



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O.P.No.24 of 2022
and
I.A.No.13 of 2022

Dated 22.06.2022

Present

Sri T. Sriranga Rao, Chairman
Sri M. D. Manohar Raju, Member (Technical)
Sri Bandaru Krishnaiah, Member (Finance)

Between:

Sri Palabatla Shiva Kumar, H.No.18-397,
Survey No.263, Pargi Road, Shadnagar Municipality,
Rangareddy District – 500 217.

... Petitioner.

AND

1. Assistant Engineer. Operation, Farooq Nagar,
TSSPDCL, Pargi Road, Shadnagar, RR District – 509 216.
2. Assistant Divisional Engineer, Operation Shadnagar,
TSSPDCL, Pargi Road, Shadnagar,
RR District - 509 216.
3. Division Engineer, Operation Shadnagar,
TSSPDCL, Shadnagar, Pargi Road,
RR District – 509 216.
4. Senior Accounts Officer, Operation Rajendernagar,
TSSPDCL, Nanlnagar x Roads, Mehdipatnam,
Hyderabad – 500 028.
5. Superintending Engineer, Operation, Rajendernagar,
TSSPDCL, Nanlnagar x Roads, Mehdipatnam,
Hyderabad – 500 028.

... Respondents.

The petition came up for hearing on 11.04.2022 and 18.04.2022. Sri K. Nataraj, Advocate for petitioner and Sri Mohammad Bande Ali, Law Attaché for respondents are present and the matter having been heard physically on 11.04.2022 and

18.04.2022 and having stood over for consideration to this day, the Commission passed the following:

ORDER

The petitioner has filed present petition under Section 146 of the Electricity Act, 2003 (Act, 2003) read with provision of the Conduct of Business Regulation, 2015 (Regulation No.2 of 2015) of the Commission seeking to punish the respondents for not complying with the interim of order passed by the Vidyut Ombudsman.

- a. It is stated that the petitioner is a person as defined in under Section 2 (49) of Act, 2003.
- b. It is stated that the petitioner has filed an appeal before Vidyut Ombudsman on 20.11.2021 aggrieved by the rejection of complaint dated 07.10.2021 in respect of non-release of new service connection under domestic category against the registration No.NR51521489494 dated 26.09.2021 by the Consumer Grievance Redressal Forum (CGRF) II of TSSPDCL vide letter No.CGRF-2 / Orders / 2021-22 / 440 / 21 dated 02.11.2021 under clause 2.37 of Regulation No.3 of 2015 without complying the clause 2.37 of Regulation No.3 of 2015.
- c. It is stated that the Vidyut Ombudsman was pleased to register the said appeal as Appeal No.26 of 2021. Further, the Vidyut Ombudsman was pleased to pass an interim order on 01.12.2021 directing the respondents to release the supply connection subject to further orders. It is stated that the petitioner vide his letter dated 03.12.2021 filed a copy of the said interim order before the respondent Nos.1 and 5 with a request to release the service connection duly complying the said interim order as prescribed in clause 3.38 of Regulation No.3 of 2015. It is pertinent to note that the Vidyut Ombudsman directed the respondents to file the compliance of the interim order within 10 days.
- d. It is stated that the petitioner regularly followed up with the respondents for release of domestic service connection from 03.12.2021 but respondents refused to release under the pretext of one or other reasons. Hence, the petitioner vide its letter dated 24.12.2021 filed a reminder before respondents No.5 even though there was no proper response from the respondents. It is stated that the petitioner has no other option except to approach before this Commission for relief.

- e. It is stated that the Act, 2003 is enacted and conferred with the power to the Commission to make regulation under Section 181 of Act, 2003. Accordingly, the Commission made Regulation No.2 of 2015 dated 02.05.2016. As per clause 26(1) of Regulation No.2 of 2015 a person is entitled to file complaint against the person who contravene any provisions of the Act or Rules or regulation made there under. As provided under Section 146 of the Act, 2003 a person who contravene any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes of attempts of abets the contravention, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one lakh rupees, or with both in respect of each offence. Clause 24 of Regulation No.2 of 2015 is conferred with the power to issue interim order.
- f. It is stated that as prescribed in clause 3.38 of the Regulation No.3 of 2015 dated 03.10.2015 the licensee shall duly comply with and implement the decision of the Ombudsman on the representation filed by the Complainant within 15 days of the receipt of the order/award.
- g. It is stated that the respondents have not implemented/complied the interim order dated 01.12.2021 passed by the Vidyut Ombudsman for the State of Telangana in Appeal No.26 of 2021 as on date in-spite of specific direction of the Commission issued in clause 3.38 of Regulation No.3 of 2015 and specific direction of the Vidyut Ombudsman in the interim order hence, the respondents have contravened the clause 3.38 of Regulation No.3 of 2015 and entitled for punishment as prescribed in Section 146 of the Act, 2003.

