



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No. 89 of 2011

M/s. Visvas Promotors (P) Limited
Represented by its Managing Director
Thiru S Seetharaman
No.78, T.P.K. Road
Andalpuram
Madurai – 625 003.

.... Appellant
(Rep. by Appellant himself &
Thiru G.R.Swaminathan, Advocate)

Vs.

The Superintending Engineer
Madurai EDC / Metro
TANGEDCO
Madurai.

... Respondent
(Thiru P.Baskar, Executive Engineer /Distn
West / Madurai)

Dates of hearing : 19-01-2012 & 2.5.2012

Date of order : 3.8.2012

The above Appeal Petition No.89 of 2011 came up for hearing before the Electricity Ombudsman on 19-01-2012 & 3.5.2012. Upon perusing the above petition, the counter affidavit connected records and after hearing both sides, the following order is issued by the Electricity Ombudsman :-

ORDER

1. Prayer of the Appellant :-

The Appellant has prayed to set aside the order of the Consumer Grievance Redressal Forum of Madurai Electricity Distribution Circle / Metro's in செயல் முறை ஆணை எண். மி.நு.கு.தீ.ம/பெரு/மது/செயலர்/கோ.கட்டு/அ.எண்.235/11, நாள் 25-02-2011 and direct the Respondent to refund the sum of Rs.8,55,916/- along with development and service connection charges with interest to the Appellant.

2. Facts of the case:-

M/s.Viswas Promoters (P) Limited is engaged in the business of promotion and building residential colonies in and around Madurai area. While availing service connections to the residential colonies (Agrini and Vasudhara), the Appellant has paid a sum of Rs.8,55,916/- towards cost of equipments. Further every individual consumers have also paid development charges and service connection charges. The Appellant has requested for refund of the equipment charges and the development and service connection charges paid stating that TNEB has already issued instructions, not to collect such charges. The Consumer Grievance Redressal Forum of Madurai Electricity Distribution Circle has rejected the Appellant's petition for refund of the above charges. Hence the Appellant filed this appeal petition.

3. Contentions of the Appellant:-

The Appellant has contended the following in his appeal petition:-

(i). The Appellant was asked to pay the cost of the equipment and the same was remitted.

(ii) Subsequently, the Appellant came to know that the TNEB had already issued instructions not to collect the cost of equipment from the consumers and development charges and service connection charges.

(iii). The Appellant in ignorance of their legal liability had erroneously remitted the sum of Rs.8,55,916/- along with development and service connection charges for nearly 1949 services to the TNEB. But TNEB declined to refund when it was demanded.

(iv). The impugned order of the Forum is not in consonance with the Memorandum No.X/CFC/DFC/R/AAO/TE1/TSC/068/2003, dated 13-08-2003 issued by the Chief Financial Controller, TNEB Memorandum No.SE/IEMC/EE3/AEE1/B.577/D.389/99 dated 14-05-1999 issued by the Member (Distribution) and Memorandum No.SE/IEMC/EE3/AEE1/F.Instructions/D.627/95 (Technical Branch) dated 09-06-1995.

(v). The purpose of collecting development charges is to cover the cost of installation. In the present case, from each of the individual consumers who have purchased houses in Agrini and Vasudhara the Board had collected such development charges. The Board is not justified in retaining the charges

collected from the Appellant. It is not open to the Board to unjustly enrich itself by collecting both from the promoter and individual plot owners / house owners.

(vi). The Board acted illegally in collecting the cost of equipment from the Appellant. Merely because the remittance was made with Appellant's consent, that will not enable the Board to retain such illegally collected sums.

