

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

On this the 02nd day of June' 2021
C.G.No:103/2020-21/ Kadapa Circle

Present

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

Chairperson
Member (Technical)
Independent Member

Between

K. Suseela,
W/o. K. Prabhakar Reddy,
1/167,
Chapadu (P),
Kadapa-Dist

Complainant

AND

1.Assistant Accounts Officer/ERO/ Mydukur
2.Deputy Executive Engineer/ Mydukur
3.Executive Engineer/O/Mydukur

Respondents

* * * * *

ORDER

1. The case of the complainant is that she is having HSC. No.2611110000231in Chapadu (V) & (M) of Kadapa Dt. She was paying bills regularly without committing any default.Respondents while installing a new meter took the final reading as 14911 and immediately a new meter was installed on 06.10.2015 at 5.30 P.M. The same was noted in the meter change slip and the signature of the husband of the complainant was also taken in it.
2. Respondent No.2 also submitted a report to the AAO/ERO/Mydukur and based on that, AAO/ERO/Mydukur raised bill for power consumption charges from November'15 to June'16 and that amount was also paid by the complainant. Respondents issued a demand bill claiming Rs.88,829/- as arrears in the month of July'16. On 27.07.2016 complainant addressed a letter requesting to cancel the said

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bill as she was not liable to pay any arrears. Thereafter in the bill for the months of September'16 and October'16, they reduced a sum of Rs.55,392/- and issued a bill demanding Rs.33,837/- as arrears. She has not paid that amount as she is not liable to pay the said amount. Respondents disconnected power supply to her house and power supply was not restored. She is suffering mentally and her reputation was also damaged.

Respondent No.2 made alterations in the meter change slip by altering the final reading as '24911' in the place of '14911' unilaterally without giving any opportunity to the complainant. Complainant has no information how and on what basis the final reading was changed. If the said reading of 24911 is correct, how they reduced the demand bill amount and what is the basis for the same. On inquiry with ERO/ Mydukur they represented that the amount was due to accumulated consumption. The same is not correct. Complainant learnt that the respondents sent the said old meter for testing to the LT Meters Lab /Kadapa and it was found that the final reading was '24911' units. They kept the meter in their custody for more than 6 months. They might have misused the said meter or the said reading in the meter might have jumped in transportation for which complainant cannot be blamed and no opportunity was given to her before sending it to LT Meters Lab/Kadapa.

Complainant filed a complaint bearing C.C.No.76/2016 before the District Consumer Redressal Forum Kadapa, YSR District. Earlier complaint filed by her in CGRF/Tirupati was dismissed by its order dt: 22.12.2016 on the ground that in respect of the same subject matter between the same parties was pending before the District Consumer Disputes Redressal Forum, Kadapa. However the said order was not passed on merits. There after the District Consumer Disputes Redressal Forum, Kadapa as per its order dt: 17.03.2017 dismissed the said complaint. The same was challenged before the Hon'ble Andhra Pradesh State Consumer Disputes Redressal Commission, Vijayawada in F. A. No. 146/2017. Subsequently on the basis of memo filed by the complainant, complainant was permitted to withdraw complaint by granting liberty to her to challenge the demand bill in an appropriate forum for redressal. The earlier complaint was not decided on merits by the Hon'ble Andhra

Pradesh State Consumer Disputes and Redressal Commission, Vijayawada and the proceedings were closed by granting liberty to her to challenge the same in an appropriate forum for redressal.

Therefore the complainant prays that the Hon'ble Forum may be pleased to cancel the bill issued by the respondents demanding Rs.33,837/- and further direct the respondents to pay compensation of Rs.50/- per day from October'16 till the date of restoration of power supply to her house as they illegally disconnected power supply to the house as the same amounts to deficiency of service and further direct them to restore power supply to HSC No.2611110000231 of Chapadu (V) & (M) of Kadapa District.

