



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**

Wednesday, the Eighth Day of July 2015

Appeal No. 21 of 2015

(Old Appeal No. 145 of 2013-14)

Preferred against Order Dt. 31.01.2014 of CGRF In
CG.No:1242/2013-14 of Hyderabad South Circle

Between

Mohd. Riyaz Ali
H.No 18-8-589/36
LCH Kumarwadi, Jyothi Bagh
Edi bazar, Hyderabad
Cell: 9247786246

..... Appellant

AND

- 1) The AE/OP/Bhavaninagar/TSSPDCL/Hyderabad.
- 2) The ADE/OP/Santoshnagar/TSSPDCL/Hyderabad.
- 3) The AAO/ERO/Chanchalguda/TSSPDCL/Hyderabad.

..... Respondents

The above appeal filed on 3.03.2014 up for final hearing before the Vidyut Ombudsman, Telangana State on 2.07.2015 at Hyderabad in the presence of Sri. Pavan Kumar Pujari on behalf of the Appellant and Sri. A. Kailas - ADE/OP/Santosh Nagar, B. Laxmaiah - AAO/ERO/Chanchalguda, R. Krishna - AE/OP/Bhavani Nagar for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant is a consumer having a non domestic service connection No. R2044803 category II released on 13-3-2004.

2. The Appellant claimed that he let out the premises to a Tenant who was running a small bakery since 2005. He used to pay the CC charge regularly. In the month of September 2010, the tenant vacated the shop. The appellant then requested the respondents to dismantle the service connection immediately which is pending action.

3. The Appellant further claimed that after a lapse of 3 years, the 1st respondent issued a demand notice with electricity bill for an amount of Rs 19,879/- which is against the terms of GTCS. The Appellant further stated that on 26.11.2013 he approached the Respondents for dismantlement of service and was informed that there are arrears of Rs 15,923/- and ii) Rs 1,34,323/- which should be paid. The Appellant asserted that when he was not using the service connection, the payment of arrears does not arise.

4. The Appellant asserted that since the arrears relate back to the year 2010, which are more than 3 years old, the amounts shall not be recoverable after more than 2 years as per S.56(2) of the Electricity act, 2003.

5. The Respondents filed reply stating that the 2 cases were booked against the Appellant as stated below:

i) The consumer was found drawing power directly from nearby LTOH line. This was discovered on 31-1-2010 in the inspection of AAE/OP/Bhavani Nagar. In this case the electricity charges Rs 670/- + supervision charges Rs 150/- + R/F Rs 50/- Totalling Rs 870/- was demanded through the provisional assessment dt. 9-2-2010.

ii) The Consumer connection was inspected on 20-07-2010 by ADE/SD-1/DPE/Hyderabad and it was found that the meter cover was open, internal circuit was disturbed, the original wire was by passed from CT and it was connected directly between incoming and outgoing of phase terminals inside the meter.

In this case, the following demand was raised.

CC Charges upto 31-12-2013	Rs	17,253.00
1st theft case balance amount	Rs	370.00
2nd theft case amount	Rs	<u>1,34,473.00</u>

Total Amount due by the consumer Rs 1,52,096.00

6. The Respondents asserted that the Appellant is involved in theft of power twice and he is due Rs 1,52,096.00 to the Power Distribution Company and that the Appellant is not entitled to any relief.

7. After hearing both sides and consideration of the record, the CGRF opined that the matter relates to theft of energy and therefore it has no jurisdiction to decide the matter involving theft of energy under S.135 of the Electricity Act, 2003 which would be within the purview of the special court U/S.154 of the Electricity Act. Without answering the question of application of S.56(2) of the Electricity Act -2003, CGRF dismissed the complaint through the impugned order.

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

9. The Efforts to bring a settlement between the parties could not succeed, as there is no meeting point in their respective stands.

ARGUMENTS HEARD

10. The point for determination is whether the Amounts claimed as due Rs 17,253/- and Rs 1,34,843/- (including Rs 370 of 1st theft case) on the service connection are barred by time U/S.56(2) of the Electricity Act as claimed by the Appellant?

