



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No.60 of 2015

M/s Platinum Catering,
165/1 Bharani Main Road,
R.N. Pudur,
Erode – 638 005.

.....Appellant
(Rep by Thiru. E.S. Appusamy, Advocate &
Thiru. A.R.P. Dhamodharan)

Vs

1) The Executive Engineer,
Urban/Erode,
Erode Electricity Distribution Circle,
TANGEDCO ,
948, E.V.N. Road, Erode – 638 009.

2) The Assistant Executive Engineer,
Chithode,
Erode Electricity Distribution Circle,
TANGEDCO,
Chithode, Erode – 638 102.

3) Assistant Engineer,
Chithode East,
Erode Electricity Distribution Circle,
TANGEDCO,
Chithode, Erode – 638 102.

.....Respondents
(Rep by Thiru A. Subramaniam/Executive Engineer/Urban/Erode,
Tmt. K. Shanthy, Asst. Exe. Engineer/Chithode &
Thiru. K. Thangavel, Junior Engineer/Chithode)

Date of hearing : 30.12.2015

Date of Order : 30.3.2016

The petition dated 20.7.2015 filed by M/s Platinum Catering, Erode was registered as appeal petition No.60 of 2015. The above appeal petition came up for hearing before the Electricity Ombudsman on 30.12.2015. Upon perusing the appeal petition, Counter Affidavit and after hearing both sides, the Electricity Ombudsman passes the following order.

ORDER

1. Prayer of the Appellant:

The Appellant most humbly pray that this Hon'ble Forum may kindly be pleased to allow the appeal of the Appellant and set aside the order passed in petition No.10/2015 dt.14.6.2015 on the file of consumer Redressal forum, Erode.

2. Brief history of the case:

- 2.1. The Appellant filed a petition for changing the tariff of his service connection No.013-006-1499 from tariff III-B to tariff V on 11.1.2013.
- 2.2. The above request was rejected by Junior Engineer/Chithode stating that as there are two services in the same premises the services are to be merged as a single service vide letter dt.17.2.2015.
- 2.3. The Appellant filed a petition before the CGRF of Erode EDC on 16.4.2015 and the CGRF has issued its order on 24.6.2015.
- 2.4. Aggrieved over the above order the appellant filed this appeal petition before the Electricity Ombudsman.

3. Orders of the CGRF:

The CGRF of Erode EDC has issued its order dated 24.6.2015. The relevant para of the order of the CGRF is extracted below:-

“முடிவுரை

மனுதாரரின் கோரிக்கையையும் அதற்காக கழகத்தரப்பினரது அறிக்கை மற்றும் சமர்ப்பிக்கப்பட்ட ஆவணங்கள் ஆகியவற்றையும் கூர்ந்து ஆராய்ந்து பார்த்ததில் M/s பிளாட்டினம் கேட்டரிங்கில் வெளியிடங்களுக்கு கேட்டரிங் செய்து கொடுப்பதில்லை என்பதும் அதே வளாகத்தில் அமைந்துள்ள M/s பிளாட்டினம் டிரேட் சென்டர் என்ற பிளாட்டினம் மாலில் நடைபெறும் திருமணங்கள் மற்றும் இதர நிகழ்ச்சிகளுக்கு சமையலறையாகப் பயன்படுத்தப்பட்டு வருவதும் உறுதி செய்யப்பட்டுள்ளது. எனவே வணிக உபயோகத்திலுள்ள M/s பிளாட்டினம் கேட்டரிங்கின் LTCT மின் இணைப்பு எண் 013-006-1499, Load -106 KW-ஐ மின் கழக விதிமுறைகளின் படி மின் கட்டண விகிதப்பட்டியலை III-B யிலிருந்து V-ற்கு மாற்றுவதற்கு பதிலாக மேற்கூறிய மின் இணைப்பு அதே வளாகத்தில் உள்ள மற்றொரு LTCT மின் இணைப்பு 013 006 1900 மின் பளு 110 KW, M/s பிளாட்டினம் டிரேட் சென்டர் என்ற நிறுவனத்தின் மின் இணைப்பையும் சேர்த்து TNERC (DC) 8-21 Dt 07.10.2014-ன் படி உயரமுத்த மின் இணைப்பாக மனுதாரர் பெற்றுக் கொள்ள வேண்டும். எனவே மனுதாரர் கோரிக்கையான மின் இணைப்பு எண் 013 006 1499-ன் வீதப்பட்டியல் III B-ல் இருந்து V க்கு வீதப்பட்டியல் மாற்றம் செய்ய இயலாது என இம்மன்றத்தால் இறுதி உத்தரவிடப்படுகின்றது.

