

BEFORE THE VIDYUT OMBUDSMAN

Present

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

Dated: 09 -09-2009

Appeal No. 29 of 2008

Between

Sri. M.R.V. Sudhir,
Door No. 50-100-7 / 1,
Ground Floor, North Extension,
Seethammadhara, Visakhapatnam – 13

... Appellant

And

1. The Assistant Additional Engineer/Operation/APEPDCL/ Akiveedu
2. The Asst. Divisional Engineer / Operation / APEPDCL / Bhimavaram
3. The Asst. Accounts Officer / ERO / APEPDCL / Bhimavaram
4. Divisional Electrical Engineer / Operation / APEPDCL / Bhimavaram

....Respondents

The appeal / representation dated 22.12.2008 of the appellant has come up for final hearing before the Vidyut Ombudsman on 05.06.2009 in the presence of Sri. M.R.V.Sudhir, the appellant, and Sri T.V.Surya Prakash, Divisional Engineer / Operations, Bhimavaram, Sri A.Satish Kumar, Assistant Divisional Engineer / Operations, Akiveedu and Sri Y.K.Srinivasa Rao, Assistant Accounts Officer / ERO / Bhimavaram 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. 245/ 2008 of W.G.Dist dated 29.11.2008, the appellant herein filed appeal / representation dated 22.12.2008.

2. In his representation the appellant has stated that:

“(a) On 29.09.2008 I filed a complaint C.G.No.245/08 before the Chairperson, Forum for Redressal of Consumer Grievances, Visakhapatnam praying for justice in a case of back-billing pertaining to Sri Kalyani Ice Factory (proprietary concern of my father, late Mallareddy Madhava Rao). It was my fervent hope that the Forum would provide me an opportunity to personally represent my objections in the matter of back-billing. It is my humble submission that the same was denied to me and therefore this appeal is filed.

(b) My father had constructed an ice factory, Sri Kalyani Ice Factory in Taratava village, Akiveedu mandal, West Godavari Dist, in the year 1994. The factory had been provided electricity connections, S.c.No.4, with a contracted load of 73 HP+746 W on 07.07.1994.

(c) In the year 1997, on 25th of August, the electricity meter was inspected by the ADE/DPE-I/Guntur and found it to be stuck up in one phase. The meter was tested at MRT Laboratory, Eluru and it was confirmed to be recording the consumption at an error of -33.33%. The faulty meter was replaced on 05.10.1997.

(d) The ADE/Oper/Bhimavaram issued provisional assessment notice vide Lr.No.Sub-Engineer/d.No.248/98/Dt.29.07.1998 for Rs.60,852/-. He cited therein the opinion of the Chief Engineer, Vijayawada, who on review of the meter readings assessed the period of fault in meter as 2 months. My father duly submitted his reply. In the year 1999 the Superintending Engineer/Oper/Eluru issued a back-billing show cause notice vide Lr.No.SE/O/ELR/AE/T2/F.Doc/D.No.350/99, dt.12.05.1999, for Rs.1,44,953.80/- only. The back billing was done for a period of 6 months from the date of inspection of electricity meter. It is relevant to note the inconsistency with regard to the period of fault through the decision in both instances was taken based on the same available data.

(e) My father was later diagnosed with intestinal cancer and sadly expired on 21.08.2001. There was no further action by the department in the matter of back billing during the 2 years after issue of show cause notice in May 1999 till my fathers death in August 2001.

(f) In the year 2003, approx. 4 years after issue of notice, on the 26th February I received the proceedings of the SE/Eluru, Lr.No.SE/O/ELR/DE.T/ AAE.T2/F.Doc/ D.No.740/03 dt.20.02.2003, on 26.02.2003. Being totally ignorant of all the earlier happenings pertaining to the ice factory as I was living in Hyderabad prior to my father's death I did not reply to the notice. Subsequently relevant notices under the Revenue Recovery Act were served to me and my movable properties attached. I challenged the department's action before the High Court of Andhra Pradesh vide WP No.2777/2005. The court ordered the return of the articles. Subsequently on a counter filed by the electricity department the court disposed the petition vide order dt.25.07.2007. Based on the court order demand notices as also attachment order, under the provisions of the Revenue Recovery Act, were issued. However, no effort was made to decide the arrears as was suggested by the court despite representations made by me in person to the Superintending Engineer/Oper/Eluru on the basis of documents and data that I happened to chance upon which were not available to me. It was for this reason that I approached the Forum in Visakhapatnam seeking a review of the entire case.

