

BEFORE THE VIDYUT OMBUDSMAN

Present

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

Dated: 25 -08-2009

Appeal No. 23 of 2009

Between

Sri. T. Narayana Reddy,
M/s. Rassi Seeds Industries,
S.C. No. PPL / 812, Pedda Papayapally Village,
Huzurabad Town
Karimnagar Dist.

... Appellant

And

1. Divisional Engineer / Operation / APNPDCL / Huzurabad
2. Asst. Accounts Officer / ERO / APNPDCL / Huzurabad

... Respondents

The appeal / representation dated 27.04.2009 of the appellant has come up for final hearing before the Vidyut Ombudsman on 11.06.2009 in the presence of Sri. T. Narayana Reddy appellant, Sri K.Ramaiah, AAO,ERO,Huzurabad and Sri A.Haribabu, AE(Tech.)/Divisional Office/Huzurabad 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 inaction of the respondents in not implementing the order of CGRF dt.25.08.2008, the present appeal is preferred on 27.04.2009.

2. The appellant stated that he had installed an industrial unit by name 'Raasi Seed Industries' at Peddapapayyapalli village in Huzurabad Mandal of Karimnagar District. The service connection no. is PPL 212. Due to unforeseen reasons the unit has become sick. Subsequently, the appellant represented to the respondent authorities to treat the unit as a sick unit and extend the benefits of sick industries. However, as there was no response from the authorities, he approached the CGRF

for redressal of the grievance in CG No.218/2008. The forum has considered the matter and allowed the same directing the respondents to extend the benefits of sick industry to the unit.

3. The appellant stated that bills were paid and received for some time after the CGRF order was passed. However, subsequently the respondents are refusing to receive the bills and are not implementing the order of the forum.

4. The appellant prayed that this authority may direct the respondents to implement the order of the forum and extend the benefits of sick industries apart from directing them to collect the arrears and not disconnecting the supply.

5. The respondents have stated as follows:

(a) The service bearing No. SC.No.812 Category-III released during the month of January 1998 to M/s. Rasi Seeds Industries, Peddapapaiahpally (V) of Operation section, town, Huzurabad with a contracted load of 35 HP, since then the consume was utilized the power supply and payments made up to 3/2004 regularly to the extent of demand raised as per the consumption utilized by them. During the month of 4/2004 an amount of Rs.7,043/- arrears fallen on the same industry, due to non-payment of same arrears the service was disconnected during the same month. From the date of disconnection the consumer not come forwarded to pay the same arrears. The same service was kept under bill stopped during the month of 11/2004 as on that date the arrears fallen Rs.16,983/- on the same service.

(b) Due to non-payment of arrears by the consumer the service was kept under bill stopped. On 19.11.2007 the consumer preferred an application to the Asst. Engineer, Operation, town, Huzurabad duly stating that a certificate is to be required as the service lines have not dismantled till the date of application to revoke the service which was kept under bill stopped. Based on the representation of the consumer, the Asst. Engineer, Operation, town, Huzurabad addressed a letter to the Asst. Accounts Officer, ERO, Huzurabad by mentioning the fact that the lines have not been dismantled of the above service connection. Subsequently the consumer made a representation to the Asst. Accounts Officer, ERO, Huzurabad to issue the reconnection order by collecting the payment fallen as on the date of bill stopped and exempting the payments for the period of bill stopped, since his unit was seized by

the State Bank of Hyderabad for a period of 3 years. Further, the consumer stated in the same representation stated that the issue between the industry and Bank authorities was settled and they are ready to reopen the industry by paying the amount fallen as on the date of bill stopped.

(c) Accordingly, the Asst. Accounts Officer, ERO, Huzurabad collected an amount of Rs.20,993/- vide P.R.No.387473 on 19.11.2007 i.e., arrears as on the date of bill stopped along with interest on same amount up to date of realization. Further a proposal has been also submitted to the Chief General Manager, Projects &RAC, NPDCL, Warangal through the Superintending Engineer, Operation, Karimnagar for waiver of minimum charges during the seizure period from 4/2004 to 11/2007. The Chief General Manager, Projects &RAC, NPDCL, Warangal has communicated the order that the service does not fall under sick industry, hence the sick industry benefits cannot be extended to the above service in view of the consumer taken reconnection and utilized the power for a period of two months from 19.11.2007 vide Memo. No. CGM / P & RAC / NPDCL / WGL / RAC/ F.Sick Industry / D.No.30, dt.16.04.2008. Accordingly, the minimum demand for the period from 4/2004 to 11/2007 was raised against the same service and included in the bill for an amount of Rs.48,204/-. Due to non-payment of the same arrears by the consumer within the due date the service was disconnected on 27.01.2008.