மேலும் M/s பிளாட்டினம் டிரேட் சென்டர் (பி) லிட் நிறுவனத்திற்கு சமையலறையாக M/s பிளாட்டினம் கேட்டரிங் நிறுவனத்தை மாற்றி அமைத்துள்ளதால் அவ்விரு நிறுவனங்களுக்கும் வழங்கப்பட்டுள்ள இரு LTCT மின் இணைப்புகளும் ஒரே வளாகத்திற்குள் மேலும் ஒரே பயன்பாட்டிற்காகப் பயன்படுத்தப்பட்டு வருவதால் இரு மின் இணைப்புகளையும் கழக விதிகளின் படி ஒன்றாக இணைத்து ஒரே மின் இணைப்பாக வழங்க உரிய நடவடிக்கை மேற்கொள்ளுமாறு செயற்பொறியாளர் நகரியம் ஈரோடு அவர்களுக்கு இம்மன்றத்தால் பரிந்துரை செய்யப்படுகின்றது.”

4. Arguments of the of the Appellant furnished in the appeal petition :

4.1. The lower forum has not appreciated the case of the appellant in its proper perspective and meticulously dismissed the petitioner on wrong principles.

4.2. The lower forum has failed to note that the M/s Platinum Catering and M/s Platinum Trade Center are different legal body i.e. different entity. They are doing separate business, having separate account, Pan number etc.

- 4.3. The lower forum has failed to consider that the respondent while giving service connection they found that the petitioner company was in separate building with separate segregation.
- 4.4. The lower forum has failed to note that the respondents on inspection, had found that the petitioner company was doing catering business and it was amount to misuse of the tariff III-B and its consumption falls under tariff V. To that effect a tune of fine Rs.55355/- was collected on 8.11.2013 under receipt No.5745298.
- 4.5. The lower forum has failed to consider that while the Platinum Trade Centre was given service connection No.013-006-1900 on 22.11.2013, they found that the petitioner company was doing business separately. On the day the respondents found that the both companies are in separate segregation.
- 4.6. The respondent has falsely reported that, on inspection the respondents found there was no production on the date of inspection. It is totally contra to their earlier stand. The lower forum miserably failed to note that the business is a seasonal business. When ever the petitioner has been get order on that time only they would cook catering items. Purposely the respondents failed to disclose the inspection day. More over the forum failed to consider that there is regular power consumption and charges are also being paid periodically under tariff V.
- 4.7. The petitioner company's name was changed from M/s Primecoats India Pvt Ltd on 20.1.2013. The penalty was imposed on 8.11.2013. The

petitioner gave application to change the tariff from III-B to V on 11.11.2013 but the petitioner company was received the refusal order on 17.2.2015 only which is the subject matter of this case.

- 4.8. The lower forum has failed to note that while applying for service connection to the petitioner company, a property tax receipt dated 10.2.2009 was produced for door No.165,165/1, 165/2. The present property tax receipt dated 13.12.2015 is also for the same door numbers.
- 4.9. The lower forum wrongly arrived the conclusion in para 9 of its order without any base that the service connection to the petitioner is given in Door No.175.
- 4.10. The lower forum miserably failed to give fair opportunity for further oral arguments in the interest of justice. It was keen only to dispose the petition but not render justice.

5. Arguments of the Respondent furnished in the Counter Affidavit:

- 5.1. Initially the HT SC No 30 was effected for a maximum demand of 300 KVA to M/s Erode Spinning Mills Pvt Ltd., Chithode on 12.10.1983 at SF No 177 and 178 of Suriyampalayam Village, Bhavani Main Road, R.N. Pudur Post, Erode.
- 5.2. On 10.07.2009 one No LTCT SC No 013-006-1499 was effected to M/s Prime Coats Pvt Ltd, at SF No 177 & 178 Suriyampalayam Village, Bhavani Main Road, R.N. Pudur Post, Erode for a load of 106 KW for the purpose of manufacturing fabrics, cotton under tariff III B. At the time of effecting supply, both industries M/s Erode Spinning Mills and M/s Prime Coats Pvt Ltd were functioning by providing passage of 21 feet among each other.

