



TAMIL NADU ELECTRICITY OMBUDSMAN

19- A, Rukmini Lakshmi pathy Salai, (Marshal Road), Egmore, Chennai – 600 008.
Phone : ++91-044-2841 1376 / 2841 1378/ 2841 1379 Fax : ++91-044-2841 1377
Email : tnerc@nic.in Web site : www. tneo.gov.in

BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

A.P. No.36 of 2012

The Addl. Chief Engineer,
Erode Electricity Distribution Circle,
TANGEDCO,
Erode – 638009.

... Appellant
(Rep. by party in person)

Vs.

Thiru C.Ramasamy,
S/o.Chinnappa Gounder,
Thandampalayam Post,
Erode – 638109.

... Respondent
(Rep.by Thiru D.Selvaraj,
Advocate)

Date of hearing 19-11-2012 & 20.12.2012

Date of order : 11-02-2013

The above appeal petition No.36 of 2012 came up for hearing before the Electricity Ombudsman on 19-11-2012 & 20.12.2012. Upon perusing the above petition, the counter affidavit connected records and after hearing both sides, the Electricity Ombudsman passes the following order:

1. Prayer of the Appellant :

The Appellant prayed to set aside the order of the District level Consumer Grievance Rederessal Forum, Erode dated 2-6-2012.

2. Facts of the case:

Thiru C.Ramasamy, the Respondent has applied for an Agricultural service connection for his borewell situated in RSF.No.268/1B, Kongudayampalayam Village. He entered his readiness on 1-12-2010. He has also enclosed a declaration to the effect that he has obtained concurrence from the owner Thiru Subramania Gounder and his son Kandasamy for erection of LT line in the adjacent land and assured that he will solve any objections which are raised either at the time of erection of lines or at the time of effecting supply. The estimate for the above service was sanctioned and the extension work was completed on 20-5-2011. But on 21-5-2011, a notice was received from the Tvl. P.Shanmugam and S.Ramesh, Advocates on behalf of the adjacent land owner Thiru Subramaniaya Gounder to dismantle the erected line. Thiru Ramasamy Gounder was asked to arrange for the way leave for the alternate route but he has not responded. The respondent has filed a Writ petition WP No.13295/2011 dated 4-6-2011 in the Hon'ble High Court of Madras praying to effect the service connection but withdrawn the case on 17-6-2011. The Respondent has filed a petition to CGRF of Erode EDC on 5-12-2011 to effect the service connection. Based on the views of two members of the CGRF, the CGRF has ordered to effect the service. The Chairman of the CGRF has not agreed for the above decision of the other two members. Aggrieved over the above orders of the CGRF, the Additional Chief Engineer, Erode Electricity Distribution Circle has filed this appeal petition.

3. Condonation of delay:

3.1 The Appellant informed that the Appeal has to be filed before 2-7-2012 since the date of orders of CGRF is 2-6-2012. The Appellant has sought for the opinion of the legal cell of the TANGEDCO on 2-7-2012 and the legal cell has suggested

preferring an appeal before the Electricity Ombudsman on 17-7-2012. But the appeal was filed on 10-9-2012 with the delay of 67 days. (The Appellant informed that the delay is 42 days which is not correct). The Appellant informed that delay in filling the appeal is due to the above reason and prayed for condoning the delay.

3.2 As per the Regulation 8 of the Forum Regulation, the Electricity Ombudsman may entertain an appeal after expiry of the said period of 30 days if the Electricity Ombudsman is satisfied that there was sufficient cause for not filing it within the said period.

As the appellant has stated that the delay is due to obtaining of legal opinion from the legal cell, the delay is condoned.

4. Contention of the Appellant :

The appellant has contended the following in the appeal petition :

(i) It is respectively submitted that the respondent is a prospective consumer who applied an agricultural service connection to his borewell situated in RSF. 268/1B (OSF.No.236). Kongudayampalyam village and registered as No.538/91-92, dated 4.12.1991. As per Tamil Nadu Electricity Board order dt.18.10.2010, a notice was issued to enter the readiness under special priority.

(ii) On 1.12.2010, the respondent entered his readiness with relevant Revenue records to avail supply with declaration for erection of low tension line along his adjacent owner Thiru. M. Subramania Gounder's land at RSF.No.312, and assured to solve any problems that arises in future at his own cost. Accordingly, the estimate has been sanctioned by the competent authority.

