,

TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No.26 of 2012

Sr.Danis Mary,
Vice-President,
St.Isabels Hospital,
49, Oliver Road,
Mylapore,
Chennai-600004 ..... Appellant

Vs. (Rep. by Thiru. G. Balakrishnan & Thiru. M. Haridoss)

1) Mr.C.K.Chellaiah, B.E.,
Executive Engineer/O&M,
Chennai EDC/Central,
TANGEDCO,
Nungambakkam,
Chennai-600034.

2) Mr.Manivel, B.E.,
Asst.Executive Engineer/O&M,
Chennai EDC, Central,
TANGEDCO,
Mylapore,
Chennai-600004.

3) Mr.K.Mohan,
Junior Engineer/O&M,
Chennai EDC/Central,
TANGEDCO,
Mylapore,
Chennai -600004 ..... Respondent

(Rep by all respondents in person)

Dates of hearing : 14-9-2012 & 16-11-2012

Date of Order : 4-12-2012

The above appeal petition came up for hearings before the Electricity Ombudsman on 14-9-2012 & 16-11-2012. Upon perusing the appeal petition, the counter affidavit, connected records and after hearing both sides, the following order is passed by the Electricity Ombudsman.

ORDER

1. Prayer of the Appellant:

1.1 The Appellant prayed that the TANGEDCO may be directed to waive the penalty levied towards excess demand charges which is not consistent with section 5(2)(ii)(c)(iii)A of Tamil Nadu Electricity Supply Code and section 56(2) of Electricity Act 2003. The Appellant also prayed to direct the TANGEDCO to integrate all LT services and effect HT service pending on the file of SE/Chennai EDC/Central.

2. Facts of the case:

2.1 The Appellant is having 9 nos. LT services for distribution of Electricity for all the blocks for the Hospital. The service connection Nos. are

(1) 125-011-119
(2) 125-011-120
(3) 125-011-121
(4) 125-011-122
(5) 125-011-123
(6) 125-011-133
(7) 125-011-134
(8) 125-011-187 and
(9) 125-011-188

2.2 All the above services are charged under tariff - V. The TANGEDCO has raised demand to the tune of Rs.42,16,276/- towards power factor compensation,

excess demand charges and short fall amount during meter defective period. The Appellant filed a petition to CGRF for redressal of their grievance. The CGRF issued its order dated 7.5.2012 directing the respondent to issue revised advice for Rs.26,48,128/- to collect the P.F. penalty, average short fall amount and MD charges penalty to all the LT services after dropping the repetitive claims and excess demand penal charges. The appellant was also advised to avail HT service early. The Appellant paid the above charges under protest and filed an appeal petition before Electricity Ombudsman for waiver of the excess demand charges. The appellant has also applied for a HT service connection integrating all the above service.

3. <u>Findings of the CGRF:</u>

3.1 The findings of the CGRF issued in its order dt.7.5.2012 is furnished below :

"5.Findngs of Forum : Based on the records, it is noted that the petitioner has not maintained appropriate power factor for various service connections for various period. Hence the assessment of P.F. penalty is in order.

Repetitive penal claim amounting to Rs.851684.00 is to be dropped. Revision of penalty amount towards "excess demand" on the available records of the service connections 125-011-133, 125-011-187 and 125-011-188 may be done.

Petitioner has not produced any valid documents like test report etc., to support the sanctioned demand of the service connections under dispute.

The excess demand was not regularized since the petitioner has availed more no. of service connections and utilised for a single establishment and it is against the Distribution code 27 (13) and (14).

(6) Order : In view of the above, the respondent is directed to issue the revised advice to the petitioner to collect the P.F. penalty, average short fall amount and MD charges penalty of all the LT services, after dropping the repetitions and excess penal charges "

The petitioner is directed to pay the revised amount of Rs.26,48,128/- and avail HT service connections earlier. The petition is disposed."

4. Contention of the Appellant

4.1 The Appellant has contended the following in her appeal petition as grounds for appeal.

4.2 **Ground - 1**

(i) It is noticed that the audit team has suggested imposing penalty based on the wrong computer entries about the quantum of sanctioned load as 19 KW only, while it is actually above 40 to 65 KW.

(ii) The audit team has suggested levying penalty only under the assumption that sanctioned demand is just 19 KW as per such wrong computer entries. Just because it was suggested by the audit team, the field engineers too have raised the demand very mechanically, without application of mind and without verification of the relevant records. Neither the audit team nor the field officers found fit to trace the applications / load sanction copies / agreements / test reports/ service connection register etc., to vouch the correctness of the data entries in the computers.

(iii) The forum, in its order, has affixed the responsibility of producing valid documents like Test reports etc., to support the sanctioned load on the shoulders of the petitioner viz., consumer and eased out officers of TANGEDCO Ltd., from such responsibility.

