



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No.70 of 2011

Thiru S.A.Mohammed Ibrahim
S/o. Thiru Abdul Rahman Rowther
No.90, Main Kandy Street
Beemanagar
Trichy District.

.... Appellant
(Represented by Thiru. Mohammed Iqbal)

Vs.

1. The Executive Engineer (O & M)
Urban / TANGEDCO
Tennur
Trichy – 620 017.
2. The Assistant Executive Engineer (O&M)
Contonment / TANGEDCO
Trichy – 620 001.

... Respondents
(Represented by Thiru.Krishnamoorthy/
EE/Urban and others)

Dates of hearing : 5-1-2012, 4.4.2012 & 12.6.2012

Date of order : 25.7.2012

The Appeal Petition No.70 of 2011 came up for hearings before the Electricity Ombudsman on 5-1-2012, 4.4.2012 & 12.6.2012 Upon perusing the

above petition, the counter affidavit and other documents furnished, the following order is passed by the Electricity Ombudsman:-

ORDER

1. **Prayer of the Appellant :-**

The Appellant prayed to set aside the order dated 14-2-2011 of Consumer Grievance Redressal Forum of Trichy Electricity Distribution Circle / Metro and to disconnect the new service connection No. 212-050-584 effected in the disputed site at Door No. 72/80, Heber Road, Beema Nagar, Trichy – 620 001. He has also prayed for taking departmental action against the erred officials for not following the procedure in PDC of Service Connection No. 212-050-063 and 212-050-064.

2. **Facts of the case:-**

The Appellant filed his complaint before the Consumer Grievance Redressal Forum, Trichy on 13-12-2010. His prayer before the Consumer Grievance Redressal Forum, Trichy was to disconnect the new Service Connection No.212-050-584 effected in the disputed site and to recommend departmental action against the officials who are responsible for the above. The Consumer Grievance Redressal Forum, Trichy in its order dated 12-1-2011 rejected the prayer of the Appellant. Hence this appeal has been filed to the Electricity Ombudsman.

3. Contentions of the Appellant:-

3.1. The lower authority failed to consider that there is a legal battle between the Appellant and his step-mother family members right from 1975 onwards.

3.2. In O.S. No. 421 of 1975 the Court directed the Appellant and his elder brother to surrender the possession of House No. 80 (New No.72) Heber Road, Beema Nagar, Trichy – 600 001.

3.3. As per final decree obtained in O.S. No. 421 of 1975 the possession belongs to the Appellant.

3.4. No Execution Petition filed in the final decree in O.S. No. 421 of 1975 against the Appellant as on date.

3.5 The appellant's step mother family have not made any attempt to transfer the service in their name after getting a favourable decree from the court in the year 1977.

3.6 Respondent 1 & Respondent 2 have not received any documentary proof to show that the appellant's step mother family members are in lawful occupation of the disputed premises.

3.7 The respondent have not received death certificate and legal heir certificate of the appellant's father on whose name the service existed before PDC.

3.8 As per the Member 2 of the CGRF the PDC done is not in order, but CGRF passed no order for taking departmental action on the erred official.

3.9 The availability of super structure for more than 4 decades and the appeal suit pending in the trail court Trichy have not been considered at the time of receipt of PDC request.

3.10 The tax paid receipt is wrongly construed as a basis for the possession of the disputed property.

3.11 The respondents have not verified the construction approval from Trichy City Corporation while objections exists from May 2010.

3.12 Appellant objection from may 2010 were not considered by the respondent.

4. Contentions of the Respondent in Counter:

4.1. The Appellant is not a consumer under TANGEDCO / TNEB in respect of S.C. No.212-050-584.

4.2. The Appellant is not an approved person or complainant as contemplated under the Act and Rules.

4.3. The grievance of the Appellant is not relating to service of electricity.

4.4. The Appellant ought to have approached the competent court for any remedy.

4.5. A dispute among his relatives over the property is pending before the Hon'ble High Court of Madras.

4.6 PDC of old service connection and effecting of new service connection was carried out by the respondents according to the relevant regulation.

5. Hearings held by the Electricity Ombudsman :

5.1 In order to enable the appellant and the respondents to putforth their arguments in person, a hearing was held before the Ombudsman on 5.1.2012.

