



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present: Thiru. A. Dharmaraj. Electricity Ombudsman

Appeal Petition No. 69 of 2016

Tmt. R. Ranjani,
W/o Rajendran,
P.No.146, 2nd Main Road,
Venkateswaranagar,
Ramapuram,
Chennai – 600 089.

..... Appellant
(Rep by Thiru. K. Narasimhan, Advocate)

Vs

1) The Superintending Engineer,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,
110 KV SS Complex,
K.K. Nagar, Chennai - 600 078.

2) The Executive Engineer/O&M,
Porur,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,
SRMC SS Complex,
Porur, Chennai – 600 116.

..... Respondents
(Rep by V. Jeyakumar, EE/O&M/Porur)

Date of hearing : 22.11.2016 & 25.1.2017

Date of Order : 10.4.2017

The Petition dt. 23.8.2016 filed by Tmt. R. Ranjani, W/o Rajendran, Venkateswaranagar, Ramapuram, Chennai-89 was registered as Appeal Petition No.69 of 2016. The above appeal petition came up before the Electricity Ombudsman for

hearing on 22.11.2016 & 25.1.2017. 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 to reconsider the order of the CGRF of Chennai EDC/South and order to effect service to his complex.

2. Brief History of the case:

- 2.1 The Appellant requested for service connection to the Residential complex build by her. There are 8 nos apartments in the above complex. The licensee has refused to effect service to her apartments for want of completion certificate.
- 2.2 The Appellant filed a petition before the CGRF of the Chennai EDC/South. The forum has dismissed her petition vide order dt.14.6.16.
- 2.3 Aggrieved by the order of the CGRF of Chennai EDC/South, the Appellant filed her appeal petition before the Electricity Ombudsman.

3.0 Condonation of Delay :

- 3.1 The CGRF of Chennai EDC/South has issued its order on 14.6.16. Aggrieved by the order of the forum, the Appellant filed an appeal petition before the Electricity Ombudsman on 23.8.2016.
- 3.2 As the appeal petition was filed after expiry of the 30 days time permitted for filing the appeal, the petitioner was requested to intimate the reason for delay in filing

the appeal petition vide letter dt.26.8.2016.

3.3 The petitioner informed that as she was not available in station, she was unable to file the appeal within 30 days and prayed for condonation of delay.

3.4 In this regard, the regulation of 8 of the Regulations for CGRF & Electricity Ombudsman is extracted below :

“8. Any person aggrieved by an order made by the forum may prefer an appeal against such order to the Electricity Ombudsman within a period of 30 days from the date of the order, in such form and manner as may be prescribed by the Commission. Provided that the Electricity Ombudsman may entertain an appeal after the expiry of the said period of 30 days if the Electricity Ombudsman is satisfied that there was sufficient cause for not filing it within that period.

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

3.5 On a careful reading of the said regulations, it is noted that 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 the delay.

3.6 As the Appellant has stated that she was not in station for some time, the delay of 69 days in filing the appeal petition is condoned.

4. Orders of the Forum

The CGRF of Chennai EDC/South has issued its order on 14.6.2016. The relevant paras of the order is extracted below :

“Findings and order of the forum:

As the building attracts CC from CMDA, the respondents arguments on the case

is acceptable and the forum directs the petitioner to produce CC obtained from CMDA, for the actual dwelling units for availing electricity supply. With this order the petition is disposed off.”

4.0 Arguments furnished in the Appeal Petition:

4.1 The Appellant obtained permission for constructing a residential complex with 6 dwelling units and constructed a complex with 8 dwelling units based on her requirement. The Appellant applied for service connection vide க.எண்.166/மின்/பொ.இ.பா. போளூர்.ஊரக பிரிவு/16 தேதி 11.3.2016. But, the licensee is seeking completion certificate as there are 8 dwelling units in the complex.

4.2 Her petition filed before the CGRF available at KK Nagar was also rejected.

4.3 As per the orders of the Board in Memo No.CE/Comm/EE3/AEE2/F. Court Order /SFS/D62/14, dt.17.2.14 and as per the orders of Hon'ble High Court in W.P.No.27845/2013 31569 to 31575 dt.25.11.2013, service connection shall be effected for the dwelling units which are having planning sanction. Service were effected in Chennai EDC/South-I & II area for such cases, after obtaining undertaking in this regard.

