



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present: Thiru. A. Dharmaraj. Electricity Ombudsman

Appeal Petition No. 89 of 2016

Thiru. R. Ramachandran,
No.8/66, A.V. Krishnasamy Street,
Janaki Nagar,
Valasaravakkam,
Chennai – 600 089.

. Appellant
(Party in person)

Vs

1) The Executive Engineer,
O&M/Valasaravakkam,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,
Valasaravakkam,
Chennai – 87.

2) The Asst. Executive Engineer,
Enforcement,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,
Valasaravakkam,
Chennai – 87.

3) The Assistant Engineer,
Enforcement,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,
Valasaravakkam,
Chennai – 87.

4) The Executive Engineer,
O&M/K.K. Nagar,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,

110 KV SS Complex,
K.K. Nagar, Chennai – 78.

5) The Chairman,
(Superintending Engineer),
Consumer Grievance Redressal Forum,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,
110 KV SS Complex,
K.K. Nagar, Chennai – 78.

. Respondents
(Thiru.S.Purusothaman, AEE/O&M/Valasaravakkam,
Thiru.P.Arputharaj, AEE/Enforcement/South
Thiru.R.Sivakumar, AE/Enforcement/South)

Date of hearing : 03.02.2017 & 15.2.2017

Date of Order : 6.4.2017

The Petition dt. 25.10.2016 filed by Thiru. R. Ramachandran, Valasaravakkam, Chennai 7 was registered as Appeal Petition No.89 of 2016. The above appeal petition came up before the Electricity Ombudsman for hearing on 03.02.2017 & 15.2.2017. 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 for the following:

- (i) Direct the opposite party to refund the Compounding fees of Rs.16000/- collected u/s 152 of IR Act 2003 and extra levy fees of Rs.2,37,310/- collected under section 126 of IE Act 2003 along with applicable interest.

- (ii) Direct the opposite party to reassess the electricity consumption based on new meter reading (3927817) and recalculate the compounding fees and extra fees accordingly and the excess amount collected may be ordered to be refunded.
- (iii) Direct the opposite party to pay Rs.25000/- being the compensation for the deficiency of service and negligence caused to the petitioner and to pay Rs.25000/- towards mental agony.
- (iv) Direct the opposite party to pay Rs.5000/- towards cost to the case.
- (v) Pass any other orders which may deem fit and proper in the facts and circumstances of the case and thus render justice.

2. Brief History of the case:

- 2.1 In the Appellant house two service connections were effected viz. one in ground floor (SC No.240-009-293) being used by the appellant and other one for the tenant (SC No.240-009-862). Both the meters have been fitted closely side by side in the ground floor.
- 2.2 On 18.04.2016 APTS squad found out that the meter pertaining to SC No.240-009-293 has some obstructions and not working properly and hence electricity is being stolen through by seal tampering. On account of this, the Licensee levied Extra levy fees and compounding fees and the same was paid by the petitioner. The consumer filed a petition before the CGRF to refund the extra levy charges and compounding fees stating that he will not be held responsible for non-replacement of defective meter in time which was fixed some 15 years back.

2.3 The CGRF of Chennai EDC/South-I has issued order stating that the subject matter concerned is found to fall under the sections 135 - 141 of EA 2003, which is out of the purview of the Form and hence petition is not entertained. Aggrieved over the order of the CGRF, the Appellant filed this appeal petition before the Electricity Ombudsman.

3.0 Contentions of the Appellant furnished in the Appeal Petition :

3.1 It is pointed out that the squad headed by AEE has entered into Appellant's house u/s 135(2)(a) of IE Act 2003 and search was done. The AEE is not a authorized officer to conduct such search inspection as per code, without the orders of higher authority, for which such details are not available in the file. Hence it is assumed that the search / inspection made by AEE is not in order and findings are liable to be rejected. Moreover it is understood that AEE is not authoised officer to compound the offence U/S 152 of IE Act 2003 and therefore the whole activity connected with this offence becomes invalid and not maintainable under Law.