4. Contentions of the Respondent in the counter affidavit :-

The Respondent has contended the following:-

(i). M/s.Visvas Promoters (P) Limited approached the respondent for effecting 59 number of service connections in their premises, as detailed below:-

Sl. No.	Sanction No.	No. of SCs.	Total KW mentioned in applications	Sanctioned KVA	Erected KVA of the Dis.Transformer	Remarks
1	626/S/038 -1-04-05 dt. 05.04.04	21	153.300	170.333	250	Excess=80 KVA
2	626/S/006 -04-05 dt. 07.06.04	33	98.11	109.01	250	Excess=141 KVA
3	626/S/003 -06-07 dt. 16.08.06	1	4.470	4.96	250	Excess=245 KVA
4	626/S/009 -06-07 dt. 28.12.06	3	13.41	14.9	250	Excess=235 KVA
5	626/S/002 -07-08 dt. 11.05.07	1	4.00	4.44	250	Excess=245 KVA

(ii). The erected capacity of the Distribution transformers in all the above 5 cases are much more than the actual requirement as per their applications.

These higher capacity transformers were installed on the request of the Appellant, as they had been planning for future expansion of dwelling units to be developed by them in their premises.

(iii) The development and service connection charges collected for each service is as per the regulations of Tamil Nadu Electricity Supply Code.

(iv). The development charges are collected not only for the distribution transformers but also for compensating the huge expenditure towards establishment of sub-stations, erection of distribution transformers and laying of HT/LT lines, etc. i.e. expenditure on equipments, materials, labour and establishment etc. as have been explained in the instructions vide Permanent (FB) B.P. No. 136 (Technical Branch) dated 13-06-1991. Hence collection of development charges does mean that the cost of distribution transformer alone is collected.

(v). The memorandum No.X.CFC/DFC/R/AAO/TE1/TSC/068/2003, dated 13-08-2003, instructions have been issued not to collect development charges and service connection charges only for the existing multi-tenant house services.

(vi). The instructions given vide Circular Memo No.SE/IEMC/EE3/AEE1/F.Instructions/D267/95 (Tech.Br.) dated 09-06-95, are regarding preparation of estimates. In the given case of Appellant, the

transformers of higher capacity than the actual requirement, have been installed on the request and with the consent of the Appellant.

(vii). The amount collected from the Appellant was in order and no excess amount has been collected.

5. Contentions of the Appellant in the Rejoinder :

- (a) Since the respondent demanded the Appellant to pay the estimated development charges for installing transformers and providing service connections, the appellant has paid the amount demanded by the respondent.
- (b) Subsequently the appellant was made to pay development charges for providing service connection to each of the individual unit also. It is the appellant as promoters who paid the development charges on behalf of the individual applicant.
- (c) Subsequently, the appellant have informed the respondent that the capital cost cannot be levied on the consumer in the guise of collecting development charges. Hence the prayer for refund was made. The forum rejected the said request .
- (d) In Memo No.SE/IEMC/EPF/A2/R&C/D.231/dated 21.1.1984, it has been specifically mentioned that the estimate for provision of separate feeder chargeable to the consumer shall include the cost of the line alone and

not the cost of the terminal equipment. Thus in any event, the levy of cost of transformers on the appellant is totally bad in law.

- (e) After collecting the excessive charges for installation of terminal equipments and also providing line, the respondent further collected a sum of Rs.1,400 and Rs.400/- from the three phase and single phase applicant respectively. A sum of Rs.20,00,000/- had been collected from the individual applicants.
- (f) In para 6 of the counter filed by the respondent it has been mentioned that development charges includes the charges of levying of line, establishment of sub station and erection of distribution transformers But as already pointed above, this amount has been collected from the appellant in the first instant. Therefore the retention of the amount collected from the appellant even after collection of development charges from the individual consumer amounts to double levy and constitutes unjust enrichment.
- (g) In Memo No.SE/IEMC/EE3/AEE1/V.577/ V.389/99 dated 14.5.1999, it has been stated that the lines inside the premises and the transformers are not chargeable to the consumer.
- (h) The respondent may be directed to refund a sum of Rs.33,83,030/-

6. Hearing held by the Electricity Ombudsman:-

To enable the Appellant and the Respondent to put forth their views and arguments, hearings were held by the Electricity Ombudsman on 19-01-2012 & 3.5.2012.