(g) The inordinate delay in issue of notices is clearly evident. What is more glaring is the inaction of the department of 4 years after issue of show cause notice in 1999 despite a prompt response to the same. They clearly denied my father an opportunity to challenge the overruling of his objections.

(h) I further submit that my father in his response to the notice of 1999 stated that the meter had been inspected in July 1997 by the ADE/DPE/Eluru and found to be in order. He did not submit any proof in defense of the same. However his contention seems justified considering the views expressed by Chief Engineer, Vijayawada in the provisional assessment notice of 1998 wherein period of fault in meter was assessed as 2 months. The SE/O/Eluru in his back billing show cause notice assessed the period of fault as 6 months prior to the date of inspection of meter. It was clearly done more as a matter of established practice in cases of power pilferage rather than on the basis of a careful study of the consumption pattern. I further believe that the meter readings of the period need to be furnished to facilitate an informed decision in the matter. The meter readings are:

METER READINGS FROM 03.03.1996 TO 09.03.1998

DATE OF M.R	METER READING M.R	CONSUMPTION X M.F	BILLED UNITS	M.R. FOR 30 DAYS	REMARKS
03.03.96	14589.9	538x20	10760	----	
06.04.96	15205.5	616x20	12320	----	
08.05.96	16062.6	857x20	17140	----	
03.06.96	16647.2	585x20	11700	----	
03.07.96	17457.0	928x20	16560	----	
01.08.96	18158.2	683x20	13660	----	
04.09.96	19224.0	1066x20	21350	----	
04.10.96	20251.0	1027x20	20540	----	
15.10.96	20606.1	355x20	7102	----	Meter changed
05.11.96	00635.9	633x20	12660	----	
11.12.96	01234.4	608x20	12160	10133	Bld 36 days
04.01.97	01928.3	685x20	13700	15726	Bld 24 days
04.02.97	02784.4	856x20	17120	17120	Bld 30 days
12.03.97	03703.3	919x20	18380	14510	Bld 33 days
01.04.97	04091.7	388x20	7760	11629	Bld 18 days
02.05.97	04532.2	501x20	10020	10020	Bld 30 days
10.06.97	05709.6	1117x20	22340	17636	Bld 28 days
01.07.97	06339.5	630x20	12600	17303	Bld 21 days
02.08.97	07002.0	663x20	13260	13260	Bld 30 days
Meter was	Inspected	On 25.08.1997			
04.09.97	07409.0	407x20	8140		
05.10.97	07594.0	185x20	3700		Meter changed
10.11.97	00607.0	605x25	15121	12964	Bld 35 days
05.12.97	01238.0	681x25	17025	19185	Bld 25days
08.01.98	02431.0	1143x25	28575	----	
08.02.98	03451.0	1020x25	25500	----	
09.03.98	04301.0	850x25	21250	----	

(i) From the data few conclusions can be safely drawn. Firstly the consumption pattern in the years 1996 and 1997 is comparatively similar without major deviations. It is notable that after the replacement of the meter on 15.10.96 the consumption upto the billing date of 02.08.97 is fairly consistent. The actual consumption for the month immediately after replacement of meter on 05.10.97 of 12964 units is notable. On the basis of the above facts, it can be safely assumed that the meter got stuck up between 02.08.97 & 25.08.97 (date of inspection). I therefore contend that the assessment should have been limited to billing dates of 04.09.2008 and 05.10.98 and the calculation done on the meter readings of 8140 units and 3700 units (total

11840 units). Taking the error percentage -33.33% into consideration the shortfall in units would be 5920 units. The amount payable would not exceed Rs.20000/- under any circumstances.

(j) In view of all the above facts I humbly request your honourable self to kindly provide me an opportunity to personally represent the facts and thereafter to review the entire matter and render justice at the earliest.”

