

BEFORE THE VIDYUT OMBUDSMAN

Present

K.Sanjeeva Rao Naidu
Vidyut Ombudsman

Dated: 16 -12-2011

I.A. 5 of 2011

in

Appeal No. 22 of 2011

Between

Sri P.Satyanarayana Raju
S/o. Appala Raju,
H.No.48-1-32/3, Srinagar Colony,
Visakhapatnam – 20.

... Appellant

And

1. Asst.Engineer/operation/Town/Gopalapatnam
2. Asst.Divisional Engineer/operation/Gopalapatnam
3. Divisional Engineer/operation/Zone-III/Visakhapatnam.

....Respondents

The appellant in the above said Appeal No. 22 of 2011 filed a petition claiming that this authority passed an order on 17.05.2011 in which it has clearly mentioned that the extension / connection of load is concerned that can be considered only after the final order either by the competent court or District Collector in the above said proceedings provided the appellant establishes his right over the said property.

2. The respondent, SE/O/Visakhapatnam initially did not consider the issue of HT service connection. Subsequently, accepted the following payments (a) Rs.1,72,800/- towards service line charges, (b) Rs.5,25,000/- towards development charges and (c) Rs.3,50,000/- towards security deposit. On the oral request made by the CEO/Zilla Parishad , the respondent did not release the power supply. The CEO/Zilla Parishad filed IA 1103/2011 against the owners of

the appellant and another under Order XXXIX Rules 1 & 2 of CPC with a request not to release the HT power supply. The respondent herein also filed its counter in the above said I.A.1103/2011 admitting the receipt of the money from owners and requested the Hon'ble Court to permit to release the HT power supply by taking undertaking bond from the owners. The Hon'ble VI Additional District Judge, Visakhapatnam passed its order on 28.11.2011 and dismissed the petition with a clear cut finding that the respondent and GVMC have no right to insist the occupancy certificate and dismissed the application filed by Zilla Parishad and also further stated that the respondent is at liberty to release the power supply. In view of the final order passed in IA 1103/2011, the petitioner filed this petition inviting the attention of this authority to issue directions to the respondent to release power supply immediately. Soon after receiving the said representation from the appellant on 12.12.2011 the SE/O/Visakhapatnam was asked to submit his remarks on the said application and also a copy of the said application filed by the appellant petition was furnished to him.

3. On 14.12.2011 a representation was received from the tenant, Chandana Brothers claiming that they have taken the building constructed in S.No.1013/1A1 of Gopalapatnam village by entering into a registered lease deed for a period of fifteen years and also applied for HT service connection on 27.08.2011 and also paid an amount of Rs.1,72,880/-, Rs,5,25,000/- and Rs.3,50,000/- as asked by the department through Bankers cheques drawn on SBI, Visakhapatnam.

4. The respondent has also laid power lines and transformers for issue of power supply. They (i.e tenant) have completed entire interiors and furniture and proposed to open the said mall on 19.12.2011. The pongal season has also started and if power is not supplied within two or three days by respondents, they will be put to irreparable loss and hardship and they will abide any conditions imposed by this authority.

5. In the light of the above said representation made by the tenant, this authority is constrained to pass interim order instead of passing an order in the main interlocutory application itself. The respondent ie., SE/O/VSP has submitted his remarks on 15.12.2011 at 4.26PM by sending a fax to this authority, in which, he has admitted about the payments made by the tenant and also about the orders passed by the District Court, but finally stated that the counsel Sri.A.Vengugopala Rao opined that strict compliance and submission of occupancy certificate from GVMC by the concerned tenant relating to premises of SC No.2150/9007 for release of HT service connection as required. A detailed report was submitted to the CGM/C,R&P/APEPDCL/Visakhapatnam and requested to issue necessary instructions for releasing of power supply to Chandana Brothers. Initially, the CGM has instructed them not to release HT supply without obtaining occupancy certificate. This shows that the CGM has not given any opinion on the detailed report submitted by the SE/O/Visakhapatnam. He has also mentioned that the Commissioner, GVMC addressed a D.O. letter to the CMD,EPDCL not to release the service connection.

6. Now, the point for consideration is, “whether there is any necessity to pass an interim order in the said application? If so, in what manner?”