- 5.3. At the request of consumer, the HT SC No 30 was disconnected on 22.10.2011. After observing all the procedures and formalities the HT metering set and service connection materials have also been dismantled permanently on 11.04.2012.
- 5.4. During the year 2013, M/s Prime Coats Company have stopped their business and started another one business in the name of M/s Platinum Catering in the same premises by using the electricity from the LT CT SC No.013-006-1499.
- 5.5. Subsequently, name transfer was effected on 29.01.2013 at the request of the consumer from MIs Prime Coats Pvt Ltd to MIs Platinum Catering.
- 5.6. Another one LT CT SC No. 013-006-1900 was also effected on 22.11.2013 under tariff V in the name of MIs Platinum Trade Center at D. No. 165, Bhavani Main Road, R.N. Pudur post, Erode for a load of 110 KW in the premises in which M/s Erode Spinning Mills had already run their industry by availing HT SC No 30 previously.
- 5.7. Then, the physical segregation between two firms were found removed i.e, MIs Platinum Trade Center and MIs Platinum Catering the premises was found to be provided with a common wall and door arrangement for the purpose of using passage. At the time of functions both premises were utilized viz one for 'Marriage Reception' Hall and another one for 'Kitchen with Dining' Hall i.e. utilised for the same purpose & as the Same premises for a common purpose. There is no chance of providing physical segregation between two premises either in normal course or during function times.
- 5.8. Under the above circumstances the consumer has applied tariff change in the LT CT SC No 013-006-1499 from tariff III B to V which is not at all possible one and the fact was also informed to the consumer by the respondent no.3.
- 5.9. As per the clause 20(3) of the forum Regulation, the appellant was called upon for a settlement on 14.08.2015. During the above meeting also once again the appellant was given sufficient opportunity on the

grounds in which the CGRF, Erode passed orders and putforth the TNERC's Notification No. TNERC/DC/8-21/Dt 07.10.2014 para 6, clause 27 sub rule 15(A). Moreover, the Appellant was also informed and explained well to have anyone of the following options as below :

(i) The existing 2 (Two) firms, M/s. Platinum Trade centre and M/s Platinum Catering should be provided with necessary permanent Physical segregation with separate entrances from main road which should satisfy the TNERC Norms (or)

(ii) To shift anyone of the 2 (Two) service connection to some other premise (or)

(iii) To convert the 2 No LT services into a HT service connection.

(or)

(iv) Anyone service may be converted to temporary supply tariff

5.10. On 11.06.2015 only the petitioner M/s. Platinum catering produced the property tax No. 301591 Dated 10.06.2015 in the name of M/s. Platinum Trade center private LTD at the address 165/1,2,3, R.N. Pudur, Bhavani Main road. The service connection application of both firms M/s. Platinum Trade center and M/s. Platinum catering clearly show that the activities and both service connection are found to be associated activities & run by Mr. ARP. Dhamodaran as a Managing Director and as the Proprietor respectively.

5.11. Though it is stated that M/s Platinum Catering and M/s Platinum Trade Centre are separately functioning and having separate account and 'PAN' etc., the premises is a common one, physically also not permanently segregated as found out by the field engineers during their Inspection.

5.12. At the time of effecting LT CT Service connection No 013-006-1900 on 22.11.2013 in the name of M/s Platinum Trade Centre at D.No 165, Bhavani Main Road, R.N. Pudur Post, Suriyampalayam, Erode under tariff V, based on the Physical Segregation between

M/s Platinum Trade Centre and M/s Platinum Catering provided with LT CT Service connection No 013-006-1499 under tariff III B.

5.13. The short levy was only arrived on the purpose of power consumption utilized for other than the purpose for which originally the service connection was effected. Of course the Nature of Business is an occasional one. While appointment in Platinum Trade Centre such as Marriage, Reception, marriage Religious functions and any other Meeting during VIP visits, etc. M/s Platinum Catering was utilized for catering purpose during all such occasions as mentioned above. Hence it is confirmed that M/s Platinum Catering and M/s Platinum Trade Centre are functioning in one and the same building and also in the same, premises which is beyond any doubt. Hence the consumer is liable to pay the electricity charges for both entities functioning in the same premises under appropriate Tariff fixed for the purpose of the energy utilized by them is also found to be a ' Genuine one.

5.14. The Consumer Grievance Redressal Forum also analyzed the procedure followed on the name transfer of firm from M/s Prime Coats Pvt Ltd to M/s Platinum Catering and the request of tariff change applied from tariff III B to tariff V on 11.12.2013. After granting sufficient Time limit for providing physical segregation between the above said two firms M/s Platinum Catering and M/s Platinum trade Centre, they have neither provided any physical segregation nor intimated the respondent. (2). regarding any such provision. Hence the respondent (3) has given Notice Dated 17.02.2015 to M/s Platinum Catering :

(i) To provide necessary physical segregation (or)

(ii) Other wise the LT CT Service connection No 013-006-1499 may be shifted to any other premises (or)

(iii) The connected load of the L T CT Service connection No 013-006-1499 may be added as additional load with the other available LT CT Service connection No 013-006-1900

M/s Platinum Trade center utilized in the same premises converting to a single HT service.

- 5.15. The Consumer Grievance Redressal Forum (CGRF) carefully construed the facts and averments filed by the respondent and constitute the Distribution Code 15 (A) and interpreted correctly. The content of TNERC distribution code /8-21 Dt 07.10.2014 Para (6) of clause (27) sub rule 15(A) is mentioned below.

