

M/s Meenakshi Udyog, the first respondent before the High Court in the above writ petition, obtained a service connection HTSC 302 with a sanction load of 5500 KVA at 33 KV and availed a Electricity supply on 10-06-2005 for industrial purpose which falls under the jurisdiction of the Superintending Engineer, Dharmapuri Electricity Distribution Circle, who is the petitioner in the above writ petition. The first respondent was initially billed under tariff III (commercial) and same was converted to HT tariff I on its request and the difference amount was refunded to the 1st respondent by TNEB, the writ petitioner. However, TNEB reversed its decision and called upon the 1st respondent i.e. Meenakshi Udyog India to pay the amount refunded already. Aggrieved by the order passed by the Superintending Engineer of TNEB, the first respondent in the writ petition, M/s. Meenakshi Udyog filed an appeal before the Tamil Nadu Electricity Ombudsman who is the 2<sup>nd</sup> respondent in the writ petition.

The stand of TNEB before the Ombudsman was that commencement of the industrial activity can be verified only physically on the date of meter reading and that in the tariff Order dated 15-03-2003 of the TNERC and the G.O. issued by the Government of Tamil Nadu with regard to tariff, there was no specific direction with regard to the date from which HT tariff is to be adopted for HT service connection and as such the procedures of the petitioner Board laid down in its communication dated 2-3-2002 would be applicable.

The Ombudsman framed the following issues:

1. Whether the communications dt. 31-5-97 and 2.3.2002 of the respondent board would be applicable to the present case?
2. Whether Industrial Tariff can be charged from the date of meter reading in spite of production of proof with regard to commencement of industrial activity by a consumer and whether the stand taken by the respondent that

irrespective of the Industrial status of a unit, commercial tariff alone is applicable until the first meter reading is taken?

On the first issue the Ombudsman recorded his finding to the effect that the tariff order of the TNERC will prevail over the communications dt. 31-5-2007 and 2.3.2002 of TNEB which are only executive instructions. Thus, the Ombudsman held that the Tariff Order of TNERC being statutory in nature would be binding on the parties rather than the executive instructions of TNEB.

On the second issue, the Ombudsman held that the date of first meter reading cannot be the criterion for levy of industrial tariff especially when as per the Tariff Order referred to above the appellant has to be charged only under HT Tariff-IA and restored the original order of the TNEB. The Electricity Ombudsman also ordered refund of difference in commercial tariff and industrial tariff .

Aggrieved by the orders of Tamil Nadu Electricity Ombudsman, TNEB which was the respondent before the Electricity Ombudsman filed the above writ petition. In the writ petition, TNEB chose to assail the orders of the Ombudsman on the grounds of lack of jurisdiction to adjudicate upon the disputes between the licensees and the consumers. Apart from arguing that the role of Ombudsman could at best be viewed only conciliator, TNEB questioned the jurisdiction of the Ombudsman to pass awards under Regulation 22 (3) of the Regulations of Consumer Grievance Redressal Forum and Electricity Ombudsman. The Hon'ble High Court, in para 12 of its aforesaid order , held as follows”

**“ A reading of this provisions in Regulations 21 and 22 shows that the authority to be exercised by the Ombudsman is more in the nature of appellate authority in deciding on the grievance projected against the order of the Consumer Grievance Redressal Forum. For all practical purposes ,**

**it is an appeal to the resolution of a dispute. The further proceedings before the Ombudsman is by way of adjudication of disputes raised over the orders passed by the redressal forum. While recognising the need for resolution through settlement by recourse to reconciliation, the Regulation also reserved the power in the Ombudsman to pass an award on the merits of the claim. Regulation 20 and 21 operate on a different fields one by way of settlement through agreement on conciliation and the other by adjudicating on the claims.**

In para 14 of the order the Hon'ble judge of the High Court held as follows:

**I do not find to any justification to accept the plea of the petitioner herein. A reading of the regulations does not give room for any such understanding that the Ombudsman functions only as a mediating personality as an alternative system for resolution of disputes. Although by very nature, normally the Ombudsman acts more as an administrative authority to settle the grievances in any set up of an institution, to understand the role of Electricity Ombudsman, one has to look at the scheme of Regulations given under the notification dt. 8-1-2004. When the extent and power of jurisdiction is guided by these Regulations, it is not possible to accept the submission of the petitioner herein, that he merely attempts on a settlement between the parties through conciliation failing which the Ombudsman loses is authority to proceed further in the matter. The Ombudsman is a statutory arbitrator in the matter of adjudicating on the rival claims, where settlement through conciliation fails.**

In the concluding para 17 of the order, the Hon'ble judge held as follows:

**In the background of the said provisions, it is not possible to accept the contention that the Electricity Ombudsman loses his authority once efforts failed under Regulation 20. Consequently, I uphold the jurisdiction**

**of the Ombudsman under Regulation 21 to pass an award as an arbitrator would do under normal circumstances. Since no arguments were advanced on the merits of the awards passed, I confirm the order impugned proceedings. Consequently, the writ petition fails and the same is dismissed”**

Thus, it can be seen from the above order of the Hon'ble High Court of Madras that the Ombudsman has jurisdiction to don the role of an arbitrator once mediation fails and there is no embargo on adjudicatory functions. TNEB's contention that the Ombudsman is only a mediator and not an adjudicator has been rejected. The Regulations of the Tamil Nadu Electricity Regulatory Commission conferring upon the Ombudsman the dual roles of mediator as well as arbitrator have been upheld. The appellate power which is vested with the Ombudsman to hear the appeals against the orders of the Consumer Grievance Redressal Forums has also been upheld by the High Court.