3.2 It is pointed out that when any search / inspection was done, some public witnesses should be made present U/S 135/(4) of IE Act and U/S 100 Cr. pc, But the squad people has not brought any public witnesses or arranged any other available neighbouring public witness to be present, so as to maintain their transparency of their inspection. It is to be noted that the allegation of seal tempering and connect load of all home appliance in Ground Floor meter should have been shown and explained to the public witnesses and their consent should have obtained in the Mahazar. But the mahazar was not prepared accordingly and hence the contents are not admissible before law.

3.3 It is pointed out that person who prepared the mahazar has not signed himself in the mahazar, which is required as per law. The squad consists of 6 staff and all have entered and inspected the premises of Ground Floor and First Floor, but only 3 officers alone have signed in the Mahazar and others were deliberately left out. Therefore the mahazar was not prepared properly and thus suffers legal sanctity. Moreover the mahazar does not contain the signature of public witnesses and all other members of the party and fails to explain the activities of each member as to who has done what.

3.4 It is pointed out that even though his signature was forcibly obtained in mahazar (D-8) and provisional Assessment (D-9) a copy of the same was not given inspite of my repeated request as required U/S 135 (3) of Indian Electricity Act 2003. But Xerox copy of the same was given after a month, thus deliberately delayed and denied his opportunity to represent his redressal, well in advance. Moreover, the charge memo was not framed and issued to him and notice for willingness to have the case compounded, was also not issued so far. It is not known how the authority has collected the compounding fees and levy amount, without framing any charge memo against him and without issuing any notice to him, which are highly unjustifiable under law.

3.5 It is further submitted that on 18.04.2016 when inspection was done by squad, one staff among them removed the meter from cupboard Box, and cut the seal of the meter, and showed to the Appellant that the seal has been already cut and tampered. Actually the staff himself cut the seal when he was able to see and pressurized me to accept that the seal has already been tampered. If the meter was actually tampered earlier it should be shown to the public witness and explained the modus operatus before removing from the Box and their consent should have been obtained in the mahazar. Then the meter

should have been removed and packed and sealed in front of public witness, and should have been sent to the Authorised lab and finally the actual fact should be ascertained by a report of third party as to how the meter has got struck down or any damage has been done by the consumer, so as to maintain to the transparency of the alleged offence. But the squad has failed to adhere the procedure as required by Law. But the squad staff himself damaged the seal and arrived a conclusion to their favour, which is untrue and unacceptable under natural justice and amounts total abuse of Law.

3.6 It is further submitted that on 02.02.2016, Two EB Staff came to the Appellant's house and inspected the both meters, available in the same Box and the defective meter (077157) 'of First Floor (240-009-862) which was noticed by the Assessor on 6.1.2016 alone was replaced with Digital meter (1518317) by the staff. Therefore it is ascertained that Ground Floor meter (6010591) was intact and no tampering was noticed at that time of replacement of defective meter by the EB staff. Moreover the Assessor has taken reading on 6.1.2016 and 11.03.2016 in the same meter and has not found any damage or tampering of the meter. Therefore the allegation of the squad of seal tampering is totally false, incorrect, irrelevant, unacceptable and misconceived.

3.7 The defective meter was not replaced in time because of negligent attitude of TNEB and this negligence has been willfully and wantonly converted to Petitioner, as seal tampering. To safeguard the staff of TNEB, this offence has been intentionally converted as seal tempering and theft of energy U/S 135 of IE Act 2003 but fact is not so.

3.8 From the analysis of Provisional Assessment Report, it is revealed that the electric home appliances like mixer, water motor, Geyser etc. are shown as having been used for 12 hrs per day, but the actual use shall be, as all we know,

½ - 1 hrs per day and the Bulbs of 15 Nos. fitted in the outer wall of the house are rarely or never used. Moreover the home appliance of Ground Floor and First Floor were totally counted, even though the EB Bill of First Floor [1561 units and Rs.9133] was paid by me. But squad has unilaterally arrived 17978 units for 12 months (i.e. 1500 units per month) as thieved energy. Further in the case of extra levy fees, this calculation has been doubled and the compounding fees has been calculated at Rs.2000/- per kw, thus there are several punishments in every stages of calculation. Even if it is argued as seal tampering, as alleged by Respondents there should be only one punishment for one offence when offence was filed under one section of the Act, .but imposing of several punishments for one offence, is against natural justice and against the authority of Law.