4.4 Refusal of service connection for the house she built with great financial difficulties amounts to refusal of her fundamental rights. Therefore, she prayed for review of the order of the CGRF and ordered to effect service connection.

5. Arguments furnished in the counter :

5.1 The petitioner herein has sought for relief from the Electricity Ombudsman for effecting 6 nos domestic service connection at No.146, 2nd Main Road, Venkateswara

Nagar, Ramapuram, Chennai 89.

5.2 The petitioner stated that the plan approval had been obtained for six dwelling units and eight dwelling units were constructed and requested service connection for the approved six nos dwelling units only quoting previous CGRF orders in petition nos 164 to 168 of 2015.

5.3 It was found that the petitioner premises consist of slit + 3 floors with 8 dwelling units which attracts completion certificate from CMDA, but the planning permission was obtained only for 6 dwellings. Hence, the petitioner had been informed to produce completion certificate by Executive Engineer/O&M/Porur.

5.4 This cases comes under CGRF on 8.6.2016 and the orders given as below :

“As the building attracts CC from CMDA, the respondent’s arguments on the case is accepted and the forum directs the petitioner to produce CC obtained from CMDA, for the actual dwelling units for availing electricity supply. With this order the petition is disposed off. ”

5.5 Further, the Chief Engineer/Commercial /Chennai has requested (vide Lr.No.CE/Comml/SE/Comml/EE3/AEE2/F.Doc/D.365/16, dt.26.9.2016) from the learned advocate General of Tamil Nadu regarding effecting of service to Special building as per the norms Specified in the Hon'ble High Court Order dated 23.8.2006 in W.P.No.Nos 18898 of 2000, 19998 of 2001, 24316 of 2002 and 17645 of 2006 or as per the norms specified in the development Regulations for second master plan for Chennai Metropolitan area.

5.6 In view of the facts and circumstances of the case on hand and position of law as stated above, the petitioner has no prima facie case to further pursue the above

petition. Therefore, the petitioner is not entitled to any relief as prayed for in the petition.

6.0 Hearing held by the Electricity Ombudsman:

6.1 To enable the Appellant and the Respondents to putforth their arguments in person, a hearing was conducted before the Electricity Ombudsman on 22.11.2016 & 25.1.2017.

6.2 Thiru K. Narasimhan, Advocate attended the hearing on behalf of the Appellant and putforth his side arguments on both the days.

6.3 Thiru. Jeyakumar, Executive Engineer/O&M/Porur the Respondent-2 herein attended the hearing and putforth his arguments.

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

7.1 Thiru. K. Narasimhan, the learned advocate for the Appellant reiterated the contents of the Appeal Petition.

7.2 The learned advocate citing the order issued by the Electricity Ombudsman in A.P.No.99 of 2015 argued that the building of the Appellant is not coming under the definition of the multistoried building or special building given in the judgments of the Hon'ble High Court in W.P.No.18898 of 2000 and batch and argued that it does not require completion certificate.

7.3 The learned advocate has also putforth the following arguments which were given in the written submissions. The above arguments are given below :

(i) “ Section 43(1) of the Electricity Act clearly states that

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...

The Appellant therefore is eligible for a New Connection under section 43(1) of the Electricity Act”

(ii) The Electricity supply being in the concurrent list of the Indian Constitution, it is settled that no state laws/statutes can override Electricity Act and rules thereof. Hence, new service connection is an exclusive domain of Electricity Act and Distribution Code; They don't require completion certificate from CMDA for giving new Electricity connection. As there is no specific provision in the Electricity Act insisting completion certificate as a mandatory requirement the Appellant is eligible for new electricity connection.

