



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No. 24 of 2016

M/s. Real Link Engineering India P Ltd.,
Rep by its Senior General Manager,
Thiru. Chandramouli,
SF No.404-2A, 2B, 2C, 2D and 412,
Appanaickenpattipudur,
Appanaickenpalayam,
Sulur Taluk,
Coimbatore District.

..... Appellant
(Rep by T. Chandramouli)

Vs

The Superintending Engineer,
Tiruppur Electricity Distribution Circle,
TANGEDCO (Formerly TNEB)
10A Jyothi Nagar,
Perumalnallur Road, Tiruppur 641 603.

..... Respondent
(Rep. by K. Rajamani, Executive Engineer/Palladam)

Date of hearing : 31-5-2016

Date of Order : 9-8-2016

The Petition 22.2.2016 filed by M/s Real Link Engineering India Pvt Ltd., Appanaickenpattipudur was registered as Appeal Petition No.24 of 2016. The above appeal petition came up before the Electricity Ombudsman for hearing on 31.5.2016.

Upon perusing the appeal petition, counter affidavit of the Respondent and after hearing both sides, the Electricity Ombudsman passes the following order.

ORDER

1. Prayer of the Appellant:

The appellant prayed that the Hon'ble Ombudsman may be pleased to quash the order of the Hon'ble CGRF in CC No.06/2015-16 on 6.2.2016 and consequently direct the respondents to refund the EMD amount of Rs.5,20,000/-(Rupees five lakhs twenty thousand only) and pass such further or other orders as the Hon'ble Ombudsman may deem fit and proper and thus render justice.

2. Brief history of the Case:

2.1 M/s Real Link Engineering India Pvt Ltd., the Appellant herein has applied for a new HT service connection for a demand of 650 KVA and paid the registration fee on 13.9.2012 along with EMD of Rs.5,20,000/-

2.2 The licensee requested the Appellant to shift the metering point to the front side of the factory from inside the factory vide letter dt.27.11.12. As the Appellant has not shifted the metering point the Appellant was again informed to shift the metering point within 15 days time vide letter dt.11.1.2013.

2.3 As the Appellant has not shifted the metering point the application seeking service connection was cancelled on 6.2.2013. The Appellant again furnished an application on 20.5.2014 and paid the EMD amount and obtained a HT service connection.

2.4 The Appellant filed a petition before the CGRF of Tiruppur EDC for refund of the EMD amount of Rs.5,20,000/- paid while registering the first application on 13.9.2012.

2.5 The Forum rejected the petition. Aggrieved over the order dt.6.2.2016 of the Forum, the Appellant filed this appeal petition before the Electricity Ombudsman.

3. Orders of CGRF :

The CGRF of Tiruppur EDC has issued its order on 6.2.2016. The relevant para of the order of CGRF of Tiruppur EDC is extracted below :

“Order of the forum:

From the statements of the licensee , the respondent and from the documents produced by the licensee, and as per the TNERC Distribution Code 34(4), it is ordered that the petitioner is not entitled for refund of already paid amount Rs 5,20,000/- towards Earnest Money Deposit .”

4. Arguments furnished by the Appellant in the Appeal Petition :

4.1 The Appellant is a private limited company having foundry division at SF No.404/2A, 2B, 2C, 2D and 412 of Appanaickenpattipudur, Appanaickenpalayam village of Sulur Taluk, Coimbatore District. For the above foundry division the appellant made requisition for electrical supply at High tension for the maximum demand of 650 KVA in prescribed format to the Superintending Engineer/Tiruppur EDC on 14.3.2011. The application was received by the circle office on 19.3.2011.

4.2 Though the application was received by the circle office on 19.3.2011, the same had been registered on 13.9.2012 (Registration No.BT/018/12-13 dt.13.9.2012). The Appellant had been required to pay EMD amount of Rs.520000/- Accordingly, the amount was paid on 13.9.2012 in receipt No.438 C010354/13.9.2012. The licensee by letter dt.27.11.2012 have informed that the metering point to be shifted to the main panchayat approach road. The letter was received on 12.12.2012.

