

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

On this the 14th day of August 2018

In C.G.No:109 / 2018-19/Anantapur 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. Y. Ramanjaneyulu,
S/o. Late. Govindu,
15/296,
Guntakal,
Anantapur – Dist

Complainant

AND

1. Assistant Engineer/O/ Guntakal
2. Assistant Divisional Engineer/O/ Guntakal
3. Divisional Engineer/Assessments/Tirupati

Respondents

* * * * *

1. This complaint was presented stating that he is running a photo studio for his livelihood. Officials of the Licensee inspected his photo studio on 16.03.2018 and registered a case No. DPE/GTL/GTKL/6029/18 and demanded to pay Rs. 88,571/- as penalty. This photo studio is having inverter, 2 lights, one fan and one tube light only. But the Assistant Engineer in his report stated that he is also using AC of 1400 watts but the AC was in another D. No.15/294- A, which belongs to his relatives who are running color lab vide Service No. 7221201038290 under Category – II . He has appealed after paying 50% but the assessment authorities did not consider his plea and dismissed his appeal.
2. Respondent No.3 field written statement stating that the service connection No. 7221201018960 Category LT- 1(B) Domestic, M/s. Sagar Studio Market backside in D-1 Guntakal section was inspected by Sri. Venkata Rajesh AE-T/DPE/Anantapur on 16.03.2018 and registered unauthorized usage of Electricity under Section 126 of Electricity Act, 2003. An assessment was made for an amount of Rs. 88,571/- . Show cause notice was issued to the complainant. Consumer represented this office that he is

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running photo studio and to avoid interruptions purchased inverters on 06.10.2017 and utilizing only one inverter from service No.7221201018960 and utilizing the inverter for the past five months and requested to reduce the penalty. The consumption pattern is on increasing side from October'16 and more or less i.e. uniform till the date of inspection which implies that the AC units are in service, in this service connection and it is also recorded consumption. In view of the same the assessment amount is confirmed. Complainant also preferred appeal to SE/Assessments/Tirupati and SE/Assessments/Tirupati also confirmed the same.

3. Respondents No. 1 and 2 did not choose to file any separate written submissions.
4. Personal hearing was conducted at Anantapur on 11.07.2018 wherein Respondents No.1 and 2 were present. Complainant reiterated his contention. Respondent No.1 reiterated the version as mentioned in the written submission of Respondent No.3.

Opinion of Member Finance :

The point for determination is whether the amount is liable for withdrawal as requested by the complainant?

The Respondent No.3 in his written submission has explained that during the course of inspection by the inspecting officer i.e. AE/Technical, DPE/Anantapur on 16.03.2018 it was found that the complainant was availing supply for the Sagar photo studio from the domestic supply and hence a case was registered under section 126 of Electricity Act, 2003 for an assessment amount of Rs. 88,571/-. The Respondent No.3 further added that the complainant has represented on 13.04.2018 to reduce the penalty amount the Respondent No.1 has reported him on 24.03.2018 that the complainant was availing one No. AC, 3 No's tube lights, 2 No's fans, one No inverter and one No. printer. As per the consumption pattern it is on increasing side from 10/2016 onwards and the same trend continuous till the date of inspection by the Respondent No. 1 and this clearly establishes that AC unit was in service and hence the recorded consumption was high from 10/2016 onwards. The Respondent No. 3 has also informed that the complainant has made an appeal to SE/Assessment/TPT and SE Assessment/TPT in turn confirmed that assessment on 25.05.2018. Finally the Respondent No. 3 has requested to dispose the case on merits.

As could be seen from the account copy of the service connection under question the consumption recorded from January' 2016 to May'2018 clearly depicts hike in the consumption from 10/2016 onwards only. Since the appellate authority i.e.,

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SE/Assessment/TPT has confirmed the assessment made by the final assessing authority, in accordance with sub section (4) of Section 127 of Electricity Act, 2003, the orders of the appellate authority referred in sub section(1) passed under sub section (3) shall be final.

In view of the above the complaint is dismissed.

Sd/- XXXX
Member/Finance

As per opinion of Chairperson:

Though I also agree with the above conclusion, but since I have a different view with regard to maintainability of a complaint which falls under Sec.126 of the Electricity Act,2003 before this Forum I have given my opinion separately.