(iii) It is respectively submitted that till the completion of sanctioned line extension work, the adjacent land owner has not raised objection. The above work was completed on 20.5.2011.

(iv) On 21.5.2011, a notice was received from the advocates Tvl. P Shanmugam and S. Ramesh on behalf of Thiru. Subramania Gounder, the adjacent land owner of prospective consumer stating to dismantle the already erected low tension line.

(v) On 25.5.2011, based on lawyer notice and as per the provisions of regulation 27(6) of the TN Distribution Code, the intending consumer has been intimated to arrange alternative way route arrangements at his own cost.

(vi) On 4.6.2011, he has filed a writ petition W.P.No.13295/2011 dt.4.6.2011 in the Hon'ble High Court Jurisdiction, Madras praying to effect service connection to his borewell situated at RSF.268/IB (OSF.No.236), Kongudayampalayam Village.

(vii) On 17.6.2011 subsequently the writ petition was withdrawn by the respondent. Accordingly the writ petition was dismissed on 21.6.2011, by the Hon'ble High Court of Madras. An opportunity was extended to the respondent consumer to arrange way leave through letters dt.12.10.2011, 11.1.2012 by AE/O&M/TANGEDCO, Kandasampalayam. Thiru. C. Ramasamy, the prospective consumer has approached the CGRF, Erode on 5.12.2011, requested to effect new agricultural service connection challenging the AE/O&M/TANGEDCO Kandasampalayam's letter dt.25.5.2011 required to arrange at his own expenses for necessary way leave for effecting such service connection when the objection is raised and the petition was admitted on 19.4.12

(viii) The two members out of three consisting the said consumer redressal forum Erode on 7.5.2012 citing the order dt.8.11.2012 passed in WP(MD) No.8844 of 2011 of Madurai Bench of Madras High Court (reported in 2012(1)CTC 504) with reference to the Telegraphic Act, 1885, that since the extension of lines have already

been completed, the service connection may be effected immediately to the prospective consumer and the objector may get his relief, if any, under section 17 (1) & (2) of the Telegraphic Act, 1885 by way of filing petition before the District Magistrate concerned.

(ix) In this connection, it may be pointed out that the section 164 of the Electricity Act, 2003, which relates to, in case where restriction if any, when placing of electric lines or electrical plant for the transmission of electricity provisions of the Indian Telegraphic Act, 1885 can be imposed. Whereas the provisions of regulation 27(6) of the TN Distribution Code, which relates to, 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, the intending consumer shall arrange at his own expense for any necessary way leave, license or sanction before the supply is effected.

(x) It is further pointed out that regulation 7(8) of the regulation for CGRF & Electricity Ombudsman 2004, provides that all decisions shall be taken by a majority of votes by the members present . The CGRF/Erode EDC has passed order by the majority of members and whereas the president of the redressal forum has not agreed with the said order and recorded his views as follows : -

“Do not agree” since as per TNERC Distribution Regulation 27(6), the intending consumer shall arrange at his / her own expense for any necessary way leave, license (or) sanction before the supply is effected”

(xi) The provisions of the Telegraphic Act, 1885 that can be imposed only in cases where restrictions if any for placing of electric lines or electrical plant for the transmissions of electricity as per the provisions of section 164 of the Electricity Act, need not be compared to the case on hand.

(xii) As such in so far as the present case is concerned, there is a clear provision in the said regulation 27(6) of the Distribution Code that it is for the prospective consumer to arrange necessary way leave at his own expenses if there is any objection, before the supply is effected. Therefore, the order dt.2.6.2012 of CGRF, Erode passed by the two members is not in line with the said regulation 27(6) of the TNERC Distribution Code.

4. Contention of the Respondent :

The Respondent has contended the following in the counter:

i) The entire work of sanctioned line extension was completed by the authorities of Electricity Distribution Circle, till completion of work none had expressed any objection only after completion of the entire work an objection was raised by one Mr.Subramania Gounder objecting that the line should not be drawn through his lands.

ii) It is pertinent that the Hon'ble High Court of Madras, Madurai Bench in WP No.8844 of 2011 had held that once the extension of lines have been completed, effecting service connection should not be delayed on the basis of objections and the service should be provided. If the objector opted to persue his objection he should approach the District Magistrate under Section 17(1) and (2) of Telegraphic Act.