3. The respondent No.4 in his letter dated 23.01.2009 submitted as follows:

“(a) It is submitted that, SC No.64, Cat-III of Taratava village of Akiveedu Mandal was released in favour of M/s. Sri Kalyani Ice Factory, Managing Partner Sri Mallareddy Madhava Rao, with connected/contracted load of 73 HP+746W on 07.07.94 for manufacturing of ice blocks.

(b) It is submitted that the consumer premises was inspected by the Assistant Divisional Engineer / DPE-I/ Eluru on 25.08.1997 at 1500 hrs and noticed that the meter disc is rotating with 1.5kw heater load in forward in R&B phase and stuck-up in Y phase. The meter was tested at MRT lab, Vatluru and as per the test results, it is noticed that the meter was recording the actual consumption at an percentage average error of -33.18%.

(c) It is submitted that the Assistant Divisional Engineer/Operation/Bhimavaram issued provisional assessment notice vide Lr.No.ADE/O/BVRM/d.No.2648/98, dt.29.07.08 for Rs.60,852/-. Accordingly, back billing show cause notice has been served to the consumer vide Lr.No.SE/O/ELR/ADE(T2)/F.Doc/D.No.350/99, dt.12.05.99 for Rs.1,44,953.80. The show cause notice was acknowledged. The representation of the consumer has been examined and final assessment proceeding have been passed for Rs.1,32,236/- vide Proceedings No. SE/O/ELR/DE.T/AE.T2/F.Doc/D.No.734/03, dt.20.02.2003.

(d) It is submitted that the said service was disconnected for default of CC charges during 08/2001. The bills stopped with effect from 02/2002. The meter was removed vide ADE/O/Akiveedu Lr.No.D.No.756/02, dt.18.12.02. Accordingly the agreement of the said service was terminated with effect from 01.02.02 as per Proc. No.DE/O/Bhimavaram /Comml-II/F-13/d.No.6553/2002, dt.28.12.2002.

(e) It is submitted that the back billing assessment amount of Rs.1,32,236/- as per Proc.No.SE/O/ELR/Dt.20.02.03 was journalized vide RJ No. 64/02-04. The consumer did not pay the arrears even after repeated pursuance right from the AE/Operation to the Superintending Engineer / Operation.

(f) It is submitted that Form A&B notices as per sub-section 2 of section 3 of the APSEB (Recovery of dues), Act 1984 (Act 28 of 1984) read with sub-rule (2) of Rule 4 of the APSEB (Recovery of dues), Rule 1985.

(g) It is submitted that the Superintending Engineer / Circle office / Eluru had issued notice to the said service consumer for early payment of dues vide Lr.No.SE/O/ELR / LT/DY.Tahr/D.No.928/04, dt.23.06.2004 for Rs.1,32,236/-.

(h) It is submitted that Distant notice has been served to the consumer vide DEE/O/BVRM/D.No. 3952/04, dt.21.12.2004 for Rs.1,32,236/- as per RR Act. Accordingly the movable property of Sri M.R.V.Sudhir, S/o.Late Madhava Rao, was attached on 28.01.2005 by the Deputy Tahsildar / Circle office / Eluru.

(i) Aggrieved by the attachment of movable property of Sri M.R.V.Sudhir S/o.Late M.Madhava Rao. Sri M.R.V.Sudhir approached Hon'ble High Court. Upon hearing the arguments for the petitioners and respondents, the court further made the following order: "The petitioner No.1 states that he has nothing to do with the ice factory said to have been established by his father and not even residing in the premise, where the ice factory used to exist before it was closed in the year 1998. In that view of the matter, there shall be interim direction to the respondents to return the articles seized from the petitioners. The petitioners are directed not to dispose of the same until further orders" dt.17.02.2005.

(j) It is submitted that as per the interim orders of the Hon'ble High Court the attached articles were returned to Sri M.R.V.Sudhir on dt.28.02.2005.

(k) It is submitted that the Hon'ble High Court disposed of the WP No. 2777 of 2005 on 25.07.2007 and made the following order "Heard both sides, it appears, first petitioner was served with only demand notice and attachment order was passed, but no notice of any kind was issued to the petitioner for deciding the arrears due against SC No. 64, Taratava village, Akiveedu mandal, W.G.Dist. In that view of the

matter, the respondents are directed to issue fresh notices to the petitioners or refer the matter to the special court, if necessary, for the purpose of deciding arrears and proceed with the matter as per law. The writ petition is accordingly disposed of no. order as to costs”.