2. Therefore, the petitioner has sought the following prayer in the petition for consideration.

“To punish the respondents as prescribed in Section 146 of the Electricity Act, 2003 for non-compliance of interim order dated 01.12.2021 passed in Appeal No.26 of 2021 by Vidyut Ombudsman for the State of Telangana”

3. The petitioner has also filed an interlocutory application and the averments of it are extracted below.

- a. It is stated that the applicant had filed an appeal before the Vidyut Ombudsman on 20.11.2021 aggrieved by the rejection of Complaint dated 07.10.2021 in respect of non-release of new service connection under domestic category against the registration No.NR51521489494 dated 26.09.2021 by the Hon'ble CGRF 2 vide letter No. CHAIRPERSON / CGRF-2 / Orders / 2021-22 / 440 / 21 dated 02.11.2021 under clause 2.37 of Regulation No.3 of 2015 without complying the clause 2.37 of Regulation No.3 of 2015.
- b. It is stated that the Vidyut Ombudsman was pleased to register the said appeal as Appeal No.26 of 2021. Further, the Vidyut Ombudsman pleased to pass an interim order on 01.12.2021 directing the respondents to release the supply connection subject to further orders. It is stated that the applicant vide its letter dated 03.12.2021 filed a copy of said interim order before the respondent No.1 and 5 with a request to release the service connection duly complying the said interim order as prescribed in clause 3.38 of Regulation No.3 of 2015. It is pertinent to note that the Vidyut Ombudsman directed the respondents to file the compliance of the interim order within 10 days.
- c. It is stated that the applicant regularly followed up with the respondents for release of domestic service connection from 03.12.2021 but respondents refused to release under the pretext of one or other reasons. Hence, the applicant vide its letter dated 24.12.2021 filed a reminder before respondent No.5 even though there was no proper response from the respondents.
- d. It is stated that the applicant has no other option except to approach before the Commission for relief.
- e. It is stated that the respondents have not implemented / complied the interim order dated 01.12.2021 passed by Vidyut Ombudsman for the State of Telangana in Appeal No.26 of 2021 as on date in spite of specific direction in clause 3.38 of Regulation No.3 of 2015 and specific direction of the Vidyut Ombudsman in the said interim order hence. the respondents are contravened the clause 3.38 of Regulation No.3 of 2015

and entitled for punishment as prescribed in Section 146 of the Act, 2003.

4. The petitioner has sought the following relief in the application:

“To release power supply under domestic category against the NR5152148494 dated 26.09.2021 in compliance of interim order dated 01.12.2021 passed by the Vidyut Ombudsman for the State of Telangana in Appeal No.26 of 2021 pending final decision/order in the main petition.”
5. The respondent No.2 has filed its counter affidavit as under.
 - a. It is stated that the petitioner had option to file a petition under clause 3.42 of Regulation No.3 of 2015 before the Vidyut Ombudsman, but has straight away filed this petition before the Commission. Hence this petition is liable to be dismissed on this ground itself.
 - b. It is stated that this petition under clause 23, 24 and 26(1) of Regulation 2 of 2015 r/w Section 146 of Act 2003 is not maintainable since the respondents did not contravene any provision of the Act, Rules or Regulations or any direction of the Commission.
 - c. According to the petitioner the respondents failed to implement/comply the interim order dated 01.12.2021 (sic 02.12.2021) of the Vidyut Ombudsman for the State of Telangana in Appeal No.26 of 2021.
 - d. Clause 3.38 of Regulation No.3 of 2015 lays down that the licensee shall comply with and implement the decision of the Vidyut Ombudsman on the representation filed by the complaint within 15 days of the receipt of the order/ award.
 - e. It is stated that clause 3.42 of Regulation No.3 of 2015 provides for awarding of compensation for non-compliance of the order.
 - f. In the circumstances mentioned above and in view of the specific provisions laid down under Regulation No.3 of 2015 for filing representation/petition before the Vidyut Ombudsman itself for non-compliance of the order, this petition under clauses 23, 24, 26(1) of Regulation 2 of 2015 r/w Section 146 of the Act 2003 is not maintainable and hence liable to be dismissed in limini.