5.2 However, on 5.1.2012 Thiru. A,. Syed Abuthagir, S/o Abudl Rahman has filed a implead petition to implead him in the appeal as the service prayed to be disconnected by the appellant is in his name.

5.3 In order, to hear the impleaded respondent also along with the appellant & respondent a hearing was proposed on 13.3.2012. But, the above hearing was adjourned to 14.4.2012 as requested by the appellant..

On 4.4.2012, Thiru. Syed Abuthagir the impleaded respondent has not attended the hearing . It was reported by him that his counsel was not able to be present on that day due to heavy traffic jam. Hence, a hearing was proposed on 16.5.2012 which was adjourned to 12.6.2012 as prayed by the appellant.

6. Arguments of the Appellant :

6.1 The appellant was represented by Thiru. Mohammed Iqbal in the hearing held on 5.1.2012 . He reiterated the contents of the appeal petition.

6.2 Thiru. Mohammed Iqbal argued that PDC of service connections No.212-050-063 & 212-050-064 is not correct. He argued that the service is in the name of (Late) Thiru. S. Abdul Raheman , the father of the appellant. But consent of all the legal heirs of the service connection owners was not obtained for the

permanent disconnection. He argued that the above PDC is not correct. He also cited the views of member I of the CGRF's in support of his argument and requested for taking action on those officials who are responsible for the above mistake. However, he said that he is not asking for restoration of the service.

6.3 Regarding effecting of new service connection in the name of Thiru. A. Syed Abuthagir and others, he argued that his application for a new service connection was rejected whereas, new service connection was effected in the name of Thiru. A. Syed Abuthagir and co owners inspite of his objections to effect service connection in the disputed site detailing 13 nos objections in letter dt.22.11.2010. The representative of the appellant argued that as a civil case is pending at the Madurai Bench of Madras High Court over the ownership of the property, the licensee would not have effected the service. He informed that the opinion of Govt. Pleader referred by the respondent is the opinion given by GP for police dept.,

6.4 He argued as the tax receipt based on which the service was effected is a vacant land tax receipt and he also argued that as per Trichy Corporation Charge Sheet, the date of offence (construction of building measuring 52' x 32' with Asbestos Sheet) is noted as 10.12.2010 whereas the service was given on 29.11.2010. Hence, the service is given for a vacant land.

6.5 The representative of the appellant also pointed out that the indemnity bond was given in form 6 by the service seeker. The Indemnity Bond in form 6 is required only when the intending consumer is not the owner of the premises. But, no enhanced security deposit was collected which are violation of the rules.

6.6 He also stated that the copy of the Power of Attorney was attested on 22.11.2009 whereas the PDC was done 30.5.2009. Hence, he argued that the general power of Attorney would not have been furnished along with the application seeking permanent disconnection of the service.

7. Argument of the Respondent :

7.1 The respondent was represented by Thiru. S. Krishnamoorthy EE/U/Trichy, Thiru. Balasubramanian AEE/O&MContentment & Thiru. Vinod Pandian Advocate on 5.1.2012.

7.2 Thiru. S. Krishnamoorthy reiterated the contents of the counter. he argued that Thiru. Syed Abuthagir has given an application for permanent disconnection of Service Nos 212-030-62 & 63 along with a consent of the other legal heirs. He also furnished the Trichy District Munsiff Court order No.421/75 in support of the ownership of the land. On field inspection, it was found that the building was in damaged condition and was also vacant . Hence, permanent disconnection of the above service was done after collecting the necessary charges. There was no objection for disconnecting the services.

7.3 Regarding rejection of the appellants application for a new service connection at the disputed site, the AEE/O&M/contentment informed that the appellant has enclosed only 2007 receipt in the name of Thiru. Abdul Rahuman , hence he was advised to produce the latest tax receipt issued by the Trichy Corporation in his name . He was also requested to come for a joint inspection to prove that the property is under his enjoyment. But, he left the office and sent the same application by speed post. As required documents are not

enclosed, the application was recorded and the same was informed to the appellant on 26.11.2010. On the same date, an application was received from Thiru. A. Syed Abuthagir, Tmt. Safia Begam and Tmt. Abitha begam for a new service connection duly enclosing vacant land tax receipt issued by corporation in Trichy dt. 20.1.2011. Copy of judgment issued in OS No.421/75 and copy of judgment delivered on 19.10.2009 in case No.203/2006 in the court of District Judge Trichy in support of the ownership of the premises at 72/80 Heber Road, Trichy. Hence, the above was considered. Further he also informed that as there was no stay on effecting service connection and as TNEB is not a party in case No.858/2010 which is pending at Madurai Bench of Hon'ble High Court of Madras, the service connection was effected for the Asbestos shed constructed using hollow block in the name of Thiru. A. Syed Abuthagir and other after inspecting the site.