7. The Hon’ble VI Additional District Judge has categorically mentioned in his order that EPDCL and GVMC have no right to seek occupancy certificate when admittedly the building has been in accordance with the approved plan. When there is a specific direction by the VI Additional District Judge, the respondent has no right to insist upon the occupancy certificate, if he insists for production of the occupancy certificate, it amounts to violation of the court’s order. This authority passed an order in the above said appeal on 27.05.2011. The salient features of the order which are extracted hereunder:

“The dispute is with regard to the title. He is neither a tenant nor a licensee. He is in possession of the property in the capacity of an owner. If declaration is made in favour of the ZPP; he will be a trespasser and on that

ground it can be disconnected. In the absence of right assertion by the ZPP, disconnection is improper. Hence, necessary instructions or directions are to be given to restore the service connection under Cat-II as it was in existence at that time. So far as the extension or increase of load is concerned that can be considered only after the final order either by the competent court or District Collector in the above said proceedings provided the appellant establishes his right title over the said property.”

8. The very order passed by the Hon’ble District Court in IA 1103/2011 gives cause of action to the petitioner herein to approach this authority once again.

9. Admittedly, a representation is made by the appellant to the District Collector for regularization of site to extent of 0.14 cents. No order is passed on the representation made either by way of regularization or by way of rejection.

10. So far as the title is concerned it may take sufficient time for disposal of the main suit. It is also not proper for this authority to dispose the main application without hearing the GVMC and CEO/Zilla Parishad. The main application can be posted calling for objections by the above said GVMC and CEO/Zilla Parishad. The very representation made by the tenant certainly invites the urgency having invested huge amounts.

11. So far as the request made by the tenant is concerned, he has filed a photocopy of the lease deed for a period of 15 years but is subject to the result of the main suit. Merely, because they have entered into an agreement for 15 years, cannot give any right either to the appellant or to the tenant to continue the said premises for such long period. If the title issue is settled before the expiry of the said period. The premises is taken during pendency of the said suit OS 297/2009 on the file of the VI Addl.District Judge, Visakhapatnam. Hence, it is by hit by *lis pendence*. They can claim their right till the final adjudication of the title over the property.

12. So far as the conduct of the respondent is concerned, it is highly objectionable as it has simply relied upon the information of the standing counsel which is contrary to the finding given by the Hon'ble District Court.

13. Furthermore, the final opinion is also not expressed by the CGM inspite of the report submitted by SE/O/VSP. The finding is given by the Court basing on the DO letter addressed by the Commissioner to the CMD not to release the service is contrary to the direction given by the Hon'ble District Court.

14. This authority or the court which deals with the matter must look into the just and convenient occasions to render justice. It should not be arbitrary or whims and pleasure of the authority / court while passing an order. The term 'Just and convenient' connotes what is right and just according to the judicial notion. An order which is passed by the court or authority is for protection of property or prevention of injury according to legal norms.

15. In the counter, the respondent has not stated anything about the procedure of the occupancy certificate. If that is so, why they have asked the tenant to pay such a huge amount to the account of EPDCL. It is on the estimates made by the officials and the intimation given by the officials, the amounts have been paid. It is nobody's contention that the tenant has paid the amounts voluntarily. The officials of the respondents have also laid the lines and they have installed the transformers in the said process. Under those circumstances, the respondents and EPDCL are estopped from contending that the tenant has to produce the occupancy certificate.

16. Furthermore, the building was completed in the year 2005. It was taxed during 2006. On the oral instructions of CEO the single phase service connection was disconnected. Then, the petitioner approached CGRF with a representation about the disconnection. CGRF also denied the relief. Thus he filed the above said Appeal 22/2011 and this authority passed the order for

restoration in the month of May 2011 and it was complied on 02.06.2011 a letter was also addressed to this authority. So under any circumstances, it cannot be treated as a fresh service connection, it is only an extension of category. The building was also constructed and was also taxed long prior to the G.O. under which BPS scheme was introduced. No application was filed by the petitioner for regularization under the said scheme. Moreover, the 3rd respondent (GVMC) in IA1103/2011, have not raised any deviation in the construction of the building in the counter filed by them. The very insistence of occupancy certificate in this manner is nothing but to harass the landlord or the tenant. The merits or otherwise can be considered at the time of hearing of the main petition by giving opportunity to all interested parties.

17. In the light of the above said discussion, it is proper on the part of this authority and in view of the urgency represented by the tenant, it is proper and necessary in the interest of justice to instruct the respondent to release the HT service connection forthwith and continue the same for a period of 3 months.

18. In view of the above said discussion, I am of the opinion that necessary direction is to be issued to the respondents to release HT service connection enabling the tenant to proceed with the inauguration and the same shall be continued for a period of 3 months from the date of issue of service connection or till further orders issued by this authority.

19. In the result, this authority is directing the respondent to release the service connection forthwith (immediately) without insisting upon occupancy certificate. He is at liberty to take other necessary bonds in the regular process of releasing the service connection.

This order is corrected and signed on this 16th day of December 2011

VIDYUT OMBUDSMAN