POINT:

The matter in controversy are two. One is the CC Amount Rs 15,923/- plus Rs 1330/- and other charges due upto November, 2013 on the basis of which the service was disconnected during November, 2013 and the second is the 1st theft case amount of Rs 370/- and 2nd theft case amount of Rs 1,34,473/- as dues.

11. The Appellant claimed that his Tenant was the beneficiary of the service connection and also the theft if any and he (the Appellant) is not liable to pay these two amounts. He claimed that the entire premises where the service was on was demolished in the road widening and he is not liable to pay any amount more

particularly, since the amount due became unrecoverable and time barred U/S.56(2) of the Electricity Act.

12. The Respondents have no answer to the limitation prescribed U/S.56(2) of the Act but asserted that the amounts due were a result of 2 instances of theft, for which the prosecution was initiated U/S.135 of the Electricity Act and these amounts are recoverable from the Appellant, in the absence of his tenant/beneficiary of the service connection. When it is so, the Appellant is not entitled to dismantling of the service connection without payment of arrears.

13. The CGRF, while refusing relief to the Appellant observed that the special court U/S.154(5) of the Electricity Act has not determined the civil liability against the present cases booked U/s 135 of the Electricity Act and further it has no jurisdiction over the cases booked under S.135 of the Electricity Act. Whether the special court has decided this civil liability (loss suffered by the Distribution Company) is not on record. The Respondents could not give any information in this regard.

14. The provisional Assessment of Rs 1,34,323.00 is connected with theft of energy covered by S.135 of the Electricity Act. It is the special court U/s 154(5) of the Electricity Act which would determine the civil liability against the consumer in terms of money for theft of energy. What happened to the criminal case for the offence U/s 135 of Electricity Act is not known. It is the special court which would, at the request of the licensee, assesses the civil liability and it is not on record whether this civil liability has been assessed or not. Therefore S.56(2) of Electricity Act has no application here, as the limitation aspect can not be examined without the assistance of the orders of the special court U/S.154(5) of the Electricity Act 2003.

15. CGRF noted that the Consumer has not availed power supply from September, 2010. The Appellant alleged that the demand notice was issued on 16.11.2013, which is beyond 2 years and the claim is hit by S.56(2) of the Electricity Act.

16. For application of S.56(2) of the Electricity Act to the arrears, it is necessary to reproduce the provision for clarity in application

S.56(2)

“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due **unless such sum has been shown continuously as recoverable as arrear of charges for Electricity supplied** and the licensee shall not cut off the supply of the Electricity.

17. From application of this provision, there is one exception and that is “unless such sum(due) has been shown continuously as recoverable as arrears of charges for electricity supplied.” If the arrears are shown as due continuously, then the limitation prescribed in S.56(2) has no application.

18. In the present matter, it is to be seen whether the arrears are shown, continuously or now and then or only once or twice?

19. A perusal of the statement of consumption, Billing, Collection and arrears history for the period from January, 2007 to April, 2014 shows that the arrears are shown regularly, continuously and for each month CC bills were issued. This statement shows arrears continuously from January 2007 to March 2014, month to month ending with balance due as Rs 17,253.00. This statement clearly makes out an exception to application of S.56(2) and the contention of the Appellant contrary cannot be sustained. The respondents are entitled to take all legal steps to recover Rs 17,253/- from the owner/Appellant which is not hit by S.56(2) of the Electricity Act.

20. The CGRF has not examined the application of law to the arrears properly and refused relief, which is not sustainable.

The Appeal is disposed off accordingly.

Corrected, Signed and Pronounced on this 8th Day of July 2015.

VIDYUT OMBUDSMAN

1. Mohd. Riyaz Ali
H.No 18-8-589/36
LCH Kumarwadi, Jyothibagh
Edi bazar, Hyderabad
2. The AE/OP/Bhavaninagar/TSSPDCL/Hyderabad.
3. The ADE/OP/Santoshnagar/TSSPDCL/Hyderabad.
4. The AAO/ERO/Chanchalguda/TSSPDCL/Hyderabad.

Copy to:

5. The Chairperson, Consumer Grievance Redressal Forum, Greater Hyderabad Area, TSSPDCL, Vengal Rao Nagar, Erragadda, Hyderabad - 500 045.
6. The Secretary, TSERC, 5TH Floor, Singareni Bhavan, Red Hills - Hyderabad