



## **TAMIL NADU ELECTRICITY OMBUDSMAN**

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### **BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI**

**Present : Thiru. A. Dharmaraj, Electricity Ombudsman**

#### **Appeal Petition No. 44 of 2012**

Thiru A. Subramanian,  
18/279, Kavitha Nagar,  
V.M. Sathram,  
Palayamkottai,  
Tirunelveli District

. . . . Appellant  
(Party in person)

Vs

1) The Superintending Engineer,  
Tirunelveli Electricity Distribution circle  
TANGEDCO  
Maharaja Nagar, Palayamkottai  
Tirunelveli - 11

. . . . . Respondent  
(Rep by Thiru. A. Krishnan/  
EE/Distn/Valliyoor &  
Thiru. Shajagan, AEE/Valliyoor  
Thiru. R. Jegathesh , JE/Valliyoor)

2) A.S. Asan Abdul Kadhar,  
S/o Ahamed Siddique,  
Shop No. 58 B, Main Raod,  
Valliyoor

..... Impleaded Respondent  
(Party in person)

**Dates of hearing : 22-11-2012, 10-1-2013 & 20-2-2013**

**Date of Order : 18.4.2013**

The above appeal petition No. 44 of 2012 came up for hearing on 22-11-2012, 10-1-2013 & 20-2-2013. Upon perusing the above appeal petition, the Counter affidavit connected records and after hearing both sides, the Electricity Ombudsman passes the following Order.

## **ORDER**

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

The appellant prayed for disconnection of a service effected in the premises situated at SF No. 1425/1 stating that a partition settlement case is pending in the Court in respect of the above property and there is an interim order of the Court to maintain status quo.

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

There is a case pending in the court in respect of SF No. 1425/1 between the family members of Thiru A. Subramanian, the Appellant. The case No. is OS 324/2010. In the above case an interim order was issued on 28.11.2011 to maintain the status quo over the suit properties. But, in the commercial complex built up in the above SF No. the TANGEDCO has effected a permanent service connection despite being intimated about the interim order of the Court by the appellant. The service was effected in the name of Thiru A.S. Asan Abdul Kadhar who purchased the disputed land from Thiru A. Vadivel. The Appellant filed a petition before the CGRF of Tirunelveli Electricity Distribution Circle for disconnection of the service effected. But the CGRF of Tirunelveli Electricity Distribution Circle has ordered that as the case is pending on the court, till the court issues its order, the issue cannot be decided at the CGRF. Aggrieved over the above order, the petitioner filed an appeal before the Electricity Ombudsman.

### 3. Order of CGRF:

The CGRF in its meeting held on 22-9-2012 has issued the following order on 26-9-2012.

7.	நுகர்வோர் குறைகள் தீர்க்கும் மன்றத்தில் எடுக்கப்பட்ட முடிவு	மின் இணைப்புக்கு கொடுக்கப்பட்டுள்ள இடமானது தங்களுக்கு உரியது என்றும். நீதி மன்றம் மூலம் மின் இணைப்பை துண்டிக்க உத்தரவு பெறப்பட்டு உத்தரவு நகல் சமர்ப்பிக்கும் பட்சத்தில் தற்போது உள்ள மின் இணைப்பு துண்டிக்க இயலும். மேலும் வழக்கு நிலுவையில் உள்ளதால் நீதிமன்றஉத்தரவு பெறும் வரை நுகர்வோர் குறைகள் தீர்க்கும் மன்றத்தில் முடிவு செய்ய இயலாது என்ற விவரம் அன்புடன் தெரிவித்துக் கொள்ளப்படுகிறது.
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### 4. Contentions of the Appellant:-

The Appellant has contended the following in the Appeal petition.

- (i) In respect of SF No. 1425/1, a partition settlement case is pending in the court. The case No. is OS 324/10. An interim order was issued on 28-1-2011, to maintain status quo over the suit properties.
- (ii) The Executive Engineer / Distribution / Velliyoor was informed about the interim order of the court on 7.2.2011.
- (iii) A temporary service connection was given for construction of a commercial complex in the above site on 6-3-2012. A petition objecting the temporary service was given on 4-4-2012.
- (iv) A permanent service connection was effected for the above complex by the Junior Engineer / Distribution, Valliyoor without taking into account of the facts of non availability of the documents such as planning permission, building tax issued by the panchayat and without

considering the Order of the court. They have not obtained legal opinion also in this regard.

- (v) The CGRF of Tirunelveli EDC has stated that as the court case is pending the Forum could not decide the issue. The above order is not justifiable and hence requested for disconnection of the service.
- (vi) The Thasildar, Radhapuram has recommended cancellation of patta issued in the name of Thiru. Asan Abdul Kadhar to the Collector.
- (vii) Based on the representations dt. 9-4-2012 and intimation of interim order to maintain status quo, the Executive officer of panchayat has not issued the planning permission.

**5. Contentions of the Respondent:-**

The Respondent has contended the following in the counter.

