



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 Twenty Eighth of September 2015

Appeal No. 56 of 2015

Preferred against Order Dt. 30.6.2015 of CGRF In

CG.No: 146/2015 of Ranga Reddy North Circle

Between

Smt. M. Anasuya Devi,
H.No. MIG 1317, BHEL,
Ramachandrapuram,
Hyderabad.

..... Appellant

AND

1. The AE/OP/Chandanagar/TSSPDCL/RR Dist.
2. The ADE/OP/KPHB/TSSPDCL/RR District.
3. The AAO/OP/KPHB/TSSPDCL/RR District.
4. The DE/OP/Gachibowli/TSSPDCL/ RR District.
5. The SE/OP/ RR North Circle/TSSPDCL/RR District.

..... Respondents

The above appeal filed on 04.07.2015 came up for final hearing before the Vidyut Ombudsman, Telangana State on 04.08.2015 at Hyderabad in the presence of Sri. M Satish, S/o M Anasuya Devi - For the Appellant and Sri. A Surender Reddy - ADE/OP/KPHB, Sri. P Vittal - AAO/ERO/KPHB, Sri. A Srinivas Rao - AAE/OP/Chandanagar for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant purchased lease hold land building and machinery in plot No. 25/A, MIE, Hafeezpet from AP State Financial Corporation and took possession on 21/12/2012 with a view to setup a unit in it. The Appellant approached APCPDCL and obtained a new service connection No. 01314 on 17.7.2003 in the name of M/s Shalini Industries and has been paying bills regularly. With a view to extend business, the Appellant was constructing a new building. The

Appellant was getting a minimum bill of Rs 3986/- during the construction of the building. When the Appellant went to pay the bills, the Respondents gave a demand notice for Rs 4,03,560/- of SC No. 36190285 in the name of M/s Anu Industries towards outstanding arrears. The Appellant claimed that she is not responsible for the arrears relating to SC No. 3619 00285. A complaint to the above effect was lodged by the Appellant with the CGRF.

2. The first Respondent filed a written submission vide letter dt. 19.6.2015 to state that on field verification and local enquiry, he came to know that in the half part of the plot no 25/A, Hafeezpet, the service connection No. 361900285 was existing since 1994 and whereas, in the other half of the plot a new S.C.No. 3619 01314 was released in the year, 2003. The premises of S.C.No 3619 00285 was purchased by the owner of SC NO 3619 01314. The Respondents claim that the meter of SC No 3619 00285 is not available in the premises and for the purpose of collecting outstanding dues on S.C.No. 3619 00285, the other service was disconnected.

3. The 3rd Respondent AAO/ERO/KPHB vide letter dt. 16.6.2015 disclosed that as per the available records S.C.No. 3619 01314 stands in the name of M/s Shalini Industries released on 18.7.2003 which is under **billstop** from August, 2013. The 3rd Respondent claimed that S.C.No. 3619 00285 stood in the name of M/s Anu Industries, MIE, Hafeezpet which was released on 29.12.1994 and the bill was stopped in August 2001. He claimed that the total outstanding dues against the service as on June 2015 are Rs 3,84,112/-

4. The Appellant claimed that she is not responsible for the arrears pending against S.C.No. 3619 00285 as she had not used the service and whereas, she was issued a new S.C.No. 3619 01314 against which she has been paying bills regularly and that she is not responsible and liable for the arrears relating to the other service connection. The Respondents are vehement in asserting that the Appellant has to clear the arrears against the S.C.No. 3619 00285 because it was located in the same premises the Appellant purchased.

5. After hearing arguments and on consideration of material on record, CGRF directed the Respondents to restore the power supply to the Appellant on receipt of payment of arrears amounting to 3,84,112/- against SC No. 3619 00285 through the impugned orders.

6. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present appeal.

The efforts made to settle the matter by mediation were unsuccessful as there was no meeting point between the partners.

ARGUMENTS HEARD.

7. The points for determination are:

1. Whether the impugned orders are liable to be set aside?
2. Whether the Appellant is liable to pay the arrears pending against S.C.No. 3619 00285 amounting to Rs 3,84,112/-?
3. What is the other relief the Appellant is entitled to?

POINTS 1 TO 3

8. The Appellant purchased the leasehold rights in the land and machinery in Plot No. 25/A, MIE, Hafeezpet from APSFC with a view to set up a unit and she was handed over the possession of assets on 21.12.2002. The APSFC originally executed an agreement of lease for 30 years, effected through a registered release deed in favour of M/s Anu Industries represented by Director/Proprietor/Partner Smt. K Susheela Rani on 22.01.1993 for an amount of Rs 0.03 paise per square yard. There was a theft of energy case booked against M/s Anu Industries in november 1999 by the AE/DEP-1/RR Circle for Rs 4,62,143/- and final assessment orders were passed in January, 2004 by the SE/Assessments/Hyderabad for Rs 3,75,342/- which was debited to the service in February, 2004.

