

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

On this the 29th day of June 2021

C.G. No: 159/2019-20/Anantapur Circle

Present

Sri. Dr. A. Jagadeesh Chandra Rao
Sri Y.Sanjay Kumar
Sri. Dr. R. Surendra Kumar

Chairperson
Member (Technical)
Independent Member

Between

A. Venkata Adi Narayana Reddy ,
13-3-464,
Gowri talkies Road,
Mylavaram,
Anantapur .

Complainant

AND

1. Assistant Accounts officer/Anantapur Town
2. Assistant Executive Engineer/O/Anantapur D6
3. Deputy Executive Engineer/Anantapur Town-II
4. Executive Engineer/O/Anantapur

Respondents

ORDER

1. The case of the complainant is that he obtained service connection bearing No.7111301166292 under domestic category on 16.05.2018. The building was inaugurated on 16.06.2018 and he is residing in the house from the date of inauguration. He is using the supply for domestic use only. The inspecting officer booked a malpractice case without verifying the facts. Hence the case may be withdrawn.
2. Respondents No.2 and 3 filed written submission stating that service connection No.7111301166292 Cat-I with contacted load of 15 KW was released on 14.05.2018. The building was completed in full shape and house opening ceremony was held on 16.06.2018. The building is having 4 floors

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ground, 1st floor and 2nd floor are being used for running lodge and service under Category-2 was released on 14.05.2018 and 3rd and 4th floors is a duplex house. A malpractice case was registered on 05.03.2019 on service No.7111301166292 as the consumer was utilizing supply for lodge purpose and house construction purpose. The consumer is doing interim modification works due to Vastu problem in the 3rd and 4th floor at the time of inspection.

3. Respondent No.1 filed written submission similar to the version given by respondents No. 2 and 3. He also further stated that Deputy Executive Engineer/O/Anantapur-II issued Provisional Assessment order for Rs.2,57,723/- on 07.03.2019 and final assessment was issued by Executive Engineer/Assessments /Tirupati on 25.03.2019 for Rs. 2,68,605/-.

The Superintending Engineer/Assessments/Tirupati issued appeal order based on consumer appeal on 22.04.2019. After inclusion of assessment amount of Rs.2,68,605/- consumer paid an amount of Rs. 28,672/- and same amount was posted in MATS against the case No. DPE/ATP/ATP-2/6311/19 and CC balance amount of Rs. 2,74,549/-. The category was changed from non-domestic to domestic based on Regd. No.71113C005252019 SEP25 as on 26.09.2019.

4. Personal hearing through video conferencing was held on 16.10.2019. Complainant absent. Again personal hearing was held at Court Hall on 14.11.2019, Complainant's son and respondents No.2 and 3 were present. The copy of inspection report was called for. Again personal hearing through video conferencing was conducted on 17.12.2019. Complainant reiterated the version that the service connection is used only for domestic purpose. At the time of inspection modification work is going on in the premises due to Vastu problem. Respondents No. 2 and 3 also stated the same version.

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5. The complaint was dismissed on merits. Aggrieved by the dismissal of the complaint, complainant herein approached Hon'ble Vidyut Ombudsman with a representation, the Hon'ble Ombudsman was pleased to dispose of the representation by way of remanding the matter to this forum for fresh disposal of the case on merits on all aspects.
6. In obedience to the orders of the Hon'ble Ombudsman the case was restored to its file, notice was issued to file additional submissions if any within 10 days from the receipt of the notice.
7. Accordingly both parties submitted additional submissions.
8. Respondents in their counter reiterated the same version that was mentioned earlier in their written submissions. A. Veeranjaneya Reddy filed his affidavit as Respondent No.5 supporting the contents of his inspection report . He stated in para 5 of his affidavit that he inspected the premises on 05.03.2019 . The service No.166292 was inspected and found that electrical power supply is being utilized for non domestic purpose i.e. Sree 7 Lodge /Convention Hall 3rd and 4th floor building construction purpose which comes under LT Category – II other than sanctioned purpose Category - I. The consumer is already having 3 commercial service connections vide service No's.166291, 166293 , 166294. Further the premises were thoroughly inspected by removing the electrical supply to confirm that the above service is utilized for non domestic purpose. Further it is submitted that the service was inspected in the presence of the consumer son who is well educated and agreed as per his statement that supply is being utilized for 'Sree 7 lodge' air to water heat pump motor, 3rd and 4th floor building construction purpose. Hence a case of malpractice case booked.