(d) The consumer approached the Consumer Grievances Redressal Forum, APNPDCL, Warangal for restoration of supply to his industry. The forum issued interim order dated 30.05.2008 in CG.No.218/2008 of Karimnagar circle, the power supply to SC.No.PPL-812 of M/s. Rasi Seeds industries, Huzurabad has been restored on 31.05.2008. Subsequently the forum issued order on 25.08.2008 that “the forum is of the view that the consumer is entitled to get sick industry benefits up to the date of reconnection ie. upto 19.11.2007. The sick industry benefits shall be made available to the consumer”. In the same order it has also directed that the consumer is directed to pay CC charges bill from the date of reconnection i.e. from 19.11.2007 for the power utilized.

(e) In view of the orders communicated by the Chief General Manager (P&RAC),NPDCL Warangal who is appropriate authority to examine and consider to

declare the sick industry, the benefits of sick industry could not be extended to above industrial service, since the consumer obtained the reconnection to his service on 19.11.2007 and demand raised on the same service for the period from the date of disconnection to the date of revoking of the service i.e from 4/2004 to 11/2007.

(f) On 20.04.2009 the consumer made a representation to accept the regular CC by leaving the minimum charges for the period from 12/2004 to 12/2007 and reconnect the service in view of the order dt.25.08.2008 passed by the Forum. But in view of the request made by the consumer for restoration of supply during the month of 11/2007, the industry does not fall under sick and the benefits of sick industry could not be extended. The consumer has denied for payment of entire amount fall on his service.

(g) Therefore, the service was disconnected on 25.01.2008 for non-payment of arrears, the arrears included in the bill due to benefits of sick industry not extended by the competent authority in view of the request made by the consumer for restoration of supply during the month of 11/2007.

6. Heard the arguments of the appellant and respondents.

7. The appellant stated that the bills are not being accepted even though efforts are made to pay the same. It is stated that the unit was set up and was functional but later it has become sick due to unforeseen problems for a period of 3 years. He had availed a loan from State Bank and the amount was not cleared by him, so it has attached the unit. After due proceedings and clearing of amounts the unit was restored to the appellant.

8. The appellant stated that he sought restoration of power supply. The same was done after much delay and after payment of certain amounts which are levied and collected towards minimum charges. It is also stated that the service was disconnected on the ground that it ought not to have been reconnected. The same was restored subsequently on the ground of sick industry. The issue was communicated to senior officers of the licensee for clarification and orders in the matter. As the respondents were likely to disconnect the supply and also failed to extend the benefits of sick industry the appellant had approached the forum which

had given a clear finding on the aspect of extending benefits of sick industry in favour of the appellant. The collection of certain charges by the respondents was also found fault with by the forum.

9. The appellant stated that the respondents are collecting interest on the amount due and the same is being paid. He prayed for suitable orders in the matter for implementation of the order of the forum and extension of benefits for sick industry.

10. The representative of the respondent stated that they have already filed written submissions and has nothing to add to the same.

11. Now, the question that arises for consideration is whether the licensee was within its powers not to implement the order of the forum.

12. Before adverting to the rival contentions and the factual aspects it is appropriate to examine the matter from the stand point of issue raised above.

13. The licensee has a universal service obligation. It is a sole authority to undertake distribution and supply of electricity in its area of operation as per the license granted to it by the Andhra Pradesh Electricity Regulatory Commission (APERC). Section 43 of the Electricity Act, 2003 requires it to provide supply to whoever desires to avail supply. This is subject to such conditions as may be imposed under the rules and regulations made by APERC. When a forum is constituted exercising powers vested in an authority by way of subordinate legislation made by such authority which has got the power to do so, becomes a statutory Act. The power is exercised in accordance with the provisions of the statute and such exercise of rule making is ordinarily termed as subordinate legislation.

14. APERC in exercise of its powers to make regulations for establishment of forum as well as this authority had framed Regulation No.1 of 2004 for constitution of the forum by the licensee as well as this authority. Such forum is bound to act in a manner as is required under the statute as well as the regulation under which it owes its genesis. It is independent of the licensee as is required under the statute and has to render the service of redressing the grievances of the consumers. The licensee being a mighty organization has to act in line with the Act and Regulations under

which it is established or is granted licence and cannot act in an unfair manner apart from sitting in judgment over the forum which is constituted under a Regulation and has rendered justice in respect of grievances raised by the consumer.