- 4.3 The site proposed by the licensee involved approval from local body authorities for widening the Road. The Appellant took earnest and sincere efforts to obtain the approval from local body authorities. While the Appellant's efforts in this aspect were going on, it has been informed by letter dt.9.1.2013 (received on 18.1.2013) to shift the metering point within 15 days. The Appellant completed the shifting of metering point and enclosing the revised site plan with the new location of metering point, by letter dt.11.2.2013 requested for sanction of the maximum demand of 650 KVA. But, before the application was processed the same has been cancelled citing the reason that they have not shifted the metering point to the site proposed by the TNEB.
- 4.4 They have requested not to cancel the application. But their requests were not considered and sticking to the stand, the application was cancelled forfeiting the EMD amount paid by them. The ground for cancellation of the application and forfeiture cited was that "they have not shifted the metering point" vide letter dt.6.2.2013.
- 4.5 The appellant has also been informed by the above letter that if he desires of electrical supply, he has to apply afresh. As the Appellant has already incurred huge expenditure on establishing the industry and as also paid the EMD of Rs.520000/- the appellant immediately applied for fresh electrical supply by application dated 19.3.2013. The application was registered on 30.7.2014 and load sanction accorded in Lr.No.SE/TEDC/AEE/GI/AE2/GI/F.Real Link/D.2247/14-15, dated 5.9.2014.

- 4.6 In the meantime the Appellant also represented for refund of the EMD amount of Rs.520000/- by letter dt.11.8.2014. Again on demand to pay the development charges and service connection charges, the Appellant represented for adjustment of the already paid EMD amount of Rs.520000/- against the demand for development charges etc, But the request for refund/adjustment of the already paid EMD amount of Rs.520000/- has been rejected by letter dt.16.9.2014 stating that *“as per TNERC Distribution Code clause 34 if the applicant backs out after registration and payment of EMD but before payment of Development charges, service connection charges and meter caution deposit, then the application will be cancelled and EMD forfeited”*.
- 4.7 The Appellant states that the Hon'ble CGRF also relied on provisions in regulation 34 of the Distribution Code which states that “ if the applicant backed out after registration and payment of EMD but before payment of development charges, service connection charges and meter caution deposit, then the application shall be cancelled and EMD forfeited” Having toned the same line of the Respondents that the metering point has not been shifted; the CGRF rejected the claim for refund of EMD in its order dt.6.2.2016.
- 4.8 The Appellant states that they have not backed out from availing the supply. This could be evident from the fact that as advised by the licensee, the Appellant applied afresh and availed electrical supply to their foundry division. There was NO BACKED OUT by the appellant.
- 4.9 As per provisions of Regulation 34, the application cancellation and forfeiture of EMD could be only when the applicant backs out from availing electrical supply.

In their case there is NO such backed out. Hence, the cancellation and forfeiture is against the provisions of regulation 34 of the TNE Distribution Code.

4.10 It is also pertinent here to refer the provision regarding the duty of licensee as detailed in section 43 of the Act to supply electricity on request incorporated in regulation 27 of the TNE Distribution Code.

(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.

In the present case nothing has been followed as above but the application cancelled even before processing it citing shifting of metering point” which is erroneous and against the provisions of Regulation 34 of the Distribution Code.

4.11 The Appellant states that even if it has been taken the metering point has not been shifted within the time fixed by the licensee, it may please be noted that as per provision in clause 29(13) Note : 2, of the Distribution Code, the Chief Executive Officer of the Distribution licensee (The Chairman /TNEB) may approve relaxation against the required stipulation in sub section 12 and 13 in exceptional cases.

4.12 The appellant states that they have not been provided with the opportunity as above, instead without considering the alternate remedies available to an intending consumer the application has been cancelled. The appellant repeatedly explained the constraints in shifting the metering point ; as the same requires approval from local body authorities. The grievance was genuine and the same could have been considered by the respondents. There is also provision to revoke the cancelled Application by the Competent Authority. The Chairman of the Distribution Licensee has powers to revoke the cancelled application and revive it. The above procedure neither followed nor informed by the licensee. Instead it has advised to apply afresh paying all charges afresh. The above fact have been represented both to the Superintending Engineer/Tiruppur EDC and also to the CGRF, Tiruppur on 6.2.2016. But, the

forum relying on the statements of the respondents, rejected their claim for refund of EMD Rs.5,20,000/- and issue order dt.6.2.2016.