(iv) TANGEDCO Ltd., is expected to furnish copies of original test reports or revised test reports to the respective consumers, when new services are connected or any additional load is connected. But it is a matter of fact known to everyone that such practice is never followed by the officers of TANGEDCO Ltd., While so, it does not appear to be fair to assign the responsibility of producing documentary evidence like OTRs/RTRs on the shoulders of the consumers to prove their innocence.

(v) TANGEDCO Ltd., adopts dual stand in respect of remaining 4 Nos. LT services listed below and sticks to its original stand of 19 KW only, despite the fact that they were unable to produce any form of documentary evidence to support the quantum of sanctioned load as 19 KW.

1	125-011-134	04/2005 to 08/2006	Excess Load	RIS	Rs.8,77,618.00
2	125-011-121	04/2005 to 08/2006	Excess Load	RIS	Rs. 2,30,444.00

3	125-011-123	04/2005 to 08/2006	Excess Load	RIS	Rs. 7,54,187.00
4	125-011-122	04/2005 to 08/2006	Excess Load	RIS	Rs. 2,57,087.00

We stand penalized for no fault of us but due to wrong entries done inadvertently at the office of TANGEDCO Ltd., without support of any of related office records.

(vi) It is imperative that at least any one of the records like the applications/ load sanction copies/ agreements/ test reports/ service connection register etc., should be produced as EXHIBITS and entries available in such documents alone should be relied upon to ascertain the quantum of sanctioned load and act in any manner forthwith. It is respectfully submitted that while nothing is traceable, imposing penalty would be against all cannons of natural justice.

4.3 **Ground – 2** :

(i) The energy meters available in these LT services are 3 phase meters of 100-120 A capacity. It is the practice of TANGEDCO Ltd., to provide meters of adequate capacity matching with the connected load.TANGEDCO Ltd., would not have provided 3 phase 100-120 A capacity meters in these LT services, if the sanctioned load is just 19 KW only. It is matter of fact that TANGEDCO Ltd., uses to provide 100-120 A capacity 3 phase meters only when the sanctioned load exceeds 40 KW. The existence of higher capacity meters of 100-120A rating would vouch that actual sanctioned load cannot be 19 KW as collected from the computer entries.

(ii) When the appellant filed objections on receipt of notices, the field officers were advised to inspect the services and submit report about existing connected load. It was found that the actual load was around 40-65 KW in these LT services, while the services were inspected by the officers of TANGEDCO Ltd., during Sept-2010. It is learnt that field officers have also submitted necessary reports to the EE/SE subsequently.

(iii) While so, it is indeed unfortunate that TANGEDCO Ltd., now takes shelter under a different reason viz., non-availability of particular capacity meter TANGEDCO Ltd., is bound to explain how different services connected during different periods would have got 3 phase 100-120 A capacity meters uniformly.

4.4 **Ground - 3**

(i) TANGEDCO Ltd., is penalizing them heavily at one stroke through its notice under the guise of audit observation and also continuing proportional penalty every month subsequently. This sort of penal action is quite contrary to the provisions under Section 5(2)(c)(i) and (iii) A of Supply Code.

(ii) In the event of the 2nd and subsequent occurrences TANGEDCO Ltd., is duty bound to revise load sanction to the level of recorded demand within one month of the second occurrence in accordance with the procedure laid down under section 5(2)(ii)(c)(iii)(A) of the Tamil Nadu Electricity Supply Code.

(iii) Above all, TANGEDCO Ltd., is going on penalizing continuously every month contrary to above said provisions of Tamil Nadu Electricity Supply Code. Left with no other option, we are also making payment in order to avoid disconnection, since any disconnection would cause innumerable suffering to the patients who are undergoing treatment in the Hospital.

(iv) TANGEDCO Ltd., contends that the excess load was not regularized since the petitioner has availed more number of service connection and utilized for a single establishment. This contention amounts to allowing the illegality without remedy / relief that is warranted as per Tamil Nadu Electricity Supply Code and simply shirking the responsibility assigned to them. It is further more painful to observe that even the CGRF has also endorsed the above unethical argument and declined to render justice by setting aside the penalty for alleged “Excess Load”.

(v) We are not aware of the rules and regulations related to supply of electricity and hence we sought for more services in the same campus; but it is the responsibility of TANGEDCO Ltd., to decline additional service connections and guide the consumers in the righteous way to avail the supply in accordance with the provisions under Tamil Nadu Electricity Distribution Code. TANGEDCO Ltd., bears major share of responsibility for the existing illegality of too many services under one roof and hence it is duty bound to act quickly to terminate the illegality at the earliest.