7. Arguments of the Appellant:-

7.1 The Appellant himself presented with Thiru G.R.Swaminathan, Advocate. The learned Advocate reiterated the contents of the appeal petition. The learned counsel argued that the charges levied by the Respondent are not as per Regulation 4 of the Supply Code. He has cited circular dated 13-08-2003 of the CFC and argued that development charges and service connection charges are not applicable to him. Further he has cited memo dated 14-05-1999 issued by the Member (Distribution) and stated that the HT lines and transformers are not chargeable to his account. The learned advocate has also referred to Section 42 (1) of the Electricity Act, 2003 and argued that as per the above section, it is the duty of the distribution licensee to develop and maintain an efficient coordinated and economical distribution system in his area of supply. He has also argued that the development charges charged by the licensee is towards expenditure involved in laying of HT / LT lines, establishment of SS, erection of distribution transformers etc. But in this case, the Respondent has charged separately the cost towards erection of distribution transformer also (i.e.) the Respondent has levied the capital expenditure two times from the Appellant and argued that this is unjust enrichment. With regards to consent given for payment of the estimate cost, he argued that consent given in belief that it is a legitimate claim when it is not so, it cannot cure the situation.

7.2 On 3.5.2012, Thiru. R. Thiagarajan, Advocate attended the hearing. He was asked by the Electricity Ombudsman whether the M/s Viswas Promoters who have promoted the residential colonies agrini and vasudhara and who are

not the service connection owners of the houses can be defined as consumer for filing this case before the Electricity Ombudsman. The learned advocate informed that he will send his written arguments on the above and sought 15 days time. In case if any amount has to be refunded then the question of sharing of such amount with the respective consumer, who have procured the dwelling units will arise. In such a situation the learned counsel argued that since the appellant has only paid the estimate amount the question of refund to the respective consumers will not arise.

8. Argument of the Respondent:-

8.1 The Respondent was represented by Thiru Baskar, Executive Engineer/West/Madurai on both the days of hearing. He reiterated the contents of the counter. He has stated that the circular dated 13-08-2003 is applicable to the existing multi-tenant houses only and not for the new multi-storied apartments. He has further informed that the development charges and service connection charges were collected from the intending consumers as per provisions of Distribution Code Regulation 45, 46, 47 and 49. Hence, they are in conformity with the Regulation issued by the Hon'ble Tamil Nadu Electricity Regulatory Commission.

8.2 He has also argued that as per Section 46 of Electricity Act, 2003 and as per Regulations 44 of Distribution Code, the licensee is entitled to collect the estimate amount. He has also argued that had the Appellant not given consent,

transformers will be erected only depending upon the need and based on the application received.

9. Written Argument of the Appellant:-

In the Written Argument dated 23-01-2012, the Appellant has stated the following:-

9.1 The Appellant has paid Rs.33,83,030/- towards cost of erection of distribution transformers and other related levies for extending supply to the housing complexes promoted by them.

9.2 The Appellant has paid Rs.20,00,000/- towards development charges and service connection charges on behalf of the individual applicants.

9.3 The retention of Rs.33,83,030/- even after collection of development charges from the individual consumer amounts to double levying and constitutes unjust enrichment.

9.4 As per Superintending Engineer / IEMC's Memo dated 21-01-1984, the estimate for provision of separate feeder chargeable to the consumer should include the cost of line alone and not the cost of the terminal equipment. As per the Superintending Engineer / IEMC's Memo dated 14-05-1999, HT lines inside the premises and the transformers are not chargeable to the consumer.

9.5 It is a clear case of unjust enrichment and the consent given by the Appellant will not cure the situation. Any levy and collection made without the express authority of law is illegal and will have to be refunded.

9.6 The appellant has stated the following in his written argument dt. 1.6.2012.

(a) The definition of consumer is given in section 2(15) of the Electricity Act, 2003 which is as follows : “ Consumer “means any person who is supplied with electricity for his own use by a licensee or the Govt. or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the govt. or such other person, as the case may be,”. The appellant is very much a consumer within the meaning of the Act and as such entitled to invoke the jurisdiction of both Consumer Grievance Redressal Forum as well as the Electricity Ombudsman . The details of service connections obtained in the name of the appellant for the Agrini and Vasudhara Enclaves with details of S.C No. and consumption charges from January 2010, onwards have also been furnished by the Appellant.