3. Since the complainant already filed similar complaint before this forum in C.G. No.194/2016-17 for the same relief and as it was rejected on the ground that complainant also filed a complaint before District Consumer Redressal Forum Kadapa, YSR Dt. vide CC. No. 76/2016 and is pending. Again complainant filed this complaint after dismissal of the complaint by District Consumer Forum, Kadapa on merits on the ground that the complainant had withdrawn the appeal before Andhra Pradesh State Consumer Disputes and Redressal Commission, Vijayawada with a liberty to approach proper forum. The matter was posted for hearing through video conferencing in respect of maintainability of the complaint.

On 14.02.2020 the husband of the complainant was heard and considering the material available on the record the complaint was rejected.

4. Aggrieved by the orders of this forum complainant preferred a representation before the Hon'ble Ombudsman who was pleased to set aside the order of the forum and remanded the matter to this forum by giving an opportunity to both parties to lead evidence, if want to do so before the case is decided on merits and decide it as per the provisions of Reg.No.03/2016.
5. In obedience to the orders of Hon'ble Ombudsman complaint is registered as C.G.No.103/2020-21. Notice was issued on 31.03.2021 to respondents to file additional written submissions.

6. Respondent No. 2 filed written submissions on his behalf and respondents No. 1 and 3 stating that K. Susheela, complainant herein is having service No.2611110000231 to her house in Chapadu. On 06.10.2015 the old meter was changed with a new meter by B. Mahesh Babu ALM, Chapadu. The meter change slip submitted to section office duly entering particulars of old and new meter. The final reading in the old meter with serial No.742707 of BHEL make is '14911'. The initial reading in new meter No. 27432040 HPL make is '01'. On 29.12.2015 the old meter was given to LT/Meters Kadapa and he noticed that the final reading of old meter was noted as '24911'. The AE/LT Meters sent a letter vide reference No.AE/LT Meter/Kadapa/F/D.No.2983/16 Dt: 18.01.2016 to AAO/ ERO/Mydukur to raise the demand as per the difference units recorded. Based on the letter of AE/LT Meters, AAO/ ERO/Mydukur raised demand for an amount of Rs.88,829/- for difference units vide RJ No.23/06-2016 and also notice issued to the complainant on 01.04.2016. The raised demand was added to the CC bill in the month of June'2016. On 27.07.2016 complainant represented for withdrawal of raised demand for difference units. Based on the representation of complainant, AE/Chapadu recommended to AAO/ ERO/ Mydukur Vide Lr. No.AE/O/Chapadu/F/ D. No.326/16 dt: 26.08.2016 for revision of bill from 01.04.2004 to the date of meter change i.e. from 01.04.2004 to 06.10.2015. AAO/ ERO /Mydukur revised the CC bill vide RJ. No. 35/09-2016 (Slab) from Rs.88,829/- to Rs.33,837/- and the same was added in the CC bill and requested to pay the complainant balance amount. But the complainant did not come forward to pay the amount and supply was disconnected in the month of October'2016 to the complainant for non- payment of CC charges. The complainant approached the District Consumer Redressal Forum, Kadapa and filed case vide CC No.76/2016 on 11.11.2016. The District Forum dismissed the case on 17.03.2017. Again the complainant filed case in A.P. State Consumer Disputes and Redressal Commission, Vijayawada vide FA No.146/2017 on 18.04.2017. The case F.A.No.146/2017 was dismissed on 29.11.2019. Complainant filed complaint before the forum on 24.12.2019 and it was dismissed on 21.07.2020.

A memo was issued to B. Mahesh Babu, ALM/Chapadu on 06.11.2016 regarding false reading noted in meter change slip from AE/O/Chapadu and recommended to DE/ O/ Mydukur for disciplinary action on the individual. DE imposed a punishment of postponement of one annual increment with cumulative effect to B. Mahesh Babu, ALM Chapadu. The meter reading was suppressed and accumulated the demand raised for accumulated reading which was actually consumed by the complainant. The CC bill for accumulated units revised by averagely distributed to each month from 01.04.2004 to 26.08.2016 and billed as per the tariff rates applied in different periods.