- (i) Thiru A.S. Asan Abdul Kadhar S/o Ahamed Siddique, Valliyoor has applied for a temporary connection to construct a commercial complex along with revenue records (sale deed and patta). Accordingly a temporary service was effected on 6-3-2012.
- (ii) Thiru A. Subramanian S/o Ayirathan has given the objection on 4-4-2012.
- (iii) Thiru A. Subramanian was informed on 30-4-2012 that based on the ownership documents furnished by Thiru A.S. Asan Abdul Kadhar, the service was effected.
- (iv) As Thiru A. Subramanian has not produced any document to prove that the land is owned by him and as there is no order in the interim court

order in case No. OS 324/10 restraining the board from effecting of electricity service connection, the service was effected. Further, Thiru A.S. Asan Abdul Kadhar has produced documents on the ownership as per the Boards rules. Hence, service was effected.

- (v) The partition case is in respect of SF No. 1425/1 at Valliyoor whereas the new service was effected in the complex constructed by Thiru A.S. Asan Abdul Kadhar in SF No. 1425/1 A2D. Further in the interim order issued by the court on 28-1-2011, there is no stay to effect any new service in SF No. 1425/1A2D.
- (vi) Thiru A.S. Asan Abdul Kadhar has submitted an application to JE (D) Valliyur for effecting a permanent service connection for the building constructed in SF No.1425/1A2D on 14-8-2012 with the following revenue documents namely :-
  - (a) A copy of the gift settlement dt.15.10.2010 executed by Tmt. Muthammal mother of the appellant in favour of her son Thiru A. Vadivel.
  - (b) A copy of Sale deed dt. 18.10.2011 executed by Thiru A. Vadivel in favour of Thiru A.S. Asan Abdul Kadhar
  - (c) A copy of Patta No. 1994 issued by the Radhapuram Taluk office in the name of Thiru A.S. Asan Abdul Kadhar.
  - (d) Copy of Adangal and tax receipt issued by V.A.O, Valliyoor North.
  - (e) EC for the period from 1.1.1987 to 26.7.2012.

- (vii) As the documents submitted are sufficient for effecting a new service connection and as there is no court stay for effecting service connection the service was effected after obtaining an indemnity bond from Thiru A.S. Asan Abdul Kadhar in a stamped paper of Rs.80/- as per Regulation 27 (4) of the Distribution Code since there was an objection from Thiru A. Subramanian. The service connection No. is M1030/Valliyoor.
- (viii) In the partition settlement case No. OS 324/2010, EB is not a party. Further in the interim order furnished by the Appellant no stay is issued by the court against effecting of service. In the above case, if court ordered to disconnect the service given to Thiru A.S. Asan Abdul Kadhar, the service could be disconnected based on the indemnity bond obtained from Thiru A.S. Asan Abdul Kadhar.
- (ix) As a case is pending in the court regarding partition settlement in OS No. 324/10 the CGRF could not take the petition on file as per Regulation. Accordingly, the petition is dismissed.

**6. Contention of Thiru A.S. Asan Abdul Khadar:-**

The Appellant Thiru Subramanian has requested for disconnection of a service which is in the name of Thiru A.S. Asan Abdul Khadar. In order to hear his views also, a notice was sent to him to attend the hearing scheduled on 10-1-2013. He has not attended the hearing on the above date due to non receipt of the summon. As pleaded by him a hearing was held on

20-2-2013. Thiru A.S. Asan Abdul Khadhar has given his counter. In the counter he has contended the following:-

- (i) He purchased a vacant land of 2 ½ cents in SF No. 1425/1 A2 D from the owner Thiru A. Vadivel on 18-10-2011.
- (ii) The original SF No. of the land purchased by him is 1425/1. The total extent of land in that SF No. is 32 cents. Out of the above, Tmt Muthammal has purchased 28 cents on 26-3-1987 and Tasildhar of Radhapuram has issued a patta in the name of Muthammal and the patta No. is 1538.
- (iii) Tmt. Muthammal has given 2 ½ cents to her son A. Vadivel through settlement.
- (iv) A. Vadivel has obtained a separate patta for that land of 2 ½ cents by bifurcating the SF. No. 1425/1 and the new SF No. assigned is 1425/1 A2 D and the Radhapuram revenue Taluk Office has given him a separate pata.
- (v) He purchased the 2 ½ cent land in SF No. 1425/1 A2 D from its owner A. Vadivel on 18-10-2011 and constructed a shop in that land and enjoying the property.
- (vi) All the above facts are known to Thiru Subramanian also. A service connection was sought for the newly constructed shop. Along with the application, the ownership documents were submitted and the application was registered by paying the required fee.
- (vii) As per the regulations of the Board, the ownership of land and indemnity Bond were given and a service was obtained in his name. Further, he has

also given his consent to take action based on the out come of court case pending.

(viii) The above property was purchased from the owner only. A Subramanian has no right or enjoyment over the property purchased by him. If Subramanian thinks that he is having right on the shop where the impleaded respondent is doing business, Thiru. Subramanian has right to file a case against the Impleaded respondent.

