

**BEFORE THE VIDYUT OMBUDSMAN**

Present

**Nagaraj Naram,  
Vidyut Ombudsman (FAC)**

Dated: 03.08.2009

**Appeal No. 17 of 2008**

**Between**

M/s. UNAR Infrastructure Ltd.,  
Plot No. 20, Flat No. 402, Srichaitanya Residency,  
Sagar Society, Street No. 2 Road No. 2, Banjara Hills,  
Hyderabad 500 034.

**... Appellant**

**And**

1. Asst. Engineer / Operation / APEPDCL / Seethammadaara / VSP
2. Asst. Divisional Engineer / Operation / APEPDCL / Seethammadaara / VSP
3. Divisional Electrical Engineer / Operation / APEPDCL / Zone-I / VSP

**... Respondents**

The appeal / representation dated 08.09.2008 of the appellant has come up for final hearing before the Vidyut Ombudsman on 27.05.2009 in the presence of Sri. M. V. N. Shyam Assistant General Manager (HR and Admn) on behalf of the appellant and S K Abdul Rauf Assistant Engineer for the respondents and having stood over for consideration till this day, the Vidyut Ombudsman passed / issued the following:

**A W A R D**

Aggrieved by the order passed by the Forum for Redressal of Consumer Grievances of APEPDCL (for short the "Forum") in C.G. No. 166/ 2008 of Vishakapatnam Circle dated 26.08.2008, the appellant herein filed appeal / representation dated 08.09.2008 mentioned supra.

2. The appellant stated that it is a company registered under the Companies Act, 1956 and having registered office at Hyderabad. It has taken on lease the premises bearing No. 50-97-5 at Seethammadhara from its owner Sri T.Madhava Rao who is the consumer of the respondents. It is being used by the company as a guest house for transit halt of officers of the company.

3. The appellant stated that a person has visited the premises for taking meter readings of the power supply being provided by the respondents to the said premises. It is for the sake of issuing bills for the power supply availed. He informed the landlord that the meter is not functioning and it is stuck. Immediately the matter was brought to the notice of landlord to take suitable action for replacement and rectification of the meter. Even the second time also the information provided by the company to the respondents, no action was taken by the respondents for replacement of the meter.

4. The appellant stated that the respondents did not take action even after letters were given and later readings were taken in the month of July'08. The appellant stated that they have received a letter on 21.07.2008, the contents of which were surprising and far from the truth. Instead of replacing the meter they have foisted a false case with all false allegations to suit their convenience and to cover up their inaction in replacing the meter. No officer of the respondent had visited the premises for inspection of the same and it is false that such an inspection took place.

5. The appellant stated that it has submitted its objections to the assessment notice purported to have been issued by the respondents which is stated earlier. It was also requested to refer the matter to the Forum for proper adjudication and redressal of the dispute. Further, it has also approached the Forum for redressal of the grievance which has taken the same on the file of the CGRF.

6. The appellant stated that it was due to the threats extended by the respondents, they have paid the amounts demanded in the provisional assessment notice and also made a representation though the same is illegal and against Electricity Act and the General Terms & Conditions of Supply (GTCS).

7. The appellant stated that it approached the Forum as stated above being aggrieved by the proceedings which are contrary to facts of the case and violative of provisions of the Electricity Act, 2003 (Act No. 36 of 2003) and conditions. It sought an enquiry of the matter under clause 7.5 of the GTCS and violation of standards of performance regulation issued by the Andhra Pradesh Electricity Regulatory Commission (APERC). It raised the following grounds before the Forum.

(a) The orders passed by the officials are not valid, tenable under the provisions of the Act, 2003 there the word malpractice was not defined in the Act, but as per the facts on hand the case is required to be dealt as per clause 7.5.1 of the General Terms and Conditions of Supply of EPDCL as approved by the APERC, as the complaint is contemplated one under the clause 14.5 of the GTCS and as such at any stretch of imagination the provisions of Section 126 of the Act are applicable to the facts of the case. Therefore, the actions and deeds of the Official Respondents are required to be nullified and set aside.