7. Personal hearing through video conferencing was conducted on 20.04.2021. Heard husband of the complainant, respondents No. 2 and 3. Both parties reiterated their versions. Complainant's husband stated that he will file evidence and sought time on the ground that he received copy of the written statement on that day only. Hence time was granted to both parties to file chief affidavits of witnesses with a direction to furnish the copy of the same to other parties within seven days.
8. Accordingly complainant's husband sent his affidavit through registered post.

The contents of the chief affidavit of the complainant's husband are replica of the pleadings. So also Respondent No.2 filed, verified affidavit, the contents of it are replica of his written submissions

Admitted facts in this case are complainant filed complaint before this forum in C.G.No.194/2016-17 by questioning about issuing of an arrear bill for Rs.88,829/- and subsequently reduced to Rs.33,837/- and for disconnection of the service No.2611110000231 of Chapadu (V) &(M) of Kadapa Dt. It is also an admitted fact that complainant also filed a complaint before District Consumer Redressal Forum Kadapa, YSR District in C.C. No.76/2016. This Forum rejected the complaint in C.G.No.194/2016-17 on 22.12.2016 as per the provisions of Clause No. 10.2 (a) of Reg.03/2016 issued by the Hon'ble APERC on the ground that the forum may reject the complaint in cases where proceedings in respect of the same matter and between the same complainant and the Licensee are pending before any court, tribunal,

passed by any such court, tribunal, arbitrator or authority.

Subsequently the complaint filed by the complainant herein before District Consumer Disputes Redressal Forum Kadapa, YSR District vide CC.No.76/2016 was dismissed on merits on 17.03.2017. There after complainant herein preferred an appeal in F.A. No.146/2017 against the orders of the District Consumer Disputes Redressal Forum, Kadapa before Andhra Pradesh State Consumer Disputes and Redressal Commission, Vijayawada. Complainant filed a memo for withdrawal of the appeal and the Hon'ble State Consumer Disputes Redressal Commission, Vijayawada was pleased to dismiss the appeal as withdrawn, granting liberty to the appellant to approach the proper forum for redressal.

Complainant filed this complaint before this Forum contending that the Hon'ble State Consumer Disputes Redressal Commission, Vijayawada permitted her to file complaint again before this forum on the ground that her complaint before this forum was not decided on merits.

Initially it was rejected on the ground that complaint is not maintainable before this forum as per the provisions of Clause No.10.2 (a) of Reg.03/2016, subsequently in obedience to the orders of the Hon'ble Ombudsman numbered the complaint as C.G.No.103/2020-21.

The contention of the complainant is that CC bill was issued on 25.09.2015 with a final reading of '14833' for the service No.2611110000231. The meter was replaced on 06.10.2015 with Final Reading of '14911' with initial reading of '1' in the new meter. He has also paid subsequent bills basing on the meter readings in the new meter. The Final Reading of '14911' was incorporated in the meter change slip and this was also forwarded by concerned AE to accounts section for raising the bill. After about 6 months respondents came with a plea that Final Reading in the meter is '24911'. Affidavit was also filed by ALM before District Consumer Disputes Redressal Forum, Kadapa that Final Reading is '14911'. The meter reading by AE/LT Meters was not taken in the presence of the complainant. The removed meter was in

the custody of respondents for more than 70 days. Respondents might have misused the meter and due to which the readings in the meter might have gone up or they might have tampered with it or might have jumped during transit. The alleged disciplinary action against ALM cannot be a ground to punish the complainant. It is the internal matter. No evidence is shown that disciplinary action is taken only on account of this issue. No evidence is produced in respect of suppressed accumulated reading. Every month readings were recorded and demand bills were issued and were paid. If there are arrears, then only the same can be called as accumulated. Except internal wiring, the remaining things be under the control of respondents only. In that case how there can be suppressed readings. ALM is the authorized person from the department. So the version of ALM has only to be taken into consideration. There was no tampering of with the meter, no action was taken against the complainant for theft of energy. Respondents also admitted that meter is perfectly in order and showing readings regularly. So raising supplementary bill after lapse of 6 months on the ground that final reading is not correctly mentioned in the meter change slip at the time of replacing of meter is illegal and liable to be withdrawn.