(ix) As A. Subramanian has filed a case against his mother and brother he cannot be the owner of the properties covered in the case. The above case is also pending and A. Subramanian has not filed any case against the Impleaded respondent. The order issued in the above case is not binding upon him. The service connection issued in his name is not a document on the ownership of the property. As a consumer based on agreement, he obtained a new service connection with the above conditions.

(x) The Electricity Board employee A. Subramanian has filed an appeal petition to cancel the new service connection issued in his name. The above Subramanian has not filed the appeal petition to cancel the service as a consumer. As far as his service is concerned A. Subramanian is only a third party.

(xi) There is no provision in the CGRF Regulations for the person other than a consumer to file a petition to cancel a service as per the Tamil Nadu Electricity Regulatory Commission Regulation. There is no provision in the Electricity Act 2003.

- (xii) The CGRF is for solving the dispute between the consumer and Tamil Nadu Electricity Board in the agreement entered. It cannot be a Forum for enquiring a petition filed by a third party to cancel the agreement between the consumer and the Board.
- (xiii) As per section 42 (6) of the Electricity Act, consumer who is aggrieved by non redressal of his grievance under subsection (5) may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed and designated by the State Commission. As per section 42 (7), the Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by State Commission.
- (xiv) As per the above section, only consumer alone make a representation to the consumer grievance redressal forum. A person who is not a consumer cannot file a petition before the forum and seek cancellation of his service.
- (xv) As per section 7 (3) of Electricity rules 2005, the Ombudsman shall consider the representation of the consumers consistent with the provisions of the Act, the rules and Regulations made thereunder or general orders or directions given by the Appropriate Government or the appropriate commission in this regard before settling their grievances.
- (xvi) As per Electricity Act 2003, the CGRF and Ombudsman are the highest Appellate Forums. The above forum is for issuing guidance for settling the issues between consumer and the Board. Before the above Forum only consumer can file a petition and seek redressal of his grievance. Parties

other than consumer cannot file a petition to disconnect a service connection which is affecting the rights of the consumer.

(xvii) In Section 56 of the Electricity Act, disconnection of a services has been clearly dealt with. The service connection given in his name could be disconnected only for the reasons given in the above section and not for other reasons. He has not violated the conditions given in Section 56 of the Electricity Act and paying the charges of current consumption.

(xviii) He is doing the business of selling Iron rods and Tiles in his own shop. If the service connection is disconnected, he cannot do his business and there will be heavy loss. Hence, the appeal petition filed may be dismissed.

#### **7. Hearing held by Electricity Ombudsman:-**

In order to facilitate the Appellant and the respondent, hearing was held on 22-11-2012. As the Appellant is praying for disconnection of a service given to Thiru A.S. Asan Abdul Kadhar he was also called for to putforth his view on 10-1-2013. But, on 10-01-2013, the above person did not attend the hearing due to non receipt of the hearing summon. Hence, to give him a chance to purforth his arguments, further hearing was proposed on 20-2-2013 and all the parties have attended the hearing conducted on 20.2.2013.

#### **8. Argument of the Appellant:-**

8.1 The Appellant reiterated the contents of the Appeal petition.

8.2 The Appellant argued that he has intimated the court decision to maintain the status quo in the disputed properties to the EE/D/Valliyoor on 7-2-2011 but the

temporary supply was given on 6-3-2012. Again, an objection was given on 4-4-2012. But the licensee has not considered the Court Order and his objection and effected the permanent service on 16-8-2012.

8.3 He also argued that the permanent service was given to the building constructed in a disputed land which has no plan approval. He also argued that building has not been assessed for tax by the local authority pointing out the explanation under Regulation 27(16) of the Distribution Code. He argued that effecting a service without tax receipt (or) plan approval is contrary to the above regulation.

8.4 He argued that based on his objections, the Tasildhar, Radhapuram has recommended for cancellation of the transfer and subdivision done after 28-1-2011 in the patta to the Sub Collector, Sermadevi. He also furnished a copy of the above letter dt. 20-6-2012 in support of his argument.

8.5 He also informed that the Executive Officer of the Selection Grade Panchayat, North Valliyoor has intimated that no plan approval has been accorded to Thiru A.S. Asan Abdul Kadhar in SF. No. 1425/IA2D. A copy of the letter dt. 5-7-2012 issued by the Executive Officer of North Valliyoor Panchayat was also furnished by him in support of the above argument.

8.6 He also informed that the licensee has obtained indemnity bond but not obtained security deposit at double the normal rate.

8.7 He also argued that no legal opinion was obtained by the Respondent when there is an interim order of the court to maintain status quo.

8.8 On 20-2-2013, he argued that as per the procedure for obtaining Domestic / Commercial service connection, issued by the TANGEDCO (and available in the website) the intending consumer shall comply any decree, or order or judgement of any civil court in regard to supply of electricity or other requirements mentioned in such decree or order or judgment.