3.9 It is further submitted that, after inspection of special squad on 18.4.2016, a new digital meter was installed (3927817) on the same day on 18.4.2016 and the old meter (6010591) was removed from the premises and the reading of new meter of (Ground Floor) is furnished as below:

Reading on 09.5.2016	384
Reading on 12.7.2016	770
Reading on 08.9.2016	<u>660</u>
Total	<u>1814</u> / 6m = 300 units / pm.

Therefore it is to be pointed out that the average electricity consumption of Ground Floor is about 300 units / per month, under Regulation 11 of TN Electricity supply code. But the squad has wrongly and arbitrarily assessed as 17978 units / 2m = 1500 units / per month. Therefore it is pointed out that the compounding fees and Extra Levy fees have been calculated based on mere guess and provisional Assessment and not actual assessment.

3.10 Even if the case is argued for Respondents, as theft of electricity u/s 135 of IE Act 2003, the compounding fees shall be $300 \times 12 = 3600$ units / per year (or) $[1.5 \text{ KW} \times 2000 = \text{Rs.}3000/-]$ and extra Levy fees shall be $3600 \times 6.60 \times 2 = 47500/-$ and thus a total of $\text{Rs.}3000 + 47520 \text{ Rs.}50520/-$ alone is to be collected by TNEB. But the squad has wrongly assessed the usage of electricity as 5 times higher than average and $\text{Rs.}16000/- + 237310 = \text{Rs.}253310/-$ has now been collected, which is highly unfair and unethical under law.

3.11 It is informed that the compounding fees and extra levy fees have been collected u/s 152 of IE Act 2003, which is within the purview of the Hon'ble Forum / Ombudsman and there is no restriction to enquire the matter arising U/S 152 of IE Act 2003. Therefore the petitioner requests that the Forum/Ombudsman may kindly be ordered to refund the excess amount, which is illegally collected from the petitioner.

3.12 It is further pointed out that for calculating Extra Levy fees, they have arrived as $\text{Rs.}23,731,0/-$ but this amount was wrongly written as $233310/-$ (Two lakhs, thirty three thousand, three hundred and Ten only) in the provisional Assessment Report. But As per Budget manual, the written amount alone should be taken into account and $\text{Rs.}233310/-$ alone should have been collected. Therefore the report itself is incorrect which contains lot of irregularities and inconsistencies and liable to be set-aside.

3.13 It is to be noted that, when seal tempering was not done by the consumer as explained above, the allegation of power theft u/s 135 by IE act 2003, shall not apply and the whole inspection becomes invalid and ineffective under Law. It is the duty of TNEB, to replace the defective meter in time whenever they found the same. It is the duty of the Assessor to verify

whether any damage has been done to the meter while taking meter Reading.

3.14 The damage of seal tampering was noticed on 18.4.2016 only and this mischief was done on 18.4.2016 by squad. The forum may enquire the allegation and the actual fact may be ascertained as per law. The accusation of seal tempering is totally misconceived and unsustainable under law.

3.15 Moreover it is submitted that once an offence has been compounded and it has a effect of acquittal and no further proceedings, shall be taken u/s 320 of cr.p.c. and u/s 152 IE Act 2003. But in this case, this offence was compounded u/s 152 IE Act 2003 for Rs.16000/- (D-10) and further collection of levy fees Rs.237310/- (D-11) is not warranted and against the rule of Law. It is not known how the Levy fess was collected, when no further proceedings shall be taken after collection of compounding fees u/s 152 of IE Act 2003.

3.16 It is further submitted that the offence against the petitioner was filed U/S 135 of IE Act 2003 and the penalty for such offence has been prescribed u/s 152 of IE Act 2003 and accordingly a penalty of compounding fees (8.00 KW x 2000 = Rs.16000/- was calculated and the same has been collected on 18.4.2016. Moreover it is to be understood that any offence filed u/s 126 of IE Act 2003, the penalty prescribed, is to pay the amount prior to 12 months period of provisional assessed amount. It is informed that no offence u/s 126 of IE Act 2003, was filed against the Petitioner and therefore the collection of penalty in the form of extra Levy fees, prescribed for the offence U/S 126, does not arise. But the TNEB has collected as extra Levy fees of Rs.237310/- U/S 126 of IE Act 2003 for which no offence was made against the Petitioner. Therefore the collection of Levy fees is against the authority of Law and therefore the same should be refunded forthwith.