"(15A) Notwithstanding anything contained in sub-regulations (14) and (15) a person or an establishment or an entity shall be given only one service connection in a premises or in contiguous premises to run a business or service or occupation or another form of activity including its Associated Activities and for activities of the associates even if there is a permanent physical segregation"

As per the TNERC (Distribution code Dt 07.10.2014 Para (6) Clause (27) Sub rule 15 (A), A person / An Establishment or an Entity shall be given only one service connection in a premises or in contiguous premises to run a business or service or occupation or another form of activity including its associated activities.

In this case, in a "Contiguous premises "the details of the 2 (Two) service connections available are furnished below;

மேல்முறையிட்டாளர் திரு. ARP. தாமோதரன்			
1	நிறுவனத்தின் பெயர்	M/s பிளாட்டினம் கேட்டரிங் சென்டர்	M/s பிளாட்டினம் டிரேடிங் சென்டர் (பி) லிட்
2	LTCT 3 Phase மின்இணைப்பு எண்.	013-006-1499	013-006-1900
3	மின் பளு	106 KW	110 KW
4	வீதப்பட்டியல்	III-B	V
5	மின்இணைப்பு உரிமையாளர்	திரு. ARP. தாமோதரன்	உரிமையாளர்/இயக்குநர் திரு. ARP. தாமோதரன்
6	மின்இணைப்பின் முகவரி	165, பவானி மெயின் ரோடு, ஆர்.என். புதூர், அஞ்சல், ஈரோடு-5	165, பவானி மெயின் ரோடு, ஆர்.என். புதூர், அஞ்சல், ஈரோடு-5

7	கதவு எண்.	165	165
8	பயன்பாடு (Purpose of SC Utilization)	வணிக உபயோகம், கேட்டரிங்	வணிக உபயோகம், திருமணம் மற்றும் வரவேற்பு, function, Meeting of VIPs etc.,
9	கட்டிட வளாகம் Premises	Same and single premises utilized for (contiguous premises) catering and Marriage/Receptions, Functions, Meeting by VIPs etc by Thiru. AP. Damodaran	

Hence, it is humbly submitted that both the above LT CT SCNo. 013 006 1499/106 KW & 013 006 1900/110KW should be merged / clubbed in to 1 (one) service connection with a Total connected load of (106 KW + 110KW) 216 KW (HT SC) as per TNERC Norms as mentioned above.

6. Hearing held by the Electricity Ombudsman:

- 6.1. To enable the Appellant and the Respondent, to put forth their arguments in person, a hearing was conducted before the Electricity Ombudsman on 19.10.2015. As the Appellant's advocate has prayed for postponement of the hearing, the hearing was postponed to 4.11.2015.
- 6.2. on 4.11.2015, the Appellant Thiru. A.R.P. Dhamodharan, appeared in person and prayed for an adjournment.
- 6.3. Accordingly, the hearing was adjourned to 3.12.2015. The Respondent 1 & 3 have also attended the hearing.
- 6.4. The hearing scheduled on 3.12.2015 was cancelled and posted for hearing on 30.12.2015.
- 6.5. On 30.12.2015, Thiru. E.S. Appusamy, Advocate has attended the hearing and putforth his side arguments.

6.6. Thiru. A. Subramanian, Executive Engineer/Urban/Erode, the Respondent-1 herein Tmt. K. Shanthi, Assistant Executive Engineer/O&M/Chithode the Respondent-2 herein and Thiru. K. Thangavel, Junior Engineer/O&M/East/Chittode, the Respondent-3 herein have attended the hearing and putforth their arguments.

7. Arguments put forth by the Appellant's Representative on the hearing date:

7.1. Thiru. Appusamy, Adovcate, has putforth his arguments on behalf of the Appellant.

7.2. The learned advocate reiterated the contents of the appeal petition.

7.3. The learned advocate informed that for the said service connection the charges are being levied under tariff-V and being paid by the Appellant. But, tariff change alone is not effected for the said service connection.

7.4. The learned advocate argued that M/s Platinum Catering is a proprietary concern and the M/s Platinum Trade Centre is a limited company and therefore, both are different entities with independent PAN numbers. Hence, argued that both companies need separate service connection.

7.5. The learned advocate argued that the Respondent have wrongly interpreted regulation 15(A), of the Distribution Code. Further, he also argued that the said regulation can be applied only prospectively and not retrospectively. He also argued that both the services were effected before, the regulation 27(15)(A) of the Distribution Code comes into effect and hence, it can not be applied now on the said services.

