry and has been incurring heavy loss and also interest on the capital. He requested for a direction to the respondents for the immediate release of service connection.

2. The Second Respondent submitted a reply giving detailed report in respect of HT- SC No. MDK -1270 of M/s RR moulding Technologies as follows:

Service Particulars : CMD : 150 KVA.

1. Date Of present Agreement	08.02.2010
2. Date of supply	08.02.2010
3. Whether initial period is over	Yes
4. Date of Disconnection	19.08.2013
5. Date of termination (Period of 4 months from the date of disconnection)	19.12.2013
6. Arrears due up to date of disconnection	7,75,446.00
7. Monthly minimum charges for 4 months	4,64,584.00
8. Dues up to date of termination (including FSA and Late payment charges)	12,40,030.00
9. FSA raised from 07/2011 to 03/2012	3,30,999.00
10. Arrears due up to date of termination of Agreement (i.e., 16.09.2013)	15,71,029.00
11. (-)Deposit	4,66,900.00
12. Payable after adjustment of deposit amount	11,04,129.00

This amount of Rs 11,04,129/- increased to Rs13,44,829/- representing interest.

3. The above amount was arrived at after deducting the security deposit. The CGRF heard the parties and by relying on clause 8.4 of GTCS which says that “The seller of the property should clear all the dues to the company before selling such property. If the seller did not clear the dues as mentioned above, the company may refuse to supply electricity to the premises through the already existing connection or refuse to give a new connection to the premises till all dues to the company are cleared” and rejected the prayer through the impugned orders.

4. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal.

5. The Appellant claimed that he had purchased the plot 20-B, Phase III in an auction conducted by ARM branch of Indian Bank under SARFAESI Act No.54 of 2002. He claimed that when he applied to the first respondent for a fresh service connection, it was rejected on the ground of arrears of Rs 13,44,829. He further claimed that because of non supply of power, he was not in a position to start the industry and his employees lost their livelihood.

6. The second respondent filed a copy of reply given to the Appellant showing the total due for the service No. MDK1270 after deduction of security deposit as Rs 14,34,814/- .

7. Efforts made to get the dispute settled by way of mediation could not succeed, because of the stated positions of both the parties.

8. After hearing arguments and on consideration of the material on record, the following points arise for determination:

1. Whether the impugned orders of the CGRF are liable to be set aside?
2. Whether the appellant is liable to clear the arrears of Rs 14,34,814/- standing against the service connection No. MDK 1270 of M/s RR Moulding Technologies originally located in the plot the Appellant?
3. Whether the Appellant who purchased the plot in the auction conducted by M/s Indian bank free of all encumbrance known to the bank is not liable to pay the arrears of electricity consumption charges incurred by the previous owner?

POINTS 1 TO 3

9. The Appellant is relying on a registered certificate of sale issued to him by M/s Indian Bank for sale of plot no 20 /B in survey no 145 ,161,162 part totaling 2000 sq /m which originally belonged to M/s RR Moulding Technologies, which availed finance from M/s Indian Bank. This sale certificate shows that the Appellant purchased the property free from all encumbrances known to the Bank. He got his firm registered with the Registrar Of Firms, Medak on 7.01.2015. On the strength of this purchase, he had applied to the respondents for release of service connection, only to be told /informed about the arrears amounting Rs 13,44,829/- due by the previous consumer M/s RR Moulding Technologies. The Appellant contends that he is not liable to pay the arrears of the previous consumer, because he had purchased the property in a public auction from the secured

creditor M/s Indian Bank free from all encumbrance, which includes the arrears of electricity.

10. On the other hand, the respondents claim that as per clause 8.4 of GTCS, 'firstly the seller of the property should clear all the dues before selling such property, if not, the distribution company may refuse to supply electricity to the already existing electricity connection or refuse to give a new connection till all the dues are cleared.' Clause 8.4 of GTCS is very clear on this aspect as claimed by the Respondents.