3.17 It is further understood that there is no restriction for the Electricity Ombudsman to enquire the case arising out, even u/s 126/135 of IE Act 2003 as per Regulations. It is pointed out that even the matter relates u/s 135, as alleged by TNEB, the Appellant's contention is to challenge the whole process of the offence.

4. Contention of the Respondent furnished in the Counter :

4.1 The petitioner states that the meter was not working properly and informed to the Assessor orally. No written complaint has not been received in the AE/O&M/Valasaravakkam office (or) anywhere.

4.2 Further the work allocation fixed for the Assessor is to register and enter the assessment in white meter card of the concerned service connections only and the Assessors are not empowered to inspect the service connection. The Assessors also does not have technical expertise to conduct a detailed inspection so as to detect the theft of energy cases.

4.3 The meter available in the service connection 240-009-862 was found to be defective during the assessment made on 06-01-2016 and the same defective meter has been replaced by a new meter on 02.02.2016. The Meter replacement has been carried out based on the assessment made and found to be defective in nature. The department field staff who have replaced the meters will not have technical exposure towards detecting theft of energy cases. Hence, the department field staff does not possess in depth knowledge in metering arrangement and detecting theft of energy cases may

not be possible in the above process.

4.4 The inspection was conducted on 18.04.2016 in the petitioner premises by the enforcement wing along with AEE IO&M/Valasaravakkam & AE/O&M/Valasaravakkam in the S.C.No.240-009-293. The petitioner states that the connected load arrived in detection of theft of energy case in the SC No.240-009-293 includes not only the load available in the ground floor of the premises but also the load available in the first floor of the premises. But actually, the connected load available only in the ground floor premises has taken up for calculation and arrived the quantum of thieved energy as per the formula prescribed in Form 8.

4.5 During the course of inspection conducted by the Enforcement wing in which it clearly reveals the intention of the consumer in tampering the seals in turn damaging the disc which arrests the disc rotation. The above act of the consumer clearly reveals that the consumer has indulged in theft of energy.

4.6 The modus of operandi detected in the above theft of energy has been proved beyond doubt and the consumer has accepted the above theft of energy by way of signing the parvai nahazar, provisional assessment served in Form 9 and compounding charges served in Form 11. The corresponding acceptance letter for the compounding of offence was also furnished by the consumer.

4.7 As per G.O.MS. 118 Energy (B2) Department dt: 27.11.2006, the authorized officers not below in the rank AEE/TNEB in conducting inspection to detect theft of energy in LT service connections including temporary supply

and the concerned AEE/O&M is authorized to inspect as per the Acts specified in clauses (a) to (c) of the section 135 (2) of electricity Act 2003 and the concerned AEE/O&M is also authorized to collect the compounding charges as prescribed in the G.O. Ms No.78 dt.26.06.2008.

4.8 As per section 135 (4) it has been stated that as per the provision of the code of criminal procedure, 1973 (2 of 1974) relating to search and seizure only and presence of public witness was not mentioned in the above section 135 (4). The consumer view of producing the public witness in the premises during the course of inspection even before detecting theft of energy may lead to a motive behind the inspection carried out by the Enforcement to detect the theft of energy. Further the consumer has remitted the compounding charge which clearly reveals that the consumer has accepted the theft of energy.

4.9 Even though 6 members were available in the squad as mentioned in the petition, the Authorised officer is empowered to sign the parvai mahazar and not all the members available in the squad.

4.10 Necessary documents such as Mahazar and relevant documents have produced before the consumer.

4.11 Since, the modus of operandi available in the above theft of energy has been proved beyond doubt and it is not a suspected theft which requires the above transactions and procedures.

4.12 The 12 hours taken up for calculation in respect of quantum of theft of energy as per TNERC guidelines. The 2 penalties levied such as extra levy is for

the quantum of thieved energy and compounding charges to avoid criminal proceedings.

4.13 Actually the penalty has been arrived only 2 times by taking clear of connected load at the time of inspection, load factor and diversity factor available in the formula prescribed in the Form 8.