(iii) The Appellant has constructed stilt + 3 three floors. The Hon'ble Tamil Nadu Electricity Ombudsman, Chennai in Appeal No.99 of 2015 in their order dated 6.7.2016 have clearly gone through in detail the essential requirements for production of completion certificate to give supply to electricity and have held that the High Court in their order dated 23.8.2006 in the case Consumer Action Group Vs The State of Tamil Nadu. Para 32(v) have clearly states that the special building must be categorized as those with actual construction of ground plus three floors. The stilt floors is not considered as floor. As the Appellant has constructed stilt + three floors only they are eligible for new

electricity connection.

(iv) The Hon'ble Supreme Court in Chameli Singh Vs State of U.P (1996) 2 SC 549 ; (AIR 1996 SC 1051)], held that access to Electricity is a fundamental right and human right under article 19(1) of the Constitution. The Appellant therefore, is eligible for a new connection under section 43(1) of the Electricity Act.

(v) The Hon'ble Madras High Court in T.M. Prakash Vs The District Collector (W.P.No.17608 of 2013), dt.27.9.2013 clearly held that access to electricity supply should also be a right to life, and concludes it to be a fundamental right, human right and a legal right (para 67 to 70); and further held that there is a statutory obligation to provide electricity to a owner or occupier of the premises and it is mandatory u/s 43 of Electricity Act. At para 81, it is held; The law applicable for removal of encroachment and the mandatory duty to provide electricity as per electricity law, are different and distinct. Same is true in the instant case and the same is also recognized by TNERC. The Appellant therefore is eligible for a new connection under section 43(1) of the Electricity Act as per the orders of the Hon'ble High Court of Madras.

(vi) As insisting of completion certificate is based on the judgment dt.23.8.2006, the definition given in para 32(v) of the above judgment for the Special Building of the order dt.23.8.2006 in W.P.No.18898 of 2000 and batch alone can be insisted to produce completion certificate. The Appellant's building does not fall under the category of the Special Building they are eligible for the new electricity connection.

(vii) The Government vide its G.O.Ms No.139, dt.15.10.2007, has directed the Chennai Metropolitan Water Supply and Sewerage Board to insist the completion certificate for multistoreyed buildings and the special building and defined the multistoreyed building and special building as below. It may be noted that the Govt. of Tamil Nadu has directed the CMWSSB to follow the definition of multistoreyed building and special building as furnished in the High Court Judgment dt.23.8.2006 in W.P.No.18898 of 2000 and batch;

Special Building means : Building with ground floor plus three floors.

Multi-storeyed building means: Building with more than four floors.

This once again asserts the Appellants contention that they are eligible for a new service connection.

(viii) The respected Electricity Ombudsman, while dealing with the exact issue herein, in its order in O.P.No.5/2007 dt.20.6.2007 clearly articulated and held that the High Court's direction in consumer action group Vs State of Tamil Nadu (23.8.2006) is only an obiter dicta and not the ratio decidendi and it is also against the Electricity Act and thus is not binding on TANGEDCO. This once again asserts the Appellants contention that they are eligible for a new service connection.

(ix) CMDA Development Regulations (D.R) does not regulate service connections such as Electricity and Water ; as they are covered under separate rules / regulations. This once again asserts the Appellants contention that they are eligible for a new service connection.

- (x) The Hon'ble CGRF has failed to note that it is fundamental right of the Appellant to get new electricity connection as per section 43 (1) of the Electricity Act and further the town and country planning Act (TCP Act) and Development Control Rules (DCR) are a complete code that empowers CMDA to be able to dealt with illegal constructions. It is neither the responsibility of the respondents, and nor can the respondents be allowed to make Electricity Act to be sub servient to DCR and TCP Act. As observed by apex court in so many cases, that bona fide ends(however laudable it is) cannot be achieved by questionable means, especially when the State is involved.
- (xi) There are numerous judgments where the petitioners were seeking remedy without completion certificate and none of them had applied for the CC/NOC from CMDA. The Respondents opposed it using the same 2006 judgement (Division Bench) But petitioners succeeded. Some of the details of the recent judgments are given below for the kind perusal of the Hon'ble Ombudsman:
- i) W.A.No.33 of 2015 dt.1.7.2015 against W.P.No.17612 of 2014 (Division Bench).
 - ii) W.P.No.17612 of 2014 dt.19.11.2014 No copy but is covered in appeal above.
 - iii) W.P.No.27453 of 2014 Vs The Chairman on 17 December 2014
 - iv) W.P.No.27454 of 2014 Vs The Chairman on December 2014
 - v) Writ Petition No.32995 of 2013 – don't have a copy but referred in above judgments.
 - vi) M/s Hariraj Homes Vs Tamil Nadu Electricity Board on 17 July, 2014.