The photos said to have been taken by him at the time of inspection from air to water heat pump motor for heating of water to 'Sree 7 lodge' purpose and for construction of 3rd and 4th floor building is also furnished.

Complainant filed rejoinder especially denying on the averments mentioned in the affidavit of inspecting officer i.e. Respondent No.5. Complainant further stated that Akhil Reddy was not present at the time of inspection and he did not give any written statement before the inspecting officer. Consumer had already filed agreement dt : 31.07.2019 between consumer and the OYO i.e. my preferred Transformation and Hospitality Pvt. Ltd. Gurgaon, Haryana. (But the same was not filed). The alleged inspection on 05.03.2019. Hence there is no requirement for the consumer to utilize Category- I for Category-II. It is a new building inaugurated by Sri. Swaroopananda Swamy on 02.06.2018. It is a new building. The rooms are not open. The consumer directly enters into the agreement with 'OYO'. They are liable to pay electricity from 31.07.2019. But the alleged inspection is on 05.03.2019.

9. Personal hearing through video conferencing was conducted on 23.12.2020. Complainant present and stated that he has already filed his affidavit, photos and documents that may be marked as exhibits on his evidence for respondent's evidence. Again on 10.02.2021 and on 27.04.2021 personal hearing was conducted through video conferencing. On both the occasions Complainant was absent and respondents present.
10. Finally it was heard in personal hearing through video conferencing on 15.06.2021. Complainant, his son and their advocate present. Inspecting Officer i.e. Respondent No.5 and Executive Engineer present. Heard both sides.

11. The point for determination is whether this forum can entertain a complaint for un- authorized use of electricity which was registered as per the provisions of Sec. 126 of the Electricity Act, 2003?

Investigation and Enforcement is provided under Part XII of the Electricity Act when provisional assessment order was served on the complainant under Sub-Section (5) of Sec.126 of the Electricity Act which is as follows:

“ If the assessing officer reaches to the conclusion that un-authorized use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection”.

Un -authorized use of electricity is defined under (b) of explanation given under Sub -Section (6) of Sec. 126 of the Act which is as follows:

- (6) *The assessment under this section shall be made at a rate equal to (twice) the tariff rates applicable for the relevant category of services specified in Sub-section(5).*

Explanation: - For the purposes of this section.-

a) *“assessing officer” means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;*

b) *Un-authorized use of electricity” means the usage of electricity –*

i) *By any artificial means or*

ii) By a means not authorized by the concerned person or authority or licensee; or

iii) Through a tampered meter ; or

iv) For the purpose other than for which the usage of electricity was authorized; or

v) For the premises or areas other than those for which the supply of electricity was authorized.

An opportunity is provided to the aggrieved party to prefer an appeal under Sec.127 of the Electricity Act against the final order made under Sec. 126 of the Act within 30 days.

Sec.145 of the Electricity Act is as follows:

Section 145.(Civil courts not to have jurisdiction):

“ No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act”.

In this case complainant preferred this complaint against registering a case for unauthorized use of electricity under Section.126 of the Act and also after his appeal to the appellate authority under Section. 127 of the Act. The appeal was dismissed by the appellate authority. When the Civil court has no jurisdiction at all to entertain a suit on any matter which assessing officer referred in Sec. 126 or an appellate authority referred in Sec. 127, the question of following the Civil Procedure Code

and Indian Evidence Act in recording evidence, marking of documents and appraisal of evidence does not arise at all. So also the procedure contemplated in CPC for rejection of plaint, dismissal of suit for default or on merits are not applicable. The result of rejection of the complaint or dismissal of the complaint is one and the same. Dismissing of the complaint instead of rejecting the complaint under Reg.03 of 2016 is not illegal or irregular. More over Clause .12.7 of Reg. 03 of 2016 empowers the Forum to regulate its own procedure, but it shall be guided by the principles of justice, equity and good conscience and subject to the specific provisions of the said Regulation.

