

BEFORE THE VIDYUT OMBUDSMAN

Present

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

Dated: 17-08-2009

Appeal No. 20 of 2009

Between

Smt. Rudraraju. Venkata Naga Jyothi,
W/o. Viswanatha Gopala Krishna,
Penumarru (V), Elamanchili (Mdl), W.G. Dist

... Appellant

And

1. The Asst. Engineer / Operation / APEPDCL / Elamanchili
2. The Asst. Divisional Engineer / Operation / APEPDCL / Narasapuram
3. The Asst. Accounts Officer / ERO / APEPDCL / East / Palakollu
4. The Divisional Electrical Engineer / Operation / APEPDCL / Bhimavaram

... Respondents

The appeal / representation dated 20.04.2009 of the appellant has come up for final hearing before the Vidyut Ombudsman on 19.06.2009 in the presence of Sri. K.Siva Shankar, Advocate on behalf of the appellant and Sri A.Trimurthy, AAO/ERO and Sri A.Murali Assistant Engineer / Elamanchili 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. 368 / 2008 of West Godavari District dated 25.03.2009, the appellant herein filed appeal / representation dated 20.04.2009.

2. The appellant stated that they have service connection nos. 604, 681 and 682 in Gamparru village in Elamanchili Mandal in West Godavari Dist. Each service caters to a load of 9.5HP plus 340 Watts. These are availed for the fish tank service. Service has been availed by spending an amount of Rs.2.50 lakhs for providing transformer at their own cost. They have paid a deposit of Rs.1500/- towards each H.P as a special guarantee.

3. The appellant stated that respondents have changed the meters in February 2007 and fixed the RMD meters. The meters have typically shown that 22.5 HP is being utilized for 7.5 HP and 12.5 HP is being utilized for 3 HP.

4. The appellant stated that the respondents through Sri R. John Babu had inspected the services on 23.04.2004 and without noticing the erected machinery and only on the basis of meter reading has declared that they have exceeded the load. Accordingly, short bill were raised on the services by the respondents.

5. The appellant stated that they have approached the CGRF, Vishakapatnam on 14.07.2007. The Chairperson has spoken to the Superintending Engineer and Divisional Engineer to change the MD meters. Basing on the above request, the respondents have changed the meters not only for the appellant but about 70 other meters which are showing similar mistake.

6. The appellant stated that the service was disconnected forcing them to pay the shortfall bill and restored after payment is made. They made a request to the authorities for a physical inspection of the motors to the Superintending Engineer, Divisional Engineer and Assistant Engineer but no action was taken. The service was again disconnected on 25.12.2008 regarding payment of development charges. During the said period, they have lost an amount of Rs.5 lakhs. Further, demand has been raised for balance of the charges for the period 30.04.2007 to 31.01.2009. The details are as follows:

For Service No. 681 Rs.32,292/-

For service No. 682 Rs.46,000/-

Aggrieved by the action of the respondents, the appellant has preferred a complaint before the Forum on several grounds. The same was rejected by the Forum. Hence, this appeal is preferred.

7. The appellant filed written submissions reiterating the earlier submissions and also stated that:

(a) It is humbly submitted that the petitioner herein is using motors less than 9.5 HP + 340 watts load for each service number.

(b) It is submitted that in the year February 2007 the meters were replaced R.M.D. meters to nearly 70 to 80 services in the area by the authorities and again in September 2007 the RMD meter were removed by the authorities for the reasons better known to them.

(c) It is submitted that the grievance of the petitioner is that during the period of RMD meter, the petitioner noticed that the RMD meters are showing excess load and not functioning properly as well and same is accepted by the respondents before this Hon'ble authority and the respondents failed to explain the proper reason for changing of meters without any requisition from the consumers.

(d) It is further submitted that as the respondents did not resume the power supply, the petitioner with great difficulty managed to arrange funds and paid additional loan charges of Rs.19,500/- and ACD of Rs.6,500/- on 27.04.2009 in respect of S.C.No.604.

(e) It is submitted that the respondents without considering the request of the petitioner and without providing proper power supply and services, again issued notices for payment of arrears.

(f) It is further submitted that, in the order in CG 368/2008, the Hon'ble Chairperson erred in his findings stating in the context 2nd time inspection for the additional loads connected does not merit consideration, as the RMD meters are having important features. The Hon'ble Chairperson erred in taking into consideration that the RMD meters were fixed only for a period of 3 to 4 months and the inspection was conducted by Sri R.John Babu during that period only. The petitioner requested to conduct inspection after replacing of RMD meters and paying the due of shortfall.