On the other hand the contention of respondents is that old meter was changed with new meter on 06.10.2015. The Final Reading was given as '14911', the meter change slip was submitted to the section office. Subsequently on 25.12.2015 the old meter was given to LT Meters/KDP and he noticed the final reading of the old meter as '24911' and AE/LT Meters sent a letter to AAO/ ERO on 18.01.2016 to raise the demand as per the difference units recorded. Accordingly the demand was raised for an amount of Rs.88,229/- and notice was issued to the complainant and it was added in the month of June'16. On 27.06.2016 complainant represented for withdrawal of raised demand. Based on the representation AE/Chapadu recommended revision of the bill from 01.04.2004 to the date of meter change (01.04.2004 to 06.10.2015) and the amount was revised from Rs.88,829/- to Rs.33,837/- and the same was added in the CC bill and requested to pay the amount. Since complainant not paid the amount, the service was disconnected in the month of October' 16. Disciplinary action was initiated against B. Mahesh Babu, ALM/Chapadu and after conducting departmental

inquiry, impose a punishment of one annual increment with cumulative effect. meter reading was suppressed and accumulated. The demand raised for accumulated reading which was actually consumed by the complainant.

9. The points for determination are :

1. Whether the complainant is not liable to pay revised demand of Rs.33,837/- with surcharge thereon imposed on the premise of accumulated consumption?
2. Whether this forum is competent to entertain the complaint after the complaint was dismissed on merits by the District consumer Disputes Redressal Forum, Kadapa in CC No.76/2016 dt: 17.03.2017 on the file of District Consumer Disputes Redressal Forum, Kadapa?

Point No.1:

Proceedings before consumer Fora's are summary proceedings for speedy adjudication of the issues without going into the gamut of full dress trial. So this forum is also adopted the same analogy and it has to decide this case based on the preponderance of probabilities only.

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”.

The contention of the complainant in this case is that after the meter was replaced, it was tested after more than 2 months. There is a possibility of tampering or misusing of the meter or jumped during the transit and complainant cannot be penalized for the lapses committed by the respondents.

After replacing of the meter in routine course, it will be generally sent to MRT Lab for cross verification of the meter readings. Similarly this meter was also sent to MRT lab and there AE/LT meters found that final reading in the meter is '24911' and not '14911' as mentioned in the record, basing on the entry in the meter change slip and advised the concerned authorities to raise the demand as per the difference of units recorded. Even according to the complainant, the meter is healthy and meter is in good condition. If really the meter was misused or tampered with, AE /LT Meters who is a third party no way connected with the complaint has no necessity to mention the Final Reading as '24911' instead of '14911'. It is informed that AE/LT Meters who said to have found the discrepancy in the recording of final reading in the replaced meter was dead. So there is no possibility for examining him under what circumstances he came to conclusion that the readings in the replaced meter is 24911 and not 14911 as noted in the meter change slip. The difference of units is just 10000 units and according to the version of respondents the first figure in the units was mentioned as '1' instead of '2' in the meter change slip intentionally. This forum is not expected to dispose of the case on presumptions and assumptions. Respondents after the facts of the case came to light, initiated disciplinary action against Mr. Mahesh Babu, lineman who said to have recorded false final reading '14911' instead of '24911' and also imposed a punishment of "Postponement of one annual increment with cumulative effect".

The proceedings of DEE/OPN/ MDK in Memo. No. DEE/OPN/MDK/JAO/Adm/51/F. Confi /D.No.287/2017 dt: 12.03.2017 is as follows:

"On thorough verification of records of the reply given by him to the undersigned is not satisfy. In the recorded photo evidence enclosed has AE/O/Chapadu of the meter, reading was 24911. Therefore it is opined that Sri. B. Mahesh Babu, ALM,

Chapadu has willfully mistake committed and treated to explain certain unbelievable reasons in his explanation only with a view to avoid the punishment.