(b) The Memo No.SE/IEMC/EE3/AEE1/B.577/D.389/99 dt. 14.5.1999 issued by the TNEB, Tech. Br. clearly states that when the service is only L.T. service, cost of the HT lines inside the premises and the transformer are not chargeable to the consumer. Section 185 of the Electricity Act, 2003 states that notwithstanding the repeal of the earlier statutes, the directions given under the

repealed laws, would continue to apply so long as there is no inconsistency. Hence, merely because new Act came into force, it cannot render automatically the earlier direction infructuous.

(c) Chapter 7 in Tamil Nadu Distribution Code, 2004 deals with "Recovery Charges " It clearly states the various charges to be collected like 1. Service connection charges, 2. Meter Security Deposit, 3. Development charges, 4. EMD, 5. Security Deposit. The respondent cannot collect any charges beyond what is stated in the code. The respondent is not entitled to collect both the estimated cost as well as the development charges and it will amount to double levy and liable to be refunded.

(d) The Board acted illegally in collecting the capital cost from the appellant. Since the respondent is an instrumentality of the state, it has to act fairly and cannot make an unjust enrichment.

(e) On 27.6.2012 the Appellant informed that out of the 78 services in their name, 32 services have been transferred to AGRINI HOUSE owners welfare association on 27.1.2002 and 36 services have been transferred to Vasudhara House owners association on 8.2.2011 and 10 services are still in their name.

10. Written argument of the Respondent :-

The Respondent has furnished the following in the Written Argument dated 31-01-2012:-

- (i) The Petitioner Thiru S.Seetharaman, M/s.Visvas Promoters (P) Limited as a person and as not an intending consumer requested and

submitted an application by making consent to remit the cost of HT lines and distribution transformers by expecting the future houses to be constructed. Hence as per the request of person in accordance with the Section 46 of the Electricity Act, 2003 and Section 44 of Tamil Nadu Electricity Distribution Code, the estimate had been prepared and cost collected from the person, applicant. Hence the question of refund of estimate cost does not arise.

- (ii) The Electricity Act, 2003 came into force from 10-06-2003, the instruction issued vide Memo No. SE/IEMC/EPF/A2/R&C/D231, dated 21-01-1994 as stated above had become infructuous.
- (iii) The Hon'ble Tamil Nadu Electricity Regulatory Commission issued the guidelines to collect the following charges from the intending consumer to effect the new service connections vide Section 45, Section 46, Section 47 and Section 49 of Tamil Nadu Electricity Distribution Code such as Service Connection Charges, Meter Caution Deposits, Development Charges and Security Deposits.
- (iv) There is no specific provisions in the Tamil Nadu Electricity Distribution Code which prohibits the collection of the development charges from the person who have paid the estimate cost for laying of lines and distribution transformers as per the Section 46 of Electricity Act, 2003 and Section 44 of Tamil Nadu Electricity Distribution Code.
- (v) The development charges as per Tamil Nadu Electricity Regulatory Commission Tariff Order from the intending consumers (for 3 phase

connection Rs.1400/- and for single phase connection Rs.400/- service) only were collected and not from Thiru S.Seetharaman, Managing Director, M/s. Visvas Promoters, Madurai as stated.

- (vi) The amount mentioned Rs.20,00,000/- (Rupees Twenty Lakhs only) in para (3) of Rejoinder Affidavit was the development charges collected from the intending consumers of Agrini and Vasudhara blocks total of (728 + 360 + 556 + 146) 1790 numbers intending consumers.

In the written argument dt.30.6.2012, it was intimated that the services mentioned by the Appellant (68Nos) are now in the names of the associations only.

