

BEFORE THE FORUM
FOR REDRESSAL OF CONSUMER GRIEVANCES
IN SOUTHERN POWER DISTRIBUTION COMPANY OF A.P LIMITED TIRUPATI
On this the 2nd day of August' 2021
Inward No.2831 Dt: 02.07.2021/2021-22/Anantapur Circle

Present

Sri. Dr. A. Jagadeesh Chandra Rao

Chairperson

Sri.Y.Sanjay Kumar

Member (Technical)

Sri. K.R.S.Dharmagnani

Member (Finance)

Sri. Dr. R. Surendra Kumar

Independent Member

Between

G.Laddu Lakshmaiah,
D.No:6-12 A,
Medapuram,
C.K. Palli (M),
Anantapur Dt.

Complainant

ORDER

1. The case of the complainant is that he has applied for service connection vide Reg. No. 71414 N262012019 SEP 05. Service was not released for 2 to 3 months. The number of the service meter is 7141420002017. Special squad inspected the service and imposed a penalty of Rs.50,034/-+ Rs.12,000/-. In spite of his repeated requests lineman and AE represented that the meter is not available. Hence penalty imposed by him may be withdrawn. Complainant also enclosed the provisional assessment notice issued for theft of electricity. The notice shows that assessment amount is Rs.50,034/- and compounding fee is Rs.12,000/- .
2. Since complainant filed this complaint for withdrawal of Provisional Assessment notice for theft of electricity. This forum entertained a doubt whether complaint is maintainable before this forum and called a report from EE/O/Anantapur.

DESPATCHED
INWARD NO. 2831 Dt: 02.07.2021/2020-21/ANANTAPUR CIRCLE

DATE 02/08
[Signature]

3. EE/O/Anantapur submitted his report stating that AEE pre-inspection report on 20.07.2021 stating that complainant applied for Ca service on 05.09.2019 with a load of 4 KW, the then in-charge AE had taken up the work order with WBS No.E-2019-07-01-55-04-002 and drawn the materials on 25.11.2019 vide reservation No. 8001590189 and executed the work, but the meter was not fixed and the service was not released. The present in-charge AE took charge on 17.03.2020 and has claimed that he neither received the work order as pending works to be taken up nor informed about the aforementioned service. The premises of the consumer was inspected by ADE/DPE wing on 20.10.2020 and found that complainant has been utilizing electrical power supply for running water plant by directly tapping the nearby LT overhead lines by means of 2 No's PVC insulated copper wires and hence theft of energy case was registered against the consumer under Sec.135 of the Electricity Act, 2003 with an assessment amount of Rs.50,034/- and a compounding amount of Rs.12,000/-. The present in-charge AE stated that on noticing this, the meter was fixed up at the applicant premises and service was released on 23.10.2020 bearing HSC.No. 7141420002017.
4. The case was posted for hearing in respect of maintainability of compliant on 22.07.2021. Both the complainant and EE/O/Anantapur present and heard. Complainant represented that he did not use the service at all. There was delay in releasing of service hence the provisional assessment notice may be withdrawn.
5. Points for determination are whether:
 1. This forum is competent to entertain a complaint in respect of withdrawal of Provisional Assessment notice issued for theft of energy?

2. Whether complainant is entitled for compensation as per Regulation No. 7 of 2004 for not releasing the service within the stipulated period mentioned therein?

Point No.1:

According to EE/O/Anantapur, ADE of DPE wing inspected the premises and found that complainant indulging in theft of energy by directly tapping the nearby LT overhead lines by means of 2 No's PVC insulated copper wires and a case for theft of energy—direct tapping was registered against the complainant. The Photostat copy of receipt issued by inspector of police, vigilance and anti-power theft squad, Anantapur shows that complainant had paid compounding fee of Rs.12,000/- on 04.01.2021. So the facts of the case clearly shows that a case under Sec.135 of Electricity Act, 2003 was registered against the complainant and complainant paid the compounding fee and got compounded the criminal 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 act 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 ipso-facto 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.

Relying upon the above decision of Hon'ble Apex Court of India, this forum is not competent to entertain any complaint against the case registered under Sec. 135 of the Act.

The forum is empowered to reject the complaint at any stage as per Clause. 10.2 (b) of Reg. 03/2016 which is as follows:

Clause No. 10.2: *“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 of the Act.

c).....

d).....”

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

So the complaint so far for the relief of setting aside the order of Provisional assessment notice for theft of energy by the officers of licensee is not maintainable before the forum and liable to be rejected. The point No. 1 answered accordingly.

Point No. 2.

The admitted facts in this are that as per report of EE/O/Anantapur, complainant applied for Category- 2 service on 05.09.2019. The material was drawn and work is completed on 25.11.2019, but meter was not fixed and service was not released. ADE/DPE wing inspected the premises and booked a case for theft of electricity on 20.10.2020 and the service was released on 23.10.2020. So inspite of drawing material on 25.11.2019 and completion of work, the service was not released by providing meter till 23.10.2020.

Sl.No.IX of Schedule- II of Reg. 07/2004 provides that new connection shall be released within 30 days from the receipt of application in all cases if connection feasible for existing network for release of service. The report of EE/O/Anantapur is

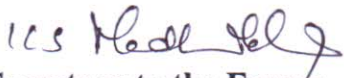
silent on this aspect. So it can be safely presumed that serviceconnection in this shall be released within 30 days of receipt of application. In this case application was received on 5.09.2019. So service shall be released within 30 days i.e. 04.10.2019, but the service was released on 23.10.2020. So the service was released with a delay of 1 year and 19 days. So as per the above said Regulation, there is a delay of 384 (365+19) days in releasing the service. So complainant is entitled for a compensation of Rs.38, 400/-(384 days xRs.100/-). The point No. 2 is answered accordingly.

6. In the result the complaint so far for the relief of withdrawal of Provisional Assessment Notice for theft of energy issued by the licensee concerned is rejected.

However, as the facts of the case shows that there is a delay of 384 days in releasing the service connection, complainant is entitled to a compensation of Rs.38,400/- as per Reg. 07 of 2004. EE/O/Anantapur is directed to credit the compensation of Rs.38,400/- to the service of the complainant bearing No.7141420002017 within 30 days from the receipt of this order and submit compliance report within 15 days thereon. The amount of compensation of Rs.38,400/- credited to the service connection of the complainant shall be recovered from the concerned officers who are responsible for the delay as per the prescribed procedure of the Licensee.

Sd/- Sd/- Sd/- Sd/-
Member (Technical) Member (Finance) Independent Member Chairperson

Forwarded By Order


Secretary to the Forum

This order is passed on this, the day of 2nd August'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.