4.5 **Ground - 4**:

It is respectfully submitted that the demand towards arrears emanates from the year 2006 based on audit remarks done during the year 2008. Hence, this claim cannot sustain the scrutiny of law in terms of limitation of 2 years prescribed under Section 56(2) of Electricity Act 2003 which mandates as below :

"Section 56(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." It is therefore fair and proper to waive the arrears towards Excess Demand charges, duly considering the time limitation of 2 years prescribed under Electricity Act, 2003."*

5. <u>Contention of the Respondent</u>

5.1 The Respondent has contended the following in his counter:

i) The respondents deny the allegation in para 5 of the appeal memorandum and would state that all the claims raised by the TANGEDCO are in pursuant to the rules and regulations and there exists no specific irregularity or violation thereof. When the appellant challenges levy of charges by a public authority, it is for the appellant to produce the documents contradicting the claim of the EB authorities.

ii) The demands are based on the two heads, namely power factor violation and excess demand. Admittedly the appellant had accepted the liability towards power factor violations and has objected only with reference to excess demand.

iii) In so far as shortfall amount with reference to defective meter, it is admitted by the appellant that the service connection in 125-011-123 was defective during certain period. At the time when defect was noticed, the EB authorities have right to levy penalty based on the highest consumption on the preceding 12 months period, as per the regulations of the EB. Having kept a defective meter, without intimation to the authorities, the appellant cannot find fault with the EB authorities, who have been empowered to levy and collect penalty charges as per the regulations.

iv) The respondents would submit that, the main ground of contention by the appellant, is that of excess demand, based on the overdrawal of the electricity, beyond the sanctioned demand. The EB authorities had rightly levied on the penalty based on the factor 19 KW. The allegations regarding 'semi-skilled outsiders' are all unwarranted. EB authorities had rightly raised the claim based on the records furnished by the OTR records section and that they have no other

opinion than to rely on the same. The reliance on the 19 KW factor is based on the available records. Because of the fact that the appellant does not possess the necessary records, which they are bound to maintain and even to produce at the time of inspection etc., they cannot charge upon the EB authorities for non production of the records.

v) The respondents would submit that based on the records, they have reversed the levy on 3 accounts. This shows the bonafide on the part of the EB authorities and that non possession of the records is the fault on the part of the appellant and that if they could not produce any records contradicting the 19 KW factor or depicting any other high KW sanction, EB authorities could very well have reversed those demands also.

vi) The respondents would submit that the allegations regarding OTR/RTR are also is incorrect. At all times when OTRs/RTRs are ready, a copy of the same would be furnished to the consumers. By not producing the OTRs and RTRs, the appellant cannot find fault with the EB authorities. It is the duty cast upon any consumer to keep in possession the OTRs and RTRs, at all times, when they challenge any demand.

vii) The capacity of the meter cannot be a criteria to guess the sanctioned load, which the appellant alone should prove by producing the sanction demand order/letter. Non filing of those documents, by the EB authorities would not make their claim false, as it is the sole duty of the appellant to produce those documents.

viii) The ground No.5 regarding sub sections in Section 5 also is untenable and not sustainable in law. The appellants have not approached to revise the sanctioned demand at any point of time and as such non revision of the sanctioned demand is not a fault on the part of the EB authorities.

ix) The ground No.6 raised by the appellants is also not correct and that the demands raised by the EB authorities had been in time, as and when the violation came to their notice and that they have right to demand the charges and there is no bar of limitation.

x) The respondents would submit that all the reasons given by the CGRF are reasonable and does not require any interference.

6. Hearing held by the Electricity Ombudsman:

In order to facilitate both the Appellant and the Respondent to putforth their arguments in person, a hearing was proposed on 22-8-2012. However, it was adjourned to 14-9-2012 as prayed by the respondent. Hearing was also held on 16-11-2012.

7. Argument of the Appellant:

7.1 The Appellant was represented by Thiru G.Balakrishnan and Thiru M.Haridoss. They reiterated the contents of the Appeal petition.

7.2 Thiru G.Balakrishnan, informed that they are agreeable for the Power factor compensation levied and also for the average consumption levied for the meter defective period in respect of SC No.125-011-123. The Appellant representative argued that the excess demand charges levied are arbitrary and to be dropped on the following grounds.

7.3 **Ground-1:** He argued that the sanctioned load entered in the computer is not based on any record like OTR, RTR or sanction order etc., It was entered by availing the services of the outsourced agency without proper checking of the entry by the concerned officers. He argued that any record such as service register, test report, load sanction copy has not been produced in respect of the 19 kw recorded in the computer.