- 4.13 The impugned order rejecting the Appellant's request to refund the EMD amount of Rs.520000/- is erroneous and without application of mind and without any basis in law.
- 4.14 The learned CGRF failed to state the reason as to how it was convinced with the findings of the Respondents with regard to "backed out" Hence, the order is erroneous and not sustainable.
- 4.15 The learned CGRF had failed to appreciate the provisions in regulation 34 of the Distribution Code, which clearly states that "if the applicant backs out after registration and payment of EMD but before payment of development charges, service connection charges and meter caution deposit, then the application will be cancelled and EMD forfeited" There is no provision either in the Act or in the Distribution Code to cancel the application for "not shifting of metering point".
- 4.16 The appellant states that as per procedure for effecting the High Tension supply the feasibility to effect High Tension supply has to be assessed, But, even before assessing the feasibility and before processing the application the application was cancelled and EMD forfeited. As such the same is against the procedure prescribed by the licensee for effecting the High Tension supply.
- 4.17 The Hon'ble CGRF has failed to appreciate the fact that the licensee has not adhered the provisions of regulation 43 of the Electricity Act specified in clause 27 of the Distribution Code.

- 4.18 The Appellant states that the shifting of metering point involved, widening of the panchayat road and approval of local body authorities. Hence, the time lag is beyond the control of the Appellant. The fact has been informed to the respondent. On obtaining approval from local body authorities, the Appellant has also sent intimation with revised drawing and new location of metering point by letter dt.11.2.2013. Hence, it is not correct to content that they have not sent any reply.
- 4.20 The appellant states that the application was received on 19.3.2011 by the licensee but registered the application only on 13.9.2012. When the licensee had taken one and half years for registration of the application, it is not justifiable to cancel the application for not shifting metering point within a period of 45 days.

5. Arguments furnished by the Respondent in their counter :

- 5.1 The petitioner M/s Real Link Engineering India (P) Ltd., having foundry division at SF 404/2A, 2B, 2C, 2D and 412 of Appanaickenpatty village Suler, Taluk, Coimbatore District. The petitioner's application for a new HTSC for a demand of 650 KVA was received only on 08/09/2012 and registered on 13/09/2012.
- 5.2 The application was received only on 8/09/2012 in full shape and registered on 13/09/2012 (Reg.No.BT 018/2012-13 dated 13/09/2012). Application registration fees of Rs.500/- and EMD Rs.5,20,000/- collected vide PR No.438 Co 10354 dated 13.09/2012.
- 5.3 In this connection feasibility was studied and concurrence requested to effect a new HTSC for a demand of 650 KVA in 11 KV Pappampatty Feeder emanating from 110/11 KV Peedampally SS under the control and jurisdiction of

SE/CEDC/Metro Coimbatore. Concurrence to effect a new HTSC for a maximum demand of 650 KVA to M/s Real Link Engineering India (P) Ltd., had been received vide Lr.No.SE/CEDC/M/AEE/GL/AE/F.Inter circle feeding/D.1559/12, dated 27.09.2012.

5.4 The Chief Engineer/Distribution/Coimbatore inspected the petitioner's premises at Appanaickenpatty village on 24.11.2012 and returned the load sanction proposal due to following remarks.

1. There is no building in the industrial premises where HTSC applied
2. There is no equipment available
3. Metering point is not in front side of industry, on main road approach
4. Approach road is only 10 feet wide.

vide Memo No.CE/D/CBE/AEE.PLG/F.HT.GL/D.985/12 dated 26.11.2012 and instructed that the petitioner's application will be processed only after shifting the metering point to the main road approach side.

5.5 Based on the above remarks from the Chief Engineer/Distribution/Coimbatore a letter was addressed to the petitioner to shift the metering point to the main road approach side, such that the distance between main gate and the metering point will be within 30 meters as per TNERC norms vide Lr.No.SE/TEDC/TPR/AEE.GL/AE.GL/F.Real Link/D.No.2115/dated 27.11.2012.

5.6 No efforts were made by the petitioner to shift the metering point and no communication received. A letter was addressed to the petitioner to shift the metering point to the main road approach side within 15 days so as to avoid

cancellation of application vide Lr. No.SE/TEDC/ TPR/AEE.GL/AE.GL2/F.Real Link/D.No.43/12 dated 11.1.2013.