**9. Argument of the Respondent :-**

9.1 The respondent was represented by Thiru A. Krishnan, EE/D/Valliyoor on 22-11-2012 and Thiru Shajahan AEE/Valliyoor and Thiru R. Jagatheesh, JE / Valliyoor have represented on all the three days of hearing. The EE/D/Valliyoor reiterated the contents of the counter.

9.2 The respondents argued that Thiru A.S. Asan Abdul Kadhar has furnished all the documents such as copy of sale deed, copy of patta, copy of adangal and tax receipt in support of the ownership which are sufficient for effecting a new service connection to a premises. Hence service was given.

9.3 The licensee is not a party in the case OS No. 324/10 between the Appellant and his family members pending in the Court of Principal District Munshif Valliyoor. Further, no stay is issued by the Court restraining the licensee to effect service connection in the disputed property.

9.4 As there is a court case pending, indemnity bond was obtained from Thiru A.S. Asan Abdul Kadhar which empowers the licensee to disconnect the service based on the outcome of the court order in the pending case.

9.5 Regarding the non availability of tax receipt and planning permit for the premises to effect the new service the AEE argued that the usual practice is to

obtain the tax receipt for vacant land as proof of ownership whenever service connection was sought for newly constructed buildings. He also argued that the planning permit is insisted only for multistoried buildings and special buildings as per circular memo No. CE/Comm/EE3/AEE2/F-Planning permission/ D.No.874/06 dt22-11-2006.

9.6 With regard to non obtaining of a legal opinion before effecting the service connection, when it was brought to their knowledge about the court case and the interim injunction on the case pending, the AEE replied that as the documents for ownership for effecting service connection are available and as there is no stay order to effect service connection in the premises and EB is not a party to the interim order, no legal opinion was obtained. However, he furnished a legal opinion obtained from the Government pleader on 18-2-2013 on the above subject in support of his argument.

**10. Argument of Thiru A.S. Asan Abdul Kadhar:-**

10.1 Thiru A.S. Asan Abdul Kadhar himself has presented his views on 20-2-2013. He reiterated the contents of the written arguments submitted.

10.2 He argued that while purchasing the above land from Thiru Vadivel he verified the title and found it was correct. Hence, he purchased the above land. He applied for patta and also obtained the same. He is not aware that the property is under dispute.

10.3 He submitted all the documents called by the licensee and obtained a commercial service for the building. He has also given an indemnity bond agreeing to disconnect the service in case of an order from the court.

10.4 He argued that Thiru Subramanian is not a consumer to raise this issue either in CGRF or before Ombudsman. He is only a third party. He has not established that he is the owner of the land.

10.5 The service connection given in his name is an agreement between him and the licensee only and it is not a document in proof of ownership of the land.

10.6 There is no provision in the Electricity Act 2003, for the persons other than the consumer to file a petition before the CGRF to disconnect a service of a consumer.

10.7 As per section 42(6) & 42(7), only consumers can make representation to the CGRF and to the Electricity Ombudsman for redressal of their grievances.

10.8 In the Electricity Rules 2005 also it has been specified that in rule 7 (3), the Electricity Ombudsman shall consider the representation of the consumer. Hence, only consumers can represent their cases to the Electricity Ombudsman and not the other person.

10.9 He also argued that he is paying the electricity charges without any dues and hence, his service cannot be disconnected. He has cited section 56 of the Electricity Act in support of his above argument.

10.10. He also argued that he has applied for necessary planning permit and paid Rs.18,375/- on 11.6.2012 towards infrastructure and development charges and expecting the planning approval shortly.

**11. Written argument furnished by the appellant :**

11.1 The appellant has furnished the following in his written arguments dt.27.2.2013.

11.2 The dispute that arise was only regarding the orders passed by the lower officials in sanctioning the alleged temporary as well as permanent service connection without complying and following the basic norms and rules and regulations of the board, and also the same was done by the respondent without considering and violating the status quo order passed by the honourable principal district munsif court, valliyoor.

11.3 Even prior to the sanctioning of the alleged service connection, the existence of the order passed by the Hon'ble Court, Valliyoor, was duly intimated to the concerned lower officials of the board. Even then without considering any thing and not following the board rules everything was done by the lower officials for the reasons only known to them.

11.4 The present dispute is only between this appellant and the concerned lower officials of the board. So in this appeal this 2<sup>nd</sup> respondent is not a necessary party to be considered. It is nearly equal to the departmental proceedings. Eventhough this 2<sup>nd</sup> respondent is in the status of consumer or beneficiary, but if that status was obtained by this 2<sup>nd</sup> respondent in an unlawful manner, automatically it becomes null and void in the eye of law. Even, though if at all if any service connection was granted and received in an unlawful manner, it is nearly equal to theft of energy, so the peculiar stand now taken by the second respondent is illegal. This 2<sup>nd</sup> respondent simply tried to misguide the Hon'ble forum which was totally against the principles of natural justice.

## **12. Findings of the Ombudsman :-**

12.1 Thiru A.S. Asan Abdul Kadhar has argued that the CGRF and Electricity Ombudsman can deal with redressal of the grievances of the consumers only and hence, the grievance of the Appellant who is not a consumer could not be taken up by the Electricity Ombudsman.