(g) It is submitted that the Hon'ble Chairperson stated in his order that it is not also a practice of conducting inspection for additional load connected in order to have a confirmation of the additional loads and it is needless to say that maximum demand may be exceeded for various conditions and reasons, which clearly shows that the Hon'ble Chairperson did not consider the contentions of the complainant in CG 368/08 and is much against the principle of natural justice.

(h) It is further submitted the meter reading chart issued by the department really shows that the readings were high at the time of functioning of RMD meters, except those three months readings, all other previous and later months readings are normal. Even till today, the authorities are issuing notices basing on the readings recorded during the period of installation of RMD meters.

(i) It is therefore prayed that the Hon'ble authority may kindly consider the application of the petitioner and direct the concerned authorities to take necessary action and pass any such other order or orders as the Hon'ble authority deems fit and proper in the ends of justice.

8. The respondents have stated in their response that:

(a) It is true that the service bearing SC No.604, Cat-III utilized for fish tank purpose at Gumparru was released in the name of Smt.Rudraraju Venkata Naga Jyothi, W/o Sri R.Viswanadha Gopala Krishna Varma on 09.04.2003 and the SC No. 681, Cat-III utilized for fish tank purpose at Gumparru was released in the name of Sri R.Viswanadha Gopala Krishna Varma on 15.03.2005 and SC No.682, Cat-III utilized for fish tank purpose at Gumparru was released in the name of Smt.Rudraraju Venkata Naga Jyothi, W/o Sri R.Viswanadha Gopala Krishna Varma on 15.03.2005, on payment on requisite charges to the department.

(b) The contention of the petitioner that he is using power supply for aforesaid purpose less than the contracted load of 9.5 HP + 340watts is just not sound and correct, as the maximum demand recorded by the meters connected to the aforesaid services already speaks that they have exceeded the contracted loads against all above three services.

(c) The said services were inspected by the ADE/DPE-II/Eluru on 23.04.2007 and noticed that they have exceeded the contracted loads for all the three services and the details are appended hereunder for ready perusal.

S.No.	SC.No.	Cat	Existing contracted load	Date of inspection	Total connected load at the time of inspection	Addl. (approx)	Remarks
1	604/Gumparru	III	9.93HP	23.04.2007	22.01HP	13HP	Exceeded the contracted load and also fallen under Rs.3.75/unit tariff as per tariff rates 2008-09.
2	681/Gumparru	III	9.93HP	23.04.2007	11.15HP	2HP	
3	682/Gumparru	III	9.93HP	23.04.2007	12.25HP	3HP	

(d) The aforesaid inspection was also witnessed by Sri R.V.G.K.Varma himself and signed on the I.N. The M.D recording featured meters are embedded with the latest technology and records all parameters viz., the consumption and the MD etc., very accurately and hence, there is no possibility of excess recording of MD said meters, as alleged by the petitioner.

(e) Besides, the consumption of the each service with a contracted load of 9.5 HP +340watts per month with 7 hours power supply in a day shall not exceed 1566 units, where as all the 3 services recorded excess consumption i.e. in the order of 2900 units, 2700 units

and so on, as is evident from the consumption pattern of the services enclosed and hence, the MD recorded by the meters were accurate and correct only.

(f) The plea of the petitioner for reinspection, of three services for detection of additional loads if any can not be considered, as there is no such provision made available in GTCS of Electricity Act 2003 and also the connected load of the services can be altered by the consumer at any point of time for their convenience and hence, does not merit consideration.

(g) She has further contended that the MD meters are available connected to the said services for 3 to 4 months only i.e. between 02/2007 to 09/2007, is not true and correct. The replaced meters, if any owing to exigencies (i.e, if the meter become defective) are also having the MD recording features and are now existing in the services and there is no variation in the consumption pattern of the services as contended i.e, prior to and after replacement of the meters as is evident from the consumption pattern of all the three services (copies enclosed).

(h) It is not true to state, that the 70 to 80 services RMD meters provided in the area were removed and replaced with the conventional meters, as the RMD meters provided in the area are still being continued, but for the replacement of defective meters with again MD featured meters, as and when exigencies warrants.

(i) The application for duration of load to 90 paise tariff could not be considered (though not registered in prescribed form at call center, Narasapuram) only, due to non-payment of additional load charges for SC No. 604 since all the above three services belong to the petitioner.

(j) It is needless to mention that the consumers are required to limit their connected loads to with in the contracted loads, else the infrastructure provided by the Discom viz., DTRs and its connected lines are most likely to damaged due to overloading of DTRs / OH lines.