7.4 Regarding getting indemnity bond, from the above persons while effecting service connection, as there was a dispute in the land, the indemnity bond was obtained. He also argued that the indemnity bond was obtained from Thiru. Syed Abuthagir not as a tenant but to safeguard the interest of the Board as there was a dispute in the land.

8. Written Argument of the Appellant :

8.1 The appellant has furnished a copy of counter affidavit filed vide. SA 858/2010 in Madras High Court, Madurai Bench in support of the case which is pending on the ownership of the premises at 80/72 Hebers Road where service connection No.212-050-584 was effected.

8.2 He also furnished a charge sheet filed by Trichy Corporation in support of his argument that the site was vacant and there is no construction while effecting the service wherein the date of offence is noted as 10.12.2010 whereas the service was effected on 29.11.2010. He has also enclosed a copy of the order dt.10.11.2011 issued by the Judicial Magistrate Court No.5 In the order a fine of Rs.750/- was levied on Thiru. Syed Abuthagir for the illegal construction as he has accepted the offence.

8.3 The appellant also enclosed the photo graph showing the disputed premises after demolition of the building.

In the written argument submitted on 16.6.2012, he reiterated the same arguments except indicating the acceptance of the representative of the impleaded party that no execution petition was filed by him. He argued that only through such execution petitioner Thiru. Syed Abuthagir and others, can become owner of the property.

9. Written argument of the Respondent :

9.1 The respondent has filed a written argument on 13.1.2012. In the above he has also given the arguments which were put forth by him during the hearing on 5.1.2012. The point not covered in the personal hearing is furnished below :

9.2 The respondent argued that in the Trichy Judicial Magistrate Court No.5 also only fine was levied on Thiru. Syed Abuthagir and others and there is no observation regarding the ownership of the premises. Hence, he prayed dismissal of the petition.

9.3 In his written argument dt.25.6.2012, he has given two more points beside, the things already furnished which are alone furnished below :

(i) As per TNERC's Regulations, the new service connection applicants except Agricultural and Hut has to furnish proof of ownership of the premises. Further production of any one of the following document is sufficient namely sale deed or property /water /sewerage tax receipt. As Thiru. Abuthagir and his co owners have furnished vacant land tax receipt in proof of their ownership, the service was effected.

(ii) He further, informed that planning approval was not obtained for the houses and premises as per Memo no.CE/Comml/EE3/AEE2/F.Planning Permission/D.No.874/2006 (Tech.Branch) Dt.22.11.2006.

10. Argument of the Impleader :

Thiru. A. Riaz Ahamed has represented on behalf of Thiru. Syed Abuthagir the impleaded on the hearing conducted on 12.6.2012. He argued that the property is in their name and they are paying the tax and the property is under their possession only. He also informed that they are running muttan stall , tea shop etc., in the above building . He also argued that nobody has objected the demolition . He also informed that RCP was filed by him which shows he is in possession of the property. He also argued that there is no need to file an execution petition for taking possession of the property as he is already having the possession of the property.

11. Issues for Consideration :

I have heard the arguments purforth by the appellant respondents and the Impleaded petitioner. On a careful consideration of the rival submissions and perusal of documents, I find the following are the issues to be considered.

- i) Whether the permanent disconnection of service No. 212-050-063 & 212-050-64 is in order ?
- ii) What are the rules & regulations for effecting a service connection as per the code provisions ?
- iii) Whether the rejection of service connection applied by the appellant is correct ?
- iv) Whether the service effected in the names of Thiru. Syed Abuthagir and others could be disconnected as pleaded by the Appellant ?