7.4 **Ground-2**: Further, as the meter, fixed in the services are of Three phase, 100-120A, the sanctioned load shall be more than 40 or 45 kw as per the capacity of the meter. He also informed that the licensee will not fix higher capacity meter for low loads since for such cases, the recording of consumption may not be accurate. To the argument of non availability of meters may be the cause for fixing only higher capacity meters, he argued that all the four services may not be effected during the same period.

Hence the non availability may not be there in all the cases. He also informed that in the three services (viz) 125-011-133, 125-011-187 and 125-011-185 in which the records were traced by the respondent , the sanctioned load was found to be 38.79KW, 40.77KW and 44KW as against 19 KW recorded in the computer. Hence, he argued that the sanctioned load shall be more than 19KW.

7.5 **Ground-3:** He referred to section 5(2)(ii) C(III)A of the Supply Code and argued that as per the provisions of the above Code, the licensee can levy penalty at 1% of the energy charges for every KW of demand exceeding the sanctioned load for the first occurrence only and on the second occurrence the load has to be revised to the level of the recorded demand within one month of second occurrence with due intimation to the consumer.

7.6 **Ground-4:** Thiru Balakrishnan has argued that as per section 56 of the Electricity Act 2003, no sum due from the consumer can be recovered from the consumer after 2 years from the date when it first become due. Here, the licensee has levied excess demand charges for 2006 on 6/2008. Hence, he argued that the claim is barred by the limitation.

8. Argument of the Respondent:

8.1 All the three respondents were present on the hearing date.

8.2 Thiru Chellaiah, EE/O&M argued that the sanctioned load taken for calculation of excess demand charges is as per the computer statement. He assured that he will trace the records and produce the proof for the sanctioned load. He argued that the sanctioned load could not be arrived based on the capacity of the meter fixed in the service. Due to shortage of the correct capacity of the meter, the higher capacity meter could have been erected in the service.

8.3 Regarding Supply Code provisions, the AEE argued that as the arrear was not paid by the Appellant, the regulation 5(2)(ii)C (III)(A) was not adopted. He also argued that there was no representation from the Appellant for sanction of additional load also. With regard to limitation of 2 years it was argued by the respondents that the arrears were under dispute and were shown as arrears. Hence, the levied amount(s) does not attract the provision of the above section referred to by the Appellant.

8.4 The EE/O&M/Mylapore also agreed to trace the records to confirm the load sanctioned in the above service and requested 15 days time for the above work and to file his written arguments.

9. <u>Written argument of the respondent :</u>

The respondent has furnished his written argument on 16.10.2012. The contentions of the respondent in the written argument are furnished below :

(i) OTR records available for the service connection A/c Nos 125:011.133, 125:011.187 and 125:011.188 only. Balance service connections OTR records are not traceable at the offices of the respondent.

(ii) As per clauses 27(13) & (14) of the Distribution Code “Where more than one person or more than one establishment is in occupation of a door number or sub door number, more than one service connection will be given only if there is a permanent physical segregation of areas for which different service connections are applied for,” as per above clause , since the petitioner has availed more nos of service connections for single establishment the petitioner should avail HT service only. Hence, the excess demand was not regularised.

(iii) On receipt of BOAB / RIS Audit Para, the petitioner has been reminded repeatedly to pay the shortfall / arrears amount. Hence, the procedure as per clause 21(2) of Supply Code, the Audit Shortfall amount to be recovered has been followed continuously and hence the delay after a period for two years does not arise.

10. <u>Issues for consideration</u>:

10.1 I have heard both sides and perused the documents adduced before me. On a careful consideration of the submission of both sides, I fix the following as issues for consideration.

i) Whether the contention of the Appellant that the computer entry for load could not be considered and respondent should establish the sanctioned load by showing the documents such as sanction copy, OTR/RTR etc. is correct?

ii) Whether the capacity of meter can be taken for consideration for arriving the sanctioned load?

iii) Whether the contention of the Appellant that as per Supply Code, the excess demand charges can be levied for one month only is correct?

iv) Whether the contention of the Appellant that as per Supply Code provisions after second occurrence, the sanctioned load has to be revised without any application from the consumer is correct?

v) Whether non payment of arrears is a bar for regularising the load. ?

vi) Whether availing more than one service in a door number or sub door number is a bar for regularising the load ?

vii) Whether the claim of the respondent is barred by limitation ?

10.2 Though the petition was filed for the issues in 9 services, after the CGRF order, the issues of excess demand charges and average consumption charges for the meter defective period is existing only in the following service connections.

(1) 125-011-121
(2) 125-011-122
(3) 125-011-123
(4) 125-011-134

Accordingly the above service connection issues alone are taken for arriving at a conclusion.

10.3 The prayer of the appellant to effect HT service was not taken up as the HT service was already effected by the respondent.