- vii) S.N. Rajkumar Vs Tamil Nadu Electricity Board 17 July 2014
- viii) P.Rajesh Vs the Chairman on 17 December 2014 (W.P.No.15810 of 2014)
- ix) N. ganesh Natraj Vs TANGEDCO & on 10 December 2014
- x) B. Mohamed Siddiq Basha Vs The Asst. Engineer on 4 December 2014.

9. Arguments putforth by the Respondent :

9.1 Thiru. Jeyakumar, Executive Engineer/O&M/Porur reiterates the contents of the counter.

9.2 The EE informed that the Appellant has obtained plan approval for only 6 dwelling units and have constructed 8 dwelling units.

9.3 As per the Development Regulations for Second Master Plan for Chennai Metropolitan Area, the definition of special building covers the residential building with more than 6 dwelling units. The EE/O&M/Porur argued that the Building Constructed by the Appellant comes under the category of Special Building and therefore, completion certificate is necessary for effecting service connection. He cited CE/Commercial Memo dt.3.12.2012 in support of his argument.

9.4 The EE/O&M/Porur also informed that the Appellants premises is stilt + 3 floors. with 8 dwelling units. Therefore, it attracts completion certificate.

10 Findings of the Electricity Ombudsman :

10.1 On a careful consideration of the rival submissions, the issue to be considered is whether supply could be effected to the premises of the Appellant without insisting of completion certificate ?

10.2 The Appellant also citing the Memo No.CE/Comml/EE3/AEE2/F.Court orders/D.62/14 dt.17.2.2014 and the order of Hon'ble High Court in W.P.No.27845 /2013 & 31569 to 31575, dt.25.11.2013 and argued that service could be effected to the dwelling units which are having planning sanction. The Appellant informed that in Chennai EDC/South-I & II, services have been effected for approved dwelling units after getting undertaking from the consumers.

10.3 The Respondent argued that the Appellant's premises is still + 3 floors, with 8 dwelling units. Therefore, it is to be categorized as a Special Building and completion certificate is necessary for effecting service connection.

10.4 The Respondent also argued that the Appellant has got plan approval for 6 dwelling units only but constructed 8 dwelling units. As more than six dwelling units comes under the category of Special Building, the Respondent argued that the completion certificate is necessary for effecting the service connection.

10.5 The Appellant argued that as per section 43(1) of the Electricity Act, every Distribution licensee shall on an application by owner or occupier of any premises give supply of electricity to such premises with in one month after receipt of the application and there is no specific provision in the Act insisting completion certificate as a mandatory requirement.

10.6 The Hon'ble Supreme Court in Chameli Singh Vs State of U.P. (1996 2SC 549;(AIR1996 SC 1051) held that access to electricity is a fundamental rights

and a human right under article 19(1) of the constitution.

10.7 The Hon'ble Madras High Court in T.M. Prakash Vs The District Collector(W.P.No.17608 of 2013) dt.27.9.13 held that access to electricity supply should also be a right to life and concludes it is to be a fundamental right, human right and a legal right and further held that there is a statutory obligation to provide electricity to a owner or occupier of the premises and it is mandatory under section 43 of the Electricity Act. At para 81, it is held that the law applicable for removal of encroachment and the mandatory duty to provide electricity as per electricity law, are different and distinct. Same is true in this case also.

10.8 As insisting of completion certificate is based on the judgment dt.23.8.2006, in W.P.No.18898 of 2000 and batch the definition given in para 32(v) of the above judgment for special building alone can be insisted to produce Completion Certificate. The Appellant has cited the Electricity Ombudsman's order in A.P.No.99 of 2015 dt.6.7.2016 and the G.O.No.139, dt.15.10.2007 issued by the Government in support of the above argument.