- 7.6. With regard to the doors, in the common wall connecting the Platinum Trade Centre and the Platinum Catering, the learned Advocate agreed that the door arrangement will be removed and permanently closed to have physical segregation between the premises.
- 7.7. Similarly, the Appellant agreed to segregate the verandha portion also to have a permanent physical segregation in between both the premises.
- 7.8. The learned advocate informed though the Platinum Catering is doing the catering works whenever there is a function in Platinum Trade Centre, the catering is being done by the Platinum Catering for other orders received from parties other than Platinum Trade Centre also.
- 7.9. The learned advocate argued that the licensee's argument of the open space available in front of both the entities shall also be segregated is not acceptable to him. He also argued that for having a separate service, the physical segregation of permanent building alone is sufficient. The open space is available in front of the Building used as parking space for both the entities.
- 7.10. The learned Advocate also furnished, the memorandum and Articles of Association M/s Platinum Trade Centre Pvt Ltd., the Pan card and Certificate of incorporation in respect of M/s Platinum Trade Centre to show that it is a Pvt Ltd., company. He has also furnished a provisional income and expenditure account for the year ending 31.3.2015 attested by the Chartered Accountant in respect of M/s Platinum Catering.

8. Arguments put forth by the Respondent on the hearing date:

- 8.1. Thiru. A.Subramanian, Executive Engineer/Urban/Erode reiterated the contents in the counter.
- 8.2. The EE argued that there is no proper physical segregation between the premises of M/s Platinum Catering and M/s Platinum Trade Centre. He pointed out that there was a door in between the two premises in the common wall and the same was kept open. Therefore, he argued that there is no physical segregation between the premises and it has to be treated as a single premises only.
- 8.3. He also argued that both firms are owned by the same family. Thiru. A.R.P. Damodharan is proprietor for M/s Platinum Catering and he is the Managing Director in respect of Platinum Trade Centre.
- 8.4. The Platinum Trade Centre is used as a marriage function/meeting hall and the Platinum Catering Centre is utilized for catering purpose in all the function conducted in Platinum Trade Centre. Hence, argued both the services are to be merged together as they are in a same complex and utilised as one for Hall and another for Dining.
- 8.5. The EE also argued that it is not enough to close the door now available in between the two buildings and provide a partition in the varandha to treat them of having physical segregation. Further, physical segregation has to be made from the main road to the premises (ie) the open space in front of both the building shall also have to be provided with partition walls, so as to establish that there is physical segregation between the

buildings. He also gave a sketch showing both the premises when separate services were given (ie) one HT service for Erode Spinning Mills Pvt Ltd., with and another LTCT service in the name of Prime Coals India Pvt Ltd., and also the present status after the name change as Platinum Trade Centre and Platinum Catering.

9. Written arguments of the Respondent :

9.1 In the written argument dt.25.2.2016 the Respondent has stated the following :

- (i) One service connection shall be given as per Distribution Code regulation 27(15)(A) to the above premises.
- (ii) The consumer has to surrender any one of the LTCT services and apply for additional load as per regulation 33(4).
- (iii) The request for change of tariff is not possible in LTCT SC No.013-006-1499.

10. Findings of the Electricity Ombudsman:

I have heard the argument of both Appellant and Respondents. On a careful consideration of the arguments put forth by the rival parties, I find the following as the issues to be resolved.

- (i) What is tariff applicable for SC No.013-006-1499?
- (ii) Whether the argument of the Respondents that both the service are to be merged is acceptable ?
- (iii) Whether physical segregation is available in between the premises of M/s Platinum Catering and M/s Platinum Trade Centre ?

- (iv) Whether the prayer of the Appellant to change the tariff of M/s Platinum Catering is acceptable ?

11. Findings on the first issue:

- 11.1. The Appellant informed that originally they obtained a LTCT service in the name of M/s Prime Coats Pvt Ltd., in the said premises for manufacture of Fabrics under tariff IIIB. They have changed the name of the company as M/s Platinum Catering on 20.1.2013, but they have not changed the tariff. The licensee has levied penalty of Rs.55,355/- for misuse of tariff as the said service billed under IIIB is utilized for catering.
- 11.2. The Appellant argued that they gave an application for change of tariff from tariff IIIB to V on 11.11.2013, after paying the penalty amount. But the Respondents have refused to change the tariff vide their letter dt.17.2.2015.
- 11.3. The Respondent argued that the applicable tariff is V only. The CC charges are being collected at the Tariff –V rates only to avoid financial loss to the Board. But, tariff was not changed as the physical segregation which was originally available while effecting the services was removed. Hence, the appellant was requested to provide necessary physical segregation between the premises with separate entrances for each premises from the main road (or) the appellant may merge the services and avail only one service to cater both the loads.
- 11.4. On a careful examination of the arguments of the appellant and the Respondent, it is noted that both are agreeable that the tariff applicable is tariff-V only and

there is no dispute over the applicable tariff. Hence, it is held that the tariff applicable is tariff V.

12. Findings on the Second issue:

12.1 The Respondent has informed the following :

(a) Initially the HTSC No.30 was effected for a maximum demand of 300 KVA to M/s Erode Spinning Mills Pvt Ltd., Chithode on 12.10.1983, at SF No.177 and 178 of Suriyampalayam village, Bharani Main Road, R.N. Pudur.