- 5.7 Since no communication was received and shifting of the metering point to the main road approach side also not carried out, a letter was addressed to the petitioner vide Lr.No.SE/TEDC/TPR/AEE.GL/AE.GL2/F.Real Link/D.No.322/12 dated 6.2.2013 informing that the petitioner's application was cancelled and apply in fresh if need of HT supply in future.
- 5.8 Even after issuing of 15 days notice for cancellation of application no communication or request for time extension was received from the petitioner. The petitioner has not sent any letter to TANGEDCO requesting of extension of time to shift the metering point. The application was cancelled and EMD forfeited only after 15 days from the date of acknowledgement of cancellation notice.
- 5.9 The petitioner has represented only on 31.7.2013 to retain the application where the application was cancelled and already paid EMD forfeited at that time.
- 5.10 A fresh application for a demand of 950 KVA was received on 20.5.2014 and registered on 30.7.2014 after obtaining concurrence from SE/CEDC/Metro/Coimbatore to connect the new HT demand in 11 KV Pappampatty feeder emanating from 110/11KV Peedampally SS. The petitioner had paid the registration charges of Rs.500/- and EMD amount of Rs.7,60,000/- without claiming the already paid and forfeited EMD amount.

- 5.11 This clearly shows that the petitioner had admitted the forfeiture of EMD amount for backed out from availing of HT service for a maximum demand of 650 KVA at that time.
- 5.12 Based on new application the extension estimate was sanctioned vide sanction no.SE/TEDC/TPR/AEE/GL/AE2/F.Real Link /D.no.2247/14-15, dated 5.9.14. A notice given to the petitioner to pay Development charges, estimate charges and service connection charges. At that time only the petitioner has requested to adjust the above charges already paid and forfeited EMD amount Rs.5,20,000/-
- 5.13 The previous application was already cancelled and EMD forfeited as per class 34 of TNERC Code TNERC Code 34 clearly mentioned that “ if an applicant backs out after registration and payment of EMD but before payment of Development charges and Meter caution deposit, then the application will be cancelled and EMD forfeited”.
- 5.14 Even after 2 clear notices to shift the metering point to main road approach side as per TNERC norms there was no work done to shift the metering point and no representation of any kind received from the petitioner for time extension. It clearly shows the petitioner was backed out from availing HT supply at that time. Hence, the petitioner’s application was cancelled and EMD forfeited as per provisions made in class 34 of TNERC Distribution Code.
- 5.16 The petitioner’s application has been processed as per regulation 27 of TNERC Distribution Code. Since, the petitioner has not come forward to shift the metering point to the main road approach side and within 30 meters from the main gate as TNERC norms and no communication received from the petitioner

for time extension clearly shows that the petitioner has backed out from availing HT supply at that time the petitioner's application was cancelled and EMD forfeited as per provisions made in class 34 of TNERC Distribution Code.

5.17 The petitioner has never represented to the Chairman/TNEB as per provisions made in section 29(12) and (13) of TNERC Distribution Code.

6. Hearing held by the Electricity Ombudsman:

6.1 To enable the Appellant and the respondents to putforth their arguments in person, a hearing was held before the Electricity Ombudsman on 31-5-2016.

6.2 Thiru. T. Chandramouli, Senior General Manager has attended the hearing and putforth his side arguments.

6.3 Thiru. K. Rajamani, Executive Engineer/Palladam attended the hearing on behalf of the Respondent and putforth his side arguments.

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

7.1. The Appellant's representative Thiru. T. Chandramouli, Senior General Manager, reiterated the contents of the Appeal Petition.

7.2 The Senior General Manager argued that the Respondent was aware of the approval to be obtained from the local body for widening the road so as to shift the metering point as suggested by the Respondent.

7.3 They have shifted the metering point as suggested by the licensee and informed the same on 11.2.2013. But, the licensee has cancelled the application on 6.2.2013 which was received by them on 11.2.2013 only.

7.4 In the application cancellation letter, the forfeiture of the EMD amount was not intimated. It was known to them only on 16.9.2014.

7.5 The Appellant's representative argued that they have not backed out. They have availed the service after furnishing fresh application as directed by the licensee in their letter dt. 6.2.2013. As they have not backed out, the EMD has to be refunded to them only.