15. In this process only, the forum has acted and mitigated the grievance of the consumer in this particular case. The licensee cannot and should not disobey the orders of the forum which is exercising a statutory power. In the instant case having heard the parties the forum has mitigated the grievance of the consumer and directed the licensee to act in a particular manner the same has to be implemented at first instance whatever might be the view of the licensee, then take such appropriate steps which it thinks fit.

16. It is strange that the consumer has been pushed to brink and order of the forum is not implemented. Further, subsequent events brought to the notice of the authority go to show that the consumer is being harassed by resorting to disconnection of power supply and also not allowing him to pay regular consumption charges. Inasmuch as this authority had to send a communication to the CMD of the licensee requiring him to direct the concerned officers to restore power supply as this order was yet to be pronounced at that point of time.

17. From the material placed before this authority, it is clear that the appellant's unit has become sick due to action of other agencies. He has finally wriggled out of it later. The appellant was allegedly involved in a criminal case for securing loan from the bank. The bank in turn reported the matter to the investigating agency which lodged a criminal case against the appellant. Ultimately, after detailed examination and hearing, the criminal court has discharged the appellant. A certificate issued by Mandal Revenue Officer shows that the appellant's unit has been seized by the bank and is closed for a period of 3 years.

19. As the unit was under seized condition till the acquittal in the criminal case, it appears the appellant has sought to restart the business and accordingly paid some amount for getting restoration of supply of electricity. Accordingly, the unit has been given supply on payment of minimum charges to a certain extent. At this stage, the officials are not aware of the proceedings issued by the management of the licensee pursuant to communication received from the APERC. They also did not enlighten

the consumer about the requirements to avail the benefits of a sick industry. In that background only the consumer appears to have paid some amount.

20. The proceeding issued by the licensee clearly stipulate as to who should get the benefit of sick industries. This proceeding was directed against such industries which have become sick for a particular period. This authority had directed the respondents to file a copy of the said proceedings having been informed of the same at the time of hearing. From the facts in the instant case it is clear that the unit was closed in April 2004 and from November 2004 the bill stopped procedure was adopted by the licensee. This only goes to show that the conditions in the said proceedings are fully met.

21. Now coming to the order of the forum it has rightly pointed out that the benefits have to be extended to the consumer and such extension should be done without any delay. It is one thing to say that the consumer is entitled to the benefits and it is another thing to say that consumer has not fulfilled the conditions in the proceedings mentioned supra. Thus, the forum has clearly given finding about entitlement as well as implementation of the proceedings supra. Thus, the licensee cannot escape its implementation without giving any reasons.

22. Furthermore, it is the duty of the officers of the licensee to enlighten the consumers about the benefits and not to throw a spanner by not allowing the implementation of the schemes desired for the benefit of consumers. There should not be any room for non-implementation of the forum's order as there is clear finding.

23. The other point that arose for consideration is that the consumer has been pushed to the brink by disconnecting supply, just because they perceived the proceedings and orders as not in confirmity with the interests of the licensee. As long as the utility is a public utility the interpretation or otherwise of the provisions of the law and regulation should be to the benefit of consumer. It does not behoove of an organization to push the ordinary consumer from pillar to post for securing his benefits. In the instant case an ordinary consumer is put to harassment even after he has succeeded in at least one forum i.e., CGRF.

24. The officers concerned should be advised to desist from narrow interpretation of the rules and regulations. In this case as seen from the submissions initially power supply was restored and later it was disconnected owing to the interpretation that was sought to be given to the rules and regulations. Subsequently, when the appellant succeeded before the forum, power supply is restored but the regular charges appear to have been not collected in the guise of asking for arrears of amounts to be paid or face disconnection.

25. It has been stated at the time of hearing as well as in the submissions that the senior officers of the licensee are insisting on not implementing the order of the CGRF. A proceeding to that effect appears to have been given by the senior officers. No reasons are assigned for stating that the appellant is not entitled to benefits of sick industrial unit.

26. Thus, the action of respondents is not called for and they are directed to extend the benefit of sick industries immediately and adjust all the amounts collected from the consumer.

27. For the foregoing reasons and discussions the appeal is allowed confirming the order of the forum but without any order as to costs.

This order is corrected and signed on the 25th day of August 2009.

VIDYUT OMBUDSMAN (FAC)