11. The Appellant is relying on a Memo No. DE/COMML/I/77/75-10 Dt. 6.1.1976 issued by the then APSEB after receipt of judgement dt. 29-11.1974 in W.PNO.6433 of 1974 to the following effect:

"The board cannot insist on the petitioner to pay the arrears due to it by the previous owner before supplying the electricity as there is no obligation on the part of the purchaser to pay the arrears to the board due by the previous owner. It is for the board to get payment from the previous owner and it cannot refuse to supply electricity to the petitioner on the ground that arrears are due from the previous owner".

12. The Hon'ble high court of AP decided the above matter in Krishnaveni Khandsari Sugar Industry Vs APSEB (Unreported judgment) wherein the writ petitioner was not aware of the electricity dues when it purchased the factory from the erstwhile owner. Based on this judgment, the above cited memo dt. 6.1.1976 was issued. This decision was rendered when there was no clear cut statutory rule or guideline governing the matter in issue. This judgment is of no avail to the Appellant, in view of the specific Subclause 4 of Clause 8 of GTCS which is extracted supra.

13. The Appellant also relied on a decision rendered in M/s Haryana State Electricity Board Vs M/s Hanuman Rice Mills and Others(AIR 2010 SC 3835) where in the Hon'ble Supreme Court found similar situation as in the present case. In the cited decision M/s Hanuman Rice mills purchased the plant and machinery of M/s Durga Rice Mills in an auction on 14.12.1990 conducted by M/s Haryana Financial Corporation and paid the consideration of Rs 15,25,000/- towards the entire sale consideration. At the time of auction, the electricity supplied to the premises was disconnected. After taking possession of the premises, M/s Hanuman Rice Mills applied for and obtained electricity connection in its own name in the

year 1991. Four years later, M/s Haryana State Electricity Board served a notice dt. 16.1.1995 demanding Rs 2,39,251/- towards arrears of electricity charges due by the previous owner M/s Durga Rice Mills. The matter came up before the Punjab and Haryana High Court and by judgment dt. 8.8.2005 held that the liability of a consumer to pay charges for consumption of electricity cannot be fastened on a subsequent auction purchaser of a property, in view of the decision of the same court in M/s Isha Marbles Vs Bihar state electricity board [(1995) 2 SCC 648]. The Hon'ble supreme court, in the present judgement (AIR 2010 SC 3835) while relying on a decision rendered in Paschimanchal Vidyut Vitaran Nigam Ltd Vs DVS Steels and Alloys Pvt. Ltd [2009 (1) SCC 210] wherein the principle that the electricity dues did not constitute a charge on the premises, but where the applicable rules require such payment, the same will be binding on the purchaser and it was further held as follows:

“A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked to pay the dues of his predecessor in title or possession, as the amount payable towards supply of electricity does not constitute a “charge” on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises.

When the purchaser of the premises approaches the distributor seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subjected to which it would supply electricity. It can stipulate as one of the condition for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity, the distributor can insist upon fulfillment of the requirements of such rules and regulations. If the rules are silent, it can stipulate such terms and conditions as it deems fit and proper, to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, court will not interfere with them.

A stipulation by the distributor that the dues in regard to the electricity supply to the premises should be cleared before the electricity supply is restored or a new connection is given to the premises, cannot be termed as unreasonable or arbitrary. In the absence of such a stipulation, an unscrupulous consumer may commit defaults with impunity, and when the electricity supply is disconnected for non payment, may sell away the property and move on to another property, thereby making it difficult, if not possible for the distributor to recover the dues. Provisions similar to clause 4.3 (g) and (h) of Electricity Supply Code are necessary to safeguard the interests of the distributor.”

14. The Hon'ble Supreme Court summarised the findings in the following manner:

i. Electricity arrears do not constitute a charge over the property. Therefore in general law, the transferee of the premises cannot be made liable for the dues of the previous owner / occupier.

ii. Where the statutory rules or terms and conditions of supply which are statutory in character, authorize the supplier of electricity, to demand from the purchaser of a property claiming reconnection or fresh connection of electricity, the arrears due by the previous owner / occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser.