11. Issues for consideration:-

I have heard both sides and perused the documents furnished by both parties. On a careful consideration of rival submissions and perusal of documents, I fix the following issues for consideration:-

- a. Whether the contention of the Appellant that the development charges and service connection charges are not applicable to multi-storied apartment as per CFC's Circular dated 13-08-2003.
- b. Whether the licensee is authorized to levy development charges ?
- c. Whether the licensee is authorized to levy service connection charges for metering ?
- d. Whether the licensee is entitled to collect the expenses reasonably incurred in providing any electric line or plant from the person requiring supply?

e. Whether the undertaking furnished by the appellant to pay the estimate charges is binding on the appellant ?

12. Findings on the First Issue:-

12.1 The Appellant has referred to the licensee's Circular dated 13-08-2003 and stated that the development charges and service connection charges are not leviable on their apartments.

12.2 In the Circular Memo No.X/CFC/DFC/R/AAO/TE1/T&C/068/2003 dated 13-08-2003 itself in para 3, it has been clearly stated that it is applicable to existing multi-tenant house service only.

12.3 The above Circular was issued based on the Hon'ble Tamil Nadu Electricity Regulatory Commission's Order No.T.O.1-3 dated 24-06-2003 wherein the following has been specified:-

"The Tamil Nadu Electricity Board shall permit the owners of multi-tenant houses to get separate service connection for each tenement in the same building premises without collecting Development Charges and service connection charges to the additional service connections so that the tenants can avail the benefits of lower slab. This is applicable only to the existing multi-tenant house services."

12.4 It could be seen from the above, that the above order is applicable for the existing multi-tenant house services only and was issued to give the benefit of lower slabs to the tenants as it was represented that the consumer of multi-

tenant houses are being charged at the highest slab applicable for domestic tariff by the house owners.

12.5 Hence, the above is not applicable to the apartments and the learned advocate of the Appellant has also accepted the above during the hearing held on 19-01-2012.

13. Findings on the Second Issue:-

13.1. With regard to the applicability of development charges, the relevant Regulation 47 of the Distribution Code is reproduced below:-

47. Development Charges: The Licensee is authorized to collect development charges from LT/HT consumers at the rates specified by the Commission from time to time.

Note:—

(1) The above development charges (on time payment) shall be collected from all applicants both for new and additional loads.

(2) For additional loads applied in the existing service the same rates are applicable.

(3) In case of conversions from Single Phase to Three Phase the difference in the development charges shall be collected provided the initial development charges were paid while availing Single Phase Service.

(4) One fourth of the development charges shall be applied to temporary supplies”.

13.2 On a careful reading on the above Regulations, it can be concluded that the licensee is entitled to collect development charges from the consumer at the rates specified by the Commission.

13.3 In M.P. No. 41 of 2003, the Hon'ble Commission has fixed the consumers for various non-tariff related charges such as meter rent, meter caution deposit, reconnection charges etc. including service connection charges (metering) and development charges:-

As per Table 8 Development charges are Rs.400/- per service for LT, Single phase service and Rs.1400/- per service for LT 3 phase service.

13.4. As the development charges levied are as specified by the Commission, I am of the view that the development charges levied is in conformity with Regulation 47 of the Distribution Code.

14. Findings on the Third Issue:-

14.1 With regard to the applicability of the service connection charges, the relevant Regulation 45 (1) and (2) of Distribution Code are reproduced below:-

“45. (1) Service Connection Charges: Regarding the recovery relating to service connection charges:

(i) For connecting up an installation, the Licensee shall be entitled to charge the consumer the actual cost of materials upto meter board, labour, transport plus overhead charges.

(ii) Extension, improvement or alteration to service lines to meet any additional demand will be charged on the same basis. In each case, the consumer will be furnished with an estimate of the cost of the work and this amount is payable in advance. On completion of the work, a bill for the actual amount payable will be forwarded to the consumer and any difference shall be paid by the consumer or will be refunded by the Licensee as the case may be.

(iii) The estimate for service connection charges may also include the service connection charges for metering referred to in Regulations 45 (2). The licensee shall give due credit for the materials supplied by the consumer.

2. Service Connection Charges for metering:-

The licensee is authorised to collect service connection charges for metering.”