- g. It is stated that the respondents aggrieved by the interim order dated 02.12.2021 in Appeal No.26 of 2021 filed Writ Petition before the Hon'ble High Court since the said order is contrary to clause 8.4 of GTCS and opposed to the clear and categorical judgment of the Hon'ble Apex Court TSSPDCL Vs. Srigdha Beverages in Civil Appeal No.1815 of 2020.
- h. It is stated that petitioner herein Sri Palabatla Shiva Kumar applied for LT-I service connection vide NR51521489412 on 20.09.2021. The documents furnished revealed that Sri Palabatla Shiva Kumar had purchased part of land from M/s Sheetal Shipping and Metal Company, which company had HT service vide RJN1890 and the same was under OSL since May 2015 with an arrears of Rs.9,82,94,598/-. Therefore, the officers concerned rejected the application in Section Automation System (SAS) on 25.10.2021 stating that "*OSL SC RJN1890 in the same premises*".
- i. The petitioner filed complaint before the CGRF for the non-release of the domestic LT-I Category service in the premises of Sri Palabatla Shiva Kumar who purchased a part of the land from M/s Sheetal Shipping and Metal bearing S.C.No.RJN1890 (old S.C.No.MBN361) which was disconnected on 29.05.2015 due to non-payment of CC dues.
- j. The CGRF having noticed that W.P.Nos.17271 / 2009, 9159 / 2004, 678 / 2000 and Civil Appeal Nos.13785-13937 of 2012 pending before the Hon'ble High Court and Supreme Court, disposed of the complaint stating that it has no jurisdiction to entertain the grievance of the complainant/petitioner in terms of clause 2.37 Regulation No.3 of 2015 of the Commission.
- k. The petitioner filed Appeal No.26 / 2021 before Vidyut Ombudsman and obtained interim order dated 02.12.2021 whereby the Vidyut Ombudsman directed that supply connection may be released subject to further orders in the appeal and further ordered that in the event of rejection of appeal the service connection is liable to be disconnected and dismantled.
- l. As per clause 8.4 of GTCS, the seller of the property should clear all the due to the company before selling such property, if the seller did not clear the dues as mentioned above, the company (TSSPDCL) may refuse to

supply to the premises through the already existing connection or refuse to give a new connection to the premises till all dues to the company are cleared.

- m. The Hon'ble Supreme Court of India in TSSPDCL Vs. Srigdha beverages in Civil Appeal No.1815 of 2020 (arising out of Special Leave Petition (c) No.19292 / 2018), reported in 2020 (6) SCC 404 holding that DISCOM would be well within its right to demand the arrears due of the last owner, from the purchaser. The relevant paragraphs of the Judgment is extracted hereunder:

- "i. That Electricity dues, where they are statutory in character under the Electricity Act and as per the terms & conditions of supply, cannot be waived in view of the provision of the Act itself more specifically Section 56 of the Electricity Act 2003 (in pari material with Section 24 of the Electricity Act, 1910) and cannot partake the character of dues of purely contractual nature.
- ii. Where, as in cases of E-auction notice in question, the existence of electricity dues, whether quantified or not, has been specifically mentioned as liability of the purchaser and the sale is on "AS IS WHERE IS, WHATEVER THERE IS AND WITHOUT RECOURSE BASIS", there can be no doubt that the liability to pay electricity dues exists on the respondent (Purchaser).
- iii. The debate over connection or reconnection would not exist in cases like the present one where both aspects are covered as per clause 8.4 of the General Terms & Conditions of Supply."

6. The petitioner has filed a rejoinder to the counter affidavit filed by the respondents. The contents of the rejoinder are extracted below.

- a. It is stated that the admission of the respondent No.2 in this para is established that they have not implemented the interim order dated 01.12.2021 passed by the Vidyut Ombudsman in spite of the same is binding on them as prescribed in clause 3.38 of Regulation No.3 of 2015 hence, they are liable for punishment as prescribed under Section 146 of the Act, 2003. The respondent No.2 advising about compliance of clause 3.42 of Regulation No.3 of 2015 whereas the respondent No.2

himself has not complied the clause 3.38 of Regulation No.3 of 2015 which is a violation hence, prima facie the respondent No.2 is liable for punishment as prescribed under Section 146 of the Act, 2003.