Admittedly proceedings before consumer Fora's are summary in nature. The cases before consumer Forums are decided basing on the pleadings and chief affidavits filed by the parties.

It was held by National Consumer Disputes Redressal Commission, New Delhi in a case between D. Shankar vs Gopi Agencies & Others Reported in IV (2010) CPJ 73 (NC) as:

“These letters /admissions/actions of OP's 1 and 3 since soon after the accident to March 1995 lend strong credence to the substance of the complainant's contentions. We may recall that adjudication of consumer complaints in summary proceedings is based on preponderance of probabilities and not on application of the rigorous provisions of the Evidence Act enjoining proof beyond doubt. In our opinion, the State Commission erred in not duly considering the collective weight of these documents/admissions and conduct of Ops 1 and 3 and coming to the conclusions that it did”.

Complainant also filed affidavit of his son A. Akhil Kumar Reddy and one Md. Abdul Eliyaz said to be employee of the Complainant .

A. Akhil Kumar Reddy in para 2 of his affidavit stated that respondent authorities never visited their house in his presence at any point of time as alleged in inspection report dt: 05.03.2019 and it is a false one. The house is used only for domestic purpose. Some interior decoration with latest imported furniture were carried out, they are using air water heater for domestic purpose only. They never used electricity other than domestic purpose as alleged by the inspection authorities in their inspection report. In their premises, G+2 is given to one OYO company opened and operations started on 03.07.2019 after completion of the alleged inspection dt: 05.03.2019.

Md. Abdul Eliyaz in his affidavit stated that he is an employee of the complainant and respondent authorities never visited the duplex house for the purpose of inspection on 05.03.2019. G + 2 floors in the same premises is given to OYO company on 03.07.2019. Air water heater was fixed for hot water usage for house purpose.

Son of the complainant who alleged to have present at the time of inspection by respondent No. 5 on 05.03.2019 stated in his affidavit that inspection was not at all made and inspection report is a false one. But he did not specifically deny about his writings and signature in the inspection report. The affidavit was filed after the matter was remanded. When Mr. Akhil Reddy who appeared on behalf of the complainant at Tirupati in personal hearing stated that he had endorsed that electric supply used for 3rd and 4th floor for water heater purpose only and he has not gone through the observations made by the inspecting officer. The same was also mentioned in the earlier order but now he had taken a plea that he was not present and inspection was a false one. So it is a different version made by him at a later date to suit the contention of the complainant who is his father, so the same cannot be relied on.

So also the affidavit of the so called employee that no inspection was made cannot be relied on the aspect of that no inspection was made on 05.03.2019 by respondent No.5.

In the inspection report, it was mentioned that one Y. Linga Raju, Supervisor was present but not signed. The affidavits of Complainant or his son are silent on this aspect.

The contention of the complainant is that house warming ceremony (Gruha Pravesham) was celebrated on 16.06.2018 and they are residing in the premises. But due to some vastu advice they made some alterations. Complainant also filed 4 photos showing furniture in some rooms. Complainant in his initial complaint or in the affidavit of his son and employee did not specifically state that the alterations are made in the premises while they are residing in it. Some times Gruha praveshams will be conducted even though the entire work in the house is not completed due to auspicious muhurtams and after performing the ceremony and there after completing the work in all respects will occupy and utilize the premises for residence. So merely because house opening ceremony was celebrated prior to the date of inspection, it cannot be concluded that the service is used for domestic purpose only from the date of house opening ceremony and not used for construction purpose.

The other contention of the complainant is that he has entered agreement with OYO for running the lodge and they started commencement of operations on 03.07.2019. Merely because an agreement was made on 03.07.2019 with OYO for running the lodge is itself is not sufficient to come to conclusion that prior to that those floors in the premises are not used for running the lodge.