(l) it is submitted that, the Assistant Divisional Engineer / operation / Akiveedu issued notice to Sri MRV Sudhir as per the Hon'ble High Court orders dt.25.07.2007 for payment of arrears vide Lr.d.No.1998/07, dt.03.12.07, but he has not cleared the dues and not approached the forum.

(m) The consumer approached the forum for redressal of consumer grievances of APEPDCL, Visakhapatnam vide CG No. 245/08 of WG Dist and the forum has issued order dt.29.11.08 stating that the consumer is liable to pay the dues of the Discom.

(n) It is respectfully submitted that an amount of Rs.284175 is due from Sri Mallareddy.Venkata Raja Sekhara Venkata Sudhir (legal heir) S/o late Sri Mallareddy Madhava Rao to APEPDCL.”

4. The respondent No.2 in his written submissions dt.21.01.2009 stated that:

“(a) Again, I have visited the Taratava village along with Deputy Tahsildar Eluru on 25.06.2008 at the time MRV Sudhir available at Taratava village but he is refused to take the fresh notice and it was also witnessed by the deputy Tahsildar Eluru and other departmental staff. A very next day on 26.06.2008 the fresh notice was pasted on the wall to M/s. Kalyani Ice Factory in the presence of revenue authorities between these periods Sri MRV Sudhir has sold the Kalyani Ice Factory two times to the following persons.

1. Midde Bapanaiah Akividu
2. Seera Syamala Rao Kaikaluru

Even though the court case is pending at Hon'ble High Court of A.P.

(b) It is very highly objectionable that the consumer Sri M R V Sudhir has registered that Kalyani Ice Factory to the above said persons. The other property lands of paddy and fish tanks at Rs Nos are available in the name of MRV Sudhir Kumar at Taratava Village, for which the letter addressed to the MRO/AKVD. Vide

this office no Lr.no.ADE/O/AKVD/F.no./D.No.1505/08, dt.25.09.2008, for auction the property through the revenue recovery act and the same may be published through gazette publication, it is under process.”

5. The other respondents adopted the submissions made by respondent Nos. 2 &4.

6. The appellant further stated in his letter dated 21.05.2009 that as per the Gazette Notification no. 384, dt.23.12.2009 the Divisional Electrical Engineer, Bhimavaram has declared that property, Ac 1.28 cents of agricultural land in Sy.No. 25/2 of Taratava Village, Akiveedu mandal, W.G.Dist, would be auctioned on 08.06.2009 for recovery of electricity dues as per the provisions of the Revenue Recovery Act.

7. Heard the appellant and the representatives of the respondents.

8. The appellant stated that the issue is of the year 1997. The meter was stuck in the August 1997. A notice of back billing had been issued for a sum of Rs.60,852/- The assessment was for six months. Subsequently, while affirming the notice the amount is stated at Rs.1,44,950/-.

9. The appellant stated that the appeal has been preferred to this appellate authority as the issue relating to the year 1997 and action has not been taken even in the year 1999 itself. The assessment proceedings were disposed of in the year 2003. In the meanwhile, the father of the appellant who was the original consumer against whom the said assessment proceedings were pending expired in the year 2001.

10. The appellant stated that he had approached Chief General Manager of the respondent company but to no avail. Later, the respondents initiated action for recovering the amounts due by invoking the provisions of Revenue Recovery Act, 1864 and issued distraint notice apart from attaching the movable properties of the appellant. Then, he had preferred a writ petition before the Hon'ble High Court. The same was disposed of with a direction to the respondents to take action in accordance with law.

11. The appellant stated that he had approached the forum mainly to correct the anomalies in the assessment orders passed by the respondents and also with regard to period of assessment. The other fact which required consideration is in respect of sale of the premises to which the power supply was provided and in respect of which the present proceedings have arisen. Even though the sale has taken place the forum did not consider the grievance of the appellant hence, this appeal is preferred.

12. The representative of the respondent stated that the original consumer was given notice and show cause notice. It is relevant to state that due to implementation of the reforms and transition to new system that the procedural delay has occurred in deciding the assessment notice.