11. <u>Findings on the First issue</u>:

11.1 The Appellant argued that the licensee shall produce service connection register, load sanction copy, OTR, RTR or any other relevant document to establish that the load sanctioned is 19kw in all the three services. Appellants representative Thiru Balakirshnan has also pointed out that natural justice warrants that prosecution is duty bound to produce necessary evidence to substantiate and prove any charge.

11.2 The EE/Mylapore argued that as per their computer entry the sanctioned load is only 19 KW in all the four services under dispute. Accordingly, the respondent has taken the same as sanctioned load for arriving the excess demand. Hence, if Appellant says that the sanctioned load is something other than 19 kw, it is their duty to show documentary evidence to prove their case. As copy of OTR/RTR, receipt for payments made at the time of service connections are available with the appellant, they may show any of the above records to prove that the sanctioned load recorded in computer is wrong.

11.3 In this connection, it is to be noted that the licensee has shown the entry made in the computer as records for substantiating the claim of sanctioned load is 19 kw. But they have not shown any register or record based on which the entry was made in the computer. The appellant was not producing any document such as sanction copy, amount paid towards the load sanction, OTR copy etc., Hence, both the appellant and respondent are not having any record to establish the sanctioned load. As per section 35 of the Evidence Act (as amended by Information Technology Act 2000) an entry in any public or other official book, register or record or an electronic record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or

record of or an electronic record is kept, is itself a relevant fact. Here, the entry in computer about the sanctioned load is a electronic record and hence it is considered as a relevant fact.

11.4 In the absence of any other records, the computer entry may be treated as the documentary evidence.

11.5 In view of the above, the first issue is decided in favour of the respondent .

12. <u>Findings on second issue</u>:

12.1 Thiru Balakrishnan, argued that the capacity of the meter fixed in all the four services are 3 phase 100-120 A capacity meter. The usual practice by any utility is to fix these meters when the sanctioned load is more than 40 kw. The fixing of higher capacity meter shows that the sanctioned load may be higher than 19 kw.

12.2 The EE/O&M/Mylapore argued that when there is shortage of meters the higher capacity meters are used to be erected in the services. Hence, due to shortage of meters of required capacity, the meters of higher capacity would have been erected in the services being a hospital to avoid delay it would have been done.

12.3 The Appellants representative argued that the non availability of particular capacity meter may be existing in a particular periods, but not always. Here in all the services which were effected at different period higher capacity meters have been fixed. Hence, load may be the real reason for erecting the above capacity meter. He also argued that in respect of SC Nos 125:011.133, 125:011.187 and 125:011.188 for which the OTRs were traced by the licensee, sanctioned load are found to be 38.79KW, 40.77 KW and 44KW respectively instead of 19KW recorded in the computer and hence, he argued that the sanctioned load will be higher than 19KW.

12.4 The capacity of the meter to be fixed in a service depends on the sanctioned load and higher capacity meter will not be fixed for very low load. This is the general

criteria. Moreover, based on the capacity of meters, one may arrive the maximum load that can be connected to the service. But the connected load can be anything less than the maximum capacity. In view of the above, I am of the view that based on the capacity of the meter conclusion could not be arrived for arriving the sanctioned load.

13. <u>Findings on third issue</u>:

13.1 The Appellants representative cited regulation 5(2)(ii)c(III)A of Supply Code and argued that the licensee can claim excess demand charges for exceeding the sanctioned demand only for the first occurrence.

13.2 In this regard, the said 5(2) (ii)C(III)A of Supply Code is reproduced below:

"5. Miscellaneous charges

(1) Capacitor compensation charges

x x x x x x x x x x x x

(2) Excess demand charge

Whenever the consumer exceeds the sanctioned demand, excess demand charge shall be:—

(i) In the case of HT supply, the maximum demand charges for any month shall be based on the KVA demand recorded in that month at the point of supply or such percentage of sanctioned demand as may be declared by the Commission from time to time whichever is higher. The exceeded demand shall alone be charged at double the normal rate.

(ii) In case of LT supply,

(a) For Domestic and Agricultural category of service, the excess demand charges shall not be applicable.

(b) For other categories of LT services with contracted demand equal to or less than 18.6 KW (25 HP), the excess demand charges shall not be applicable where the connected load is equal to or less than the contracted demand.

Note: For services with contracted demand less than or equal to 18.6 KW (25 HP), whenever the consumers connected load exceeds the contracted demand, the licensee shall install meters with demand recording facility and bring the consumer under the scope of excess demand chargeable category. After installation of the meter, if the recorded demand is in excess of contracted demand, the existing demand, shall, after intimation to the consumer, be

revised to the level of recorded demand and all relevant charges applicable for extension of additional demand shall be included in the next bill. No excess demand charge is leviable till such time the licensee installs meter with demand recording facility and bring the consumer under the scope of excess demand chargeable category.