(iii) The present appeal is not maintainable in limine, the Appeal had been preferred by the Addl. Chief Engineer who is the Chairman of the District Consumer Grievances Redressal Forum at Erode and a party to the judgement who has not concurred with the majority view of the other two members of the Forum.

(iv) The issue that was adjudicated and decided by the District CGRF was the proceedings of JE (O&M) Kandasamy Palayam. The appellant who is not a party in the case and happened to be a Chairman of the District Forum cannot

maintain an appeal against a judgement in which he himself happened to be a presiding Officer in the Forum, hence the appeal itself is not maintainable in limine and liable to be dismissed.

7. Hearing held by the Electricity Ombudsman :

In order to facilitate the Appellant and the Respondent to putforth their arguments in person, a hearing was held on 19-11-2012 & 20.12.2012.

8. Argument of the Appellant :

8.1 The appellant was represented by Thiru. D. Selvaraj, Advocate.

8.2 The learned Advocate reiterated the contents of the counter. He argued that the appellant is the CGRF , Chairman, Hence, he cannot make an appeal against an order in which he himself is a presiding officer. Further, in the lower forum he has given a view different from the majority view. Hence, the appeal is to be rejected. He also informed that in the lower forum, the JE/O&M Kandasamy palayam was the respondent. But now, the Additional Chief Engineer has filed the appeal petition.

8.3 The learned counsel argued that in the objection letter there is no reason as to why objection is raised by the nearby land owner. Hence, the objection may not be treated as an objection. He also argued that the Telegraphic Act does not specify that it is applicable for only HT lines and there is no distinction to apply the rules whether it is LT or HT.

8.4 On 20.12.2012, the learned advocate argued that as per the orders of Hon'ble High Court of Madras in W.P. No.8844 of 2011, the service has to be effected on completion of the erection works. He argued that the only course open for the person objecting the line laid through his land is to approach the District Magistrate under section 16(2) or 17 of the Telegraphic Act.

8.5 On 20-12-2012, the learned advocate furnished an extract of the judgement reported in 2004(13) SCC page 72 in Civil Appeals No.5845 of 2004 with No.5846-59 of 2004 and argued that as the Apex court has ordered that a judge who hears and decides a matter while sitting singly should not participate in any manner whatsoever in the appeal from his order. He also filed a copy of another judgment dt.10.11.1997 reported in (1995) 6 SCC 744 in appeal No.9955 of 1995 in support of his argument of the appeal petition is to be dismissed as the appeal was preferred by Additional Chief Engineer/Erode EDC who is the Chairman of the CGRF. He argued as the Supreme Court has categorically stated that the judge who hears and decides a matter cannot in any manner participate in the appeal proceeding cannot be an appellant also.

9. Argument of the Respondent :

9.1 The Respondent himself attended the hearing. He argued that as the Distribution Circle head, he filed an appeal petition. As the JE (O&M) Kandasamy Palayam is his subordinate officer, he argued that he can file an appeal petition to the Electricity Ombudsman. He argued he filed his petition as the Circle head and not a Chairman CGRF of Erode EDC. The ACE also informed that the Respondent in his letter dated Nil (received by AE/O&M, Kandasamy Palayam on 1-12-2010) has stated that he has got concurrence from Thiru Subramania Gounder and his son Thiru Kandasamy and obtained their concurrence for laying the line through their land and hence requested to lay the line as above. Further the respondent also assured that any objections raised either at the time of erecting the line or at the time of effecting the service will be set right by him. Hence it is respondent's responsibility to arrange for getting concurrence from the objector.

9.2 Regarding the powers of Telegraphic authority is vested with the licensee for erecting the electric lines, the ACE argued that it is applicable only for tower line construction and the judgement referred is also for a HT line and hence it is not applicable and section 27(6) of the Distribution Code is applicable to the above case and as per the said code, the consumer has to arrange for way leave in case of any objection before the supply is effected. Hence, he argued that it is the responsibility of the respondent to clear the objection before effecting supply. As the objection is raised before effecting supply it is to be cleared by the Respondent only.

10. Argument of Thiru M. Subramania Gounder.

In order to ascertain the view of Thiru M. Subramania Gounder who is objecting the drawal of line through his land was also invited for the hearing conducted on 20-12-2012. He was represented by Thiru S.Ramesh, Advocate. The learned advocate informed that the LT line extended to effect service to Thiru Ramasamy is in South West direction in his land. He also informed that HT line and LT line are already drawn through the land. Because of electric lines, his client is unable to plant coconut or any tree in his land. However he informed that if the supply line is erected over the southern boundary of his client's land, he does not have any objection.