12. Findings on the First Issue :

12.1 The appellant argued that the permanent disconnection of service connection Nos 212-050-063 & 212-050-064 is not correct as consent of legal heirs of the late Thiru. S. Abdul Rahman who was the owner of the service was not obtained . The Member II of the CGRF has also opined that for permanent disconnection death certificate , legal heirs certificate and no objection from other legal heirs are required as ordered by CGRF in petition No.12/2011.

12.2 Hence, he observed that the permanent disconnection is not in order. However, he remarked that, reconnection could not be ordered as the buildings are demolished and it is also not a prayer of the appellant .

12.3 The appellant also has not asked for reconnection, but he only prayed to take action on the errred officials.

12.4 The respondent argued that as Thiru. Syed Abuthagir, and other, have submitted a copy of judgment of Trichy District Munsiff Court in OS No.421/75. As per the above judgment, Tmt. Avva Bibi W/o Abdul Rahiman, Thiru. Syed Abuthagir S/o Abdul Rahiman Abitha Begum, W/o Sowkth Ali Safia Begum W/o Musthafa Kamal are the owners of the premises 72/80, Heber Road, Trichy. Tmt. Avva Bibi has expired after issue of the Court Order. The death certificate and the legal heir certificates of Tmt. Avva Bibi were obtained Syed Abuthagir, Abitha Begum & Tmt. Safia Begum are the legal heirs of Tmt. Avva Bibi, Tmt. Safia Begum and Abitha Begum have given power of attorney to Thiru. Syed Abithagir on the above property and a copy of the above registered general power of attorney was also furnished by the Thiru. Abuthagir while applying for the permanent disconnection. The site was inspected and it was observed that the meter was hanging dangerously and the building was also in damaged condition. Further, nobody was also living there. Hence, based on the above, the permanent disconnection was made as per the request of Thiru. Abuthagir and also on consideration of the safety aspects, the service was permanently disconnected after collecting the necessary charges.

12.5 Regarding permanent disconnections of the service, regulation 33(3) & 33(5) of Distribution Code is reproduced below :

“(3) The agreement can be terminated by the consumer at any time by giving one month’s notice in writing to the Licensee expressing his/her intention to do so.

(5) In the case of termination of the agreement either by the consumer under sub – regulation (3) or by the licensee under sub – regulation (4), as the case may be, the licensee shall recover the dues if any due from the consumer after making such adjustment of the dues, due to him by the consumer as may be necessary to clear the dues from the consumer against the security deposit or additional security deposit or any other deposit made by the consumer and after making such adjustment, refund the balance deposit, if any, to the consumer within three months from the date of termination of the agreement ”

12.6 As per regulation 33(3) of the Distribution Code, the agreement can be terminated by the consumer at any time by giving one month's notice in writing to the licensee expressing his intention to do so.

12.7 In the case on hand the agreement holder for SC No. 212-050-063 & 64 is Late Thiru. Abdul Reheman. Hence, the appellant argued that no objection from all the legal heir of Thiru. Abdul Reheman is necessary.

12.8 But, in the impugned order dt.29.1.1972 of Court of Subjudge, Trichy in OS No.421 of 1975, it has been interalia observed as follows :

- “1. The suit items 2,3,4 and 5 shown as in the Commissioner's plans and report Exs.C2, C3, C4 and C5 be and hereby are allotted to the Plaintiffs;*
- 2. The Defendants do put the Plaintiffs in possession of the above said allotted items in the suit properties;*
- 3. The Plaintiffs do deposit the owelty sum of Rs.2000/- into court on or before 29-3-1977;*
- 4. The Commissioner's report and plans Exs.C1 to C5 will be appended to this final decree;*

5. *The costs of final decree will come out of the estate.*

Description of properties:-

1. *House bearing Door No.90 Kandi Street, Tiruchirappalli.*
2. *Building bearing Door No. 25 at New Kandi Street, Trichy – 1 (Store)*
3. *Building bearing Door No. 80 at Heber Road, Trichy -1 (Store)*
4. *Building bearing Door No. 247 at Big Bazaar, Trichy -1 (shop)*
5. *Building bearing Door No.19 at Kajjar Street, Tiruchy -1 (store)”*