7.6 The appellant's representative's also informed that they have resubmitted the HT application and requested the licensee register the application vide letter dt.19.3.2013 also. But, there was no response from the licensee for their letters dated 6.2.2013 & 19.3.2013.

7.7 The Appellant's representative also cited their letter dt.31.7.2013 and argued that they have informed their acceptance for shifting the metering point and requested the licensee to retain original application registration and not to cancel the application. It shows that they are very much interested in getting the service. Hence, forfeiture of EMD on the ground of backing out is not reasonable.

7.8 The Appellant's representative also argued though there was no written communication except the above, they have requested the authorities to keep the HT application already registered alive.

7.9 The Appellant also furnished the written argument as the same were already covered in appeal petition, the same are not furnished again.

8. Arguments putforth by the Respondent's Representative on the hearing date :

8.1 The Executive Engineer/palladam argued that the Appellant was requested to shift the metering point as per the direction of the Chief Engineer/Distribution/Coimbatore Region vide letter dt.27.11.2012.

8.2 But, no communication was received from the Appellant and he has also not taken any effort to shift the metering point. Hence, the Appellant was again addressed to shift the metering point to the Main Road approach side within 15 days so to avoid cancellation of the application vide letter dt.11.1.2013.

8.3 As the appellant has neither shifted the metering point nor requested extension of time even after issue of 15 days notice, the application was cancelled and EMD was forfeited.

8.4 The EE also argued that only on 30.7.2013, the Appellant has requested for retaining the application whereas the application was cancelled on 6.2.2013 itself (ie) the appellant has requested to retain the application only after 5 months from the date of cancellation of the application.

8.5 New application was also submitted by the Appellant only on 20.5.2014 (ie) he has furnished fresh application only after a lapse of more than a year from the date of cancellation. The EE argued that it shows that the Appellant was not interested in getting a service till 20.5.2014 (ie) he has backed out from getting a service for his earlier application.

8.6 As per regulation 34 of Distribution Code, if the applicant backed out after registering the application and payment of EMD but before payment of development

charges and meter caution deposit, then the application will be cancelled and EMD forfeited. As the Appellant has neither shifted the metering point within the time period stipulated by the licensee nor requested for extension of time to shift the metering point, the application was cancelled. The above Acts indicates that the appellant was not interested in getting the service connection at that time. Hence, the EE argued that it amounts to backing out only.

9. Findings of the Electricity Ombudsman :

9.1 On a careful consideration of the rival submission, the issue to be decided is whether, the prayer of the Appellant to refund the EMD amount of Rs.5,20,000/- forfeited is acceptable ?.

9.2 The Appellant putforth the following arguments in support of their case.

(i) The Appellant argued that they have not backed out as they have again applied for a service connection as directed by the Respondent and availed the service connection.

(ii) As per the regulation 34 of the Distribution Code, the EMD could be forfeited only if the applicant backed out after payment of EMD but before payment of development charges, service connection charges and the meter caution deposit. But, in their case, the application was canceled by the licensee for not shifting the metering point within the stipulated time of 45 days. There is no such provision in the regulation for forfeiture of EMD. Hence, it is against the law and against the regulation 34 of the Distribution Code.

(iii) The Appellant argued that shifting of metering point involved widening of Panchayat Road and approval of local body authorities. Hence, the time lag is beyond the control of the Appellant. The fact has been informed to the Respondent. On obtaining approval from local body authorities, the Appellant has also sent information with revised drawing and new location of metering point on 11.2.2013.

(iv) The Appellant also argued that they have resubmitted the HT application to SE/Tiruppur EDC on 19.3.2013. But they have not submitted any proof for having sent the letters on 11.2.2013 & 19.3.2013.

(v) The Appellant also argued that they have informed their acceptance of shifting of the metering point and furnished copy of document handed over to panchayat to Superintending Engineer. Citing the above, the Appellant argued that they are interested in getting the supply and hence forfeiture of EMD on the ground they have backed out is not correct.

(vi) The Appellant also argued that the licensee has taken more than 1 1/2 years to register the Application received on 19.3.2011. The application was registered on 13.9.2012. Hence, cancelling the application for not shifting the metering point within 45 days is not reasonable.

