

BEFORE THE FORUM FOR REDRESSAL OF CONSUMER GRIEVANCES OF
SOUTHERN POWER DISTRIBUTION COMPANY OF A.P LIMITED
TIRUPATI

This the 5th day of November 2012

C.G.No:190/2012-13/Nellore Circle

Present

Sri K. Paul
Sri A.Venugopal
Sri T.Rajeswara Rao
Sri K. Rajendra Reddy

Chairperson
Member (Accounts)
Member (Legal)
Member (Consumer Affairs)

Between

Smt. S.Kamakshi
DNo:23/830., Ramesh Reddy Nagar,
Nellore Post & Mandal,
Nellore-Dist-524003

Complainant

and

1. Assistant Engineer/Operation/West-I/Nellore
2. Assistant Divisional Engineer/Operation/Town-3/Nellore
3. Assistant Divisional Engineer/DPE-III/Nellore
4. Divisional Engineer/Operation/Town/Nellore
5. Superintending Engineer/ Assessments/Tirupati

Respondents

Smt. S.Kamakshi Resident of DNo:23/830., Ramesh Reddy Nagar, Nellore Post & Mandal, Nellore-Dist-524003 herein called the complainant, in their complaint dt:15-9-2012 filed in the Forum on dt:15-9-2012 under clause 5 (7) of APERC regulation 1/2004 read with section 42 (5) of I.E.Act 2003 had stated that

1. She is having domestic service with SCNo: 3313102060647 under LT-1 (A) category in the jurisdiction of west-1 section of Nellore Town.
2. Her husband who is a doctor was retired from service about 15 years back and he is not running any hospital in their house i.e. the above said premises and there was not even a para medical staff working.

3. The front room of the premises is being used for consultancy and to advise relatives, friends and acquaintances regarding their health problems and to keep himself social contacts.
4. The rest of the premises is being used for family purpose and not for any commercial purpose.
5. When such is the case she received a letter dt: 24-05-2012 on 04-09-2012 informing her that a penalty of Rs 31105/- was imposed and 50% of the said amount is to be paid immediately for making an appeal.
6. Immediately she made a representation to the ADE/Opn/town-3/ Nellore on 06-09-2012
7. Subsequently she received an another letter on 14-09-2012 and the said letter was dated: 25-08-2012 and the contents are the final assessments.
8. She don't have an opportunity and time to go through.
9. Requested for a direction to the respondents re-inspect the said premises and cause justice by waiving the penalty imposed.

Notices were served upon the respondents duly enclosing a copy of complaint.

The respondent-2 i.e. the Assistant Divisional Engineer/Operation/Town-3/ Nellore in his written submission dt:20-9-2012 received in this office on dt:21-09-2012 stated that:

1. The SCNo:3313102060647/F3B-W1C, Smt S.Kamakshi, DNo: 23/830, Ramesh Reddy Nagar, West-1, section, Nellore was inspected by Sri M.Sreenivasulu, ADE/DPE/Nellore, on dated :03-05-2012 at about 10:20 hours and noticed that the consumer was utilizing supply for commercial purpose and the same was entered in MAT's vide case No. DPE/NELT/NEL3/1500/12, Case dated :24-05-2012.

2. Accordingly the provisional assessment notice was issued by me on 24-05-2012 vide DNo.1091/2012, and the copy was served by AE/West-1 section /Nellore, on 04-09-2012, since the consumer was out of station for personal work.
3. The final assessment order from DE/Assessment/Tirupati, was also received on 25-08-2012 and served to the party on 14-09-2012 by the AE/West-1 section/Nellore.
4. Mean while the consumer was approached on 07-09-2012 to the ADE/Opn/Town-3/Nellore, regarding the revision of notice and advised the consumer to submit the appeal to the SE/Assessment/Tirupati for further action please.
5. It is to submit that the service was inspected by me 04-09-2012 along with the AE/west-1/section/Nellore and noticed that there are no Beds, Nurse, Medical shop etc. and only name board is available and also the entire portion was vacant and one room was occupied for consultation purpose duly fixing the window A/C, Fan, Tube lights etc.

The respondent-3 i.e. the Assistant Divisional Engineer/DPE-III/Nellore in his written submission dt:03-10-2012 received in this office on dt:04-10-2012 stated that:

1. The ADE/DPE-III/Nellore has inspected the service No: 3313102060647, F3B-WIC of West-I section along with the Sri M.Hari Prasad, AE/DPE-I/Nellore and Sri G.Lakshman Reddy, ALM/West-1/Nellore on 03-05-2012 in the pole to pole programme about 10:20hrs and found that the following findings at the time of inspection as 1.