13. The representative of the respondent stated that initially when the distraint notice was proposed to be served under R.R.Act, no person was available at the premises and accordingly, it was pasted on the door and published in newspapers.

14. The representative of the respondent stated that they have invoked Section 52 of the R. R. Act for recovering the amounts due. They have taken steps as per the procedure in vogue. Initially, they tried to trace the addressee. However, the other steps were taken to recover the amount only after securing the address of the only heir to the consumer.

15. The representative of the respondent stated that initially appellant filed a writ petition against a distraint notice and obtained order for release of immovable property which was attached pursuant to the said notice. Subsequently, the said writ petition was disposed of with a direction to the respondents therein to release the properties attached and also take steps of issuing notice and hearing the appellant and if necessary initiate proceedings before the special court for recovery of the amount. In connection with the said direction notice was issued to the appellant but he did not respond to the same.

16. The representative of the respondent stated that the appellant has not paid the amount either. Hence, steps were taken to proceed under R.R. Act for undertaking sale of immovable property identified as belonging to the appellant. On

receipt of notice from this authority they have stopped exercise of proceeding further in respect of sale.

17. The appellant brought to my notice that he has obtained stay of the notice issued by the respondents under R.R.Act from the Hon'ble High Court.

18. Now, the question that arises for consideration is whether the forum has rightly apprised the facts and rendered a decision in the matter.

19. From the facts narrated by the parties the first and foremost issue that requires attention of this authority is that how proceedings can be initiated by the respondents themselves under the R.R.Act. Provisions relating to R.R.Act and APSEB Recovery of Dues Act, 1984 are the two enactments which fall for consideration to examine the above issue.

20. The provisions of R.R.Act are as follows.

52-A. Recovery of sums due to certain banks and other public bodies as arrears of land revenue: - (1) without prejudice to any other mode of recovery which is being taken or may be taken, all loans granted and all advances made to any person –

(i) by any bank to which the re-payment of the said loans and advances is guaranteed by the State Government or;

(ii) by such corporation established by or under a Central Provincial or State Act, or Government Company as defined in Section 617 of the Companies Act, 1956, or such other public body as maybe notified in this behalf by the State Government in the Andhra Pradesh Gazette;

(iii) by any Bank under any welfare scheme or programme, such as Prime Minister's Rozgar Yojana and the like, sponsored by the State or Central Government as may be notified therein in this behalf by the State Government in the Andhra Pradesh Gazette;

together with interest on such loans and advances and all sums, such as rents, margin money and the like, due to the bodies mentioned aforesaid may be recovered in the same manner as arrears of land revenue under the provisions of this Act:

Provided that the State Government may, by notification in Andhra Pradesh Gazette, specify the loans and advances together with interest thereon, and other sum due to the bodies mentioned in item (ii) above which may be recoverable under the provisions of this section.

The relevant provisions of APSEB Recovery of Dues Act. 1984 are as follows:

“4. Notice of demand for dues and penalty not paid: -

Where the dues are not paid by the debtor by the date specified in the bill therefore, the prescribed authority may, at any time, serve or cause to be served upon the debtor or his authorized representative, a notice of demand in the prescribed form, stating the name of the debtor, the amount payable by him on account of the dues, the penalty and the costs of recovery.

6. Recovery of dues, etc., if not paid: -

(i) if the aggregate amount of the dues, penalty and costs mentioned in the notice of demand served under section 4 is not deposited with the prescribed authority within three months of the date of such service or such extended period as the prescribed authority may, from time to time, allow the debtor shall be deemed to be in default in respect of such amount and the same shall be recoverable as if it were an arrear of land revenue, notwithstanding anything to the contrary contained in any other law for the time being in force, or any instrument or agreement having the force of law.

(ii) For the purpose of such recovery, the prescribed authority may forward to the Collector having jurisdiction, a certificate under his signature in the prescribed form stating the amount and the details of the demand and the name and description of the debtor in default, and the Collector shall on receipt of such certificate, proceed to recover from the debtor the amount of the demand as if it were an arrear of land revenue.”

21. A combined reading of above provisions itself specifies the procedure and the action to be taken in the matter. The provisions stipulate clearly the roles of the respondents and the revenue authorities under the state government. Initially, notice

has to be issued by the concerned department informing the person who is due any sum to the department that action would be taken to recover the amounts by initiating proceedings under the R. R. Act by the revenue authorities as if it were a revenue due to the state.

22. Secondly, the matter has to be referred to the concerned District Collector for taking action under the R.R.Act in the event of non-payment of after the first notice. The revenue authorities will in turn issue notices at each stage for recovering the amount i.e., initial notice to pay the amount, attachment of the properties for non-payment of the amount and sale notice of the attached properties. The sale notice is published in a gazette and on the appointed date the sale will be conducted by the revenue authorities for recovering the amount if the same is not paid.

23. In the instant case, as seen from the records made available the whole exercise has been undertaken by the respondents themselves instead of the state authorities. No authority is shown as to how such exercise was undertaken. Only a letter is placed before me stating that permission is granted by the Collector for publication of the notice in the gazette and no other document is filed. This authority is at a loss to understand how the state authorities who are required to perform a duty under a specific Act are not performing the same and at the same time the respondents are exercising such authority. From the record placed before me there is no delegation of the functions or powers in favour of the respondents. Inasmuch as the appellant has questioned the authority of the respondents in respect of these activities under R.R.Act in the writ proceedings initiated by him. In any case the whole action of the respondents is uncalled for and is liable to be rejected.

24. Nextly, the facts that arise in this matter also need a thorough examination. It is not disputed about the release of service and subsequent events leading to assessment proceedings towards back billing and others. However, the main issue is the assessment proceedings wherein the authorities did not appreciate the status of the meter being stuck-up and subsequently changed while disposing of the said proceedings.

25. The meter being defective and detected in the year 1997 though initial notice of short billing was given, it appears the actual proceedings have started only in the

year 1999. To add to the woes of the consumer no opportunity was given in the proceedings according to the appellant. It is also stated that unforeseen events have taken place like death of original consumer passing of final order by the first assessment officer after a lapse of four years and sale of property in between. It is also stated that the sale has been undertaken by the original consumer itself which had been subsequently registered by the appellant after five years. All these facts go to show that the respondents have acted in a callous manner in recovering the amounts which may have been justifiably due to the DISCOM.

26. It is strange that the delay in disposing of the primary proceedings is attributed to the reform process undertaken by the State when the authorities who were to dispose of the same were not at all denuded of their power to dispose of the same, as this authority notices that the powers vested in them continued till the Andhra Pradesh Electricity Regulatory Commission approved the modified General Terms & Conditions of Supply in the year 2006.

27. One interesting angle to the whole case is that there was the sale of the unit against which the amounts were due. This fact should have come to the notice of the field officer no sooner it has taken place as it is not an urban place where many activities are going on and field officer may not be knowing all the activities that are taking place. Even then they have failed to ascertain the status of the property as they have stopped issuing bills to the said unit and dismantled the service connection without even keeping in mind that there were arrears for the said unit.

28. Arising from the facts between the parties is the reasoning set out by the forum that the sale of the premises has been completed and the new consumer did not register may not be of any assistance in the decision making process. If a premises is sold by its owner the responsibility of getting the name mutated in favour of the new purchaser rests upon such purchaser only and there is no responsibility to the seller. It is trite law that 'buyer beware'. In that scenario it becomes imperative for the respondents to identify the new owner of the unit and recover any arrears due to them from such purchaser and not to go round the old owner who has already parted with the property and has no right over it.

29. At the same time the forum has lost sight of the fact that the statement made by the consumer about sale of the property, then it should have insisted and satisfied itself by asking both the parties to show to it proper evidence to that effect. Brushing aside this issue has given rise to the finding that has been rendered coupling with the fact that the purchaser has not got his name mutated in the records of the licensee.

30. A cursory reading of the order has thrown light on the fact that no hearing has taken place in the matter. Had the same been undertaken the whole status of the appellant, the sale of unit, the amounts due and the authority to take recourse to R.R.Act should have come to light nothing of this sort happened in this matter.

31. The recovery of the amounts that too when the licensee may have been clearly entitled to have been withheld mainly due to actions of the respondents on non-application of the provisions of law. At this stage it may not be correct to hold that the amounts are due from the appellant. This is more so in the peculiar facts and circumstances of the case.

32. A look at the provisions prior to 2003 and now needs consideration also at this stage. The relevant provisions are extracted hereunder for better appreciation.

Electricity (Supply) Act, 1948.

“60-A. Period of limitation extended in certain cases: -

Where the right to recover any amount due to the State Government for or in connection with the consumption of electricity is vested in the Board and the period of limitation to enforce such right has expired before the constitution of the Board, or within three years of its constitution then, notwithstanding anything contained in the Indian Limitation Act, 1908 (9 of 1908) or any other law for the time being in force relating to limitation of action, the Board may institute a suit for the recovery of such amount, -

(i) where it has been constituted before the commencement of the Electricity (Supply) Amendment Act, 1966 (30 of 1966), within three years of such commencement; and

(ii) where it has been constituted after such commencement, within three years of its constitution.

Electricity Act, 2003

56. Disconnection of supply in default of payment.

- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

- (2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”*

33. It can be safely stated that time has run out for the DISCOM to recover the amount inasmuch as the detection of the amount took considerable time and action thereof to recover the amount was at slow pace. Further, the action initiated is fraught with so much of legal infractions that no prudent person would suggest such

an action. The provisions entrusted in the law clearly go to show that the Board / Licensee are expected to take swift and immediate action in accordance with law. That being so, in the case on hand, the action taken to recover the alleged amount from a non-consumer appears to be an overzealous act. The provisions clearly stated that the bill due should have been shown for atleast two years in the bills. On the contrary, the amounts due should have been recovered through court proceedings by filing appropriate proceedings as stipulated in the law. The incident of amounts due occurred in the year 1997, notice is issued in the year 1999, the unit is sold and original consumer died in the year 2001, the service was dismantled in the year 2002 resulting in cutting of all connection between the said unit and the DISCOM. This has resulted in denying the respondents the amounts which may be rightly due to them. Any amount due should have been properly calculated and steps were taken immediately to recover the same under law. In the given set of facts there can be no doubt that the respondents are not entitled to recover the same.

34. In the instant case, the respondents have shown the callous attitude in recovery of amounts. Though on the face it appears that action has been taken, but due diligence has not been shown to process the case expeditiously. It is not a case of theft of electricity where there is a preponderance of possibilities and there is likelihood of loosing the case in a court of law. Thus the respondents are not entitled to recover the amounts at this stage.

35. This case deserves to be settled at this stage itself and not prolong it by remanding the same to the forum for investigation of the facts afresh as the appellant has already suffered for the past few years.

36. The appeal is allowed for the following reasons.

(a) the appeal is allowed on the ground that the respondents failed to process the matter to recover the amounts within a stipulated timeframe.

(b) did not take proper action in the matter of disposing of assessment proceeding expeditiously so as to initiate recovery action

(c) allowed the service to be dismantled even when the proceedings were pending in respect of back billing.

- (d) did not ascertain about the sale of the premises and also did not identify the subsequent owner as there is no denial of the same by the respondents.
- (e) no proper authority is shown for initiating action under R.R.Act
- (f) did not follow the directions given in the writ petition by the Hon'ble High Court to place the matter before a competent court as the appellant did not cooperate in the matter.
- (g) limitation to recover the amounts appears to have expired in view of the provisions of law narrated above.
- (h) respondents cannot ask the (legal heir) appellant for amounts due by his father unless it has been established that the unit run by his father is still in the hands of the appellant and there occurred no sale of unit. This can only be done by way of establishing of the fact through proceedings in a competent court of law.
- (i) the levy of the amounts is disputed by both the parties and there is no explanation in the reply before this authority as to why the amount has been enhanced from Rs.60,000/- to Rs.1,44,000/- approximately.

37. For the foregoing discussion and reasons, the appeal is allowed and the order of the forum is set aside. The proceedings initiated under the R.R.Act shall be withdrawn and the same need to be communicated to the revenue authorities also. The appeal is disposed of with no order as to costs.

This order is corrected and signed on the 9th day of September 2009.

VIDYUT OMBUDSMAN (FAC)