

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

On this the 26th day of February 2019

In C.G. No: 215/2017-18/Kurnool Circle

Present

Sri. A. Jagadeesh Chandra Rao
Sri. A. Sreenivasulu Reddy
Sri. D. Subba Rao
Sri. Dr. R. Surendra Kumar

Chairperson
Member (Finance)
Member (Technical)
Independent Member

BETWEEN

Sri. S. Mahaboob Basha,
27-92/3,
Atmakur,
Kurnool Dt.

Complainant

AND

1. Assistant Engineer/Op/Atmakur
2. Assistant Divisional Engineer/Op/ Atmakur
3. Divisional Engineer/OP/Kurnool

Respondents

ORDER

1. S. Mahaboob Basha presented a complaint stating that his father was an oil engine mechanic. The inspecting officer who saw oil engines in the house mistakenly recorded the house as workshop and imposed penalty in the absence of his father and the category was changed from I to II subsequently his father died. His father also presented a complaint to SE/Assessments/TPT. But his complaint was not resolved. Hence he is presenting the complaint as his father subsequently died.
2. Respondents No.1 and 2 presented written submission on 27.12.2017 stating that a case for unauthorised usage was booked against service No.8331103002855 for an assessed amount of Rs.1,569/-. DE/Assessment/TPT issued final order for an amount of Rs.14,651/-. ADE/O/Atmakur submitted a report to DE/O/KNL for deletion of case in MATS stating that repairing of diesel engine work was carried out in open area outside the house, no supply used for the repairs. Consumer also sent a request letter to SE /Assessments/TPT.
3. At first instance both the learned members of technical and finance opined that the complaint is liable for rejection as per para 10.2 (b) of Regulation. 03/2016. On the other hand both the Chairperson and independent member opined that an opportunity has to be given to the complainant and after hearing the complainant any orders can be passed on merits.

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4. Accordingly a personal hearing was conducted and complainant reiterated his version.
5. The point for determination is whether father of the complainant un-authorisedely use the service connection No. 8331103002855 of Atmakur and the assessed amount is liable to be collected from the complainant?

The inspection report Dt : 18.04.2015 prepared by AAE shows that there is 1 motor, 1 tube light, and 1 fan in the premises. The total load is 653 watts. The inspection report does not disclose whether the premises is also used for residence of the consumer or it was used only for repairing oil engines. Column No. 2 of the inspection report discloses that Syed. Yunus was present at the time of inspection but his signature was not obtained, the reason for not obtaining the signature of the consumer is not mentioned in the inspection report. But in column No. 12 it was mentioned that consumer refused to give statement. The total load of 653 watts was shown as commercial. The inspecting authority made an assessment for unauthorised usage is 133 units per one month from 1st March 2015 to 8th Apr' 2015 and the amount assessed by him is Rs.1,569/-. The final assessment order issued by DE/Assessments/TPT shows that final assessment was given for Rs. 14,651/- . The learned DE/Assessments/TPT did not give reasons for issuing final assessment notice for Rs.14,651/- when the inspecting officer assessed the total amount as Rs.1,569/- it was not mentioned in the final assessment order by the learned DE/Assessments/TPT that a notice was issued to the consumer before enhancing the amount for unauthorised use without giving notice enhancing the assessment amount is illegal and arbitrary. Principles of Natural justice requires that a notice must be issued to the consumer before enhancing the assessment amount and reasons for enhancing must also be mentioned in the order.

Accordingly the complainant Mohd. Yunus preferred an appeal to the SE/Assessments/TPT by registered post against the orders of DE/Assessments/TPT. He also enclosed the copy of postal receipt and acknowledgement receipt to prove his contention. The same was confirmed by both the respondents No. 1 and 2 in their written submission. Respondents did not filed any documents that SE/Assessments/TPT has passed any order in the appeal. No material is placed before this forum to show that the appeal was considered by SE/Assessments/TPT or it is still pending.