9. The APSFC which financed the unit of M/s Anu Industries entered into Agreement of sale of unexpired lease period with the Appellant for Rs 5,09,00/- for the plot, plant and machinery if any. The Respondents, as per the documents filed by the Appellant, have collected the required advance and other amounts and sanctioned the Service Connection No.3619 01314 in 2003 to the Appellant. The Appellant claims that when she went to pay the monthly bill of Rs 3,986, she was served with a demand to pay Rs 3,75,342/- and other amounts towards arrears relating to S.C.No.3619 00285.

10. The Additional AE/OP/TSSPDCL/Chanda Nagar filed a reply admitting that S.C. No. 3619 01314 was released in favour of the Appellant. He further stated that

S.C. No. 3619 00285 was released in the name of M/s Anu Industries on 29.12.1994. Against this service, a theft case was booked in November, 1999 by the AE/DPE.1/RR Circle for Rs 4,62,143/- and final assessment orders were passed in January, 2004 by the SE/Assessment/Hyderabad for Rs 3,75,342/- which was debited to the service in the month of February, 2004. This service was under bill stop from August, 2001. The service connection of the Appellant had load of 10 Hp only, which was released on 18.7.2003. The service connection of the Appellant was disconnected in November, 2012 for non payment of CC bills and was kept in OSL in the month of Aug, 2013. He claimed that since the arrears pending against SC No. 3619 00285 was Rs 3,84,112/- to which the link service is the service connection of the Appellant, a notice was given for collection of dues.

11. The AAE/OP further claimed that the original lease deed dt. 22.01.1993 executed by the district collector RR District in favour of M/s Anu Industries with effect from 19.1.1993 is continued and it is neither cancelled nor changed in favour of the Appellant. The Appellant is now constructing in the total area of the leased land and she is liable to pay arrears against S.C.No. 3619 00285.

12. The record shows that the SE/Assessment/Hyd of CPDCL of AP Ltd. passed final assessment orders vide his Order No. SEA/HYD/F.No.RN-648/SAH No. 9597/D.No. 243 dt. 31.1.2004 regarding pilferage of energy case booked against S.C. No. 285 , LT cat III in the name of M/s Anu industries, MIE, Hafeezpet, Lingampally Mandal, Ranga Reddy Dist. From the order of the SE dt. 31.1.2004, the Respondents claim that M/s Anu Industries with S.C.No. 285 was availing energy. The service was inspected by Sri S. Sunil Kumar, AE/DPE-1/Ranga Reddy on 4.11.1999 who noticed meddling with energy meter indicating power theft, due to which the meter was recording very less consumption and concluded that there was pilferage of energy and therefore, power was disconnected on 4.11.999. A provisional assessment was made for Rs 4,62,143/- and called on the consumer to pay 50% of the initial assessment and supervision charges of Rs 150.00 for continuation of supply, pending finalization of case . A show cause notice was issued to the then consumer cited by SE/Electrical/Assessments/Hyderabad towards loss sustained by the APCPDCL on account of such pilferage of energy plus Rs 150/- towards supervision charges. The then consumer did not present herself to the show cause notice and she failed to attend for personal hearing on 28.11.2003. Therefore, the assessing officer made the following revised assessment:

- | | |
|----------------------------|--|
| 1. Total connected load | : 32.882 Kw |
| 2. Recorded consumption | : 2120 units |
| 3. Estimated consumption | : $32.882 \times 1 \times 0.8 \times 7 \times 25 \times 12 = 55,242$ Units |
| 4. Preferred units | : $55242 - 21120 = 34122$ Units |
| 5. Cost of energy pilfered | : $34122 \times 11.00 = 3,75,342/-$ |

13. The assessing officer, on the basis of the record, was convinced that there was pilferage of energy and estimated the loss to the DISCOM at Rs 3,75,342/- plus Rs 150/- supervision charges and stated to have sent a copy of revised assessment order to the then consumer through Registered Post Acknowledgement Due.

14. The pilferage was detected on 4.11.1999, power was disconnected on the same day, a provisional assessment order was communicated by the ADE/OP/ kukatpally. What took the SE/Assessments/Hyderabad four years 2 months to pass this final assessment order dt. 31.1.2004 is not known. It is negligence of the representative of the licensee of a high order. What is the special process he performed in passing assessment order 31.1.2004 except calculating the pilferage by using an established method, which was initially done during provisional assessment. It is given to understand that until final assessment order is not passed, the ledger against the SC connection would not reflect the arrears due and that is the reason for releasing New SC No. 3619-01314 on 18.7.2003. Later it appears that the Respondents discovered on the basis of the belated and carelessly handled assessment proceedings dt. 31.1.2004 arrears, issued a notice demanding payment of arrears against previous service connection, because it was located in the same premises occupied by the present appellant putting her to great difficulty and misery.