15. As held by the Honble Supreme Court, the present case is governed by clause 8.4 of GTCS under which the seller is bound to clear all the dues to the DISCOM and if not, the DISCOM may refuse to supply electricity unless dues are paid relating to the already existing connection or to release a new connection.

16. It was initially the responsibility of the original consumer M/s RR Mouldings to clear the dues and it was next the responsibility of the seller of the property, the Indian Bank, ARM branch, Hyderabad which sold the unit to the Appellant under a registered sale certificate dt. 8.12.2014 containing the clause that “ the sale of the schedule property was made free from all encumbrances known to the secured creditor listed below on deposit of the money demanded by the undersigned”. This

clause clearly makes out a case against the seller M/s Indian Bank, which ought to have cleared the dues to the DISCOM or else to have made it clear to the Appellant that there were dues to be cleared relating to the DISCOM and perhaps then it would have got lesser amount than the sale price shown in the certificate of sale.

17. The Appellant, Keeping in view the facts similar to the present situation, relied on a decision of the Hon'ble High Court of Allahabad in Rekha Sahu Vs UCO bank and others (2013 law suit(All)2120) directing the Bank which sold the property to the writ petitioner therein to pay the outstanding dues to the Distribution Company by holding that a "statutory duty has been cast upon the authorised officer to declare the dues/encumbrances in public notice for auction ". This decision remains on a separate footing from the decision of the Hon'ble Supreme Court in Haryana State Electricity Board Vs Hanuman Rice Mills and others(AIR 2010 SC 3835) cited supra wherein the Hon'ble Supreme Court observed that the supplier company can recover arrears from a purchaser when there are statutory rules or terms and conditions of supply authorising the distribution company to demand arrears due from the previous owner/occupier either for reconnection or for fresh connection of electricity. The DISCOM in the present case is authorised statutorily to recover arrears due under Clause 8.4 of GTCS from the previous owner for giving fresh service connection and accordingly it has been demanding payment from the Appellant.

18. The way in which the Bank sold the property to the Appellant outwardly stating that there are no encumbrances known to it, prompting the Appellant to become a successful bidder by paying substantial amount, without knowing the amount of arrears due to the DISCOM by the previous owner. Infact it is the responsibility of M/s Indian Bank which sold the property to the Appellant in public auction, to clear the electricity dues of the previous owner or to have disclosed the fact of arrears due to the DISCOM by the previous owner to the Appellant, which view is supported by the decision of the Honble High Court of Allahabad in Rekha Sahu Vs UCO bank cited supra.

19. In view of the aforementioned discussion, the Appellant is not found entitled to any direction to the Respondents to give fresh service connection without demanding payment of arrears of the Electricity consumption of the Previous owner. Perhaps the Appellant if advised, may proceed against M/s Indian Bank, ARM Branch, Hyderabad for not disclosing the arrears due before the public auction.

20. The DISCOM may settle the issue keeping in view Clause 5.9.4.3 of GTCS while calculating the arrears due and also the haplessness of the Appellant who is wronged at the hands of the Bank, release a new service connection expeditiously after collecting the arrears due.

The Points 1 to 3 are answered accordingly. The Appeal is disposed off.

Corrected, Signed & Pronounced on this the 5th day of October, 2015.

Sd/-

VIDYUT OMBUDSMAN

1. Sri. B. Manik Rao, M/s. M.C. Engineering Industries, Plot No. 20/B, Phase - III, Pashamylaram (V), Patancheru Mandal, Medak Dist. Cell: 9000301080.
2. The ADE/Operation/Sangareddy/TSSPDCL/Medak Dist.
3. The SAO/Operation/Medak/TSSPDCL/Medak Dist.
4. The SE/Operation/Medak Circle/TSSPDCL/Medak Dist.

Copy to:

5. The Chairperson, Consumer Grievance Redressal Forum - Rural, TSSPDCL, Vengal Rao Nagar, Erragadda, Hyderabad - 500 045.
6. The Secretary, TSERC, 5th Floor Singareni Bhavan, Red Hills, Lakdikapool,Hyd.