12.2 In this regard, I would refer Regulation 2(e) of the Regulation for Consumer Grievance Redressal Forum and Electricity Ombudsman, which is extracted below:-

*“2(e) “complainant” means—*

- (i) a consumer of electricity supplied by the Licensee including applicants for new connections;*
- (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force;*
- (iii) the Central Government or any State Government - who or which makes the complaint;*
- (iv) one or more consumers, where there are numerous consumers having the same interest;*
- (v) in case of death of a consumer, his legal heirs or representatives.”*

12.3 On a plain reading of the above, regulation it is noted that complainant means (i) a Consumer of the Electricity supplied by the licensee including the intending consumers. (ii) any voluntary consumer Association registered under the companies Act 1956 or under any other law in force. (iii) the Central Government or State Government (iv) One or more consumers where there are numerous consumers having the same interest and (v) in case of the death of a consumer his legal heirs or representatives.

12.4 Thiru A. Subramanian, the Appellant may not fit into any of the above five categories, as far as service connection No. M1030 is concerned. Hence, the appeal is to be dismissed at the first instant as he is not a complainant. However, the petition filed before Electricity Ombudsman is an appeal petition. Hence, the

regulation 8 of the CGRF & Electricity Ombudsman has also to be referred. The extract of the said regulation is reproduced below:-

*“8 Any person aggrieved by an order made by the forum may prefer an appeal against such order to the Electricity Ombudsman within a period of 30 days from the date of the order, in such form and manner as may be prescribed by the Commission.*

*Provided that the Electricity Ombudsman may entertain an appeal after the expiry of the said period of 30 days if the Electricity Ombudsman is satisfied that there was sufficient cause for not filing it within that period.*

*Provided further that the Electricity Ombudsman shall entertain no appeal by any party, who is required to pay any amount in terms of an order of the forum, unless the appellant has deposited in the prescribed manner, twenty five percent of the amount as ordered by the forum.”*

12.5 On a plain reading of the said regulation 8 of the Forum Regulation, it is noted that any person aggrieved by an order made in the Forum may prefer an appeal within a period of 30 days from the date of order.

12.6 In the present case, the appellant has filed the appeal before the Electricity Ombudsman on 8-10-2012, against the Order of CGRF dt.27-9-2012. Hence, the appeal is made within the period of 30 days.

12.7 In view of the above, though the appeal petition filed by the appellant is not coming under the definition of the complainant, I would like to answer the following issues which are raised by the appellant.

(i) Whether the service given in the name of Thiru. A.S. Asan Abdul Kadhar in SF No.1425/1A2D could be disconnected as contended by the appellant. ?

(ii) Whether the contention of the appellant that the service connection given in the disputed site is not conforming to the rules and regulations of TNERC is correct ?

**13. Findings on the First Issue:-**

13.1 The Appellant argued that as the service was given without any plan approval or tax receipt issued by local body, the service has to be disconnected.

13.2 The respondent argued that the service was given following the procedure in vogue. Further, Thiru Subramanian who is objecting the service connection has not produced any documentary evidence in support of his right on the property. However, to safeguard the interest of the Board an indemnity bond was obtained from the intending consumer to agree for disconnection of the service effected in case of a court order as there was a dispute pending in the court on the ownership of the land.

13.3 Thiru A.S. Asan Abdul Kadhar in his written submission has informed that his service could be disconnected only as per the provisions given in Section 56 of the Electricity Act 2003 and he has not violated any conditions of the said section. Further, he has also argued that the Appellant is a third party in respect of the above service and hence the Appellant cannot seek disconnection of the service connection effected in his name. He also argued that the service connection was obtained based on an agreement between him and the TANGEDCO and hence, the termination could not be claimed by a third party. This is a strong argument put forth by Thiru. A.S. Asan Abdul Kadhar.

13.4 As Thiru A.S. Asan Abdul Kadhar has cited section 56 of the Electricity Act 2003, the said section is reproduced below :-

*“Section 56. (Disconnection of supply in default of payment): -- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days’ notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:*

*Provided that the supply of electricity shall not be cut off if such person deposits, under protest, -*

*(a) an amount equal to the sum claimed from him, or  
b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.*

*(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.”*

13.5 On a plain reading of the said section, it is noted that the licensee can disconnect the supply of a person if he neglects to pay the charges for electricity or any sum other than charges for electricity due from him after giving not less than 15 days notice in writing.

13.6 Further, disconnection of services could also be done in the following cases as per the sections noted against each.

- (i) If a person fails to give sufficient Security Deposit as per section 47 (3) of Electricity Act 2003.
- (ii) In case of detection of theft energy in a service as per section 135 (IA) of the Electricity Act.

- (iii) In case of refusal to allow a licensee or other person to enter the premises (or) refusal to allow the licensee or other person to perform any Act which he is authorized by sub-section 1 or 2 of section 163 of the Electricity Act.
- (iv) The licensee shall be entitled to disconnect the supply of Electricity subject to the provisions of water (prevention and Control of pollution) Act 1124, Air (Prevention and Control of Pollution Act 1981 and Environment (protection) Act 1986 etc as per regulation 26 of the supply code.