(c) For the remaining LT services other than those service connections covered in (a) and (b) above, when the contracted demand is in excess of 18.6KW (25HP) and for such of those consumers whose contracted demand is less than 18.6 KW (25HP) but opted for having meters with demand recording facility, the excess demand charges shall be -,

(I) Where the recorded demand does not exceed 112 KW, for every KW or part thereof in excess of the sanctioned demand, at the rate of 1% of the total energy charges;

(II) where the recorded demand exceeds 112KW, for every KW or part thereof in excess of sanctioned demand:-

- at the rate of 1% of the charges for electricity supplied up to 112 kW;

- and at 1.5% for every KW or part thereof over and above 112KW,

- and thereafter, that is, the third and subsequent occurrences at the rate of three percent for every KW or part thereof over and above 112KW.

(III) Where the recorded demand exceeds the sanctioned demand for the second and subsequent times ,-

(A) In case the recorded demand has not exceeded 112 KW, the existing load sanction shall, after intimation to the consumer, be revised within one month of the second occurrence to the level of recorded demand and all the relevant charges applicable to the additional load shall be included in the next bill ;"

13.3 On a plain reading of the said regulation 5(2)(ii)C(III)A of the Supply Code, it is noted that in case the recorded demand has not exceeded 112 kw, the existing load sanction shall, after intimation to the consumer be revised within one month of the second occurrence, to the level of recorded demand and all the relevant charges applicable to the additional load shall be included in the next bill. Here, it has been clearly mentioned within one month after the second occurrence that the load has to be revised. The bill for exceeding the sanctioned demand will be prepared along with the regular CC bill and paid within 20 days from the date of taking of the reading. But revision of load has one month time after second occurrence of exceeding the

sanctioned load. Hence, I am of the opinion that the excess demand charges at the rate of 1% of the charges for electricity supplied for every kw or part there of is applicable for the second occurrence also.

13.4 During the hearing, the Appellant's representative also accepted the above.

14. <u>Findings on fourth issue</u>:

14.1 The Appellant's representative argued that after the 2nd occurrence of exceeding the sanctioned loads as per the Supply Code provisions, the sanctioned load has to be revised to the level of recorded demand and the charges are to be included in the next bill with due information to the consumer. Hence, he argued that the sanctioned load should have been revised even without any application from the consumer. But, the licensee is claiming such excess charges from 2005 to till date. This is contrary to the Supply Code provision.

14.2 The respondent argued that the Appellant has not paid the arrears. As per regulation 5(2)(iv) of the Supply Code, no addition or reduction of load can be sanctioned unless the outstanding dues in the same service connection had been paid. He also argued as the Appellant is having more than one service in the same complex, revision in load was not considered by the licensee.

14.3 As the Appellant has referred to regulation 5(2)(ii)C(III)A of the Supply Code the said regulation is reproduced below :-

"(2) Excess demand charge

Whenever the consumer exceeds the sanctioned demand, excess demand charge shall be :

(i) In the case of HT supply, the maximum demand charges for any month shall be based on the KVA demand recorded in that month at the point of supply or such percentage of sanctioned demand as may be declared by the Commission from time to time whichever is higher. The exceeded demand shall alone be charged at double the normal rate.

(ii) In case of LT supply,

(a) For Domestic and Agricultural category of service, the excess demand charges shall not be applicable.

(b) For other categories of LT services with contracted demand equal to or less than 18.6 KW (25 HP), the excess demand charges shall not be applicable where the connected load is equal to or less than the contracted demand.

Note: *For services with contracted demand less than or equal to 18.6 KW (25 HP), whenever the consumers connected load exceeds the contracted demand, the licensee shall install meters with demand recording facility and bring the consumer under the scope of excess demand chargeable category. After installation of the meter, if the recorded demand is in excess of contracted demand, the existing demand, shall, after intimation to the consumer, be revised to the level of recorded demand and all relevant charges applicable for extension of additional demand shall be included in the next bill. No excess demand charge is leviable till such time the licensee installs meter with demand recording facility and bring the consumer under the scope of excess demand chargeable category.*

(c) For the remaining LT services other than those service connections covered in (a) and (b) above, when the contracted demand is in excess of 18.6KW (25HP) and for such of those consumers whose contracted demand is less than 18.6 KW (25HP) but opted for having meters with demand recording facility, the excess demand charges shall be -,

(I) Where the recorded demand does not exceed 112 KW, for every KW or part thereof in excess of the sanctioned demand, at the rate of 1% of the total energy charges;

(II) where the recorded demand exceeds 112KW, for every KW or part thereof in excess of sanctioned demand:-

- for the first two occurrences, at the rate of 1% of the charges for electricity supplied up to 112 kW;

- and 1.5% for every KW or part thereof over and above 112KW,

- and thereafter, that is, the third and subsequent occurrences at the rate of three percent for every KW or

part thereof over and above 112KW.