(vii) The Appellant also argued that as per the provision given under regulation 29 (13), [(correct regulation no. is 29(14)] the licensee can accept the point of supply beyond 30 meter from the main gate also. But, the licensee has not taken any action on the above.

9.3 The Respondent put forth the following arguments.

(i) The Respondent argued that the Appellant was requested to change the metering point to the Main Road approach as directed by the Chief Engineer vide letter dt.27.11.2012 and 11.1.2013. In the 11.1.2013 letter, the Appellant was also informed that if the metering point is not shifted within 15 days, the application will be cancelled. But, the Appellant has not changed the metering point location and has also not requested extension of time explaining the reasons therefor.

(ii) As per regulation 29(14) of the Distribution Code, the point of supply shall be within 30 meters from the Main Road approach. Hence, the Appellant was directed to shift the metering point as above.

(iii) Regarding the appellant's argument that there is a provision for keeping the point of supply even beyond the 30 meters stipulation, the Respondent argued that, it is only the responsibility of the Appellant to intimate the difficulties to keep the point of supply as per regulation and request for exemption. But, no such request was received from the Appellant.

(iv) As the Appellant has neither shifted the metering point nor, requested extension of time for shifting the metering point, it has to be treated as backed out only. He also cited that the Appellant has registered his fresh application only on 30.7.2014 (ie) after expiry of about one year and 5 months from the date of cancellation of the Application.

(v) Respondent argued that as per regulation 34(4), the EMD has to be forfeited, if the applicant backed out from availing supply. As the applicant has not shifted the metering point and not requested for extension of time, it has to be treated as that the

applicant is not interested in availing the supply. Hence, it amounts to backed out and the EMD has to be forfeited only.

(vi) The Respondent's representative also informed that the letter dt. 11.2.2013 & 19.3.2013 said to be written by the Appellant has not been received by them.

9.4 As both the Respondent and Appellant have cited regulation 34 of the Distribution Code with regards to forfeiture of the EMD, the said regulation is extracted below :

“ 34. EARNEST MONEY DEPOSIT :

(1) The applicants required to pay Earnest Money Deposit will be asked to pay Earnest Money Deposit along with registration fee for registration of application.

(2) This Earnest Money Deposit will be adjusted against the quantum of initial Security Deposit payable by the applicant before availing supply and balance amount if any shall be collected.

(3) In respect of High Tension applicant the Earnest Money Deposit payable will be equal to the quantum of initial Security Deposit.

(4) If the applicant backs out after registration and payment of E.M.D. but before payment of Development charges, Service Connection charges and Meter Caution Deposit, then the application shall be cancelled and E.M.D. forfeited.

(5) If the applicant backs out after payment of all charges and execution of agreement, the application shall be cancelled and agreement terminated forfeiting all amount remitted except meter caution deposit in the case of both High Tension and Low Tension.

(6) If the H.T. applicant who prefers to back out partially against the sanctioned demand before availing supply, then the above forfeiture rule may be applied proportionate to the demand backed out.

(7) The Earnest Money Deposit paid does not bear any interest until the date of service connection.

9.5 On a careful reading the said regulation, it is noted that in respect of HT services, the EMD will be equal to the quantum of initial Security Deposit and will be collected at the time of registering the application.

9.6 It is noted that if the applicant backed out after registration and payment of EMD, but before payment of Development charges, service connection charges, and meter caution deposit then the application can be cancelled and EMD forfeited.

9.7 If the applicant backed out after payment of all charges and execution of agreement then, the application will be cancelled and agreement will be terminated forfeiting all amounts remitted except meter caution deposit. If the HT applicant backed out partially against sanctioned demand before availing supply, then the forfeiture will be for the backed out demand only.

9.8 It could be understood from the above, that the forfeiture is only in respect of the applicants who have backed out from availing supply. If there is partial backing out from the sanctioned load the amount proportionate to the load backed out alone forfeited.

9.9 It is noted that the Appellant has submitted a fresh application for a load of 950 KVA on 20.5.2014, and the application was registered on 30.7.2014. From the above details, it could be known that the Appellant has availed HT supply subsequently based on a fresh application submitted for a higher load but with a time delay of about one year and 3 month.