12.9 From the above order and decree, it is noted that the suit property bearing Door No.80, at Heber Road, Trichy is allotted to the plaintiffs (viz) (1) Avva Bibi widow of S. Addul Rahiman (2) Thiru. S.A. Syed Abuthagir , S/o Abdul Rahiman, (3) Abitha Begum W/o Sowkah Ali and Tmt. Safia begum W/o Musthapa kamal. Hence, all the above persons have become the lawful owners of the premises at 80, Hebers Road, Trichy not by purchasing the property but by partition ordered by a court . Hence, the lawful owners of the premise are the lawful owner of the electric services also. Hence, the disconnection of service made as per the request of the above person is held as correct.

12.10 Hence, the first issue is decided in favour of the respondent.

13. Findings on the Second Issue :

13.1 The regulation 27 of the Distribution Code deals with requisition for supply of energy is reproduced below :

“(1) The provision regarding the duty of Licensee as detailed in section 43 of the Act to supply electricity on request is reproduced below:

(1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply : Provided that where such supply requires extension of distribution mains, or Commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or Commissioning or within such period as may be specified by the Appropriate Commission. Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area. Provided that the licensee will refuse to supply electricity to an intending consumer who had defaulted payment of dues to the licensee in respect of any other service connection in his name

Explanation:- *For the purposes of this sub-section, “application” means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.*

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) : Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.”

(2) Supply to Agricultural category: Application for supply to agriculture category shall be in Form 2 of Annexure III. In respect of the agricultural category, this provision shall be governed by the directives issued by the Commission from time to time, on the basis of the guidance on this matter by

the National Electricity Policy (as stipulated in sub section 4 under section 86 of the Act) and the policy directions in public interest given by the State Government under sub section (1) of section 108 of the Act.

(3) The application for HT supply shall be in Form 4. Application for LT supply (except Agricultural category) including Hut service shall be in Form 1 & 3 of Annexure III.

Note : Requisitions for supply of energy (Applications) , even if incomplete, and irrespective of whether they are handed over in person or by post, should be acknowledged in writing. If they are in order, they shall be registered immediately and acknowledged. If they are incomplete, the defects should be indicated and returned without registration.

(4). An intending consumer who is not the owner of the premises shall produce a consent letter in Form 5 of Annexure III to this code from the owner of the premises for availing the supply. If the owner is not available or refuses to give consent letter, the intending consumer shall produce proof of his/her being in lawful occupation of the premises and also execute an indemnity bond in Form 6 of the Annexure III to this code indemnifying the licensee against any loss on account of disputes arising out off effecting service connection to the occupant and acceptance to pay security deposit twice the normal rate.

(5) Omitted as per Commission's Notification No.TNERC/DC/8-6, dated 10.9.2007(w.e.f 3.10.2007).

(6) Where the intending consumer's premises has no frontage on a street and the supply line from the Licensee's mains has to go upon, over or under the adjoining premises of any other person (whether or not the adjoining premises is owned jointly by the intending consumer and such other person), the intending consumer shall arrange at his/her own expense for any necessary way leave, licence or sanction before the supply is effected. Even when the frontage is available, but objections are raised for laying lines / cables/ poles through a route proposed by the Licensee involving minimum cost and in accordance with the technical norms, to extend supply to the

intending consumer, the intending consumer shall arrange at his/her own expense necessary way leave , licence or sanction before the supply is effected. .Any extra expense to be incurred by the Licensee in placing the supply line in accordance with the terms of the way leave, licence or sanction shall be borne by the intending consumer. In the event of way-leave, licence or sanction being cancelled or withdrawn, the intending consumer shall at his/her own cost arrange for any diversion of the service line or the provision of any new service line thus rendered necessary.

(7) It shall not be incumbent on the Licensee to ascertain the validity or adequacy of way-leave, licence or permission obtained by the intending consumer. The consumer is liable for damages, if any, claimed by the person giving way-leave, licence or permission.

(8) Omitted as per Commission's Notification No.TNERC/DC/8-6, dated 10.9.2007(w.e.f 3.10.2007).

(9) In case of LT three phase supply, the Licensee shall ensure the following:

(i) For all LT three phase services other than domestic and agricultural category, when the contracted demand exceeds 18.6 KW (25 HP), the meter in the service shall have the KW demand recording facility.