(b) On 10.7.2009, one LTCT SC No.013-006-1499 was effected to M/s Prime Coats Pvt Ltd., at SF No.177 and 178 of Suriyampalayam Village, Bharani Main Road, R.N. Pudur for a load of 106 KW for the purpose of Manufacturing of Fabrics, Cotton under tariff IIIB.

(c) At the time of effecting supply both M/s Erode Spinning Mills Pvt Ltd., and Prime Coats Pvt Ltd., were functioning separately and a passage of 21 feet was available between them.

(d) At the request of the consumer, the HTSC No.30, effected in the name of M/s Erode Spinning Mills Pvt Ltd., was disconnected on 22.10.2011 and permanently dismantled on 11.4.2012.

(e) M/s Prime Coats Pvt Ltd., have stopped their business and started another business in the name of M/s Platinum Catering in the same premises using the same service connection No.013-006-1499 and the name of the service was changed as M/s Platinum Catering on 29.1.2013.

(f) Another LTCT service connection No.013-006-1900 was also effected on 22.11.2013 in the premises in the name of M/s Platinum Trade Centre where M/s Erode Spinning Mills Pvt Ltd., has already run their industry.

12.2 Now, the physical segregation between the premises of M/s Platinum Trade Centre and M/s Prime Coats Pvt Ltd., was found to be removed and a common wall and door arrangement is found to be provided for using as passage. During function time one premises was utilised as Marriage/Reception Hall and another as Kitchen cum Dining Hall.(ie) both the premises are utilized as one premises for a common purpose. There is no physical segregation between the two premises.

12.3 The Respondent citing regulation 27(15)(A) of the Distribution Code argued that the activities of the both services are run by Thiru. A.R.P. Damodharan as Managing Director of M/s. Platinum Trade Centre and as proprietor of M/s Platinum Catering. The Respondents also argued that the activities of both the service connection are associated activities. Hence, he argued that the service connection are to be merged and only one service could alone be used for the above premises with suitable sanctioned load.

12.4 The Appellant argued that M/s Platinum Catering is a proprietary concern and M/s Platinum Trade Centre is the limited company. Both are having separate business, separate accounts and separate pan numbers. He further argued both the firms are different entity. Hence, argued that both cannot have a common service. He has also submitted the copy of memorandum and articles of

Platinum Trade Centre Pvt Ltd in the support of his arguments that both are separate entities.

12.5 The Appellant's argued that the Respondents have misconstrued the Regulation 27(15)(A) of the Distribution Code and wrongly interpreted. As M/s Platinum Trade Centre and M/s Platinum Catering are different entity, the regulation 27(15)(A) of the Distribution Code is not applicable to their case.

12.6 The Appellant also argued that the services were effected during 2009 & 2013 where as the regulation 27(15)(A) of the Distribution Code has come into effect only from 3.12.2014. Hence, it cannot be applied retrospectively on the said service.

12.7 As the Respondent has cited, regulation 27(15)(A) of the Distribution Code, the same is extracted below :

“ 27 Requisitions for Supply of Energy :

*xxx xxx xxx
xxx xxxx xxx*

(15A) Notwithstanding anything contained in sub-regulations (14) and (15), a person or an establishment or an entity shall be given only one service connection in a premises or in contiguous premises to run a business or service or occupation or another form of activity including its associated activities and for activities of the associates even if there is a permanent physical segregation.”

12.8 The above regulation come into effect from 3.12.2014 and it cannot be enforceable retrospectively as held in the High Court Judicature at Madras in W.P.No.19465 of 2008 (CBM College Vs AE/TNEB) dated 02.11.2011. The relevant paras of the judgement are extracted below :

“ 17. It is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. But, the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the legislature to affect existing rights, it is deemed to be prospective only.

24. Significant it is to mention that the impugned order, dated 02.08.2008, calling upon the petitioner to apply for a single service connection as against the four connections, does not speak as to under what provisions the said order is passed. Even assuming, as contended by the learned counsel for the respondent, that the said order has been passed as per Section 27 and sub-sections (13) and (14) thereof of the Code, the said provisions shall apply only prospectively, but not retrospectively. Equally, it is nowhere stated in any of the provisions that those persons or establishments who are already having more than one service connection have to apply for single service connections.

25. It is well settled, as stated above, that any law, Act, Order, rule or regulation shall be only prospective unless it is expressly stated therein that it has retrospective effect..... Therefore, in the absence of any specific provision in the Act or the Code as to application of retrospection to the service connections prior to the coming into force of the said Act and the Code, the impugned order, which is passed without any reference to the provisions of the Act, or the Code, is unsustainable in law.”