The inspecting officer i.e. respondent No.5 in para 5 of his affidavit stated that he inspected the service No. 166292 and found that electrical power supply is being utilized for non -domestic purpose i.e. for Sree 7 Lodge/Convention Hall, 3rd

and 4th floor building construction purpose which comes under Cat-II other than the sanctioned purpose. The consumer is already having three service connections in the premises vide service No's. 166291, 166293 and 166294. Further the premises were thoroughly inspected by removing the electric supply to confirm the above service is utilized for non-domestic purpose. The service was inspected in the presence of complainant's son who is well educated and issued statement that supply is being utilized for Sri 7 Lodge air to water heat pump motor , 3rd and 4th floor building construction purpose.

So the inspecting officer categorically stated in his affidavit that after removing all other service connections verified and found that water heat pump motor which is connected to the service No's 166292 is being utilized for Sri seven lodge and for the construction of 3rd and 4th floors. There is no necessity for him to give a false statement.

In this connection it is relevant to refer Memo No. GM/CS/AAE/CS/F./D.No.167/2014, Dt: 20/3/2014 wherein Executive Director/ Projects/ APSPDCL/Tirupati issued clarification to Superintending Engineer/O/ Vijayawada/Guntur/Ongole/ Nellore/Tirupati/ Kadapa to the effect that:

“ After careful examination, it is clarified that, any consumer applied for the purpose of construction activity either individual or group of multistoried nature will be released under Category-II, after completion of the construction activity, the Category may be changed based on ground reality”.

So even if service is obtained for residential building under construction, the service will be released under Category-II only and after completion of building, the category will be changed after verification only.

Clause. 10.2 of Reg. 03/2016 empowers the Forum to reject the complaint at any stage which is as follows:

“The Forum may reject the complaint at any stage under the following circumstances:

a)

b) In cases which fall under Sections 126, 127, 135 to 139 and 152 the Act:

c).....

d)

Provided that no complaint shall be rejected unless the Complainant has been given an opportunity of being heard”.

This forum is competent to intervene in the cases filed under Sec. 126 and Sec.127 of the Electricity Act only in two circumstances they are:

1. When the facts of the case disclose that the registering of the case under Sec 126 is itself illegal.
2. When there is a procedural irregularity in registering a case and making assessment.

The facts of this case shows that the inspecting officer found at the time of inspection that the service is being utilized for un -authorized use of electricity which attracted the penal provisions of Sec. 126 and Sec.127 of the Electricity Act.

The procedure that has to be followed at the time of inspection is provided in Clause. 9 of GTCS. Clause 9.1.2 of GTCS provides that the inspecting officer shall record the observations made at the time of the inspection as per format prescribed in

Appendix- IV A for LT consumers. The inspecting officer shall send copy of the inspection report by the next working day to the assessing officer for preparation of Provisional Assessment Order.

The inspecting officer prepared the inspection report, shown the observations to the representative of the complainant and obtained statement from the son of the complainant. Inspecting officer has followed the procedure.

The contention of counsel of the complainant is that inspection has to be made in the presence of independent mediators. No independent mediator is associated with the inspection. The inspection report is a fabricated one. In the absence of independent witnesses to the alleged inspection, the inspection report cannot be relied and the assessment made basing on the illegal report is liable to be set aside. Merely because inspecting officer failed to inspect the premises in the presence of independent witnesses, his statement with regard to his findings that service is being utilized for un – authorized purpose and the inspection report cannot be brushed aside only on the ground that independent mediators are not associated with it that too when son of the complainant said to have been present and signed in the inspection report.

According to respondents, basing on the inspection report Dy.EE/O/Anantapur-II issued Provisional Assessment order on 07.03.2019. Subsequently Executive Engineer/ Assessments/Tirupati has issued a show cause notice to the complainant and in the absence of objections, EE /Assessments/ Tirupati has confirmed the assessment and communicated the final order to the consumer on 25.03.2019. Aggrieved by the order of EE /Assessments/ Tirupati complainant has also appealed to SE /Assessments/ Tirupati and he also confirmed the assessment on 20.04.2019. There after complainant has approached this Forum.