9. Heard the arguments of the counsel for the appellant and the respondents.

10. The counsel for the appellant while reiterating the submissions made in writing stated that they have not assigned any reason for change of meters on a large scale. The appellants have paid all the short fall amounts demanded pursuant to notice dated 06.06.2007 based on the inspection of ADE, Sri John Babu on 18.07.2007.

11. The counsel stated that an amount of Rs.4,115/- for Service No.604, Rs.5474/- for S.C.No.681 and Rs.6,452/- for S.C.No.682 respectively have been paid by the appellant, the appellant paid an amount of Rs.19,500/- for additional load and Rs.6,500/- towards ACD on 27.04.2009.

12. The counsel stated that the inspection was conducted in a casual manner and raised vague allegations based on which the amounts have been demanded the matter may be considered on humanitarian grounds. The appellant has already suffered heavy losses due to the actions of the respondent and is only ready to pay the amounts for justifiable reasons.

13. The representative of the respondent stated that the appellant has three services between herself and her husband. They were released as per details given below:

S.C.No.	Name	Date	Load
604	R.V.Naga Jyothi	09.04.2003	9.93HP
681	R.V.Gopala Krishna Verma	13.05.2003	-do-
682	R.V.Naga Jyothi	15.03.2005	-do-

All the services are under category –III. If the load is under 10 HP,. concessional tariff of 0.90 ps is applicable.

14. The representative stated that when the services were inspected the following details were noticed.

S.C.No.	Load found in HP	Additional load in HP
604	22.001	13
681	11.05	02
682	12.25	03

15. Based on the above inspection, two sets of notices for each of the services were issued raising shortfall amounts as well as additional load development charges.

S.C.No.	Shortfall amount (in Rs.)	Additional load Development charges (in Rs.)	Security Deposit (in Rs.)
604	4,115	19,500	46,500
681	5,474	3,000	1,000
682	6,452	4,500	1,500

16. The representative of the respondent stated that the amount of differential tariff is arrived at which is due to change of tariff, the same is as follows:

S.C.No.	Amount (in Rs.)
604	44,457
681	32,292
682	42,160

No payment has been received on the said claims.

17. The representative of the respondent stated that the consumer should not exceed 1566 units for 10 HP load if he consumes energy for a period of 7 hours in a day for a month. The readings show otherwise. The tariff of 0.90ps per unit is applicable to services where the load is below 10 HP and are being served by rural feeder, it is not applicable to town services where 24 hours supply is available. He stated that the action of the respondents is in accordance with the law and the appeal may be rejected.

18. Now, the point that arises for consideration is whether the order of the forum is beyond the scope of the facts and law in the circumstances of the case.

19. Admittedly, all the facts are not contraverted by the parties except for few where the factual basis is taken on the different stand. That apart, the forum has entirely given a go by to the submissions made by the appellant. If the true import of the facts have been applied to the provisions of law the matter should have been decided differently, instead mechanical application of the provisions of Act and regulations the forum has given a go by to basic facts and is carried away by the submissions of the respondent.

20. In the backdrop of the above observations, it is the view of the Vidyut Ombudsman that the actions of the respondents and subsequent developments need sufficient consideration at the hands of this authority.

21. First and foremost, it is stated that services are released under category – III and then it is also stated in the submissions that the motors running for seven hours should not consume more than 1566 units. It is surprising that the fish tank power supply consumption is included and treated as akin to free power supply to agriculture pumpsets. There is no submission in the counter affidavit that the supply is extended on the agriculture feeder or on a regular 24 hours feeder.

22. Secondly, the inspection done by the concerned engineer has completely forgotten the fact that exceeding load depends more on the machinery employed. A cursory reading on the inspection notes (requisitioned by me at the time of hearing) reveals that machinery employed has not been recorded therein. Instead, certain incriminating points are noted which cannot be understood by common man.

23. The statement recorded by the consumer is a figure which appears to have been shown to him by the inspecting officer and does not appear to be one written on his own volition. There is vague denial of the statement that there was change of meters across the mandal which does not match the clear statement of the appellant that the respondents on

their own have took action to change the meters. That apart, a concession is made during the hearing that meters were changed on two occasions for becoming defective. There is no explanation to the fact that the revised tariff has to be charged to the services even assuming that the action of the respondents is correct and bills should have been raised in the revised rate which has not been done so even now.

24. Nextly, the order passed by CGRF has not been rendered in the light of the facts available on record. It is strange that the foremost point is that the regulation under which it has been established has not been complied with and the complaint has been disposed of in a mechanical manner. This is even without giving an opportunity to the complainant to make his submissions. It based its decision on the submissions made by the parties without hearing and thus it appears to be a clear violation of the principles of 'audi alterm partem'.