2. The building having ground floor and upstairs. There are two services area available in the name of Smt S.Kamakshi wife of S.Mohan Rami Reddy who is retired Govt. Doctor, under domestic purpose i.e. category-I particulars are
 - a. Service No:3313102060647, F3B-WIC of West-1 section for ground floor.
 - b. Service No. 3313102032113, F3B-WIC of West-I section for upstairs.
3. Smt. S.Kamakshi family residing in the upstairs. Her husband Sri Dr. S.Mohan Rami Reddy has running the medical practice in the ground floor. At the time of inspection 1 No. lady person (Nurse) has followed with us and shown the loads in the ground floor and available loads are as follows;

Sl. No.	Location	Tube lights	Sealing fans	Window AC	Beds
1.	Office room / Consultation room	2	1	1	--
2.	Room-I	1	1	--	--
3.	Room-II	1	1	--	1
4.	Room-III	1	2	--	1
5.	Room-IV	1	1	--	1
6.	Room-V	1	1	--	--
7.	Room-VI	1	1	--	--
	Total	8	8	1	4
	Wattage	8x 40 = 320	8x60 =480	1x800 = 800	--

4. The total connected load is 2600 watts and observed that the service consumption pattern from 05/2011 to 05/2012 found that the average three hundred units per month consumed by the consumer under domestic category.
5. The consumer has unauthorized usage the supply under domestic to hospital purpose i.e. non-sanction utilization of supply under category-II.
6. Hence the ADE/DPE-III/Nellore has taken into the account for the above all findings and booked the malpractice case vide No.

DPE/NELT/NEL3/1500/12 for the past 1 year and assessed the loss sustained by the consumer to the company Rs. 31,205/-.

Findings of the Forum:

1. The grievance of the complainant is that a malpractice case was booked and an amount of Rs.31,205/- was levied against their domestic service under the plea that the supply at the premises was utilized for Hospital purpose instead for domestic for which it was sanctioned though they are not running any such hospital in the premises.
2. The complainant mentioned that her husband served as government doctor earlier and was retired about 15 years back and presently rendering medical services to the near and dear freely in the front room of the premises utilizing as consultancy room and they have not engaged any para-medical staff. The rest of the premises is being used for family purpose and not for any commercial use.
3. Where as the respondent-3 i.e. ADE/DPE-III/Nellore in his deposition stated that the premises is having 2 floors out of which the first floor having service number:3313102032113 is being utilized for residential purpose by the Doctor, the husband of the complainant and in the ground floor having service number 3313102060647 there are 7 rooms out of which one is utilized for office room/Consultancy and balance 6 rooms are provided with Ceiling fans, Tube Lights and Beds and the total load is 2600 watts.
4. He also mentioned that, at the time of inspection, the owner of the service, herein the complainant Smt. S.Kamakshi herself was present and signed the inspection notes duly accepting the contents of the notes.
5. The respondent-2 i.e. ADE/Opn/Town-3/Nellore in his deposition mentioned that he had inspected the premises again on 04-09-2012 along with the

AE/West-1/Nellore and noticed that there are no beds, nurses, medical shop etc. and only name board was available and also the entire portion was vacant and only one room was occupied for consultation purpose duly fixing the window AC, Fan, Tube Light etc.

6. The first inspection took place on 03-05-2012 by the DPE wing and the second inspection was done on 04-09-2012 by the Operation wing by which time there was a little change in the nature of premises which cannot be considered to be a fact. The conditions of the first inspection noticed by the DPE wing shall be the final and there shall not be any scope for misinterpretation of the same.
7. Though it was mentioned by the inspecting officer, the ADE/DPE-III/Nellore in his report addressing the respondent-2 i.e. ADE/Opn/Town-3/Nellore to change the category of the said service from category-I to II with immediate effect, it was left in LT-I only instead of converting the same to LT-2 with immediate effect.
8. The other point of consideration is that, the complainant received the notice of malpractice on 04-09-2012 where as it was ordered on 24-05-2012 i.e. after a delay of 103 days and she immediately represented the matter to the ADE/Opn/Town-3/Nellore on 06-09-2012 i.e. within 2 days. The respondents did not mention the reason for such a abnormal delay in serving the notice to the complainant.
9. But as per the malpractice notice the complainant has to represent the matter to the final assessing officer within 15 days duly paying 50% of the assessed amount which was not done so.
10. Since the complainant received the notice on 04-09-2012 she should have paid the 50% amount and represented the matter to the final assessing

authority by 19-09-2012, but contra to this she approach the ADE/Opn/Town-3/Nellore which serves no purpose.

11. The final assessing officer i.e. the DE/Assessments/ Tirupati ordered his assessment on 25-8-2012 itself much earlier to the date of receipt of the notice by the complainant i.e. 04-09-2012 which was received by complainant on 14-09-2012 appears that he did not wait for the acknowledgment of the complainant.
12. Without giving reasonable opportunity and not even the notice to the consumer/complainant, the assessing officers finalized the case unilaterally which is against the procedure and natural justice and hence there shall be an opportunity to the consumer/complainant atleast with the appellate authority at this juncture to put-forth her grievance.
13. As such the complainant may approach the appellate authority i.e. the SE/Assessments/Tirupati within 15 days from the date of this order duly paying the 50% of the provisionally assessed amount of Rs. 31,105/-

In view of the above, the Forum passed the following order.

ORDER

The complainant is advised that She may prefer an appeal before the SE/Assessments/Tirupati the appellate authority in this case within 15 days from the date of this order duly paying Rs.15552.50 towards 50% of the total amount of provisional assessment

The respondents are directed that they shall allow the complainant's appeal and depending upon the final verdict of the appellate authority, the service category and the assessment amount shall be adopted accordingly.

The complainant if not satisfied with the order of the appellate authority may again approach the Forum