The undersigned has carefully examined the explanation submitted by Sri. B. Mahesh Babu, Asst. Lineman and came to the conclusion to impose the punishment of "Postponement of one annual increment with cumulative effect" to Sri. B. Mahesh Babu, ALM, Chapadu".

So the contention of the complainant is that initiating disciplinary action is an internal matter and there is no evidence to show that disciplinary action is taken only on account of this issue is not tenable. On the other hand the proceedings of respondent No. 3 clearly shows that punishment was imposed against Mr. Mahesh Babu, ALM only on the ground that he falsely entered a fictitious and false Final Reading in the meter change slip and for this episode only.

The further contention of the complainant is that since ALM is the authorized person for recording the meter reading and as he has mentioned the final reading as '14911' and the same has to be taken into consideration and not the final reading alleged to have been noted by AE/ LT Meters is also not correct. Licensee is responsible for the legal actions committed by its employees but not for the illegal activities conducted by the employees.

The further contention of the complainant is that raising of bill on account of accumulated reading is not correct as bills are issued every month with Opening reading and Final Reading and as there is no tempering of meter and theft of energy in this case, the accumulated consumption does not arise at all is also cannot be accepted. As per the version of the respondents, the ALM has issued fictitious bills basing on the false readings of consumption. If continuously false readings are issued for several months, certainly it will be tallied with opening and closing readings mentioned in the CC bills. It only came to light that a false and fictitious final reading was recorded in the meter change slip at the time of replacing the meter when the Final reading in the replaced meter was checked in the laboratory and compared the reading with the reading entered in the meter change slip. When the meter reading shows more

consumption than billed, it will be generally called as suppressed and accumulated consumption. When suppressed accumulated consumption is detected generally licensee will distribute the accumulated consumption for several months or years with a view to reduce burden on the consumer as it was happened only due to omissions and commissions committed by the meter reader either with collusion or without collusion of the consumer. In this case also respondents after considering all these facts have distributed the accumulated consumption from 01.04.2004 to 06.10.2015 and reduced the amount from Rs.88,829/- to Rs.33,837/-. Respondents have followed the prescribed procedure adopted by the licensee since long time.

The procedure to be adopted in the case of erroneous and disputed bills is provided in Clause No. 4.7 of Reg. 05/2004 as amended upto 01.11.2015 and the same is as follows:

4.7.1: "The consumer shall make the full payment of the electricity bill amount:

Provided that the supply of electricity shall not be cut off if such consumer deposits, under protest

a) An amount equal to the sum claimed from him or

b) The electricity charges due from for each month calculated on the basis of average of amounts for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute raised by the consumer on the bills.

4.7.2. *The licensee shall normally resolve the billing disputes as per the standards of performance notified by the Commission under section 57(1) of the Act, failing which the consumer shall be entitled for compensation as prescribed by the Commission under section 57(2) of the Act, without prejudice to his right to seek relief through the Forum for redressal of grievances of consumers under section 42(5) of the Act.*

4.7.3. *On examination of the complaint, if the Licensee finds the bill to be erroneous, a revised bill shall be given to the consumer indicating a revised*

due date of payment, which should be fixed not earlier than seven days from the date of delivery of the revised bill to the consumer. If the consumer has paid any excess amount, it shall be refunded by way of adjustment in the subsequent bills. The licensee shall pay to the consumer interest charges at 24% per annum on the excess amount outstanding on account of such wrong billing.

4.7.4. *If the Licensee finds the bills to be correct the consumer shall be intimated accordingly and notified to pay the amount with additional charges for belated payment from the due date”.*

The complainant when he had a suspicion about the supplementary bill raised by the respondents on account of difference of Final Reading in the replaced meter, ought to have paid the amount and made an objection, so that the service will not be disconnected. But instead of paying the amount under protest, complainant allowed the service to be disconnected for non-payment of disputed bill and now she cannot be permitted to say that service connection was illegally disconnected, hence entitled for compensation.