- b. It is stated that the respondent No.2 has not filed any proof of filing of Writ Petition. The judgment passed by Hon'ble Supreme Court of India in C.A.No.1815 of 2000 dated 01.06.2020 is not applicable on this petitioner in any angle. However, these aspects have to be contended before the Vidyut Ombudsman in Appeal No.26 of 2021 by the respondents, which is pending before the Vidyut Ombudsman for the State of Telangana. These aspects are not relevant in the present petition.
- c. It is stated that the petitioner has not purchased the land from Sheetal Shipping and Metal Processor Limited. The petitioner has purchased the land from Sri Shyam Sunder Agarwal hence, in respect of dues of Sheetal Shipping and Metal Processor Limited are no way concerned to Shyam Sundar Agarwal and the petitioner. Both the persons are third party to Sheetal Shipping and Metal Processor Limited. However, these aspects have to be contended before the Vidyut Ombudsman in Appeal No.26 of 2021 by the respondents which is pending. These aspects are not relevant in the present petition. Hence, denied and the respondent No.2 put to strict proof.
- d. It is stated that the CGRF-2 has failed to apply its mind properly on the merits of the complaint and record available in the complaint filed before it and rejected the Complaint under the shelter and in violation of clause 2.37 of Regulation No.3 of 2015.
- e. It is stated that the para No.13 is extracted from the Interim order dated 01.12.2021 passed by the Vidyut Ombudsman hence, no specific reply is called.
- f. It is stated that the seller Sri Shyam Sunder Agarwal is not having any due to the respondents hence, the clause 8.4 of GTCS and judgment dated 01.06.2020 in C.A.No.1815 of 2015 will not apply to the petitioner in any angle. However, these aspects have to be contended by the respondents before Vidyut Ombudsman for the state of Telangana in the pending Appeal No.26 of 2021. These aspects are not relevant in the

present petition and hence, denied and the respondent No.2 put to strict proof.

- g. It is stated that in view of the above, the petitioner prayed the Commission to allow the Interim Application and Main Petition.

7. The Commission has heard the parties to the present petition and also considered the material available to it. The submissions on various dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 11.04.2022:

“... .. The counsel for petitioner stated that the petition is filed for implementation of the order of the Vidyut Ombudsman. The petitioner has also filed an interlocutory application for interim orders for release of power supply to the domestic connection. The representative of the respondents has opposed the same and stated that as the counter affidavit is already filed in the main petition, the main matter itself may be taken up for hearing. At this stage, the counsel for petitioner stated that he needs time to file rejoinder to the counter affidavit in the main matter. However, the Commission may consider hearing the application for interim orders. The Commission felt that the matter can be heard and disposed of finally and as such, time is granted for filing rejoinder. The counsel for petitioner also referred to order passed by the Vidyut Ombudsman along with the provision under Business Regulation, which provides for compliance of the interim order passed by any authority. Since the matter pertains to implementation of the order of the Ombudsman, the matter is adjourned by one week.”

Record of proceedings dated 18.04.2022:

“... .. The counsel for petitioner stated that the respondents are not complying with the interim order of the Vidyut Ombudsman, as such the petition is filed under the clauses applicable for implementation of the order of the Ombudsman as well as the provisions made in the Conduct of Business Regulations, 2015. The respondents are required to comply with the order and thereafter, they should contest the matter before the Vidyut Ombudsman.

The counsel for petitioner stated that the respondents are demanding payment of amounts towards arrears with which the petitioner or the seller of the premises is not concerned. It is stated in the rejoinder that the present petition

is intended for implementing the order of the Vidyut Ombudsman and if the respondents are aggrieved by the said order, they may take appropriate remedies.

The representative of the respondents relying in the counter affidavit stated that the present is not maintainable and the petitioner has an opportunity to seek implementation of the order Vidyut Ombudsman before the said authority itself. The present petition is filed invoking clauses in the Business Regulation, 2015 which pertain to the orders of the Commission and not that of the Vidyut Ombudsman. The respondents being aggrieved by the order of the Ombudsman have already approached the Hon'ble High Court, but the same is not yet registered. In any case, the petitioner should have pursued the appeal before the Ombudsman without waiting for disposal of the same, has approached the Commission with this petition.

The Commission sought to know from the counsel for petitioner as to what is the stand of the petitioner insofar as maintainability of the petition, as nothing is mentioned in reply to the contention of the respondents made in the counter. The counsel for petitioner did not provide any answer to the same. Further, the representative of the respondents sought to rely on the judgment of the Hon'ble Supreme Court in Civil Appeal No.1815 of 2020 in the matter between Telangana State Southern Power Distribution Company Limited & Anr. Vs. M/s Srigdhaa Beverages. The said judgment requires the purchaser of the premises or industrial unit to pay the earlier owner dues.