(b) That the officials have not furnished the details of the calculations on which they relied for arriving and for realization of the amount of Rs.20,371/- from the appellants and it does not specify the incriminating points on which they have relied for demanding for such huge amount. Therefore, non-furnishing of the material documents is a fatal to the inspections and subsequent orders, which were contrary to the provisions of clause 7.5.1 of the GTCS of the respondent.

(c) That the 3<sup>rd</sup> respondent have made the provisional assessment made for one year preceding from the date of inspection and also the tariff rate was charged 2 times for the assessments, which is contrary to the provisions of clause 7.5.1 of GTCS.

(d) That the 3<sup>rd</sup> respondent while issuing the impugned notice have threatened to disconnect the power supply to the premises is considered to be a cohesive methods adopted by the officials as the provisions did not specify for payment of 50% of the assessment amount at the pre hearing stage for replacing of the defective meter. Therefore, the proposed actions of the officers are beyond their powers and are not conferred on the officers as per the provisions of clause 7.5.1 of GTCS.

(e) It is to submit that the authorities have categorised the services and fixed the electricity tariffs based on the need base or on purpose base but not on the personal / individual status. Hence, if a person is having commercial or industrial operations utilizes electrical supply exclusively for non commercial / domestic purpose, then the officials cannot apply commercial tariff to such ultimate user as the supplied electricity is meant for commercial use only through they are not utilizing the same for any commercial purpose which is contrary to the spirit of the electricity laws. In this case, the premises was leased out for the purpose of maintaining a transit accommodation to the officials of a construction company, as such their utilization of

electricity cannot be categorized as a commercial and made applicable to the commercial tariff to such premises.

8. It has raised the following grounds in the appeal

(i) the Forum ought to correlate the facts narrated in the complaint with the provisions of the law and the regulations which are in force while disposing the complaint. As such the findings are devoid the facts narrated in the complaint, if at all the Forum intend to entertain any rebut able evidence from the respondents the forum should have given an opportunity to these appellants complainants, before arriving such findings as narrated in the orders. In view of not affording the opportunity to the appellants the Forum have failed to adhere to the principles of natural justice.

(ii) the forum has failed to take cognizance of various documentary evidence submitted by the appellants for settling the matter in terms of the provisions of clause 7.5.1 of GTCS of APEPDCL.

(iii) the forum has failed to take cognizance of the documentary evidence submitted by the appellants for awarding compensation as the respondents have failed to replace the defective meter within the time limit as stipulated in the standards of performance regulation of APERC.

(iv) the forum have failed to discharge its primary duties being a internal grievances settlement machinery/authority for not conducting a local inspection in order to ascertain the factual position about the utilization of the premises by the appellants for the purpose of categorization and the change of categorization made by the respondents. Especially, when a complaint is brought to the notice of the forum they ought to conduct local inspection and ensure and insist about the compliance of the various clauses of the GTCS which is approved by the APERC.

9. The appellant sought the following prayer:

(i) to declare that the appellants premises does not require any categorization change and to continue them in category I domestic purpose only.

(ii) to set aside the orders dt.26.08.2008 of the Hon'ble Forum as the findings and the orders are not in consonance for the relief claimed in the complaint.

(iii) to set aside the assessment orders ADE/O/SMD/VSP/Docket No. D.No. 1081/Dt.16.07.08 as it is not as per the provisions of section 126 of the Act, not as

per the clauses and appendix for unauthorized use of electricity as prescribed in GTCS of APEPDCL.

(iv) to award compensation to the appellants as the respondents have failed to replace the defective meter within the time limit as specified in the standards of performance regulation of APERC.

10. The respondents stated as follows in the submissions made in the appeal.

(i) The material allegations in the appeal made by the appellant are all not true, valid and tenable under law and such of those allegations that are not expressly traversed herein are not admitted by this respondent and the appellant is put to strict proof of the same.

(ii) The above appeal is not maintainable under law.