9.10 Further, it is to be pointed out here that the Appellant has agreed to shift the point of supply along side of the Panchayat Public Road and to provide the Main Gate within a distance of 30 meter from the metering point as per TNEB norms vide letter dt.31.7.2013 in response to Respondents letter dt. 9.1.2013 & 6.2.2013 and requested not to cancel the application. In letter dt.16.9.2014, the Respondent has accepted the receipt of letter dt.31.7.2013 from the Appellant. The relevant paras of letters

dt.31.7.2013 and relevant paras of Respondent's letter dt.16.9.2014 are extracted below :

Appellant's letter dt. 31.7.2013 :

“ With reference to the cited above while thank you for registering our HT application for 650 KVA new HT service connection to our newly proposal industry. We wish to furnish our request regarding the letter reference 2 & 3 as follows :

We are agreeing you valuable advice to shift the point & supply along with side of the panchayat public road and to provide the main gate with in the distance of 30 meter from the metering point as per TNEB norms. The proposal metering point shifting location is on the panchayat road with of the road is a meter (30 feet). The copy of the registered document which was handed over to the panchayat is enclosed for your verification. How ever we are taking the steps to obtain the proof certificate for the road from the VAO/Panchayat president of the respective village.

The process is taking time due to preoccupation and other govt. programs of the authorities. As soon as we got the certificate from the authorities we will submit to your office. Till that time please retain our HT application registration and we request you to no to cancel the applications as informed by your letter cited reference 3. Since, we have already invested a huge amount at our industry for civil construction, placement of purchase orders for equipments and other administrations purpose expenses etc., we once again request to retain our HT application registration or other wise we will meet a very heavy loss.

Respondent letter dt. 16.9.2014

“You have applied for a new HT SC demand for a maximum demand of 650 KVA to M/s Real Link Engineering India Pvt Ltd, SF No.404/2A, 2B, 2C, 2D & 412 Appanaickenpatti village, Sular, Coimbatore and the same was registered on 13.9.2012. In this connection vide ref 2 you were requested to shift the metering point to the main approach road side such that the metering point distance between the metering point

and main gate is within 30 meters. The letter was acknowledged by your deputy manager Thiru. Sadasivam on 12.12.2012.

Since the above work was not completed even after 45 days again a letter was sent to you to complete the work within 15 days to avoid cancellation of application vide ref(2) cited and the letter was acknowledged on 18.1.2013.

The 15 days time expired on 2.2.2013 and no intimation received from you about shifting of metering point. Hence, it was informed vide ref(3) dt.6.2.2013 that your application was cancelled and you were requested to apply in fresh. On receipt of the above ref letter also no intimation on received from you.

Only on 31.7.2013 you have made a representation that to shift the point of supply along side of the panchayat road, it took time due to some constraints and requested to retain the application. Since, the application cancellation was already informed to you, no intimation was given.

Again on a fresh application given by you and the same has been registered on 30.7.14. As per TNERC Distribution Code clause 34 mentioned in your letter dt.11.8.14. If the applicant backs out after registration and payment of EMD but before payment of development charges service connection charges and meter caution deposit, then the application will be cancelled and EMD forfeited.

Since you are not able to provide the metering point location within 30 meters as per TNERC norms even after giving sufficient time, your application was cancelled, hence, the EMD amount could not be refunded.”

9.11 On a careful reading of the Appellant's letter dt.31.7.2013, it is noted that the Appellant agreed for the shifting of metering point and requested not to cancel the HT application submitted and as per para 5 of Respondent's letter dt.16.9.2014 it has been found that the receipt of the above letter by the Respondent is confirmed.

9.12 It is to be pointed out that though the Respondent has denied the receipt of the letter dt.19.3.2013 written by the Appellant, a copy of letter dt.19.3.2013 find a place in the documents furnished by the Respondent to the Electricity Ombudsman.

9.13 As the Respondent has cited regulation 29(14) of the Distribution Code and argued that the point of supply shall be within 30 meter, from the main gate. The said regulation 29(14)(b) is extracted below :

“ 29 Service Lines :

(14) For High Tension service connections:-

xxx xxx xxx

(a) xxx xxx xxx

(b) For outdoor metering, a clear space of 10 metre x 4 metre or 5 metre x 5 metre open to sky shall be provided. This enclosure shall be at the periphery of the building and shall be cut off from other portions of the premises by fire resistance walls. These areas shall be specifically shown in the plan. Before the plan is sent to the competent authority for approval, it shall be sent to the Engineer and got approved. The point of supply shall be within 30 meters from the main gate easily accessible and visible and satisfactory with regards to security aspects. Failure to comply with the above requirements will result in denial of supply.