13.7 This present case does not come under any of the above categories to order for disconnection. The respondent has intimated that they have obtained an indemnity bond to disconnect the supply based on the outcome of the judgement in case OS 324/2010 and the service owner Thiru A.S. Asan Abdul Kadhar has also concurred with the above views of the Respondents.

13.8 The Regulation 33 of Distribution Code which deals with agreement is reproduced below:-

*“33 AGREEMENTS:*

*(1) All intending consumers shall execute an agreement governing the supply of electricity in the form prescribed at the time of paying the Security Deposit and the service connection charges. The work of extension of supply will be taken up for execution only after the agreement is executed and the Security Deposit and the service connection charges, etc. are paid. For LT consumers other than agricultural and industrial consumers the application is treated as application cum- agreement. In case of LT agriculture and industrial services, the agreement shall be in Form 7 in Annexure III and in case of HT consumers, the agreement shall be in Form 8 in Annexure III.*

*(2) Every agreement is for a specific purpose and a specified location. The Engineer may at his/her discretion permit a consumer to change the point of supply from one place to another on such terms as may be prescribed by the Licensee including payment of charges incidental to such change.*

*(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.*

*(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.”*

13.9 On a careful reading of the regulation 33(4) of the Distribution code, it is noted that the licensee can terminate the agreement by giving one month notice if the consumer has violated the terms of agreement or the terms and conditions of the code, or the provisions of any law relating to the agreement including applicable Acts and Rules under the Act and other orders from time to time. But in such case, the licensee has to inform the consumer regarding the grounds for such termination. Here, the licensee has not stated that the consumer has violated any terms of the agreement or terms and conditions or code or provision of Acts and Rules under the Act. Hence, the above provision could not be invoked.

13.10 Further, it is noted that the dispute over the property is pending in the Principal District Munisiff Court, Valliyoor in OS No. 324/2010. Hence, the ownership issue is pending before the court and is subjudice and the Electricity Ombudsman has no jurisdiction on the ownership issue. But, as per the under undertaking given by the person who availed the service, the service could be disconnected if need be as per the final orders of the Court.

13.11 In views of the reasons discussed in previous para, I am of the view, that disconnection of the service may be decided after the final order is issued by the Court on the ownership issue.

**14. Findings on the second issue :**

14.1 The argument of the Appellant is, the service given by the respondent to Thiru A.S. Asan Abdul Kadhar is not conforming to the Rules and Regulations of TNERC. The appellant's argument centered on two grounds. (a) on non compliance with regard to production of planning permit as stipulated in clause (a) of explanation given for other compliance in regulation 27 of the Distribution Code, and (b) non compliance of the status quo order issued by the court which is against clause (c) of the explanation given for other compliance in regulation 27 of the Distribution Code.

14.2 He argued that the commercial premises constructed in the disputed site has no plan approval and the local body has not issued any tax receipt for the premises which are insisted as per regulation 27 of the Distribution code. Further, he also argued as per TANGEDCOs procedure for obtaining domestic / commercial service connection, the intending consumer has to obey any decree or order of judgement of any civil court in regard to supply of electricity or other requirements mentioned in such decree or order or judgment. But, the above instruction was not taken into consideration while sanctioning the commercial service to Thiru A.S. Asan Abdul Kadhar. He also argued while revenue and local body have taken the objection and court order into consideration and taken

initiative to cancel the patta issued and not issued the plan approval respectively, the TANGEDCO alone have not taken any action on the above.

14.3 The Respondent argued that Thiru A.S. Asan Abdul Kadhar has furnished the copy of the following to establish his ownership, namely :-

(a) The gift settlement deed dt.15-10-2010 executed by Tmt. Muthammal in favour of her son Vadivel.

(b) The sale deed dt.18-10-2011 executed by Thiru Vadivelu in favour of Thiru A.S. Asan Abdul Kadhar.

(c) Patta No. 1994 issued in the name of Thiru A.S. Asan Abdul Kadhar.

(d) Adangal and tax receipt

and (e) EC for the period from 1-1-1987 to 26-7-2012.

14.4 As the ownership of the land is in the name of the intending consumer, temporary connection was issued for construction purpose and then a permanent connection was given on commercial category on completion of the construction works.

14.5 The Respondents have also argued that as per the instruction of the Board, the planning permit was insisted only for the multi storied building & and special buildings. He also furnished a copy of circular dt.22.11.2006 in support of his argument. Further, the respondent also argued that the interim order of the court to maintain status quo will bind only the parties of the above case which is pending and not the licensee or the intending consumer who are not shown as parties in the above case. He also informed that there is no stay order restraining the TANGEDCO to effect service connection. The Respondents also argued that

as there was a court case pending, they obtained a indemnity bond from the intending consumer to disconnect the service in case of the court direction and to safe the guard the boards interest. Hence argued the service given is as per rules in vogue.