(iii) The averments in para –III(1) that the appellant is a Limited company etc., are not known to this respondent and this respondent is also not aware of the lease in between the appellant company and Sri T.Madhavarao who is a registered consumer of APEPDCL under SC No. 55910. This respondent denies that the premises where the service connection No. 55910 is located is being used as transit accommodation for the appellant.

(iv) The averments in para-III(2) are absolutely false and emphatically denied by this respondent. This respondent submits that this respondent or any of the other respondents did not receive a letter or complaint as alleged in the appeal seeking replacement of defective meter. The alleged letters are self serving and are brought in to existence to suit the convenience and build up a case against the organization of this respondent. All the other averments are absolutely false and invented for the purpose of this appeal by the appellant and this respondent denies the same.

(v) The incriminating points referred to in the appeal were not raised before the appropriate fora and as such there was no chance of considering the same. The appellant all through had been pursuing the matter in a wrong forum and as such the same could not be considered. The orders of the consumer forum in observing that the appellant has not exhausted the remedies available under the act is true and the appellant cannot file the present appeal agitating against the final assessment order by raising incriminating points.

(vi) The grounds raised by the appellant assailing the orders of the consumer forum are wholly untenable and needs no consideration by this Hon'ble Commission.

The grounds raised by the appellant that the consumer forum failed to take cognizance of the documentary evidence submitted by the appellant is totally misconceived as there is no occasion for the consumer forum to advert to the documentary evidence as the complaint before the consumer forum was dismissed since the appellant has not exhausted remedies available under law.

(vii) The final assessment order issued by the Divisional Engineer specifically states that an appeal against the orders lies to Superintending Engineer but no appeal was preferred by the appellant thought it has a right to do so. Hence, without preferring an appeal against the final assessment order the appellant is precluded from agitating against the same before the consumer forum. The final assessment order issued by the Divisional Engineer on 29.08.2008 states that the incriminating points raised by the appellant were considered and that an order was passed after personal hearing of appellant. Therefore, the appellant cannot state that the incriminating points raised by it were not considered.

(viii) This respondent submits that the order of the 6<sup>th</sup> respondent herein against which the present appeal is preferred is based on facts and law and it requires no interference by the Hon'ble Ombudsman. The reliefs claimed by the appellant in the present appeal cannot be granted since the appeal before this Ombudsman is liable to be dismissed. Further more, it is submitted with utmost respect that the reliefs claimed by the appellant are those which have to be granted by the Appellate Authority over the final assessment order and as such the said reliefs cannot be granted in the present appeal. The appellant since is pursuing before a wrong forum thought the appellant has been appraised since beginning about its right and forum of appeal, the appellant is not entitled to compensation of any sort.

11. Heard the arguments of the appellant and respondents.

12. The representative of the appellant stated that appeal is against the order of the Forum, as the Forum has not decided the issue on the factual matrix and evidence available on record even without giving an opportunity of submitting its case.

13. The representative of the appellant stated that the premises has been obtained on lease for providing transit accommodation of the officers of the company. The meter has been replaced by the respondents on 10.07.2008 which

only shows that the meter was defective. The respondents have arrived at the conclusion that the premises is being utilized for commercial purpose on the basis of using letter head of the company for communication by the appellant.

14. The representative of the appellant stated that the provisional assessment has been issued by the respondents and served on them on 21.07.2008 which is on the basis of purported inspection conducted on 24.06.2008. No details were furnished about the same including any report on the purported act.

15. The representative of the appellant stated that they had approached the Forum on the ground that the meter has not been replaced immediately and taking action unilaterally for change of category without notice. The GTCS has not been followed in respect of change of category this is only claimed in the written statement. Short billing should have been resorted to as per GTCS. However, the amounts have already been paid and position has been handed over to the landlord. By not following the procedure under GTCS they have violated the same. In any case it is a unilateral action to recommend change of category.