Both the respondents categorically stated the written submissions that ADE/Atmakur submitted a report to DE/KNL for deletion of this case. But

unfortunately the same was not considered. The written submission of Respondents No.1 and 2 clearly shows that consumer has not used supply at all for his repair works. He was doing his repair work totally manually and in the sun light. If this version is taken into consideration there will be no case for unauthorised usage and registering a case under Sec.126 of the Electricity Act, 2003 itself is illegal. Para 10.2 (b) of Regulation.3/2016 has given an option to the forum to reject the complaint at any stage if the case falls under Sections.126,127, 135 to 139 and 152 of the Act. Rejection of the complaint at any stage is at the discretion of the forum. The forum is not debarred from entertaining the complaints against the registration of the case under Sec.126 of Electricity Act. Merely the officers had mentioned Sec.126 of the Electricity Act at the time of registering of the case itself is not sufficient to reject the complaint. Each case has to be decided on its own merits. The complainant has to be given an opportunity to prove his contention that registering of the case under Sec. 126 of the Electricity Act, 2003 is wrong.

The facts clearly show that registering of the case by the registering officer under Sec.126 of the Act itself is not correct. So the assessment order made by DE/Assessment/TPT also is not valid.

During the pendency of the complaint the complainant was forced to pay the entire assessed amount in instalments. Merely because the consumer paid the amount, it cannot be concluded that consumer has used the service for unauthorized use.

6. In view of the above reasons, I am of the opinion that no case was made under Sec.126 of the Electricity Act, 2003 against Service No.2855 and the assessment made against the service connection is liable to be set aside and the amount collected under the illegal assessment is liable to be refunded with interest @ 9% from the date of payments.

I concur with the opinion of Hon'ble Chairperson of CGRF.

Sd/-
Independent Member

I have gone through the opinion of learned Chairperson/CGRF and partially disagree with his opinion on the subject that "Registering of the case by the registering officer under Sec.126 of the Act itself is not correct. So the assessment made by DE/Assessment/TPT is also not valid". I am of the firm opinion that the inspecting officer during his inspection on 08.04.2015 noticed that the complainant was availing supply for diesel engine repair works from his domestic service and hence booked a malpractice case. The inspecting officer has assessed the malpractice amount for 133 units only for a period from 01.03.2015 to 08.04.2015 for Rs.1,569/- and hence registering of case by the registering officer under malpractice may be a genuine one. However the assessment made by DE/Assessment/TPT is on high side. The consumption pattern from 01.01.2015 till to date reveals that the consumption is almost uniform and there are no abnormal variations in the usage. The assessment made by the inspecting officer for 133 units seems to be reasonable and hence the assessment amount can be limited to Rs.1,569/- only. I partially agree with opinion of learned chairperson that the assessment made by DE/Assessment/TPT is not valid. Merely because the complainant has paid the entire assessment amount in instalments, it cannot be attributed that he is guilty. Hence I am of the opinion that the assessment made by the inspecting officer for Rs.1,569/- is reasonable and the complainant is liable to pay that amount only and the excess amount paid by him is liable to be refunded by way of adjustment in future bills.

Sd/-
Member (Finance)

I have gone through the opinion of learned Chairperson/CGRF and differed with his opinion on the subject that "registering of the case by the Registering officer under Sec.126 of the Act itself is not correct. So the assessment made by DE/Assessments/TPT is not valid". Technically it was observed that it is dereliction of his duty of Registering Officer wherein he was not ascertained the period of assessed units arrived to the total connected load of 653 watts by inadvertent of his inspecting notes and without deserving of assessed value which was fixed for 133 units for one month i.e. from 01.03.2015 to 08.04.2015 in his assessed calculation sheet against registering of the case even it is in his discretion of inspecting authority as an inspecting officer. On lenient view, based on non-ascertaining the period of assessed value by the inspecting authority and as per technicality it is a procedure, the then DE/Assessments/Tirupati had taken and arrived 1257 units for the period of 01.04.2014 to 08.04.2015 i.e. one year.