So, all the above facts shows that officers of licensee have followed the procedure as contemplated in Sec. 126 and 127 of the Act in this case.

In this connection it is relevant to refer the Judgment of the Hon'ble Apex Court in U.P. Power Corporation Ltd.& Ors Vs Anis Ahmad ([http:// indian Kanoon.org/doc/55216283](http://indiankanoon.org/doc/55216283)) held in para 46, 47 and 48 is as follows :

46. *"The acts of indulgence in "unauthorized use of electricity" by a person, as defined in clause (b) of the Explanation below Section 126 of the Electricity Act,2003 neither has any relationship with "unfair trade practice" or "restrictive trade practice" or "deficiency in service" nor does it amounts to hazardous services by the licensee. Such acts of "unauthorized use of electricity" has nothing to do with charging price in excess of the price. Therefore, acts of person in indulging in 'unauthorized use of electricity', do not fall within the meaning of "complaint", as we have noticed above and, therefore, the "complaint" against assessment under Section 126 is not maintainable before the Consumer Forum. The Commission has already noticed that the offences referred to in Sections 135 to 140 can be tried only by a Special Court constituted under Section 153 of the Electricity Act, 2003. In that view of the matter also the complaint against any action taken under Sections 135 to 140 of the Electricity Act, 2003 is not maintainable before the Consumer Forum.*
47. *In view of the observation made above, we hold that:*
- (i) *In case of inconsistency between the Electricity Act, 2003 and the Consumer Protection Act, 1986, the provisions of Consumer Protection Act will prevail, but ipsofacto it will not vest the Consumer Forum with the power to redress any dispute with regard to the matters which do not come within the meaning of service as defined under Section 2(1)(o) or*

complaint as defined under Section 2(1)(c) of the Consumer Protection Act, 1986.

(ii) A complaint against the assessment made by assessing officer under Section 126 or against the offences committed under Sections 135 to 140 of the Electricity Act, 2003 is not maintainable before a Consumer Forum.

(iii) The Electricity Act, 2003 and the Consumer Protection Act, 1986 runs parallel for giving redressal to any person, who falls within the meaning of "consumer" under Section 2(1)(d) of the Consumer Protection Act, 1986 or the Central Government or the State Government or association of consumers but it is limited to the dispute relating to "unfair trade practice" or a "restrictive trade practice adopted by the service provider"; or if the consumer suffers from deficiency in service; or hazardous service; or the service provider has charged a price in excess of the price fixed by or under any law.

48. For the reasons as mentioned above, we have no hesitation in setting aside the orders passed by the National Commission. They are accordingly set aside. All the appeals filed by the service provider-licensee are allowed, however, no order as to costs.

In view of the above reasons there are no valid grounds to interfere with the assessment made by the officers in this case. Relying upon the above cited decision complaint is not maintainable. Hence there are no grounds to review and revise the order passed by this forum on 04.02.2020. The point answered accordingly.


12. In the result the complaint is dismissed.

Sd/-
Member (Technical)

Sd/-
Independent Member

Sd/-
Chairperson

Forwarded By Order


Secretary to the Forum

This order is passed on this, the day of 29th June'2021

If aggrieved by this order, the Complainant may represent to the Vidyut Ombudsman, Andhra Pradesh, 3rd Floor, Sri Manjunatha Technical Services, Plot No:38, Adjacent to Kesineni Admin Office, Sri Ramachandra Nagar, Mahanadu Road, Vijayawada-520008, within 30 days from the date of receipt of this order.

To

The Complainant

The Respondents

Copy to the General Manager/CSC/Corporate Office/ Tirupati for pursuance in this matter.
Copy to the Nodal Officer (Chief General Manager (O&M)/ Operation)/ CGRF/ APSPDCL/ Tiruati.

Copy Submitted to the Vidyut Ombudsman, Andhra Pradesh , 3rd Floor, Sri Manjunatha Technical Services, Plot No:38, Adjacent to Kesineni Admin Office, Sri Ramachandra Nagar, Mahanadu Road, Vijayawada-520008.

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