(ii) For all LT three phase services other than domestic and agricultural category, when the contracted demand does not exceed 18.6 KW (25 HP) and KW recording facility is not available in the meter, the consumer shall not be permitted to have excess connected load over and above the contracted demand. The consumer shall however be permitted to opt for meters with KW demand recording facility, allowed to have connected load in excess of contracted demand and covered under the provisions of the excess demand charges as stipulated in the Supply Code.

(10) Notwithstanding anything contained in this clause, the Licensee will refuse to supply electricity to an intending consumer for any industry, including welding purpose in any predominantly residential area , if in the opinion of the Engineer, such supply will cause voltage fluctuations in the supply to the area and consequent inconvenience in that area. The decision

of the Engineer as to whether there will be voltage fluctuations in the said area shall be final and binding on the intending consumer. "Residential" area means area recognized as such by Municipal Corporations, Municipalities, Townships, Panchayats or such other local authorities constituted under any law for the time being in force. If however, the area under consideration is declared as a residential cum industrial area by the competent bodies, the above provision shall not apply.

(11) The requirement to be notified by the Authority through regulations shall be complied with for availing the service connection.

(12) Supply shall be given in poromboke land on production of —

(i) No Objection certificate obtained from the Officer (not below the rank of Deputy Tahsildar) or

(ii) Where such No Objection Certificate could not be produced by the applicant for service connection the following undertaking shall be furnished:-

(1) "I am aware that I am liable to be evicted and for supply disconnection at any time if the lands are required by the Government and / or any dispute arises at a later date and that electricity supply given in this regard will not confer any claim on ownership of the land.

(2) I am aware that the above undertaking shall not confer permanent and full right to the ownership of the land.

(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.

(15) In case of flat system and shopping complexes where more than one flat or shops are located with permanent physical segregation, more than one service shall be given.

(16) In case of non compliance by the Licensee, of the provisions as above, the intending consumer can approach the Consumer Grievance Redressal Forum established under section 42(5) of the Electricity Act 2003.

Explanation:- For the removal of doubts, the expression “other compliances” occurring in the Explanation to section 43(1) of the Act as reproduced in sub-regulation (1) above, shall include the following, namely:—

(a) the compliance by the intending consumer of other laws of the State of Tamil Nadu relating to the obtaining of permit or approval or sanction or consent from the appropriate authorities as mentioned in such laws in regard to construction, alteration or repairs to buildings or establishment of new industries or factories or other establishments for which supply of electricity is required by such intending consumer;

(b) the compliance by the intending consumer of the provisions contained in sub regulations (4), (11) and (12) above;

(c) the compliance by the intending consumer of any decree or order or judgment of any civil court in regard to the supply of electricity or other requirements mentioned in such decree or order or judgment.

13.2 In the format for requisition for supply of LT service except agri & Hut it has been specified that the following documents shall be accompanied with the application.

- (i) Proof of ownership (Sale deed or property / water /sewerage tax receipts)
- (ii) Consent letter from the owner wherever applicable.

13.3 On a careful reading of regulation 27 of the distribution Code, it is noted that for availing a LT service connection, the intending consumer has to furnish the LT application in the format prescribed by the licensee (Hon’ble TNERC has prescribed the format) along with documents showing payment of necessary

charges and as other compliance. The applicant has to furnish proof of ownership of the property for which the service is requested and consent letter from the owner, if he is not the owner. The appellant has to produce NOC or undertaking if he is seeking service for a poromboke lands.

14. Findings on the Third Issue :

14.1 The appellant informed that his application for effecting a service in the disputed site was returned.

14.2 The respondent informed that the appellant has enclosed property tax receipt for the year 2007, which was in his father's name and have not enclosed the current tax receipt. Hence, he was advised to produce the latest tax receipt.

14.3 Further, to establish that the above premises is under his enjoyment, he was also requested to come for a joint inspection of the site. But the appellant has neither furnished the latest tax receipt in his name nor come forward for a joint inspection. Hence, his application was recorded and the fact was also intimated to him in letter dt.26.11.2010.

14.4 It is noted from the findings in second issue that one of the documents to be enclosed along with the application seeking LT supply is proof of ownership of the property (or) consent letter from the owner for effecting service in the name of the intending consumer.