14.6 As the issue relates to effecting of supply regulation 27 including the explanation given under Regulation 27 (16) of the Distribution Code are reproduced below : -

**“27. Requisitions for Supply of Energy:**

*(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

(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

(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 poramboke 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 2[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”.

14.7 On a plain reading of the explanation given below the said regulation 27 (1)(i) of the Distribution Code, it is noted that application for requisition of supply means, the application complete in all respects in the appropriate form, as required by the Distribution licensee along with payment of necessary charges and other compliances.

14.8 The other compliances shall include the following (viz) (a) the compliance by the intending consumer of other laws of the State of Tamil Nadu relating to 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 building or establishment of new industries or factories or other establishments for which supply of electricity is required by such consumers.

(b) the compliance by the intending consumer of the provision contained in sub-regulation 4,11 & 12 above.

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

14.9 The Appellant's argument is that there is no plan approval for the premises where the service was given and hence the service given is in violation of the regulation.

14.10 The Respondent argued 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 constructing his own building for residential and non residential premises, no planning permit is insisted. He also produced a copy of Memo in support of his argument. The relevant para of the said memo dt 22-11-2006 is reproduced below:-

1. *Individual constructions and individuals constructing his / her own building or buildings for his / her residential premises or non residential premises.*

2. *Special building and Multistoried building.*
3. *Special building means – Buildings with ground floor plus three more than 4 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 multistoried 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.*

*If the applicant fails to produce the planning permit and compliance certificate issued by the competent authority, the field officials may refuse to effect service connection respect of Special building and Multistoried building.*

14.11 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.

14.12 In memo No. CE/Comm/EE3/AEE2/F.Planning permission/D.1024 (Tech Branch) Dt.29-12-2006 in para 3, the following instruction was issued.

*“For other buildings (i.e.) building not coming under special building and multi-storied building category service connection should be effected without delay as per TNERC's Distribution of Standards of Performance”*

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

14.14 The service effected is for commercial premises with Ground and first floor. Hence, it will not be coming under special building (or) multi-storeyed building. Hence, as per license's circular the planning permit is not insisted by the respondent.

14.15 Thiru Asan Abdul Kadhar has informed that he has applied for planning permission and paid the charges of Rs.18,375/- on 18-6-2012 and the plan approval is yet to be issued and it is not negated also. He also further informed that the plan approval will be issued soon.

14.16 It is noted from the previous paras, that as per regulation 27 of the Tamil Nadu Electricity Distribution Code, the approval issued by the appropriate authorities as mentioned in such laws in regard to construction is required (i.e) planning permit is required. But, the respondent informed that as per the procedure in vogue planning permit is not insisted for other than multi-storied buildings and special buildings. It is also noted that Thiru Asan Abdul Kadhar has paid Rs.18,375/- on 18.6.2012 as infrastructure and basic amenities charges and the plan approval is yet to be issued (ie) Thiru. A.S. Asan Abdul Kadhar has taken effort to get the plan approval from the local body and have also paid the infrastructure and basic amenities charges before getting the service connection.

14.17 Thiru A.S. Asan Abdul Kadhar in his letter dt. nil has stated that executive officer special grade town panchayat, vadakku Valliyoor has issued the planning approval on 12.3.2013 and furnished a copy of the same. On verification of the above, it is noted that building plan approval was issued vide executive officer, proceeding No. மு.மு. எண்.304/2012 –2013 dt.12.3.2013 and the approval valid from 3 years from 12.3.2013. It is observed that, the plan approval issued now only (ie) after availing the service connection through the planning approval is belated one, it answered the appellants objection.

14.17 The Appellant also argued that the court order to maintain status quo has not been followed by the respondent even though, a copy was communicated to them by him which is also deviation from the regulation.

14.18 The respondent argued that the status quo order is binding only the parties of the case No. OS 324/2010 for which only interim order was issued and TANGEDCO and Thiru Asan Abdul Kadhar are not parties in the case. Further there is no stay to effect service connection. They also enclosed a copy of legal opinion obtained on 18-2-2013 in support of their argument. The relevant portion is reproduced below :

*“அதற்கு பதிலாக வள்ளியூர் மாவட்ட உரிமையியல் நீதிமன்றத்தில் தாக்கல் செய்யப்பட்ட அ.வ.எண்.234/10 வழக்கில் தாக்கல் செய்யப்பட்ட வம8.எண்.28/11இல் கடந்த 28-1-2011 இல் பிறப்பித்த உத்தரவு நகலை இணைத்துள்ளார். மேற்படி உத்திரவில் இவ்வழக்கில் கண்ட சொத்துக்கள் தற்பொழுது உள்ள நிலையிலேயே வழக்கு முடியும் வரை இருக்க வேண்டும் என்று கூறப்பட்டுள்ளது. ஆயினும் மேற்படி உத்தரவில் புல எண்.1425/1இல் கண்ட*