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On technical aspects what they done of their duty of both respective levels are correct but it is procedural lapses occurred by both of them i.e. one is non ascertaining the period for booking the malpractice case at that time by the inspecting officer and other one is before arriving the final assessed value by DE/Assessments/TPT, prior notice had not been issued to the consumer.

As per consumption pattern from 01.01.2015 to till to date reveals that the consumption is almost uniform and there are no abnormal variations in the usage by the consumer. It is a justifiable to the assessment made by the inspecting officer for 133 units seems to be reasonable and hence the assessment amount can be limited to Rs.1,569/- only.

In view of the above, the opinion of the Chairperson /CGRF wherein he has arrived as i.e. assessment made against the service connection is liable to be set aside and the amount collected under the illegal assessment is liable to be refunded with interest from the date of payment is not correct.

Hence, I am of the opinion that the assessment made by the inspecting officer for Rs. 1,569/- is reasonable and the complainant is liable to pay that amount only and the assessed amount paid by him is liable to be refunded by way of adjustment in future bills.

Sd/-
Member (Technical)

I have pursued the opinion of both the full time members of the Forum. Both of them opined that since the inspecting officer assessed the malpractice from 01.03.2015 to 08.04.2015 for Rs.1,569/-. So the consumer is liable to pay the assessed amount. The perusal of the written submissions made by both AE/O/ Atmakur and ADE /OSD/ Atmakur shows that a report was submitted by them to DE/ O/ KNL stating that the consumer carried out the work in open area outside the house without utilising the electricity supply for his avocation.

There are two versions available on the record. The first one is according to inspecting officer who is the AE of another section that the consumer was indulging in malpractice for utilising domestic service for his avocation. The second version is according to the field officers of the sub division where the service of the consumer is located, that consumer did not utilise the domestic service for his avocation. Though their correspondence to their superior officers is on a later date the same cannot be brushed aside only on the ground they have addressed letter to their superior officers at a belated stage.

In view of the contradictory versions in respect of consumer indulging in malpractice, I am of the considered view that if there is any ambiguity in assessing the malpractice the benefit shall go to consumer only.

In this case, I and Independent Member are of the opinion that the total assessment amount levied against the consumer has to be set aside, whereas the two full time members are of the opinion that the assessment laid by the inspecting officer has to be upheld. In view of my opinion mentioned in para supra, I am exercising a second/ casting vote for setting aside entire assessment amount.

In the result, the assessment made by the inspecting officer which was enhanced by DE/Assessments/TPT is set aside in entirety. The amount paid by the consumer shall be refunded within 30 days from the date of receipt of this order and submit the compliance to this Forum.

Sd/-
Chairperson

If aggrieved by this order, the Complainant may represent to the **Vidyut Ombudsman, Andhra Pradesh, Flat No:401, 4th Floor, Ashoka Chambers, Opposite to MLA Quarters, Adarsh Nagar,Hyderabad-500063**, within 30 days from the date of receipt of this order.

Signed on this, the day of 26th February 2019.

Sd/-
Member(Finance)

Sd/-
Member(Technical)

Sd/-
Independent Member

Sd/-
Chairperson

Forwarded By Orders



Secretary to the Forum

To

The Complainant

The Respondents

Copy to the General Manager/CSC/Corporate Office/ Tirupati for pursuance in this matter.

Copy to the Nodal Officer (Executive Director/Operation)/CGRF/APSPDCL/TPT

Copy Submitted to the Vidyut Ombudsman, Andhra Pradesh, Flat No: 401. 4th Floor, Ashoka Chambers, Opposite to MLA Quarters , Adarsh Nagar,Hyderabad-500063.

Copy Submitted to the Secretary, APERC,11-4-660, 4th Floor, Singareni Bhavan, Red Hills, Lakdikapool, Hyderabad- 500 004.

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