25. The reasons stated in the order that there is no practice of conducting inspection for additional load is like stating that one has committed theft in a house without identifying what is lost and punishing him for the same. When a person is charged on the allegation of any excess load, the enquiry is dependent on event of probabilities. It is essential that the factual position is clearly stated before reporting such action. The officer who inspected the services did not record the machinery available so as to state that the consumer has exceeded the load. It is also strange that the forum without having a look at the factual aspects recorded, has made a sweeping statement that the tri-vector meter records the MD accurately. It is a fallacy to say that any device cannot go wrong. Corroboration should be on the basis of factual situation and not on assumptions and surmises.

26. This being so the inspecting officers report may have lost credibility for taking action. Further more, the consumer is asked to record the reading in kilowatts when the load connected and specified in the form on the basis of HP as recorded in the submissions of the parties. There is another angle to the whole case. The consumer has complained of meter being stuck up on two occasions which has been replaced by the respondents and same is confirmed in the oral submissions.

27. Thus, the above narration makes it clear that the forum has lost sight of Act, rules and regulations in the matter. Likewise respondents have not acted in a fair manner regarding the case of exceeding contracted load. Thus, the action of both respondents as well as the forum have to be set aside. Inasmuch as the inspection was done in April 2007 the case has been hanging fire. Since then it is causing inconvenience to the consumer due to threat of disconnection by the respondents each time when they are under pressure from the senior officers of the licensee. This authority had to write to the CMD of the licensee to

restrain his officers from taking action for disconnection of supply as this order was yet to be pronounced at that time.

28. One of the contentions raised in respect of consumption at a particular point of time of inspection and it is taken as status, the record filed by the respondents themselves shows that the consumption has been quiet different from what is alleged in the written submissions, hence the same is not correct. The maximum amount of energy consumed and the recorded in the meters is about 2200 units. This being the record, it cannot be contended and stated that the consumer is utilizing high amount of energy. Further taking the method of calculation, the energy on the same formula as suggested by the respondents themselves, if the supply is available for more than 7 hours then the recorded consumption may also be appropriately higher than the normative figure. Thus, it cannot be said that excess load has been connected to service.

29. It is also strange that a statement is made by the respondents that the consumers should not add additional load otherwise the system will suffer. It is the duty of the licensee to estimate and improve the system rather than restricting the consumer from having additions to plant & machinery as may be required as the consumers would not ordinarily resort to additions to overload his budget towards electricity charges in general, but only as per requirement. Thus, this statement is uncalled for and same is rejected.

30. Since the consumer has disputed the method of inspection itself and this authority strongly feels that the inspection has been done in a haphazard manner, the matter has to be remitted back to the forum for proper appraisal of the facts for affording an opportunity to the parties of being heard and a decision taken thereof with regard to liability of the appellants to pay the amounts or otherwise in the light of the observations made above.

31. The above stated order shall be implemented in the following manner by the forum:

(a) The forum shall issue notice to both the parties and ascertain the suitability of such persons who are acceptable to both the parties for conducting an inspection and report to the forum.

(b) The forum may get the services visited by independent officers not connected with the case and in terms of point (a) above and receive the reports from them. The team may comprise of a senior engineer and a consumer activist also.

(c) decide the quantum of excess load 'if any' on the basis of such report that may be made by the team which inspected the services.

(d) direct the respondents to collect the amounts on such decision and refund 'if any' excess amounts are collected.

(e) the consumers shall not remove any machinery as is existing as a fresh inspection is being ordered by the forum.

(f) direct the respondents to revise the bills for the interregnum period between April 2007 to the date of decision in accordance with the decision taken by the forum after properly applying the relevant tariff as notified by the licensee for the relevant year in terms of the order of the APERC.

(g) the appellant shall furnish a letter of acceptance of the decision (if it is in her favour) made by the forum and the respondents shall act in terms of the decision of the forum.

(h) such acceptance 'if any' shall be conveyed to the forum by the appellant within a period of 15 days of the decision of the forum. If no acceptance is received by the forum, then it may be open to the respondents to take such action as may be appropriate. (This shall be made clear in the order of the forum itself).

(i) The forum shall conduct the proceedings in this matter within 3 months from the date of receipt of this order and pass appropriate orders in the light of the observations made above.

32. For the reasons and the foregoing discussion, the order of the forum is set aside along with notices issued by the respondents and the forum is directed to take suitable action and decide the matter from the stage of inspection. Subject to the observations and reasoning above apart from the directions issued above the appeal is disposed of with no order as to cost.

This order is corrected and signed on the 17th day of August 2009.

VIDYUT OMBUDSMAN