The same facts were considered by Hon'ble District Consumer Disputes Consumer Disputes Redressal Forum, Kadapa and came to the conclusion that complainant failed to prove her contention and dismissed the complaint. This forum is also of considered view that complainant failed to prove that the Final Reading recorded by AE/ LT Meters is not correct and is not liable only to pay CC bills as per the Final readings recorded and only liable to pay CC charges basing on the readings mentioned in the meter Change slip. Respondents have proved that the Final Reading mentioned in the meter change slip is a fictitious and false reading made by the assistant lineman. There are no merits in the complaint. The point No.1 is answered accordingly in favor of the respondents.

Point No.2 :

This issue can be decided on considering the following aspects:

- A) Whether the complainant can be permitted to file complaints of similar nature or for one and the same cause of action before parallel Fora's either simultaneously or subsequently after her failure in former Fora?
- B) Whether the orders passed by the District Consumer Redressal Forum, Kadapa is a final order or an interlocutory order?
- C) Whether the permission granted for withdrawal of the complaint with a liberty to approach proper Forum by the Hon'ble A. P. State Consumer Disputes and Redressal Commission, Vijayawada to the complainant amounts to Doctrine of Merger with the orders of the dismissal of complaint by District Consumer Disputes Redressal Forum, Kadapa in this case?
- D) Whether this forum is competent to sit over as an appellate Fora to review and revise the orders passed by the District Consumer Disputes Redressal Forum, Kadapa on merits under Consumer Protection Act, 1986?

Point A:

It was also held in a case between Rashmi Textiles vs Oriental Insurance Co Ltd &Ors by National Consumer Disputes Redressal Commission, New Delhi Reported in IV (2011) CPJ 245 (NC) at para 8 as :

“ A party must choose one adjudicating forum if there are more than one redressal of his grievance and cannot be allowed to approbate and reprobate his course by approaching different adjudicating forums that too after he has failed in one forum. In such a situation he should exhaust his remedy under the hierarchy of the same forum. In the case in hand, it appears to us that after the order of the District Consumer Forum, the petitioner himself chose to avail the remedy of filing civil suit before the competent civil court but once the said suit was dismissed, he has approached this Commission for invoking its supervisory jurisdiction. In our view such a course is legally impermissible”.

Complainant did not cite any authority that she is entitled to file multiple complaints for the same relief before parallel forums who have got jurisdiction to entertain her complaint. In the absence of any authority, complainant is not empowered to approach parallel Fora's either simultaneously or subsequently that too after her complaint was dismissed by a competent District Consumer Disputes Redressal Forum, Kadapa on merits.

It was held in a decision between HSDC vs Kaptan Singh &ORS by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi reported in IV (2010)CPJ 301 (NC)in para 8 as :

"We have gone through the impugned order as well as order passed by the State Commission in Appeal No.349/2002. Both the appeals were directed against the same impugned order of the District Forum. In Appeal No. 349/2002 the order passed by the District Forum set aside whereas in the order passed in the present Revision Petition, the order passed by the District Forum has been confirmed. The orders passed in the appeals are contradictory. It is a cardinal principle of law that contradictory orders lead to confusion and should not be allowed to stand and operate otherwise their implementation becomes impossible. Had earlier order passed in Appeal No.349/2002 been brought to the notice of the Bench which heard the later Appeal 437/2002 subsequently, we are sure that the State Commission would have passed the order in conformity with the conclusion arrived at in the earlier appeal. Since this order was not brought to the notice of the Bench consisting of the Members, it has led to passing of contradictory orders".

When there are 2 parallel remedies available to the consumer for resolving her grievance and once she had chosen one remedy, she has to exhaust her remedies available under that Fora only. But it is not proper for her to approach another forum after her failure in the former forum. If this type of complaints are entertained by the parallel forums either simultaneously or subsequently there will be contradictory orders and confusion and it is impossible to execute those orders.