16. The representative of the appellant stated that they have filed a memo for bringing on record the Superintending Engineer as he has already passed the appellate order on the provisional assessment notice and did not give opportunity while passing the same. At the same rate the Forum also did not give opportunity to make submissions and produce evidence. The respondents have not furnished the copies of inspection notes and report. The appellant did not inform the respondents about the lease and had not sent the copy of the lease deed to them. However, it prayed for appropriate orders in the matter.

17. The representative of the respondents stated that Assistant Divisional Engineer, Detection of Pilferage of Energy had visited the premises for inspection on 24.06.2008. The manager of the appellant company was present. They have not received any letter not acknowledged any letter about the stuck-up meter.

18. The representative of the respondents stated that the Assistant Accounts Officer concerned had issued a notice for the shortfall amount under the Assessment proceedings in respect of the defective meter and the proceedings have been

completed on 29.08.2008 before the Divisional Engineer and 31.12.2008 before the Superintending Engineer. There is no information to the respondents about the leasing of premises.

19. The representative of the respondents stated that the respondents had no knowledge of the meter being stuck-up till the inspection and on such inspection notice of assessment for change of category has also been issued. The action of the respondents is in accordance with the Act and GTCS and the order of the Forum is well reasoned in the facts of the case, the same may be upheld.

20. Now, the point that arises for consideration is whether the Forum has rightly rejected the complaint of the appellant.

21. A perusal of the order clearly shows that the forum did not give an opportunity. It is very strange while receiving the complaint itself one of the members endorses on the acknowledgement that the complaint relates to issue under section 126 of the Act which cannot be under taken by it.

22. No doubt the regulation under which the forum and this authority have been established are not required to entertain issues arising under part X, XI, XII, XIV and XV of the Act or any proceedings initiated or to be initiated before the Commission as per Regulation 1 of 2004. However, this does not mean that one can pre-judge on the face of the complaint at the time of filing itself or does not give opportunity to the complainant who has initiated the proceedings.

23. It is one thing to say that forum has no authority to look into this particular matter and it is another thing to say that such authority cannot exercise the power even before it is taken on file and heard. In both the instances the normal practice is that any authority would have to adopt is that the basic principle of hearing (audi alteram partem) before rendering any verdict.

24. Inasmuch as the regulation under which the present forum and authority have been established have been specifically mandated to hear and dispose of the complaint / appeal. In these circumstances the order cannot be sustained and has to be set aside.

25. Further, during the pendency of the appeal before the forum and in parallel the order mechanism of internal assessment proceeding have also been taken up. It appears the said authorities also did not afford an opportunity of being heard before passing the order.

26. The other angle in the case is that there are several facts which need to be gone into at the complaint level itself and arrive at proper finding on the facts as the same are disputed by both the parties. The same cannot be gone into at the appellate stage, as recording of statements and examination of records has to be done before deciding the case. That being so and in order to satisfy the principle of hearing (*audi alteram partem*) the matter is remanded back to the forum by setting aside the order dt.26.08.2008.

27. The forum is directed to give notice to both the parties afford all reasonable opportunity of hearing and pass orders.

28. In so far as the orders passed by the officers under assessment proceedings, it is appropriate that they are not given effect to till the forum decides the matter.

29. It is also made clear the authority cannot interfere with the orders of the assessment authorities as there is specific embargo in the regulation to entertain the cases on those subjects and appeals against those orders. Accordingly the contention of the appellant is rejected.

30. For the same reason the petition filed by the appellant to amend the title and add Superintending Engineer as party to the present proceedings is not necessary and accordingly it is not taken on file. It is left to the appellant to challenge the said orders in an appropriate proceedings before an appropriate forum as may be advised.

31. For all the foregoing reasons and discussions the order of the forum is set aside and the matter is remanded back to the forum for afresh disposal in accordance with law. The forum is required to take a decision in the matter without being influenced by any observations expressed in this order on the facts of the

case. The forum shall dispose of the matter within a period of two months from the date of receipt of the copy of the order after giving notice to both the parties.

32. In the result, the appeal is disposed off in terms of the observations made above.

This order is corrected and signed on the 3<sup>rd</sup> day of August, 2009.

VIDYUT OMBUDSMAN