12.9 In the case on hand, the request for change of tariff was made on 11.11.2013. Whereas the notification incorporating regulation 27(15A) of the Distribution Code was issued only on 3.12.2014 (ie) one year after furnishing the application for change of tariff.

12.10 Hence I am of the view that the regulation 27 (15A) could not be applied for these services which are already existing on the date of publication of the Gazette Notification.

12.11 Further, in this regard, I would like to refer, regulation 27(14) for the Distribution Code which is extracted below :

“ 27 Requisitions for Supply of Energy :

xxx xxx xxx
xxx xxxx xxx

14. *Where more than one person or more than one establishment is or intended to be 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/ electrical segregation of areas for which different service connections are applied for.”*

12.12 On a careful reading of the said regulation, it is noted that if 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, if there is permanent physical/electrical segregation of areas for which different service connection were applied for.

12.13 In the case on hand M/s Platinum Catering is a proprietor concern and M/s Platinum Trade Centre Pvt Ltd., is a limited company. Hence, both are different entity. Accordingly, both the company are eligible for a separate service connection provided if they are physically and electrically separated. The Respondent informed that there was physical segregation when the services were effected. The Respondent have effected the services assuming both are different establishments only. Even now also, the Respondents are not arguing that both the companies are one entity. They argued that Thiru. Damodharan is a sole proprietor for one company (Viz M/s Platinum Catering) and Managing Director for other company (viz., M/s Platinum Trade Centre Pvt Ltd.,) As both the companies are different establishments, I am of the view that separate service could be maintained by the respective company if they are physically and electrically separated.

13. Findings on the Third issue:

- 13.1. The respondent argued that at the time of effecting of services there was a physical segregation. But, now, the physical segregation between the two firms were found to be removed (ie) M/s Platinum Trade Centre and M/s Platinum Catering are having a common wall with a door arrangement's. By opening the door, the people attending the function at Platinum Trade Centre can go over to the Platinum Catering for dining. Hence, he argued that the whole premises was used as one premises for conducting the function and for catering arrangements.
- 13.2. The Respondents also argued that the varandha in front of both the firms are without any physical segregation.
- 13.3. The Appellant also agreed that they have provided a door in the common wall for using it as a passage for dining. But argued that they are agreeable to close the above passage permanently. The appellant agreed to provide a permanent physical segregation in the varandha portion also.
- 13.4. On a careful examination of arguments of the Appellant and the Respondent and on examining the sketch furnished by the Respondents, it is noted that there was physical segregation in between the building when the service connection was effected in the name of Prime Coats India (P) Ltd and Erode Spinning Mills Ltd. As a door is provided in the common wall of the premises and there is no separation in varandha portion, it is held that there is no permanent physical segregation in between the premises of M/s Platinum Trade Centre Pvt Ltd., and M/s Platinum Catering at present.

14. Findings on the Fourth issue :

- 14.1. The Appellant argued that they have applied for a change of tariff from IIIB to V on 11.11.2013. But, the tariff was not changed till date. However, the licensee is collecting the CC charges as per the tariff V rate only.
- 14.2. With regard to this contentions of the Respondent that there is no physical segregation in between the premises of M/s Platinum Trade Centre and M/s Platinum Catering, the Appellant informed that the door provided in the common wall will be removed and the opening will be closed permanently. They have agreed to provide a physical segregation in the varandha also.
- 14.3. The Respondent argued that M/s Platinum Catering is doing the catering service. Hence, the tariff applicable is tariff-V only and they are collecting the CC charges at tariff V rate only.
- 14.4. The Respondent also argued that the premises of M/s Platinum Trade Centre Ltd., and M/s Platinum Catering are not having any physical segregation. The premises is treated as single/contiguous premises and utilized for catering and marriage reception function, meeting by VIPs etc., Hence, they have to be merged as a single service. Citing regulation 27(15)(A) of the Distribution Code.
- 14.5. The Respondent also argued that alternatively, the firms can have separate services, if there is a physical segregation between the two firms from the Main Road itself. In other words, the Respondent argued that a permanent physical segregation has to be made in the open space also besides closing the door provided in the common wall and providing separation in the varandha portion.
- 14.6 The Respondent also informed that they have already issued notice to the

Appellant's in this regard on 17.2.2015. In the said notice they have directed M/s Platinum Catering to confirm the following :

- (i) To provide necessary physical segregation. (Or)
- (ii) Otherwise, the LTCT SC No.013-006-1499 may be shifted to any other premises. (Or)
- (iii) The connected load of the LTCT service connection No.013-006-1499 may be added as additional load with the other available LTSC No.013-006-1900 effected in the name M/s Platinum Trade Centre and utilized in the same premises duly converting it as a single HT service.