Point B:

Complainant after dismissal of her complaint preferred an appeal to the A.P.StateConsumer Disputes and Redressal Commission Vijayawada. Subsequently filed memo for withdrawal of the appeal without serving notice on the respondents. The Hon'ble State Commission allowed the complainant to withdraw the appeal with a liberty to approach proper forum for redressal. The Hon'ble State Commission did not set aside or modify the order of the District Consumer Forum, Kadapa.

The order of dismissal passed by the District Consumer Forum, Kadapa on merits is binding on the parties, if the order was not set aside by the competent appellate forum. So the order passed by the District Consumer Forum, Kadapa is a final order and not an interlocutory order.

Point C:

It was held in Surinder Pal Soni vs Sohanlal by the Hon'ble Apex Court (Indian Kanon: <http://Indian.kanoon.org/doc/147061017>) in Para. 14 as:

“14. “The decision in Kunhayammed (supra) was followed by a three judge Bench decision of this Court in Chandi Prasad (supra), which held thus:

23. The doctrine of merger is based on the principles of propriety in the hierarchy of justice delivery system. The doctrine of merger does not make a distinction between an order of reversal, modification or an order of confirmation passed by the appellate authority. The said doctrine postulates that there cannot be more than one operative decree governing the same subject matter at a given point of time.

24. It is trite that when an Appellate Court passes a decree, the decree of the trial court merges with the decree of the Appellate Court and even if and subject to any modification that may be made in the appellate decree, the decree of the Appellate

Court supersedes the decree of the trial court. In other words, merger of a decree takes place irrespective of the fact as to whether the Appellate Court affirms, modifies or reverses the decree passed by the trial court”.

It was also held in a case between Shankar Ramachandra Abhyankar vs Krishnaji Dattatreya Bapat by Hon'ble Apex Court. Their lordships held in (Indian Kanoon: <http://Indian.kanoon.org/doc/836690>) Para's. 7 and 8 as:

7. It may be useful to refer to certain other decisions which by analogy can be of some assistance in deciding the point before us. In U.J.S. Chopra v. State of Bombay the principle of merger was considered with reference to Section 439 of the Criminal Procedure Code which confers revisional jurisdiction on the High Court. In the majority judgment it was held, inter alia, that a judgment pronounced by the High Court in the exercise of its appellate or revisional jurisdiction after issue of a notice and a full hearing, in the presence of both the parties would replace the judgment of the lower court thus constituting the judgment of the High Court—the only final judgment to be executed in accordance with law by the court below. In Chandi Prasad Chokhani v. The State of Bihar it was said that save in exceptional and special circumstances this Court would not exercise its power under Article 136 in such a way as to bypass the High Court and ignore the latter's decision which had become final and binding by entertaining an appeal directly from orders of a Tribunal.

Such exercise of power would be particularly inadvisable in a case where the result might lead to a conflict of decisions of two courts of competent jurisdiction. In our opinion the course which was followed by the High Court, in the present case, is certainly one which leads to a conflict of decisions of the same court.

8. Even on the assumption that the order of the appellate court had not merged in the order of the single Judge who had disposed of the revision petition we are of the view that a writ petition ought not to have been entertained by the High Court when the respondent had already chosen the remedy under Section 115 of the CPC. If

there are two modes of invoking the jurisdiction of the High Court and one of those modes has been chosen and exhausted it would not be a proper and sound exercise of discretion to grant relief in the other set of proceedings in respect of the same order of the subordinate court. The refusal to grant relief in such circumstances would be in consonance with the anxiety of the court to prevent abuse of process as also to respect and accord finality to its own decisions”.

We are of the opinion that mere permission for withdrawal of the appeal does not amount to setting aside the order of the District Forum, Kadapa. We are also of the opinion that Doctrine of Merger does not apply in this case.