8. The present petition is based on an interim order passed by the Ombudsman on 02.12.2021. The Ombudsman passed the interim order in Appeal No.26 of 2021 preferred against Lr. No. Chairman / CGRF-2 / Order 2021-22 / D. No. 440 / 21 dated 02.11.2021 and the relevant portion is as below:

“2. Perused the material on record. Since the appellant has filed a document of sale deed between Sri Shyam Sundar Agarwal and Sri Palabatla Shiva Kumar who is the appellant herein. Supply connection may be released subject to further orders in this appeal. In the event of this appeal being rejected the service connection is liable to be disconnected and dismantled. Compliance of the interim orders may be placed before this authority within 10 days.”

9. As the order has not been complied with, the petitioner after awaiting for a month after representing the matter on 04.12.2021 to the Assistant Engineer / Operations / Farooqnagar the petitioner has filed the present petition on 12.01.2022 under Section 146 of the Act 2003 read with clauses in the conduct of business regulations, 2015. In this regard, it may be appropriate to notice Section 146 of the Act, 2003.

“Section 146. (Punishment for non-compliance of orders or directions):

Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one lakh rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence:

Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under Section 121.”

10. Also, it is appropriate to notice clause 3.38, 3.39 and 3.42 of the Regulation No.3 of 2015

“3.38. The Licensee shall duly comply with and implement the decision of the Ombudsman on the representation filed by the complainant within 15 days of the receipt of the order/award.

3.39. Non-compliance of the Ombudsman’s orders shall be deemed to be a violation of this Regulation and liable for appropriate action by the Commission under the provisions of the electricity Act, 2003.

3.42. Compensation for non-compliance of the Order: Notwithstanding anything contained in this Regulation No.3.39, the Ombudsman may issue a notice either Suo-Motu or at the instance of Consumer / Complainant for non-compliance of his orders) within the due date prescribed in this Regulation No.3.38 to the employee / employees concerned including the Director(s) concerned and the Licensee.”

11. Reference has been made to pending litigation by the respondent in W. P. Nos. 17271 /2009, 9159 / 2004 and 678 / 2000 as well as SLP No. 13785–13937 of 2012 before the Hon'ble Supreme Court.

12. The short issue is with regard to compliance of interim order and releasing of power supply which is a conditional order of the Ombudsman as extracted above. The respondents have also referred to a judgment of Hon'ble Supreme Court in the matter of TSSPDCL Vs. Srighdaa Beverages in Civil Appeal No.1815 of 2020. It is neither relevant nor appropriate to the issue raised in this petition.

13. Primarily, the Commission is now concerned with compliance of interim order passed by the Ombudsman. As seen from the extract above, the Ombudsman himself has made the order a conditional order pending disposal of the appeal and the Ombudsman had himself required compliance of the order within ten (10) days.

14. Undoubtedly, Section 146 of the Act, 2003 and the Clause 26(1) of Regulation No.2 of 2015 empowers the Commission to impose punishment whenever any person contravenes any provisions of the Act or Rules or Regulations made there under. At the same time the Clause 3.42 of Regulation No.3 of 2015 empowers the Ombudsman to award compensation either Suo-Moto or at the instance of Consumer/Complainant whenever non-compliance of the order within the due date prescribed in the Clause 3.38 of Regulation No.3 of 2015. It appears that the petitioner without making any such complaint before the Ombudsman under Clause 3.42 of Regulation No.3 of 2015 of the non-compliance of impugned interim order filed this petition before this Commission by seeking harsh punishment of respondents for non-compliance. The petitioner in all his fairness ought to have approached the Ombudsman by filing a complaint under the above said Clause 3.42 of Regulation No.3 of 2015 instead of approaching this Commission. No reasons are stated in the petition by the petitioner for not utilising/invoking the Clause 3.38 of Regulation No.3 of 2015 by filing a complaint before the Ombudsman.

15. Without going into the merits of the dispute raised by the parties, for the aforementioned reason this Commission comes to the conclusion that the relief sought by the petitioner can't be ordered.

16. Accordingly, the petition is dismissed and in the circumstances without costs. In view of the dismissal of main petition the interim application filed by the petitioner is also dismissed. If so advised, the petitioner can file a complaint before the Ombudsman under Clause 3.38 of Regulation No.3 of 2015 for non-compliance of impugned interim order. In view of the urgency expressed by the petitioner in the matter the Ombudsman is directed to dispose of the main appeal preferably 30 days from the date of order.

This Order is corrected and signed on this the 22nd day of June, 2022.

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M.D.MANO HAR RAJU)	(T.SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

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