14.2 With regard to service connection charges, it could be seen from the Regulation that it consists of two parts. The first part covers charges towards laying of service line upto the installation of the consumer for connecting the consumer installation which includes the cost of materials upto meter board, labour, transport plus overhead charges and that may vary from consumer to consumer based on site condition. The consumer will be furnished with an estimate cost of the work which is payable in advance and on completion of works, the difference in amount will be collected or refunded to the consumer. The second part relates to charges towards metering which would vary depending upon the type of service connection whether it is a three phase service connection or single phase service connection and was fixed by the

Hon'ble Tamil Nadu Electricity Regulatory Commission in M.P. No. 41 of 2003 while fixing the various non-tariff related charges.

As per Table 1 Service connection charges for metering is Rs.250/- per service for single phase service and Rs.450/- per service for three phase service connection

14.3 As the service connection charges for metering levied is as specified by the Commission, I am of the view that it is in conformity with regulation 45(2).

15. Findings on the Fourth Issue:-

15.1 The Respondent in his Written Argument has stated that the Section 46 of Electricity Act, 2003 and Regulation 44 of the Distribution Code empowers the distribution licensee to collect from a person requiring supply of electricity and expenses reasonably incurred in providing any electric line or electric plant used for the purpose of giving that supply.

The said section 46 of the said Act is reproduced below:-

“46. Power to recover expenditure – The State Commission may, by regulations, authorize a distribution licensee to charge from a person requiring a supply of electricity in pursuance of Section 43 any expenses reasonably incurred in providing any electric line or electrical plant used for the purpose of giving that supply”.

15.2 A plain reading of the said Act, would indicate that the State Commission's authorization by means of regulation is necessary for charging the expenses

reasonably incurred in providing any electric line or electric plant used for providing a supply to a person.

15.3 The Hon'ble Tamil Nadu Electricity Regulatory Commission has notified the Tamil Nadu Electricity Distribution Code on 21-07-2004. The regulation 44 of the said code is reproduced below:-

“44. The Licensees are entitled to collect the charges from a person requiring supply of electricity any expenses reasonably incurred in providing any electrical line or electrical plant used for the purpose of giving that supply. These charges have also to be reviewed either periodically or at times of an urgent need for a revision. The consumers are liable to pay such charges as applicable and at the rates specified by the Commission from time to time through separate orders/ notifications. The various charges to be collected are furnished in the following clauses”.

15.4 It could be seen from the above Regulations that the Hon'ble Commission has also made provisions in the Regulation to collect the expenses reasonably incurred in providing any electrical line or electrical plant used for giving that supply from a person requiring supply but the charges shall be at the rates approved by the Commission.

15.5 The respondent has stated that in chapter 7 of the Distribution Code the recovery of charges have been specified wherein it has been clearly stated that licensee can collect the following charges (i) Service connection charges (ii) Meter Security Deposit (iii) Development Charges (iv) EMD & (v) Security Deposit.

The respondent cannot collect any charges beyond what is stated in code and he is not entitled to collect both the estimated cost as well as development charges and it will amount to double levy and liable to be refunded.

15.6 The relevant regulation 44, 45, 46 47, 48 and 49 furnished in chapter 7, recovery charges of the Distribution Code are reproduced below :

“44. The Licensees are entitled to collect the charges from a person requiring supply of electricity any expenses reasonably incurred in providing any electrical line or electrical plant used for the purpose of giving that supply. These charges have also to be reviewed either periodically or at times of an urgent need for a revision. The consumers are liable to pay such charges as applicable and at the rates specified by the Commission from time to time through separate orders/ notifications. The various charges to be collected are furnished in the following clauses.

45. (1) Service Connection Charges: Regarding the recovery relating to service connection charges:

(i) For connecting up an installation, the Licensee shall be entitled to charge the consumer the actual cost of materials upto meter board, labor, transport plus overhead charges.

(ii) Extension, improvement or alteration to service lines to meet any additional demand will be charged on the same basis. In each case, the consumer will be furnished with an estimate of the cost of the work and this amount is payable in advance. On completion of the work, a bill for the actual amount payable will be forwarded to the consumer and any difference shall be paid by the consumer or will be refunded by the Licensee as the case may be.