Sec.42 of the Electricity Act, 2003 in "Part VI Distribution of Electricity – Provisions with respect to distribution licensees", Sub section (5) of Section 42 of the electricity Act, 2003 provides for establishment of Consumer Grievances Redressal Forum in accordance with the guidelines issued by the State Commission. Accordingly the Hon'ble APERC issued Regulation No. 03/2016 establishing the present Consumer Grievances Redressal Forum.

Sec.126 to 130 of the Electricity Act, 2003 are with regard to "Investigation and Enforcement" and are in "Part XII" Sec.126 empowers the employees of the licensee for inspection of the premises and if the assessing officer come to conclusion that occupier of the premises is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment, the electricity charges to be paid by the person or by any person benefited by such use. The procedure for issuing of order of provisional assessment is given in Sec.126 of the Electricity Act,2003 The person aggrieved by the final order passed under Sec.126 can prefer an appeal to the appellate authority under Sec.127 of the Act and the orders passed by the appellate authority shall be final.

The present Consumer Redressal Forum is constituted in view of the provisions of Sub Section (5) of Sec.42 which is in "Part VI Distribution of Electricity". Whereas the powers given for investigation and enforcement is in "Part XII". The provisions with regard to assessment and appeal to appellate authority given above are quite different and distinct from the provisions of Sub Sec (5) of Sec.42 of the Electricity Act, 2003 under which the present Forum

is established. The appellate authority under Sec.127 of the Act may be in the rank of SE or chief engineer as the case may and they are the employees of the licensee. Whereas the present consumer forum is headed by a Chairperson who is former District Judge and consisting of Member/Technical, Member/Finance in the rank of General Manager/ Superintending Engineer, and one Independent Member. Out of 4 members in the Forum 2 are independent members and not employees of the licensee.

At first instance Regulation No. 01/2004 was issued by the Hon'ble APERC for establishment of Consumer Grievances Redressal Forum and Ombudsman. No specific provision was given in respect of nature of the complaints that can be entertained by the consumer grievances redressal forum. It appears since there was no specific provision, the Consumer Grievances Redressal Forum constituted under Regulation No.01/2004 did not entertain complaints which fall under Sec. 126 of the Electricity Act. But the Reg. 03/2016 specifically mentioned about the nature of complaints that can be entertained by the Forum.

Para 10.2 (b) of Reg.03/2016 provides that the forum may reject the complaint at any stage in cases which fall under Sec.126, 127 and 135 to 139 and 152 of the Act. The word 'may' used in the above para clearly shows that discretion was given to the forum either to reject or entertain grievances by the consumers for registering a case under Sec.126 of the Electricity Act, 2003. Merely because the appellate authority provided under Sec. 127 of the Electricity Act, 2003 dismissed the appeal, the complaint on the same subject cannot be rejected in limini by this Forum. The forum has to take independent decision whether to entertain a complaint against the registering of a case under Sec.126 by the employees of the Licensee. If such independent option is not given to this forum, there is no necessity for mentioning in Clause (b) of 10.2 of Reg. 03/2016 that the forum may reject the complaint in cases which fall under Sec.126,127, 135 to 139 and 152 of the Act.

So, I am of the considered view that the cases which fall under Sec.126,127, 135 to 139 and 152 of the Electricity Act,2003 can be entertained by this forum and they have to be decided on merits and cannot blindly reject them.

In this case the complainant has not placed any evidence of the inspection report. AE/T/DPE was not correct. So also the assessment made by assessment officer is not correct. So the compliant is not maintainable and not correct. The complainant at the time of hearing also represented, in case if his case is not considered on merits he may be given an opportunity to pay the amount in instalment as he is running small photo studio and making his livelihood only on the income of his studio.

In view of the representation complainant is permitted to pay the balance of assessment amount in 6 monthly instalments apart from paying regular CC bills.

Opinion of Member/Technical:

I agreed with the opinion of Hon'ble Chairperson in this case.

**Sd/- XXXX
Member/Technical**

Opinion of Independent Member:

I have gone through the opinion of the Hon'ble Chairperson of the Forum and I agreed with the opinion of Hon'ble Chairperson of the Forum.

**Sd/- XXXX
Independent Member**

All the members are of the unanimous opinion that there are no merits in the complaint and it is liable to be dismissed.

In the result, the complaint is dismissed. However the complainant is permitted to pay balance of assessment amount in 6 monthly instalments apart from paying regular CC bills.

**Sd/- XXXX
Chairperson**