4.14 Since the consumer has committed the theft of energy with the modus meter tampering and seal tampering which comes under section 135 of Electricity Act 2003 deals with theft of energy and not section 126 of Electricity Act 2003 which deals with violation.

5.0 Hearing held by the Electricity Ombudsman:

5.1 To enable the Appellant and the Respondents to putforth their arguments in person, a hearing was conducted before the Electricity Ombudsman on 03.02.2017. The Appellant has not attended the hearing conducted on 3.2.2017. In order to give a chance to the Appellant to putforth his arguments in person another hearing was conducted on 15.2.2017.

5.2 Thiru R. Ramachandran, the appellant herein has attended the hearing conducted on 15.2.2017 and putforth his arguments.

5.3 Thiru.S.Purusothaman, AEE/O&M/Valasaravakkam, the Repondent-1, Thiru.P.Arputharaj, AEE/Enforcement/South, the Respondent-2 Thiru.R.Sivakumar, AE/Enforcement/South the Respondent-3 herein have attended the hearing on both days and putforth their arguments.

6. Findings of the Electricity Ombudsman :

6.1 This appeal has been filed against the orders of the Consumer Grievance Redressal Forum, Chennai Electricity Distribution Circle/South/TNEB (in short "Forum") dated 30.9.2016. The said Forum has not entertained the petition of the appellant since the subject matter was found to fall under section 135 – 141 in the Electricity Act 2003. The Appellant has stated that there is no restriction for the Electricity Ombudsman to enquire the case arising out even under section 126/135 of the Electricity Act 2003 and that he is challenging the whole process of the inspection of his building and consequential assessment order. On the other hand the respondent has justified the inspection conducted by the enforcement wing of the TNEB and has sought to justify the quantum of penalty collected from the Appellant.

6.2 During the hearing, the Appellant Thiru.R. Ramachandran, reiterated the contents of his appeal petition. He also furnished a written arguments.

6.3 He pointed out that the compounding was done u/s 152 of Electricity Act 2003 and as such the Forum is empowered to enquire the case, but unfortunately the Forum has rejected the petition under Regulation 5 of the Regulations for CGRF & Electricity Ombudsman 2004. He further stressed that there is no restriction for the Electricity Ombudsman to enquire the case arising out, even u/s 126/135 of Electricity Act 2003 as per the Regulations.

6.4 As per the provisions of the Electricity Act 2003(Central Act 36 of 2003), the Electricity Ombudsman is the Appellate Authority against the orders of the Consumer Grievance Redressal Forum("the Forum") The relevant provisions of

section 42(5) and (6) of the Act is reproduced below for further appreciation of the legal provisions.

“42. Duties of distribution licensee and open access :

(1) xxx xxx

(2) xxxxxx

(3) xxx xxx

(4) xxx xx

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a Forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.”

6.5 Based on the above provisions of the Act, the Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman 2004, has been framed by the Tamil Nadu Electricity Regulatory Commission.

6.6 As the grievance of the Appellant relates to offence under section 135 (theft of energy) coming under the chapter “ Offences and Penalties” of the Electricity Act 2003 the preliminary issue to be decided is whether the Electricity Ombudsman is having jurisdiction to take up the case falling under the said

chapter of the Electricity Act 2003. As the jurisdiction issue has to be decided first, the merits of the cases are not discussed.

6.7 In this regard, I would like to refer regulation 5 of the Regulations for CGRF and Electricity Ombudsman 2004, which reads as follows :

“5. Kind of grievances that can be taken up by the forum :

The Forum shall take up any kind of grievances/complaints as defined in clause 2 (f) of these Regulations. However, the consumer’s grievances concerned with-

(i) unauthorized use of electricity as detailed u/s 126 and

(ii) offences and penalties as detailed u/s 135 to 141 of the Electricity Act 2003 are excluded from the purview of this Forum.”

6.8 On a careful reading of the said regulation, it is noted that consumer’s grievances pertaining to unauthorized use of electricity as detailed u/s 126 and offences and penalties as detailed u/s 135 to 141 of the Electricity Act 2003 are excluded from the purview of the Forum. Under the scheme of the Act and the said Regulations, the Electricity Ombudsman is not having any independent or additional jurisdiction than the jurisdiction of the Forum. As the Electricity Ombudsman is the appellate authority against the order of this “Forum” the Electricity Ombudsman cannot exercise any jurisdiction in respect of the subject matter specifically excluded from the purview of the “Forum”.