14.5 It is noted that the appellant has not produced the latest tax receipt or any other document to prove his ownership of the property but only produce tax

receipt for the year 2007 in the name of his father. Hence, I am of the view that the rejection to the application seeking service connection by the appellant is correct.

15. Findings on the Fourth Issue :

15.1 It is reported by the respondent that Thiru. Syed Abuthagir and other co owners have given the following documents while applying for new service connection in No.78/80, Heber Road, Trichy – 1.

i) Vacant land tax receipt issued on 20.11.2010 for the year 2010-11 in the names of Thiru. Syed Abuthagir, Tmt. Safia Begum and tmt. Abitha Begum by Trichy Corporation.

ii) Copy of judgment awarded in O S No.421/75

iii) Copy of judgment awarded in AS No.203/2006 by the principal district judge, Trichy.

iv) Indemnity Bond.

15.2 The respondent has stated that as Thiru. Syed Abuthagir & others have given proof for the ownership of the premises, service under tariff V was given for the Asbestos Shed on 29.11.2010 and the service connection No. is 584.

15.3 The Appellant argued that service connection was effected for a vacant land citing the vacant land tax furnished by the Thiru. Syed Abuthagir. He also argued that there is no structure or shed when the service was effected citing the charge sheet issued by the Trichy Municipal Corporation for construction of shed measuring 52"x32" by erecting steel pillar and asbestos sheet wherein

the date of offence was noted as 1012.2010 whereas the service connection was effected on 29.11.2010.

15.4 He also argued as per the other compliance, specified in the Distribution Code, the approval from the competent authority for the shed shall also be furnished by the applicants seeking service connection . But, no such approval was obtained by the respondents. It was also evident that no such approval was available at that time as penalty was levied for constructing the above shed without approval by the Trichy Judicial Magistrate Court No.V.

15.5 He also argued that Indemnity Bond in form 6 is obtained by the licensee from Thiru.Syed Abuthagir and co owners of the premises. The form 6 is normally furnished by the persons who are not the owners of the premises. Hence, licensee is having doubt about the ownership.

15.6 The Appellant also argued that the ownership of the premises is under dispute and a case in this regard is pending in the Madurai Bench of Hon'ble High Court of Madras in SA 858/2010.

15.7 In view of the reasons furnished in para 15.3 to 15.6, the appellant argued that the service connection effected is not as per rules and to be disconnected.

15.8 The respondent argued that Thiru. Syed Abuthagir and other co owners have given proof of ownership of premises such as vacant land tax receipt issued for the year 2010-11 in their favour, copy of judgment awarded in OS No.421/75 wherein the said premises was allotted to applicants. Further, they have also furnished a copy of judgment awarded in AS No.203/2006 wherein he appeal made by the appellant was dismissed by the District Judge of Trichy.

15.9 With regard to obtaining indemnity bond in form 6 the respondent argued that the indemnity bond, has been executed by the applicant as owner of the premises only. It was obtained only to safe guard the Board's interest as it was learnt that there is a dispute over the property.

15.10 On a careful reading of the copy of indemnity bond furnished it is noted that the above was executed by Thiru. Abuthagir and co-owners as the owner of the property only and not as the tenant. Hence, it is an additional document obtained by the respondent to safeguard the interest of the licensee.

15.11 With regard to obtaining a plan approval, the respondent informed in his written argument dt.25.6.2012 that as per Memo No.CE/Comml/EE3/AEE2/F. Planning Permission /D.No.874/2006 (Tech.Branch) dt.22.11.2006 for individual constructions and individual houses no planning permit was obtained. He also enclosed the copy of the said memo in support of his argument.

The relevant para of the memo is reproduced here.

"The following instructions are issued superseding the instruction issued vide reference (2).

In future newly constructed buildings have to be classified as follows.

(i) Individual constructions and individuals constructing his /her own building or buildings for his /her residential premises or non residential premises.

(ii) Special building and Multistoreyed building.

Special building means : Buildings with ground floor plus three floors (Total four floors).

Multistoreyed building means : Buildings constructed with more than four floors.