(iii) The estimate for service connection charges may also include the service connection charges for metering referred to in regulation 45(2). The licensee shall give due credit for the materials if any supplied by the consumers.

(2) Service connection charges for metering. The licensee is authorized to collect service connection charges for metering.

46. Meter Security Deposit: The Licensee is authorized to collect security for the price of meter from LT/HT consumers at the rates specified by the Commission from time to time and enter into an agreement for hiring of the meter. The Licensee may permit the consumer to install his/her own meter. However, it shall be calibrated by the Licensee.

Note : -

1. The above rate shall also apply to L.T. Temporary Supply.

2. Interest is payable on the above deposit at the rate specified by the Commission from time to time. The deposit shall be refunded after termination of service agreement, as per rules.

3. *If a consumer elects to purchase his own meter, he is not required to pay Meter Security Deposit.*

47. *Development Charges: The Licensee is authorized to collect development charges from LT/HT consumers at the rates specified by the Commission from time to time.*

Note:—

(1) The above development charges (one time payment) shall be collected from all applicants both for new and additional loads.

(2) For additional loads applied in the existing service the same rates are applicable.

(3) In case of conversions from Single Phase to Three Phase the difference in the development charges shall be collected provided the initial development charges were paid while availing Single Phase Service.

(4) One fourth of the development charges shall be applied to temporary supplies.

48. *Earnest Money Deposit (EMD) : The Licensee is authorized to collect Earnest Money Deposit from all applicants for HT and LT industrial applicants at the rates specified by the Commission from time to time. This will be adjusted against the quantum of initial Security Deposit payable by the applicants before availing supply.*

49. *Security Deposit :The Licensee is authorized to collect initial security deposit at the rates specified by the Commission from time to time. Wherever Earned Money Deposit has been adjusted against the initial security deposit the balance if any will be collected from the applicants before giving supply.”*

15.7 On a careful reading of regulation 44 of the Distribution Code, it is noted that the licensee is entitled to collect the expenses reasonably incurred in providing any electric line or plant used for the purpose of giving supply. But, the charges shall be as approved by the Commission. In the last line of the said regulation it has been stated that the various charges to be collected are furnished in the following clauses. In the subsequent clauses, the following charges alone specified (1) Service Connection Charges (2) Service Connection charges for Metering (3) Meter Security Deposit (4) Development Charges (5)

EMD & (6) Security Deposit. The extension cost covered in the estimates has not been covered.

15.8 Further, the Hon'ble Commission has also issued order for the various miscellaneous charges to be recovered from the consumer in MP No. 41 of 2003. In the above order, all the above charges have been specified but Hon'ble TNERC has not fixed the charges for laying the service line since it varies from consumer to consumer. In the above order also the charges for collecting the extension cost has not been specified.

15.9 Further, the TNEB in its letter dt.14.8.2008 has furnished a proposal for collecting the extension cost under sections 44 & 45 of Electricity Distribution Code and also instructed the CEs & SEs to collect the above cost in anticipation of approval from Hon'ble TNERC. But the above proposal has been stayed by the Hon'ble TNERC in its order dt.19.9.2008. The relevant portions of the stay order are furnished below .

“3. Lr.No.CE/Comm/EET/AEE1/F.TNERC/D.120/08 dated 14.8.2008 of Tamil Nadu Electricity Board contains the following violations of the Regulations of the Tamil Nadu Electricity Regulatory Commission.

- a. Collection of extension cost and strengthening cost for the LT Line/EHT Line constitutes violation of Regulation 45(1) (ii) of Tamil Nadu Electricity Distribution Code.*
- b. Collection of the proportionate cost of distribution transformer/power transformer is a violation of regulation 45(1)(ii) of the Tamil Nadu Electricity Distribution Code.*
- c. Collection of cost of new breaker and current transformers and potential transformers is a violation of Regulation 45(1)(ii) of Tamil Nadu Electricity Distribution Code.*

d. In para 2 of Lr.No.CE/Comml/AEE1/F.TNERC/D.147/08 dated 8.9.2008 Chairman / TNEB has reported that meter cost is being collected. This constitutes violation of Regulation 46 of the Tamil Nadu Electricity Distribution Code.