6.9 In this regard, I would also like to refer the order of the Forum’ against which the present appeal has been filed. The said order of the forum is extracted below:

“Findings and Order of the Forum :

“Since the subject matter concern is found to fall under the sections 135-141 of Electricity Act 2003, which is out of the purview of the forum, this petition is not entertained. ”

6.10 From the above order of the Forum it is clear that since the grievances of the petitioner falls under section 135-141 of the Electricity Act 2003 it was not entertained by the Forum as the said grievance was explicitly excluded from the purview of the Forum. In the appeal Electricity Ombudsman can decide an issue on merit only if the Forum has jurisdiction and passes an order on grievances of the Petitioner. Since the petition was not entertained by the Forum as per CGRF Regulation 5, I am of the considered opinion that Electricity Ombudsman lacks jurisdiction to decide this appeal on merit.

6.11 The issue could be viewed in another angle also. In this regard, I would like to refer regulation 2(k) of the Regulations for CGRF & Electricity Ombudsman. The said Regulation is extracted below :

“2(k) “Electricity Ombudsman” means an authority to be appointed or designated by the Commission, under sub-clause (6) of Section 42 of the Act, with whom a representation may be made in accordance with sub-clause 17 (1) of these Regulations.”

6.12 On a careful reading of the said definition, it is noted that Electricity Ombudsman means an authority with whom a representation may be made in accordance with sub clause 17(1) of the Regulation.

The said Regulation 17(1) is extracted below :

17(1) Any consumer, who is aggrieved on the order on the grievance or non-redressal of his grievances by forum constituted under section 42 (5) of the Electricity Act 2003 by licensees relating to providing of electricity supply, may himself or through his representative make a complaint to the Electricity Ombudsman in the form as in Annexure-III. Complaints of common nature (which may be considered applicable to more than one forum) can be directly brought

upto Electricity Ombudsman by any of the consumer or by a State level Consumer Association in the form as prescribed in Annexure –III.

xxx xxx xxx”

6.13 On a careful reading of the said regulation 17(1), it is noted that any consumer may make a complaint to Electricity Ombudsman in the following cases.

- (i) Aggrieved on the order on the grievance.
- (ii) Non redressal of grievance by the Forum
- & (iii) complaints of common nature

(i) In this case, no order has been passed on merit by the forum on the grievance relating to theft of energy. The petition of the Appellant has been rejected by the Forum for want of jurisdiction.

(ii) Secondly the consumer can also make a complaint to the Electricity Ombudsman, if his grievance was not redressed by the forum (ie) If the forum does not give any order within the stipulated time of 50 days as mentioned in regulation 17(4)(a). As the forum has given order stating that the grievance is excluded from its purview, the above clause is also not applicable.

(iii) Thirdly, if the complaint is common in nature, then it can be directly brought before the Electricity Ombudsman. But, this complaint is for a theft of energy in a particular service. Therefore, it cannot be classified as complaint of common nature.

6.14 In view of the findings in the above paras, the complaint of the Appellant is not in accordance with Regulation 17(1) or satisfy the requirements given under 17(1). Therefore, I am of the considered opinion that the Electricity Ombudsman

cannot entertain the appeal as per Regulation 17(1) of the Regulations for CGRF & Electricity Ombudsman.

6.15 Further, it is to be noted that the Electricity Ombudsman is an Appellate Authority for the orders of CGRF . When a particular grievance is excluded from the purview of the lower forum, such grievances will also be excluded from the Appellate authority unless and otherwise if a specific provisions is made in the regulation to accept such petitions directly by the Appellate Authority. As per the Regulations the complaints of common nature applicable to more than one forum alone can be directly brought before the Electricity Ombudsman. There is no provision in the Regulation to the effect that the grievances of consumer relating of the offences & penalties as detailed under section 135 to 141 of the Act can be directly filed before the Electricity Ombudsman. Therefore, it implies that offences & penalties as details under section 135 to 141 of the Electricity Act which are excluded from the purview of Electricity Ombudsman also.