(III) Where the recorded demand exceeds the sanctioned demand for the second and subsequent times ,-

(A) In case the recorded demand has not exceeded 112 KW, the existing load sanction shall, after intimation to the consumer, be revised within one month of the second occurrence to the level of recorded demand and all the relevant charges applicable to the additional load shall be included in the next bill ;

14.4 On a careful reading of the said regulation 5 (2) (ii) C (III) (A), it is noted that in case the recorded demand has not exceeded 112 kw, the existing load sanction shall after intimation to the consumer be revised within one month after the second occurrence to the level of recorded demand and all relevant charges applicable to the additional load shall be included in the next bill.

14.5 It is noted from the above that the regulation clearly direct the licensee to revise the load to the level of recorded demand within one month of second occurrence. It is also specified that the relevant charges are to be included in the next bill. It does not specify that application is to be furnished by the consumer and it states only that the consumer is to be informed about the revision of the sanctioned load to the level of recorded demand and all relevant charges applicable to additional load shall be included in the next bill. Hence, I am of the view that the load has to be revised without waiting for an application for additional load from the consumer.

15. <u>Findings on Fifth Issue</u> :

15.1 The respondent has raised a valid point that the consumer is having arrears, hence as per regulation 5(2)(iv) the additional load cannot be sanctioned.

15.2 The regulation 5(2)(iv) of Supply Code is extracted below :

"(iv) No addition or reduction of load in case of LT service and no addition or reduction of demand in case of HT service, may be sanctioned unless the outstanding dues in the same service connection had been paid."

15.3 On a plain reading of the said regulation, it is noted that no addition or reduction of load in case of LT service may be sanctioned unless the outstanding dues in the same service connection are paid.

15.4 But it is seen that the excess demand charges was issued based on audit remarks. On a careful examination of audit slips furnished by the respondent, it is noted that the excess demand charges for the period from 4/2005 to 8/2006 (ie) for nine assessments, were issued in one slip for all the four services (viz) 125-111-121, 125-111-122, 125-111-123 & 125-111-133. Hence, excess demand charges for first occurrence, second, third and so on upto nine occurrence has been claimed only in one demand notice. Had the demand notice for levy of excess demand charges was issued for first occurrence and second occurrence of exceeding the sanctioned load separately then and there and if the amounts are pending to be recovered, then the argument of the respondent may hold good. But in the case on hand, excess demand charges for the first, second and subsequent occurrences were issued only at a later date and that too on a single notice based on the audit remarks. Hence, I am of the view that pending arrears on excess demand cannot be bar to revise the sanctioned load to the level of recorded demand in the case on hand as there is no arrears pending at the time of issuance of notice. However, if the consumer has exceeded the revised load sanctioned based on the recorded demand of first two occurrences subsequently, then there may be arrears which shall be a bar as the payment of excess demand charges for the first two occurrence of exceeding the sanctioned load is pending to be paid.

15.5 As the supply code stipulate that the sanctioned load has to be revised to the level of recorded demand within one month after the second occurrence of the exceeding the sanctioned demand, it is held that the licensee has to follow the above instructions only.

16. <u>Findings on sixth issue</u>:

16.1 The respondent has argued that the appellant is having more than one service in a single premises and hence regularisation of load is not feasible. As the respondent has pointed out regulation 27(13) and 27(14) of the Distribution Code, the said regulation are extracted below :

"*(13) Within a door number or sub door number, an establishment or person will not be given more than one service connection.*

(14) Where more than one person or more than one establishment is in occupation of a door number or sub door number, more than one service connection will be given only if there is a permanent physical segregation of areas for which different service connections are applied for."

16.2 On a careful reading of the said regulation 27(13) of the Distribution Code, it is noted that more than one service could not be given to a person or establishment within a door number or sub door number. As per regulation 27(14) where more than one person or more than one establishment is in occupation of a door number more than one service connection could be given if there is a permanent physical segregation of areas for which different service connection was applied for.

16.3 In view of the above, the argument of the respondent that more than one service could not be given to St. Isabels Hospital is conforming to regulation. But, all the nine services for the same establishment (vz) St. Isabels Hospital was effected by the licensee only. The licensee would have rejected the application when St. Isables Hospital applied for the second service in the same door number and advised them to seek additional load . Further, the licensee would have issued a notice under regulation 33(4) of the Distribution Code to the consumer to merge all the services as soon as it noticed the violation . But, the respondent has informed that he is unable to trace out the letter issued for merging the services. Hence, I am unable to ascertain whether the merger letter was issued before issue of the demand

for exceeding the sanctioned load or whether any such notice is issued at all. It is the mistake on the part of the licensee in effecting more than one service in a door number for one establishment and the licensee has not produced any record to establish that it has taken any action to correct the mistake by issuing a notice for merging the service.