Provided that the Chief Executive Officer or any other Officer, not less than in the rank of a Chief Engineer, authorized by the Chief Executive Officer may approve the point of supply at a place beyond 30 meters from the main gate, if he is satisfied that such place is –

(a) easily accessible and visible to the officials of the licensee;

(b) is safe and secure; and

(c) is not susceptible to malpractice. Also there shall be no compromise on technical grounds, while relaxing the distance criteria.

xxx xxx xxx

xxx xxx xxx ”

9.14 On a careful reading of the said regulation, it is noted that the point of supply shall be within 30 meter from the main gate easily accessible and visible and satisfactory with regards to security aspects. Failure to comply with the above requirement will result in denial of supply.

9.15 Here, it has been clearly mentioned, that the licensee can deny supply to the Applicant if the condition regard to point of supply is not met by the applicant. So, denial of supply to the applicant for not shifting the point of supply is confirming the

regulation. As the word denial is used, I am of the view that it is licensee's right to deny the supply and it may not amount to backing out by the applicant.

9.16 It is also noted that the Chief Executive Officer or any other officer not less than the rank of a Chief Engineer authorized by Chief Executive Officer may approve the point of supply at a point beyond 30 meters if the condition a, b & c is satisfied. In this case, the concerned Chief Engineer has only raised the issue of the shifting the metering point after inspecting the site. Hence, the argument of the Appellant that the licensee could have granted exemption may not hold good.

9.17 In view of the following reason I am of the view that the Appellant has not backed out from availing the supply.

(i) The licensee cancelled the application as the appellant has not shifted the metering point within the notice period. The above amounts to denial of supply by the licensee as per regulation 29(14)(b) of the Distribution Code and it does not amount to back out by the Appellant.

(ii) The Appellant has requested to consider his application vide his letter 31.7.2013 explaining the procedure involved in getting approval from authorities. The Respondent has accepted the receipt of the said letter but have not replied. It shows within a period of 5 months from the date of cancellation of the application the appellant has indicated his intention to avail the supply.

(iii) The Appellant has filed a fresh application for an enhanced a load of 950 KVA duly paying the required EMD and availed the supply duly shifting the point of supply. This established that the Appellant has availed supply subsequently and not backed out from availing supply.

9.18 In this regard, it is to be noted that the EMD is collected along with applications to ensure the earnestness and seriousness of the applicants in availing the supply and the EMD is converted into security deposit as soon as the service is effected. As payment of EMD is to ensure the earnestness and seriousness of the Applicants in availing the supply and the Appellant has availed the supply subsequently based on a fresh application, the forfeiture of EMD considering that the Appellant has backed out from availing the supply is not correct.

10. Conclusion :

10.1 In view of my findings in para 9.17 & 9.18, above, I am of the considered view that the forfeiture of EMD considering that the Appellant has backed out from availing the supply is not correct. Hence, the licensee is directed to refund the forfeited EMD amount of Rs.5,20,000/- (Rupees five lakhs and twenty thousand only) within 30 days from the date of receipt of this order.

10.2 With the above findings, the A.P.No.24 of 2016 is disposed of by the Electricity Ombudsman. No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To
1) Thiru. Chandramouli,
Senior General Manager,
M/s. Real Link Engineering India P Ltd.,
SF No.404-2A, 2B, Sc, Sd and 412,
Appanaickenpattipudur,
Appanaickenpalayam,
Sulur Taluk, Coimbatore District.

2) The Superintending Engineer,
Tiruppur Electricity Distribution Circle,
TANGEDCO (Formerly TNEB)
10A Jyothi Nagar,
Perumal nallur Road, Tiruppur - 641 603.

3) The Chairman,
(Superintending Engineer),
Consumer Grievance Redressal Forum,
Tiruppur Electricity Distribution Circle,
TANGEDCO (Formerly TNEB)
10A Jyothi Nagar,
Perumal nallur Road, Tiruppur - 641 603.

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

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

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