Point D:

Admittedly in this case Hon'ble District Consumer Disputes Redressal Forum, Kadapa dismissed the complaint on merits. Statutory appeal to the higher courts i.e. State Commission, National Commission and to Hon'ble Apex Court of India is available under Consumer Protection Act.

It was held in a case between Sunil Sudhakar Fegde & ANR vs Kishor Devram Rane & Others by the Hon'ble Bombay High Court reported in III(2019) CPJ 173 (DB) (Bombay) in para 6 at page 174 held as :

“Reliance was placed by the learned counsel for petitioner on law laid down by the Apex Court in the case reported as (2011)14 SCC 337. Nivedita Sharma v Cellular Operators Association of India and Ors. In this case, the Apex Court has laid down that when there is decision of District Consumer Forum, the remedy available is of appeal under Consumer Protection Act, 1986 and writ petition cannot be entertained when there is challenge to the decision given by the Consumer Forum. It is laid down that rule of self-imposed restraint in entertaining writ petition when alternate remedy is available needs to be followed by the High Court and so, when there is statutory Forum for redressal of the grievance, writ petition should not be entertained. Thus, there is question of tenability of writ petition which was filed by respondent Nos. 1 and 2 before the learned Single Judge. For both the aforesaid

reasons, this court holds that the appeal needs to be allowed. In the result, appeal allowed. The decision of the learned Single Judge given in Writ Petition No. 2950/2010 on 22.12.2010 which was filed by respondent Nos. 1 and 2 is quashed and set aside. The said petition is dismissed. It is made clear that the decision of the matter is limited only in respect of the decision given by the learned Single Judge in Writ Petition No. 2950/2010”.

Similar view was taken by the Hon’ble High Court of Orissa in Jaya foods vs Orissa State Consumer Disputes Redressal Commission, Cuttack & others {IV (2016) CPJ 157 Orissa}

It was held by the Hon’ble Apex Court in Cicily Kallarackal vs Vehicle Factory on 06.08.2012 in para 7 as:

“ While declining to interfere in the present Special Leave Petition preferred against the order passed by the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, we hereby make it clear that the order of the Commission are incapable of being questioned under the writ jurisdiction of the High Court, as a statutory appeal in terms of Section 27 A(1)(c) lies to this Court. Therefore, we have no hesitation in issuing a direction of caution that it will not be proper exercise of jurisdiction by the High Courts to entertain writ petitions against such orders of the Commission”.

The Hon’ble High Courts of Bombay and Orissa did not incline to interfere with the orders of the District Forum in the writ petitions on the ground that statutory appeal is available to the parties. The Hon’ble Apex Court also held in the above cited decision that it is not proper to exercise jurisdiction by the Hon’ble High Courts to entertain writ petitions against the orders of the Commission.

Relying upon the above decisions, this forum is not empowered to sit as an appellate court over the orders of District Forum to revise or review the orders of District Consumer Redressal Forum, Kadapa.

The order passed by the Hon'ble District Consumer Disputes Redressal Forum, Kadapa is not set aside by the competent appellate authority.

Clause No. 10.2(a) of Reg. 03/2016 issued by Hon'ble APERC empowered this Forum to reject any complaint at any stage when it came to the notice of this forum that a complaint of similar nature is pending elsewhere or any order passed by any other competent forum. This provision is incorporated by the Hon'ble APERC only to see that this Forum do not entertain any complaint when the similar matter between the complainant and the licensee is pending or decided by any other Fora to see that conflict orders will not be passed by the parallel forums.

Relying upon the above cited decisions, this forum is not competent to interfere and pass any orders in this case against the orders passed by the District Consumer Fora. These facts were already considered by this forum and the complaint is rejected. There are no additional sufficient material available after the remand to revise the earlier order passed by the forum. We are also of the opinion that this forum is not the proper forum to entertain the complaint. There are no merits in the complaint. The point No.2 answered accordingly.


10. In view of the above reasons 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 2nd 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, Singareni Bhavan, Red Hills,
Lakdikapool, Hyderabad- 500 004.