In case of individual constructions and individual constructing his/her own building or buildings for his/her residential premises or non residential premises, which do not fall under the category of multi-storeyed or special building giving of electricity service connection is not contingent upon the issue of compliance certificate based on planning permit and , compliance certificate based on planning permit need not be insisted from the applicant to effect electricity service connection.

In respect of multistoreyed buildings and special buildings, planning permit and compliance certificate issued by the competent authority must be insisted while applying electricity service connection to the said buildings.

15.12 On a plain reading of the above memo it is noted that for other than special buildings and multi-storeyed building giving of electricity service connection is not contingent upon the issue of the compliance certificate based on planning permit and compliance certificate based on planning permit need not be insisted from the applicant to effect service connection.

15.13 In memo No.CE/Comm1/EE3/AEE2/F.Planning Permission/D.1024 (Tech. Branch) Dt.29.12.2006 in para 3, the following instruction was issued.

“For other buildings (ie) building not coming under special building and multi-storeyed building category service connection should be effected without delay as per TNERC’s Distribution of Standards of Performance”

15.14 In view of the above, it is noted that licensee is not insisting plan approval for other than multi-storeyed building and special buildings.

15.15 The service effected is for a shed only. Hence, it will not be coming under special building (or) multi-storeyed building. Hence, as per licensee’s circular the planning permit is not insisted by the respondent.

15.16 It is noted that the Judicial Magistrate court No.5 has levied a fine of Rs.750/- on Thiru. Syed Abuthagir in its order dated 10.11.2011 for the above construction as he has accepted the offence. It is also noted that the Trichy Corporation has levied a tax of Rs,8760/- per half year for the shed from 1.4.2011 vide its order dated 16.2.2012.

15.17 Termination of agreement has been dealt in regulations 33 (3) & (4) of the Distribution Code. The said regulations are furnished below :

“(3) The agreement can be terminated by the consumer at any time by giving one month’s notice in writing to the Licensee expressing his/her intention to do so.

“(4) The Licensee can terminate the agreement of a consumer at any time by giving one month’s notice if the consumer has violated the terms of the agreement or the terms and conditions of this Code or the provisions of any law relating to the agreement including the applicable Acts and Rules under the Act and other orders from time to time. The Licensee shall inform the consumer regarding the grounds for such termination. It is obligatory on the part of the Licensee to inform the consumer regarding the grounds for such termination.”

15.18 It is noted that from regulation 33(4) of the Distribution Code, that the licensee can terminate the agreement of the consumer at any time by giving one month’s notice if the consumer has violated the terms of agreement or the Terms and Conditions of the Code or provisions of the Act and Rules under the Act and other orders from time to time. However, licensee has to inform the consumer regarding the grounds for such termination. The licensee has not stated that the consumer has violated terms of agreement or terms and

conditions of code or provisions of Act and Rules under the Act, hence, the provisions of the above regulation could not be invoked.

15.19 Further, it is noted that the dispute over the ownership of the said property is pending at the Madurai Bench of Hon'ble High Court of Madras in case OS No.858/2010 . Hence, the matter is sub-judice before the competent court. Hence, the appellant is directed to resolve the dispute over the ownership of the property first and then approach the licensee for appropriate action.

16. Conclusion :

In view of my findings in paras 12 to 15 above, I am unable to interfere with the orders of the CGRF of Trichy EDC / Metro.

With the above findings the A.P. No. 70 of 2011 is disposed of. No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To

1. Thiru S.A. Mohammed Ibrahim
S/o. Thiru Abdul Rahman Rowther
No.90, Main Kandy Street
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Trichy District.
2. The Executive Engineer (O & M)
Urban / TANGEDCO
Tennur
Trichy – 620 017.
3. The Assistant Executive Engineer (O&M)
Contonment / TANGEDCO
Trichy – 620 001.

4. The Superintending Engineer
Consumer Grievance Redressal Forum
Trichy Electricity Distribution Circle
TANGEDCO, Thennur
Trichy – 620 017.
5. The Chairman & Management Director,
TANGEDCO
NPKRR Maligai,
144, Anna salai,
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6. The Secretary
Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmi pathy Salai
Egmore, Chennai – 600 008.
7. The Assistant Director (Computer) - for hosting in the website.
Tamil Nadu Electricity Regulatory Commission
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