14.7. On a careful study of the arguments put forth by the rival parties, it is noted that the applicable tariff for the SC No.013-006-1499 is tariff V only and the charges collected is also at the tariff V rates only. The Respondent is not changing the tariff as there is no physical segregation between the two service available in the said premises.

14.8. In this regard, I would like to point out that there is no provision in tariff order to bill the service under tariff V when the service connection is under Tariff IIIB category.

14.9. Further, it is noted that the new service connection in the name of M/s Platinum Trade Centre was effected on 22.11.2013 whereas the change of tariff for SC No.013-006-1499 in the name of M/s Platinum Catering was made on 11.11.2013. The time schedule given for change of tariff as per Distribution Standards of Performance Regulation is 7 days. Hence, the tariff change would have been decided on or before 18.11.2013. The licensee informed that there

was physical segregation while effecting the service connection on 22.11.2013 from M/s Platinum Trade Centre (ie) 11 days after receipt of application for change of tariff. In such case there is no reason to withhold the change of tariff applied for.

14.10. As M/s Platinum Catering is utilizing the service connection No.013-006-1499 for his catering business which comes under tariff V as per the tariff order, and as the CC charges also being calculated at tariff V rates, I am of the view that the tariff has to be changed to Tariff-V.

14.11. The issue raised by the Respondent for not changing the tariff is absence of physical segregation between the premises.

14.12. The Appellant has agreed to provide permanent segregation between the premises of the two firms in the constructed area, but not willing to provide a physical segregation in the open spaces available in front of the premises up to road.

14.13. In this regard, I would like to refer regulation 27(14) which is extracted below :

“ 27 Requisitions for Supply of Energy :

xxx xxx xxx

xxx xxxxx xxx

14. Where more than one person or more than one establishment is or intended to be 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/ electrical segregation of areas for which different service connections are applied for.

14.14. On a careful reading of the said regulation, it is noted that for effecting more than one service in a door number or sub-door number, there shall be permanent

physical/electrical segregation of areas for which different service connection was required.

14.15. As the service connection are to be utilized for the built up areas of the premises, and as the services are being utilized by 2 different entities. I am of the view that, it is sufficient if the built up area are permanently segregated besides electrical segregation to have a separate service for each entity.

14.16. As there is no permanent physical segregation between the premises, the licensee may issue a notice to both service connection owners to have permanent physical segregation between their premises to keep separate services for each firm. If the consumers have not arranged the physical segregation, within the time frame given in the notice, then the licensee may take action as per regulation.

14.17. In this regard, I would like to mention that the new service connection in the name of M/s Platinum Trade Centre was effected on 22.11.2013. Whereas the change of tariff for SC No.013-006-1499 in the name of M/s Platinum Catering was made on 11.11.2013. In the time schedule given for change of tariff as per DSOP is 7 days. Hence, the tariff change would have been decided on or before 18.11.2013. The licensee said there was physical segregation while effecting the service connection on 22.11.2013. In such case there is no reason to withhold the change of tariff applied for.

15. Conclusion :

15.1. (i) In view of my findings in para 14, the tariff change applied for SC No.013-006-1499 from tariff IIIB to V may be effected.

(ii) The Respondents shall issue a notice to the Appellant to arrange for the physical & electrical segregation in the premises duly specifying a time limit.

(iii) M/s Platinum Catering, the Appellant herein shall arrange to provide a permanent physical and electrical separation in between the premises of M/s Platinum Catering Centre and M/s Platinum Trading Centre Pvt Ltd., within the period as specified by the licensee in the notice and failing which the licensee may take further action as per regulation.

15.2. With the above findings, the A.P.No.60 of 2015 is finally disposed of by the Electricity Ombudsman. No costs.

(A. Dharmaraj)
Electricity Ombudsman

To

1) M/s Platinum Catering,
165/1 Bharani Main Road,
R.N. Pudur,
Erode – 638 005.

2) The Executive Engineer,
Urban/Erode,
Erode Electricity Distribution Circle,
TANGEDCO ,
948, E.V.N. Road, Erode – 638 009.

3) The Assistant Executive Engineer,
Chithode,
Erode Electricity Distribution Circle,
TANGEDCO,
Chitthode, Erode – 638 102.

4) Assistant Engineer,
Chithode East,
Erode Electricity Distribution Circle,
TANGEDCO,
Chithode, Erode – 638 102.

5) The Chairman,
(Superintending Engineer),
Consumer Grievance Redressal Forum,
Erode Electricity Distribution Circle,
TANGEDCO ,
948, E.V.N. Road, Erode – 638 009.

6) The Chairman & Managing Director,
TANGEDCO,
NPKR Maaligai,
144, Anna Salai,
Chennai – 600 002.

7) The Secretary,
Tamil Nadu Electricity Regulatory Commission,
No.19A, Rukmini Lakshmi pathy Salai,
Egmore,
Chennai – 600 008.

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