Therefore, the charges prescribed in Lr.No.CE/Comml/EET/AEE1/F.TNERC/D.120/08 dated 14.8.2008 and the order of the Tamil Nadu Electricity Board on recovery of the cost of meters are stayed with immediate effect.”

15.10 On a careful reading of the above stay order of the Hon'ble TNEB it is noted that there is no approval from Hon'ble TNERC for collecting the extension costs and strengthening cost from the consumers.

15.11 However, if charges towards laying of service line if any is included in the estimate then it has to be deducted as the above is to be collected from the consumer as per regulation 45(i) of the Distribution Code.

15.12 In view of the above, I am of the opinion that estimate cost collected by the respondent is not in conformity with the orders of the Hon'ble TNERC.

16. Findings on the Fifth Issue :

16.1 The respondent argued that the development charges are paid by the intending consumer and the estimate charges are paid by the promoter. The estimate charges were collected from the promoter as the appellant has given an undertaking agreeing to pay the expenses towards erection of pole lines and distribution transformers for effecting service connection to the houses constructed by him and the above works are done as per the request of the appellant. Further he also argued that as the appellant has agreed for paying

the expenses, higher capacity transformers were erected instead of the actual requirement to enable the appellant to get service connection for the dwelling units which were under construction at that time.

16.2 The appellant argued that the board acted illegally in collecting the capital cost from the appellant. Since, the respondent is an instrumentality of the state it has to act fairly and cannot make unjust enrichment.

16.3 The powers to prescribe charges from a person requiring a supply of electricity is vested in the State Commission under section 46 of the Electricity Act and the Hon'ble Commission has stayed the proposal of the licensee to collect the cost of extension. Hence, I am of the view that the extension cost could not be collected from the consumer even if an undertaking is furnished by the consumer agreeing to pay such expenses.

17. Conclusion:-

17.1 In view of the findings in paras 13 to 16 above, I am of the view that the service connection charges for metering and the development charges collected from the Appellant are in conformity with Section 43 of the Electricity Act and Regulations 44, 45(2) and 47 of the Tamil Nadu Distribution Code. But In view of my findings in para 16 the extension cost collected is to be returned to the consumers as Hon'ble TNERC has already stayed collection of such charges. M/s Viswas Promoters have stated that they are still the service owners for 10 services and have changed the services in their name to the associations in about 68 services. Hence, they argued that they are also the consumers. To this respondent argued that all the 68 services referred to by the appellant are

in the name of the welfare associations of the Agrini & Vasudhara Enclaves only and submitted the documents in support of their arguments. On a perusal of the documents it is noted that 68 services are in the names of association which the appellant also agrees. The appellant has only informed that they have been transferred.

17.2 The promoters of the Agrini and Vasudhara enclaves, M/s Viswas Promoters (P) Ltd., has paid the estimate charges. But they may have collected the above estimate charges from the persons who have purchased houses / Flats in the above schemes. Hence, if the amount is refunded to the promoter and is retained by him, then it may amount to unjust enrichment.

17.3 In view of the above, the licensee is directed to verify from records whether the existing consumers have contributed any amount towards, the estimate cost and if so, the refund may be arranged to be paid to all the services connection owners of the Agrini and Vasudhara Enclaves who have paid estimate cost proportionate to their area of entitlement of the premises and the promoter is also entitled to get refund for the services retained by him. If on verification, it is found that the existing consumers did not contribute any amount towards estimate charges, then the amount paid by the promoters towards estimate charges may be refunded to the promoter.

18. With the above findings, the A.P. No. 89 of 2011 is finally disposed by the Electricity Ombudsman. No costs.

(A.Dharmaraj)
Electricity Ombudsman

To

1. Thiru S Seetharaman
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