15. The Respondents claims that since the appellant is in occupation of the same premises and she purchased unexpired leased portion from APSFC who in the first instance executed a registered lease deed for a period of 30 years in favour of the original lessee dt. 22.1.1993 and therefore, the Appellant is also connected with the earlier lease and liable to pay the arrears standing against S.C.No. 3619 00285 based on clause 8.4 of GTCS under which "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 existing connection or refuse to give any connection to the premises till all dues to the company are cleared." The Appellant on the other hand claims that

she is not responsible for the arrears against an old service connection which she had no knowledge and the respondents had not put her on notice and they have not put APSFC on notice about the existence of earlier arrears on service connection, theft of energy and therefore, she is not liable to pay the arrears.

16. In the first instance, there is sheer negligence on the part of the representatives of the licensee, who having discovered theft of energy on 4.11.1999 and having disconnected the power supply on the same day and having issued provisional assessment within a short time, took more than 4 years 2 months to issue final assessment order dt. 31.12.2004 leading to the non appearance of the arrears in the account books of the licensee, which further allowed the consumer to get a new S.C. No 3619 01314 and start her venture.

17. The Respondents are not in a position to disclose whether the earlier consumer Smt. K Susheela Rani was prosecuted for theft of energy and whether as required under Sec. 135 of the Electricity (Supply) Act, 1948 (since repealed) whether civil liability against the consumer for the theft of energy as required under Sec 154 sub clause 5 of the Electricity act, 1948 was obtained by making a special request to the special court. In the absence of any of these particulars, it can be assumed safely that the earlier consumer was neither prosecuted nor the loss or damage incurred by the licensee by way of civil liability was assessed and placed before the special court for determination. In the absence of these steps, it is obvious that the Respondents cannot collect penalties from either the then consumer or the present consumer. It is also quite clear that the Respondents are entitled to collect only the amount representing consumption of energy as per the prevalent rates. As far as the interest portion for the actual loss incurred by the licensee is concerned, the appellant was put to great harassment because of the actions of the Respondents by their inaction in informing the Appellant about the arrears against the earlier service connection which might have affected the leasee amount of Rs 5,05000/- the Appellant paid to the APSFC.

18. In view of the aforesaid reasons, the Respondents can collect only the actual loss sustained by the licensee by way of loss of energy of 34,120 units at the prevalent rate by 4.11.1999 without interest or costs. Even with these assessed units, it is not known whether these units were consumption for one month or more months, and whether the earlier consumer paid any CC bills prior to 9.11.1999. Keeping in view these facts it is clear that the CGRF passed impugned orders without considering the material on the record, without calling for record from any authority

and without applying mind and issued the impugned orders which are untenable and therefore they are set aside.

19. Because of the negligence of the staff of the licensee, the original consumer got away scott free from prosecution for theft of energy and the concerned officials took their sweet time in passing a formal assessment order about 4 years 2 months later, by which time, the ledgers of the licensee disclosed no arrears leading to the release of a new service connection to the Appellant. Further the penalty prescribed by way of cost of energy pilfered is not determined by the special court as civil liability and it is not so formalised under S.154(5) of the Electricity Act, 1948(since repealed) to enable the licensee to recover the amount from the Appellant. Therefore, the Appellant is found not liable to pay the amount of arrears amounting to Rs 3,75,342 due against SC No. 3619 00285 released in the name of M/s Anu Industries on 29.12.1994. Both the points are answered accordingly.

20. The CGM of the licensee is directed to initiate enquiry into the matter, find out why civil liability was not got fixed by the Special Court, what happened to the prosecution for power theft and fix the responsibility also for the undue delay of 4 years 2 months caused in passing a final formal assessment order, even though the then consumer could not be served due to the mechanical efforts without substance which is not an excuse and recover the loss sustained by the licensee from them. The licensee is therefore directed to restore power to the unit of the Appellant after collecting the relevant charges as per the prevalent tariff order.

Corrected, Signed & Pronounced on this the 28th day of September, 2015.

Sd/-

VIDYUT OMBUDSMAN

1. Smt. M. Anasuya Devi,
H.No. MIG 1317, BHEL,
Ramachandrapuram,
Hyderabad.
2. The AE/OP/Chandanagar/TSSPDCL/RR Dist.
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6. The SE/OP/ RR North Circle/TSSPDCL/RR District.

Copy to

7. The Chairman, CGRF, Greater Hyderabad Area, TSSPDCL, Vengal Rao Nagar, Erragadda, Hyderabad.
8. The Secretary, TSERC, 5th Floor, Singareni Bhavan, Red Hills, Hyderabad.