16.4 As the licensee has sanctioned more than one service in a door number for a single establishment and the appellant was neither informed about the violation of having more than one service in a door number and nor advised to correct the violation by giving a notice by the respondents responsibility could not be fixed on the appellant for availing more than one service connection in a door number. Hence, I am of the view that having more than one service in door number cannot be a bar to sanction additional load to the level of the recorded demand after the 2nd occurrence of exceeding the sanctioned demand in the case on hand.

17. <u>Findings on seventh issue</u>:

17.1 The Appellant's representative argued that the excess demand charges for 2005, 2006 were levied only during 2008. As per section 56 of the Electricity Act, no sum due from the consumer shall be recoverable after two years from the date when such sum become first due unless such sums has been shown as arrears. Thiru Balakrishnan quoting the above argued to waive the arrears.

17.2 The Respondent argued that the amount was due only from the date of issue of demand notice. After issue of demand notice, the arrears were pending due to dispute and were shown as arrears. Hence, the levy is not barred by limitations. As the Appellant has referred to section 56(2) of the Electricity Act, the same is reproduced below:-

"Disconnection of supply in default of payment:

(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 :

17.3 As per the above clause, no sum due from any consumer under the said section 56(2) shall be recoverable after the period of 2 years from the date when such sum become first due, unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied.

17.4 With reference to the applicability of section 56(2) of the Electricity Act 2003 for limitation, the judgment of Appellate Tribunal for Electricity in appeal nos 202 and 203 of 2006 is relevant and is reproduced below :

"17. Thus, in our opinion the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for payment , therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in section 56(2) of the Electricity Act, 2003 shall start running. In the instant case, the meter was tested on 3.3.2003 and it was allegedly found that the meter was recording energy consumption less than the actual by 27.63%. Joint inspection report was signed by the consumer and licensee and thereafter, the defective meter was replaced on 5.3.2003. The revised notice of demand was raised for a sum of Rs.4,28,034/- on 19.3.2005. Though the liability may have been created on 3.3.2003, when the error in recording of consumption was detected, the amount become payable only on 19.3.2005, the day when the notice of demand was raised. Time period of two years, prescribed by section 56(2), for recovery of the amount started running only on 19.3.2005. Thus, the first respondent cannot plead that the period of limitation for recovery of the amount has expired"

17.5 It is clear from above judgment that , even though the liability to pay energy charges is created on the day the electricity is consumed, the charge would become first due only after a bill or a demand notice is served. Therefore, the limitation in the present case also shall run from the date of demand notice. As the respondent has stated that the amount is shown as arrears after issue of first demand, I am of the view that the arrears are not barred by the limitation.

18. Conclusion :

18.1 In view of my findings in paras 11 to 17, the licensee is directed to revise the arrears of excess demand charges in respect of the SC 125-011-121, 125-011-122, 125-011-123 and 125-011-134 adopting the regulation 5(2)(ii)C(I) and 5(2)(ii)C(III)A of Tamil Nadu Electricity Supply code within 30 days from the date of receipt of the order and refund / adjust the excess amount if any paid by the appellant .

18.2 The respondent is directed to revise the sanctioned load based on the recorded demand of the first two occurrences of exceeding the sanctioned load only. The necessary charges for sanctioning the load shall also be included in the bill. Further, revision of sanctioned load based on subsequent occurrences is not feasible since, the excess demand charges for the first two occurrences and the charges for revising the sanctioned load to the level of the demand recorded were pending as arrears till the payment is made on 22.5.2012 and is a bar on sanction of further additional load. The respondent is also directed to sent a compliance report within 45 days

18.3 As the appellant has stated that there is no dispute over power factor compensation charges and average consumption levied for the meter defective period, I am not issuing any findings on the above issues.

18.4 As a HT service has been effected merging all the LT services, the second prayer of the appellant to direct the respondent to effect the HT service is treated as closed.

18.5 With the above findings the A.P. No.26 of 2012 is finally disposed of by the Electricity Ombudsman . No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To

1) Sr. Danis Mary,
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3) Mr.Manivel, B.E.,
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4) Mr.K.Mohan,
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5) The Chairman(Superintending Engineer),
Consumer Grievance Redressal Forum,
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6) The Chairman & Managing Director,
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7) The Secretary,
Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmipathy Salai,
Egmore, Chennai – 600 008.

8) The Assistant Director (Computer) **- (FOR HOSTING IN THE WEBSITE)**
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