

A consumer is the important visitor on our premises.
He is not dependent on us. We are dependent on him.
-Mahatma Gandhi



TAMIL NADU ELECTRICITY OMBUDSMAN

4th Floor, SIDCO Corporate Office Building, Thiru-vi-ka Industrial Estate,
Guindy, Chennai – 600 032.

Phone : ++91-044-2953 5806, 044-2953 5816 Fax : ++91-044-2953 5893

Email : tneochennai@gmail.com

Web site : www.tnerc.gov.in

Before The Tamil Nadu Electricity Ombudsman, Chennai

Present :Thiru. N.Kannan, Electricity Ombudsman

A.P.No. 53 of 2022

M/s. Prashanth Fertility Research Centre Pvt. Ltd.
& Prashanth Multispeciality Hospitals,
C/o. Oswin & Jacob,
BRIO Hall, No.4/23E, Kamaraj Nagar,
4th Main Road, Thiruvanmiyur,
Chennai – 600 041.

..... Appellant

(Rep. by Thiru N. Senthil Viswarooban, Advocate
& Thiru Franklin Stephen, Advocate)

Vs.

1. The Superintending Engineer,
Chennai Electricity Distribution Circle/North,
TANGEDCO, Ground Floor, 5B Block,
144, Anna Salai, Chennai - 600002.

2. The Executive Engineer/O&M/Vyasarpadi,
Chennai Electricity Distribution Circle/North,
TANGEDCO, 110/33KV SS Vyasarpadi,
Opp Ramalingam Temple,
Vyasarpadi, Chennai -600039.

3. The Assistant Executive Engineer/O&M/Madhavaram,
Chennai Electricity Distribution Circle/North,
TANGEDCO, 33/11 KV SS, CMBTT,
Vadaperumbakkam, Chennai- 600060.

4. The Assistant Engineer/O&M/Madhavaram-II,
Chennai Electricity Distribution Circle/North,
TANGEDCO, 33/11 KV SS, CMBTT,
Vadaperumbakkam, Chennai- 600060.

..... Respondents

(Thiru P. Chandrasekaran, SE/CEDC/North
Thiru C.Jeyachandran, EE/ O&M/Vyasarpadi
Thiru K.Arunachalam, AEE/O&M/Madhavaram
Thiru M.Gokul, AE/O&M/Madhavaram-II)

Petition Received on: 22-06-2022

Date of hearing: 10-11-2022

Date of order: 24-11-2022

The Appeal Petition received on 22.06.2022 filed by M/s. Prashanth Fertility Research Centre Pvt. Ltd. & Prashanth Multispeciality Hospitals, C/o. Oswin & Jacob, BRIO Hall, No.4/23E, Kamaraj Nagar, 4th Main Road, Thiruvanmiyur, Chennai – 600 041 was registered as Appeal Petition No. 53 of 2022. The above appeal petition came up for hearing before the Electricity Ombudsman on 10.11.2022. Upon perusing the Appeal Petition, Counter affidavit, written argument and the oral submission made on the hearing date from both parties, the Electricity Ombudsman passes the following order.

Order

1.0 Prayer of the Appellant:

The Appellant has prayed to direct the SE/CEDC/North to refund the minimum charges collected through SA notice and to immediately refund the excess estimate charges collected violating the TNERC codes and regulations.

2.0 Brief History of the case:

2.1 The Appellant M/s. