VIDYUT OMBUDSMAN FOR THE STATE OF TELANGANA

First Floor 33/11 kV substation, Hyderabad Boats Club Lane
Lumbini Park, Hyderabad - 500 063

:: Present:: **R. DAMODAR**

Wednesday, the Twenty Sixth Day of October 2016

Appeal No. 39 of 2016

Preferred against Order Dt. 30-04-2016 of CGRF In
CG.No: 722/2015-16 of Hyderabad South Circle

Between

Sri. Zaheeruddin Mohammed, H.No. 20-1-341/B, Koka Bazar,
Hyderabad - 500 064. Cell No. 9391033606.

... Appellant

AND

1. The AE/OP/Hussaini Alam/TSSPDCL/Hyderabad.
2. The ADE/OP/Charminar/TSSPDCL/Hyderabad.
3. The AAO/ERO/Salarjung/TSSPDCL/Hyderabad.
4. The DE/OP/Charminar/TSSPDCL/Hyderabad.
5. The SE/OP/Hyd.South Circle/TSSPDCL/Hyderabad.

... Respondents

The above appeal filed on 01.06.2016 coming up for hearing before the Vidyut Ombudsman, Telangana State on 07.09.2016 at Hyderabad in the presence of Sri. Ravi on behalf of the Appellant and Sri. J. Jangaiah - AAO/ERO/Charminar, Sri. A. Ravi - AAE/OP/Hussaini Alam, Sri. A. Kailas - ADE/OP/Charminar for the Respondents and having considered the record and submissions of both the parties, the Vidyut Ombudsman passed the following;

AWARD

The Appellant has service connection No. M1011541. It is alleged that the Appellant has been indulging in theft of energy. The Appellant claimed that he received a provisional assessment notice dt.15.10.2012 from ADE/OP/Charminar based on an inspection report of ADE/DPE/Hyderabad South dt.21.09.2012 for Rs 6,403/- stated to be the revenue loss sustained by the Licensee. The meter got tested on 10.10.2012 and it was found that the condition of the seal bits are tampered and it is observed that the incoming and outgoing terminals inside the meter was removed from CT and made direct and a thin copper wire through CT coil, the Appellant thus had indulged in

theft of energy intentionally and therefore, a theft case under section 135 of Electricity Act 2003 was booked.

2. The Appellant claimed that the Respondents have included the theft case amount in February,2016 bill after lapse of more than two years, which is against Section 56(2) of the Electricity Act 2003 and sought the assessed amount to be set aside and a direction to the Licensee not to disconnect the supply, on receipt of payment of Rs 396/-, the bill for month of February,2016.

3. Before the CGRF, ADE/O/Charminar, the 2nd Respondent through letter dt.31.3.2016 reported that the ADE/DPE had inspected the service of the Appellant on 21.09.2012 and found the seals of the energy meter tampered with. He stated that the meter was tested in the MRT lab on 10.10.2012 in the presence of Sri. Zaheruddin Mohammed, the consumer which disclosed that (i) the condition of the seal bits were tampered with (ii) the incoming and outgoing terminals inside the meter was removed from CT and made direct and a thin copper wire through CT coil. Thus it was determined that the Appellant indulged in theft of energy intentionally causing revenue loss to the DISCOM. The loss was provisionally assessed at Rs 6,403/-. Based on this report, ADE/O/Charminar, the Respondent No.2 issued a provisional assessment letter dt.15.10.2012 to the Appellant. The Appellant paid an amount of Rs 3377/-, leaving the rest of the assessed amount unpaid.

4. Before the CGRF on behalf of the Appellant, it is claimed that any claim relating to the present case could be claimed in the bill only before 17.10.2014 as per Section 56(2) of the Electricity Act 2003 and therefore, the cause of action which arose on 21.09.2012 and the claim of Rs 6,403/- in the bill of 2016 is not permissible and should be withdrawn. On behalf of the Respondents, the allegation of the Appellant is denied in support of the assessed amount with a further assertion that the Appellant has paid 50% of the assessed amount on 8.11.2012, leaving the balance 50% of the assessed amount unpaid. The 2nd Respondent admitted that so far final assessment orders were not issued.

5. The CGRF, after hearing and on consideration of the material on record, disposed of the Appeal in the following words:

> " As the consumer has paid 50% of the assessed amount and well aware of the notice issued. Hence, section 56(2) of Electricity Act,2003 does not arise in such case. The complainant has to pay the balance amount."

through the impugned orders.

6. Aggrieved and not satisfied with the impugned orders, the Appellant preferred the present Appeal claiming that the Appellant having LT Category I(A) connection bearing SC No. M1011541 with contracted load of 1KW for supply of energy and that the CGRF has not considered his plea regarding application of Section 56(2) of the Electricity Act 2003 which does not permit demand of arrears which is not shown continuously as recoverable as arrears of charges for the energy supplied, after a lapse of two years from the date when such sum became first due, and that the provisional assessment letter dt.15.10.2012 was issued relating to the period of alleged theft and that the Appellant filed an objection under Section 126(3) of Electricity Act, 2003 before the Assessing officer on 3.10.2012 and that the assessing officer has not replied to this objection and that the present claim of Rs 3,201/- is only a provisional one not finalized till date following the due procedure prescribed and therefore, it is not due for payment.

7. In this Appeal, the 1st Respondent AAE/OP/Hussaini Alam submitted a reply dt.15.6.2016 alleging theft of energy with a tampered meter and about the provisional assessment of the loss assessed at Rs 6,403/- and on its basis, the 2nd Respondent issued a provisional assessment notice for theft of energy. He filed a copy of provisional assessment notice for theft of energy dt.15.10.2012, copy of assessment calculation. This provisional assessment report dt.15.10.2012 for theft of energy also discloses and informs the appellant that the service connection was disconnected on 21.09.2012.

The efforts at mediation failed to succeed and hence the matter is being disposed of on merits.

8. On consideration of the record, the following issues arise for determination:

A. Whether the provisional Assessment is valid?
B. Whether the recovery of provisional Assessment amount is hit by S.56 (2) of the Electricity Act 2003?
C. Whether recovery process is properly implemented as per the Electricity Act 2003 and the provisions of GTCS?
D. Whether the civil liability has to be determined by following the procedure under S.135 and S.154 of the Electricity Act 2003?
E. Whether the impugned orders are liable to be set aside?

Issues A to D

9. The ADE/DPE had inspected the service connection No. M1011541 on 21.09.2012 and found the seals of the energy meter tampered with. He got the meter tested in the MRT lab on 10.10.2012 in the presence of the Appellant. He found that the seal bits were tampered with and the incoming and outgoing terminals inside the meter was removed from CT and made direct and a thin copper wire through CT coil leading to a finding that theft of energy occurred deliberately causing loss to the DISCOM. The 2nd Respondent ADE/O/Charminar, on the basis of the report of the theft, had provisionally assessed the loss at Rs 6,403/- and fixed the compounding amount as Rs 2000/- through the provisional assessment letter dt 15.10.2012. The Appellant paid Rs 2000/- towards compounding fee, Rs 3377/- towards assessed amount and has not paid the balance assessed amount of loss to the DISCOM. It is also clear from the record of periodical consumption disclosed in the Electronic Billing System that the power was not disconnected to the service connection after discovery of the tampered meter even though the provisional assessment letter mentions that the power was disconnected on 21.09.2012.

10. The Appellant contended that the provisional assessment is not valid and recovery of the provisional assessment amount is hit by Section 56(2) of the Electricity Act 2003. The Respondents contented that Section 56(2) of the Electricity Act is not applicable in this case, since the provisional assessment notice was given on 15.10.2012 which is within one year of inspection dt.21.09.2012, which remained unpaid. The Appellant, on the other hand, contended that he filed objection before the 2nd Respondent ADE/O/Charminar to the provisional assessment notice and so far, there has been no reaction and response to his objections and that since two years have passed after the date of inspection, as per Section 56(2) of the Electricity Act, the claim on provisional assessment is not maintainable. The Appellant further claimed that since no response reached him on his objections submitted against the provisional assessment, which is beyond the period of two years, the rigors of Section 56(2) are not applicable.

The Appellant alleged that the theft case amount was added in the bill of February,2016 which is not correct as per the record. The EBS(the Electronic Billing System) from 1.1.2006 to 29.6.2016 makes it crystal clear.

11. **When was provisional assessment of loss to the DISCOM made :** The ADE/DPE inspected the service connection in question on 21.09.2012 and found the seals of the energy meter tampered with. He got the meter tested in MRT lab on 10.10.2012 in the presence of the representative of the Appellant by name Sri. Zaheerudddin Mohammed. The test revealed that a) the seal bits were tampered with and b) incoming and outgoing terminals were disconnected and a thin copper wire was connected through copper coil. Thus the Respondents determined that the Appellant was intentionally indulging in theft of energy causing loss to the DISCOM. The 2nd Respondent ADE/O/Charminar resorted to provisional assessment through his letter dt.15.10.2012 and determined the loss to the DISCOM as Rs 6,403/-.

12. As already mentioned supra, the provisional assessment was made through letter dt.15.10.2012 as a result of the inspection of the service connection on 21.09.2012, which is within a period of one year and not beyond. The contention of the Appellant that since he filed an objection to the provisional assessment, which is not on record and with not even a copy filed by the Appellant, his claim that he felt that the Respondents have accepted his objection and dropped the proceedings, in the face of a case of theft of energy by tampering with the meter, cannot be believed. It can be said that this allegation is made only to avoid the consequences of tampering with the meter to reduce recording of the power consumption.

13. It is necessary to examine the contention of the Appellant regarding application of S.56(2) of the Electricity Act.

Section 56(2) of the electricity act reads as follows:

Disconnection of supply and default of payment:

" 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."

14. A perusal of the record shows that the demand through provisional assessment is made within a period of two years from the date of inspection on 21.09.2012 and therefore, the provisions of Section 56(2) of the Electricity Act are not applicable to the present case, since it is applicable only when disconnection is sought for non payment of energy charges. It is specifically used for collection of the due amount only.

15. As far as the provisional assessment is concerned, the assessment calculation on the ground of theft of energy-metered for SC No. M1011541 Category LT II(B) - Non Domestic /Commercial/ Above 50 units/Month is as follows:

1. Total Units (H) = 2252
2. No. of Units recorded by the meter (I) = 1605
3. No.of units differed (J) = H - I
   = 2252 - 1605 = 647

4. Energy Tariff of the Category (K) = 3.27
5. Tariff for energy pilfered at special rate = (L) = 3 X K = 3 X 3.27 = 9.81
6. Value of pilfered energy = (M) = J X L = 647 x 9.81 = 6347
7. Incidental charges Rs 100/-
8. Reconnection charges Rs 75/-
9. Electricity duty charges Rs 39/-

16. The Appellant contended that no final assessment has been passed after passing of the provisional assessment and therefore, it is not legal. There is no record to show that any objections were filed by the Appellant and therefore, in the presence of the provisional assessment proceedings which are found to be correct, there need not be any final orders as per the provisions of GTCS and thus the Appellant is liable to pay the provisional assessment amount.

17. The Appellant contended that the Respondents cannot collect the Assessed amount, which is in fact a civil liability to be determined by following the procedure under Section 135 and Section 154 of the Electricity Act 2003. The Appellant paid the compounding fee of Rs 2000/-, after discovery of tampering with the meter and theft of energy. The criminal liability is extinguished after the matter is compounded under Section 152 of the Electricity Act, which amounted to clear admission of the offence of theft of energy by tampering with the meter as specified under section 135(1)(b) of the Electricity Act. The civil liability under Section 154 (5) of the Electricity Act is no doubt should be determined finally by the Special Court, which shall not be less than an amount equivalent to two times of the tariff rate applicable for a period of 12 months preceding the date of theft of energy. In the present case, there is no record that the civil liability has been determined by the Special Court under section 154(5) of the Electricity Act or that there is any such claim by the Respondents. Thus, the contention of the Appellant that civil liability has to be determined by the Special Court first and then the amount has to be collected by way of assessment is not correct. The provisional assessment issued under Clause 10.2 of GTCS by the 2nd

Respondent demanding Rs 6,403/- through his letter dt.15.10.2012, looked from any angle, is held to be valid and enforceable.

18. One of the contentions of the Appellant is that the recovery process is not legal and it is not as per the provisions of the Electricity Act 2003 and the provisions of GTCS. As per GTCS Clause 10.3.2, under the heading **Assessment for cases for theft of electricity by LT consumers,** the procedure for assessment is explained and as per Annexure XII(VII)(B) of GTCS, the guidelines for assessment of cases of theft of electricity are as follows:

"

Type of load	**Unit of measurement**	**Formula**
Heavy usage load	KW	A
Moderately Heavy Usage Load	KW	B
Infrequent Usage Load	KW	C
Total Connected Load	KW	D=A+B+C

The assessment period may have to be split into multiple periods owing to the following:

- Different tariff rates during the assessment period
- Seasonal variations in the consumption

For each of the periods, the units assessed must be calculated.

The load utilisation factor, working hours per day and working days in a month for the concerned period can be referred to in Appendix 1,II, and III of this notification.

Effective hours of usage in a month in a load type = Load Utilisation factor * number of working hours per day of each load type * Number of days of usage in a month.

Period : From ---------- to ----------"

The formula under this annexure is the total connected load plus three components for arriving at assessment of loss.

19. It is clear from a perusal of the assessment made by the ADE/O/Charminar that he followed the above formula for arriving at the provisional assessment amount which

is found to be valid and legal. Thus the provisional assessment amounting to Rs 6,403/- is found to be correct and it is based on the loss sustained by the DISCOM.

20. The record shows that the power was not disconnected soon for want of remaining payment of 50% of the assessed amount as required as per Clause 10.2.3(iii)(b) of GTCS. The reasons for disconnection of the service connection has to be given and the consumer has to be informed about the disconnection under Clause 10.2.3 of GTCS. In this case, the provisional assessing officer has informed the Appellant that if he desired restoration of supply, he should deposit at least 50% of the provisionally assessed amount of loss of revenue, in addition to other charges and pay the rest of the amount in two instalments. Further, in the event of failure on the part of the consumer to deposit at least 50% of the amount provisionally assessed, the Appellant was informed that the service may remain disconnected through the notice. There is further provision to the Licensee that if the consumer does not pay the amount as per the installments granted, the licensee may disconnect the supply as per the provisions of Section 56 of the Electricity Act. Still there is no record that either the payment was made or the power was actually disconnected.

21. It is surprising that the Respondents have not complied with Clause 10.2.3 of GTCS for collection of the assessed amount in the present case and on the other hand, they slept over for a period of more than two years after issue of the Provisional Assessment notice without taking any action, allowing the Appellant, who committed theft of energy by tampering with the meter, to contend that Section 56(2) of the Electricity Act 2003 prevents the Respondents from recovery of the energy dues for more than two years, in which the Appellant has been unsuccessful as discussed supra. The lapse on the part of the concerned officials of the DISCOM is a serious one reflecting on the half hearted approach of those who assessed the loss and failed to take coercive steps for recovery of the loss. They are satisfied to get the matter compounded with collection of only 50% of the assessed amount. They have not even requested through the complaint/charge the Special Court under Section 154(5) of the Electricity Act simultaneously to determine the civil liability to enable the DISCOM to collect two times or more of the tariff rate. The issues A to D are answered accordingly.

22. Issue No.E. The impugned orders are found to be devoid of reasons and unsustainable. The issue is answered accordingly.

23. In the result, the appeal is disposed of directing as follows:

A. The provisional assessment issued by the 2nd Respondent ADE/O/Charminar dt.15.10.2012 for Rs 6,403/- is found valid and the Appellant is found liable to pay this amount.

B. The recovery of the provisional assessment amount is not hit by section 56(2) of the Electricity Act, 2003.

C. The provisions of clause 10.2.3 of the GTCS regarding disconnection of power supply when theft of electricity is noticed, is not followed by the Respondents.

D. The impugned orders are found to be unsustainable for want of reasons.

E. The civil liability has to be determined by the Special Court u/s. 154(5) of the Electricity Act, 2003 only, on request made by the DISCOM.

F. The impugned orders are set aside.

24. This award shall be implemented within 15 days of its receipt at the risk of penalties as indicated in Clauses 3.38, 3.39 and 3.42 of the Regulation No. 3/2015 of TSERC.

TYPED BY CCO, Corrected, Signed and Pronounced by me on this the 26th day of October, 2016.

Sd/-

VIDYUT OMBUDSMAN

1. Sri. Zaheeruddin Mohammed, H.No. 20-1-341/B, Koka Bazar, Hyderabad - 500 064. Cell No. 9391033606.
2. The AE/OP/Hussaini Alam/TSSPDCL/Hyderabad.
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6. The SE/OP/Hyd.South Circle/TSSPDCL/Hyderabad.

Copy to:

7. The Chairperson, CGRF, Greater Hyderabad Area, TSSPDCL, Vengal Rao Nagar, Erragadda, Hyderabad.
8. The Secretary, TSERC, 5th Floor, Singareni Bhavan, Red Hills,Hyderabad.