சொத்திற்கு A. சுப்பிரமணியன் உரிமையாளர் என்று தீர்மானிக்கவில்லை. மேற்படி வழக்கில் A.S அசன் அப்துல் காதர் மற்றும் தமிழ்நாடு மின்சார வாரியமோ தரப்பினர்கள் அல்ல என தெரிகிறது. எனவே, மேற்படி வ.ம.எண்.28/11இல் நீதிமன்றம் வழங்கிய உத்தரவு மேற்படி வழக்கில் கட்சியாக சேர்க்கப்படாத எவரையும் கட்டுப்படுத்தாது. ”

14.19 In the legal opinion dt. 18-2-2013 the Government Pleader has opined that in the order dt. 28-1-2011 issued in IA No. 28/2011 in OS No. 324/2010 it has been stated that in respect of the properties covered in the above case, the present status quo shall be maintained . Neither the Board nor Thiru Asan Abdul Kadhar are parties in the above case. Hence, the interim order issued by the Court in IA No. 28/11 is not binding anybody who are not included as party in the above case.

14.20 As the Appellant has pointed out the interim order issued by the Principal District Munshif Court, Valliyoor, the relevant portion of the court order is reproduced below:-

“ Order :

*Petitioner / Plaintiff has filed this interim application / u/o. 39 rule 1 and 2 of CPC restraining the respondents from interfering with his joint possession and enjoyment over the all suit properties on the ground that he and all respondents are co-sharers of suit properties and as such, he is entitled to 7/36 share for which, he has filed main suit for partition. Per contra, by way of common counter the respondents would contend that the petitioner is never residing in door No.IG of Yadava Therku Pudu Street, and he is residing only at 26A, indeed the R1 and R5's family have been living in 4<sup>th</sup> scheduled property and that other properties are exclusively belonging to R1 and there in no one including the petitioner*

*herein has right to claiming partition. Heard, on both sides. During the enquiry, both sides counsels have no any serious objection to maintain present status quo till the disposal of the suit.*

*This is suit for partition where in a family members are engaged with each other on the footing of self acquisition and ancestral origin. ExP1 sale deed stands in the name of petitioner's father's name while Ex P2 to P4 would stand in R1's name. In any event whether the R1 had purchased those property through her own source or source of her decease husband is a centre question of the suit. That be the position no one, including the R1 and petitioner could be permitted to dictate others. Petitioner did not produce any material to show that now he is residing at door No.1, G. If he is living so at door No.26A, Yadavar Pudu Street, Valliyoor, he could have produced same material like electricity receipts ration card voter identity card. Non – production of such material at the same time, will not give any clean sheet to the R1 and other respondents to take the law at their own hand as alleged in the affidavit . So, in order to strike a balance this petition in the court's view, may be closed to maintain present status quo till the disposal of the suit.*

*In fine, this petition is closed with a direction that both parties should maintain present status quo over the suit properties, till the disposal of the suit. No Cost. ”*

14.21 On a careful reading of the interim order of the court it is noted that both parties should maintain the present status quo over the suit parties. Thiru. A.S. Asan Abdul Kadhar and TANGEDCO are not the parties in the suit. Hence, it may not bind them.

14.22 The appellant cited the following clause given in the explanation for other compliance and argued that the court order is binding the TANGEDCO.

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

14.23 On a careful reading of the above clause, it is noted that intending consumer has only to comply with the orders of any civil court in regard to supply of electricity or other requirements mentioned in such decree or order of judgment.

14.24 As per the above, the compliance of the civil court judgment is binding the intending consumer only and not the licensee. Hence, I am of the view that the contention of the appellant, that the court order is binding the licensee as per the above regulation is not acceptable to me.

**14. Conclusion :**

14.1 In view of my findings in paras 12 & 13, I am unable to give any relief to the petitioner. With the above findings, the AP 44 of 2012 is disposed off by the Electricity Ombudsman. No cost.

**(A. Dharmaraj)**  
Electricity Ombudsman

To  
1. Thiru A. Subramanian,  
18/279, Kavitha Nagar,  
V.M. Sathram,  
Palayamkottai,  
Tirunelveli District.

2. The Superintending Engineer,  
Tirunelveli Electricity Distribution circle  
TANGEDCO  
Maharaja Nagar, Palayam kottai  
Tirunelveli - 11.

3. The Chairman (Superintending Engineer),  
Consumer Grievance Redressal Forum,  
Tirunelveli Electricity Distribution circle  
TANGEDCO(formerly TNEB),

4.Thiru. A.S. Asan Abdul Kadhar,  
S/o Ahamed Siddique,  
Shop No. 58 B, Main Road,  
Valliyoor

5. The Chairman & Managing Director,  
TANGEDCO,  
NPKR Malaigai,  
144, Anna Salai,  
Chennai – 600 002.

6. The Secretary  
Tamil Nadu Electricity Regulatory Commission  
No.19A, Rukmini Lakshmipathy Salai  
Egmore,  
Chennai – 600 008.

7. The Assistant Director (Computer) - **FOR HOSTING IN THE WEBSITE**  
Tamil Nadu Electricity Regulatory Commission,  
No.19A, Rukmini Lakshmipathy Salai,  
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