6.16 Further, it is to be pointed out that as section 154(1) of Electricity Act 2003, the offences punishable under section 135 to 140 & 150 shall be triable only by the special court within whose jurisdiction such offences has been committed. The Special Court while conducting trial for offences under the said section also has power to determine the civil liability which includes the quantum of money recoverable from the offender for theft of energy vide sub section (5) and (6) of the section 154 of the Electricity Act, 2003. The issue agitated by the Appellant in this appeal squarely fall under this section and on

this count also the Electricity Ombudsman does not have jurisdiction in this case and the subject matter falls within the realm of the Special Court constituted under the Act.

6.17 Further, the petitioner has argued that the compounding was done u/s 152 of Electricity Act, 2003 and as such the Forum is empowered to enquire the case, but unfortunately the Forum has rejected the petition under Regulation 5 of said Regulations for CGRF & Electricity Ombudsman 2004.

6.18 In this connection I would like to refer section 152 of the EA ,2003 which states as follows:

“(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Appropriate Government or any officer authorized by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in the Table....

xxxx”

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence in accordance with sub-section (1) by the Appropriate Government or an officer authorised in this behalf empowered in this behalf shall be deemed to amount to an acquittal within the meaning of section 300 of the Code of Criminal Procedure, 1973.”

6.19 It may be seen from the above, the Act clearly specifies that the sum of money for compounding to be collected by the appropriate government or an officer authorised in this behalf from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act. Upon payment any person in custody in connection with that offence shall be set at liberty and no proceeding shall be instituted or continued against such consumer or person in any criminal court. The argument advanced by the Appellant is that the Appellant has compounded the offences under section 152 of the Act and the said section 152 is not specified as one of the sections excluded from the purview of the Forum under the said Regulation 5.

6.20 In light of the above, it is to be noted that compounding has been done under section 152 in this case and the said section 152 has not been specifically excluded under regulation 5 to assume jurisdiction by the Forum. However, since the appellant was said to have committed an offence of theft of electricity punishable under section 135 of the Act, the issue raised by the Appellant in this appeal are excluded from the purview of the Forum. I am therefore of the view that the Forum cannot enquire the case of compounding of offence under section 152 also and consequentially go into the correctness of the amount of the penalty collected or the procedure followed by the assessing officer. Even though the regulation 5 of the Regulations for CGRF and Ombudsman, 2004 is silent about section 152, since, the said section 152 is relatable to section 135,

the prohibition for exercising jurisdiction by the Forum specified in the said regulation 5(ii) will apply.

7. Conclusion :

7.1 In view of my findings on the para 6 above, I am unable to interfere with the order of CGRF/Chennai EDC South-I.

7.2 With the above findings the Appeal Petition No. 89 of 2016 is finally disposed by Electricity Ombudsman. No Cost.

(A. Dharmaraj)
Electricity Ombudsman

To

1) Thiru. R. Ramachandran,
No.8/66, A.V. Krishnasamy Street,
Janaki Nagar,
Valasaravakkam,
Chennai – 600 089.

2) The Executive Engineer,
O&M/Valasaravakkam,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,
Valasaravakkam, Chennai – 87.

3) The Asst. Executive Engineer,
Enforcement,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,
Valasaravakkam,
Chennai – 87.

4) The Assistant Engineer,
Enforcement,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,
Valasaravakkam,
Chennai – 87.

5) The Executive Engineer,
O&M/K.K. Nagar,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,
110 KV SS Complex,
K.K. Nagar, Chennai – 78.

6) The Chairman,
(Superintending Engineer),
Consumer Grievance Redressal Forum,
Chennai Electricity Distribution Circle/South-I,
TANGEDCO,
110 KV SS Complex,
K.K. Nagar, Chennai – 78.

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

8) The Secretary,
Tamil Nadu Electricity Regulatory Commission,
19-A, Rukmini Lakshmipathy Salai,
Egmore,
Chennai – 600 008.

9) The Assistant Director (Computer) – **For Hosting in the TNEO Website.**
Tamil Nadu Electricity Regulatory Commission,
19-A, Rukmini Lakshmipathy Salai,
Egmore,
Chennai – 600 008.