11. Written Argument of the Respondent :

11.1 On 20-12-2012, the learned Advocate has furnished his written arguments also. The contents of the written argument is furnished below:-

11.2 It is submitted that the Appellant holding the post of the Chairman and having taken part in the proceedings as Chairman in the impugned order passed by the DCGRF Erode, dated 2-6-2012, had taken the issue as his cause and he himself had prepared the present Appeal before this Hon'ble TN Electricity Ombudsman. As

per the settled principle of law, no man can be judge of his own cause. (maxim Nemo Debt Esse (JUDEX Propria causa) No Man can be Judge in his own cause.

11.3 It is submitted that the Chairman of DCGRF himself cannot be a suitor (Appellant) as per the (maxim Aliguis non debt esse judex in propria causa, quia non protest esse judex at parts) – No man can be at once judge as well as suitor. This proposition is the well settled principle of law, hence the very appeal prepared by the Addl. CE, Erode, Thiru N.Vadivelu is not maintainable in law.

11.4 It is submitted that it has been held by the Apex Court by categorically stating that a person who has taken part as a Judge in the proceedings of a cause, seldom cannot take part of in any Appeal proceedings in any manner whatsoever, reported in 2004 (13) SCC page 721. Hence, filing appeal by the Chairman of the DCGRF Erode himself is against the law settled by the Supreme Court in the case referred above. Therefore, the Appeal is liable to be dismissed in limini as not maintainable.

11.5 It is submitted that apart from the maintainability our Hon'ble High court in WP No.8844 of 2011 has held that once the erection of work of expansion of line is fully completed, and effecting of the service connection alone is left over the authorities should not stop giving service connection on the objection of the third parties. The only course open for the person who is objecting for having taking of the line are effecting the service connection is, to approach the District Magistrate under section 16(2) or 17 of the Telegraphic Act. Therefore, it is submitted that the majority view of the order passed by the District Forum directing to give service connection is passed by following the proposition laid down by the Hon'ble High court.

11.6 Under these circumstances, the respondent humbly submits that as per the order of the Apex Court the Appeal is not at all maintainable by the ACE, and liable to be dismissed in limini. Further on merits also the majority view of the orders is in

conformity with the proposition laid down by the Hon'ble High Court in WP No.8844 of 2011, hence the order of the DCGRF Erode is correct and it does not warrant any interference by this Hon'ble Ombudsman.

12. Written argument of the objector Thiru M.Subramania Gounder :

12.1 Thiru M.subramania Gounder has contended the following in the written argument submitted on 20-12-2012.

12.2 He is having agricultural land in SF No.312/2, Kongududaiam palayam village and Thiru Ramasamy, S/o.Chinnappa Gounder's SF No.268/1B is situated in west of his land.

12.3 He has already raised an objection in drawing electric line through his land and the lawyers notice to that effect was issued on 20-5-2011. But the Appellant has assured to remove the lines but not yet removed the same HT line is passing through his land from north south and a LT line is drawn in Eastern side of his land.

12.4 Now, from the middle of his land a line is drawn in southwest direction to give supply to Thiru Ramasamy. Hence, there are electric lines and poles all over his land.

12.5 There is way to draw line underneath the HT line and then on the boundary between his land and Thiru Kuppusamy land to effect supply to the Respondent.

12.6 There are other ways also to effect supply to Thiru Ramasamy (a) From the Cart Road available in the west of the Respondent's land. (b) From the Electric pole available in the south of the Respondent's land.

12.7 He also given concurrence for laying a line over the boundary between his land and Thiru Kuppusamy's land to effect supply to Thiru Ramasamy.

13. Additional Affidavit of the appellant :

In the affidavit dt. 31.1.2013, the appellant has stated the following :

(i) It is submitted that the Chairman of Circle level CGRF himself cannot to a suitor (appellant) as per the maxim. No man can be at once judge and suitor. However, the appellant on behalf of himself and his subordinates is entitled to make appeal in accordance with Supply Code provision clause 27(6) of appropriate regulatory commission for effective implementation and in the interest of the Tamil Nadu Generation and Distribution Corporation Ltd., Hence, the appeal is not against the Hon'ble Supreme Court Judgement referenced 2004 (13) SCC, page 721. Therefore the appeal is liable to be maintainable in law.