10.9 The Appellant also argued that CMDA Regulations does not regulate effecting of Electricity Service Connection & water as they are covered under separate regulation.

10.10 The Appellant also argued that the Electricity Ombudsman in its order in O.P.No.5 of 2007 dt.20.6.2007 held that the High Court direction in Consumer

Action Group Vs State of Tamil Nadu (23.8.2006) is only an obiter dicta and not the ratio decidendi and thus not binding TANGEDCO.

10.11 As the Appellant has cited the Electricity Ombudsman order in A.P.No.99 of 2015 dt.6.7.2016 and argued that the Stilt + 3 floors Building constructed is not coming under Special Building, the relevant para of the order in A.P.No.99 of 2016 is extracted below :

“ 12.26 The insisting of completion certificate for the Multistoreyed Building and Special Building is as per the judgment of the Court rendered in W.P.No.18898 of 2000 and batch dt.23.8.2006.

12.27 As the insisting of completion certificate is based on the judgment dt.23.8.2006, I am of the opinion, the definition given in the above judgment for the Special Building given in para 32(v) of the order dt.23.8.2006 in W.P.No.18898 of 2000 and batch alone can be insisted to produce completion certificate. In this regard, I would like to point out that Govt. of Tamil Nadu has also followed the definition given in the above judgment only for insisting of completion certificate in respect of effecting sewer/ water connection by Chennai Metropolitan Water and Sewerage Board in G.O.Ms No.139, dt.15.10.2007 based on the opinion given by the Advocate General.

13.1 As per my findings on second issue, the definition given in judgment dt.23.8.2006 in W.P.No.18898 of 2000 & batch for the Special Building and Multistoreyed Building has to be considered for insisting completion certificate while effecting service connection.

13.2 In the case on hand, the Appellant is seeking service connection for a Building consists of stilt + 3 floors and the Respondent has also stated that it is stilt + 3 floors only. As per the definition given in para 32(v) of the High Court order dt.23.8.2006 in W.P.No.18898 of 2000 and batch, the stilt+ 3 floors is not to be categorized as a Special Building.

13.3 In view of the above, I am of the view that the service connection shall be effected to the Appellant's premises without insisting of completion certificate."

10.12 As per the above order, the definition given in judgment dt.23.8.2006 in W.P.No.18898 of 2000 & batch can alone can considered for insisting of the completion certificate. Further, in the above order, the Electricity Ombudsman has directed to effect supply without insisting of completion certificate for a Building consists of Stilt + 3 floors as it is not to be categorized as a Special Building as per the definition given in para 32(v) of the High Court in order dt.23.8.2006 in W.P.No.18898 of 2000 and batch.

10.13 As the Appellant is also seeking service connection for a building consists of Stilt plus three floors, I am of the view that order issued in A.P.No.99 of 2015 is applicable to the case on hand also.

11. Conclusion :

11.1 In view of my findings in para 10 above and as the Appellant's premises is not a Special Building as per the definition given in para 32(v) of the judgment dt.23.8.2006 in W.P.No.18898 of 2000 and batch, the order issued in A.P.No. 99 of 2015 is applicable to this case also. Therefore, the Respondent is directed to effect service connection to the Appellant's premises without insisting of Completion Certificate.

11.2 With the above findings the A.P.No.69 of 2016 is finally disposed of by the Electricity Ombudsman. No Cost.

(A. Dharmaraj)
Electricity Ombudsman

To

1) Tmt. R. Ranjani,
W/o Rajendran,
P.No.146, 2nd Main Road,
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2) The Superintending Engineer,
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3) The Executive Engineer/O&M,
Porur,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,
SRMC SS Complex,
Porur, Chennai – 600 116.

4) The Chairman,
(Superintending Engineer),
Consumer Grievance Redressal Forum,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,
110 KV SS Complex, K.K. Nagar,
Chennai 600 078.

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

6) The Secretary,
Tamil Nadu Electricity Regulatory Commission,
19A, Rukmini Lakshmi pathy Salai,
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7) The Assistant Director (Computer) - For Hosting in the TNEO Website please
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