(ii) Further, the Govt., Vide G.O.(Ms) No.16, dated 23.12.2012 notifies as follows:

“In exercise of the powers conferred under section 164 of Electricity Act 2003 (Central Act 36 of 2003), the Governor of Tamil Nadu for the placing of electric lines for the transmission of electricity, hereby confers upon the TANSTRANSCO and TANGEDCO the powers which the telegraph authority possess under the provision of the Indian Telegraph Act 1985 (Central Act 13 of 1985). “

In all such cases 'Transmission Lines' (as per subsection 72 of Part I of the Electricity Act 2003), means all high pressure cables and over head lines (not being an essential part of the Distribution System of Licensee, transmitting from a Generating station or substation, together with any step up and step down transformers, switch gear and other works necessary to and used for control of search cables or over head lines and such buildings or part thereof as may be required to accommodate such transformers , switch gears and other works.

(iii) It is submitted that after hearing by the Hon'ble Ombudsman on 20.12.2012, the respondent prospective consumer was approached several times and explain the feasibility of laying LT lines in alternate route by the TANGEDCO officials

Assistant Exe. Engineer/O&M/Arachalur and the Assistant Engineer/O&M/Kandasamy Palayam on 3.1.2013 and again on 19.1.2013 the respondents, the objectors Thiru. Subramaniam and Thiru. Kuppusamy were approached by the TANGEDCO officials the Additional Chief Engineer/Erode, Executive Engineer, Distribution South/Erode, Assistant Exe. Engineer/O&M / Arachalur and Asst. Engineer / O&M/Kandasamy Palayam. On behalf of the respondent one Tmt. N. Balamani, W/o Nallasivam (D/o Thiru. Ramasamy) and one Thiru. Jaganathan son in law of Thiru. Ramasamy accepted to pay the cost of low tension line requiring deviation and the objectors accepted in laying of lines in their common bund.

(iv) The respondent paid the cost of the deviation on 21.1.2013, work completed and service connection to well of the respondent was effected on 22.1.2013 (SC No.038:005:348).

(v) For the reasons stated above, it is prayed that Hon'ble Ombudsman may be pleased to set aside the Circle level Consumer Grievance Redressal Forum, Erode EDC order dated 2.6. 2012.

14. Findings of the Electricity Ombudsman :

14.1 The appellant in his affidavit dt. 31.1.2013 has informed that the respondent has agreed to pay the extra cost for erecting the LT lines in an alternate route and the Thiru. Subramaniam and Thiru. Kuppusamy have also agreed for erection of line in the alternate route suggested by the TANGEDCO. The appellant also informed that the respondent has paid the cost of deviation on 21.1.2013 and the service connection to the well of the respondent was effected on 22.1.2013 after completing the works. The service connection number assigned is 038-005-348.

14.2 The respondent also informed that he has paid Rs.34,850/- on 21.1.2013 towards the extra expenditure for erecting the lines in the alternate route and the

extension works was completed and service was effected to his borewell on 22.1.2013. The line already erected in the lands of Thiru. Subramania Gounder was dismantled . He further prayed for releasing him from the pending case.

14.3 As the appellant has effected the agricultural service connection for the borewell of the respondent with the concurrence of the objector after collecting the extra expenditure towards extension of supply in the alternate route, I am of the view that there is no dispute between the parties now. Accordingly the Appeal Petition No. 36 of 2012 is treated as closed.

15. Conclusion :

In view of my findings in para 14, the Appeal Petition No. 36 of 2012 is treated as closed. No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To

1. The Addl. Chief Engineer,
Erode Electricity Distribution Circle,
TANGEDCO,
Erode – 638009.
2. Thiru C.Ramasamy,
S/o.Chinnappa Gounder,
Thandampalayam Post,
Erode – 638109.
3. The Chairman & Managing Director,
TANGEDCO(formerly TNEB),
NPKR Malaigai,
144, Anna Salai,
Chennai – 600 002.
4. The Secretary
Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmi pathy Salai
Egmore, Chennai – 600 008.

5. The Assistant Director (Computer) - **FOR HOSTING IN THE WEBSITE**
Tamil Nadu Electricity Regulatory Commission,
No.19A, Rukmini Lakshmiipathy Salai,
Egmore, Chennai – 600 008.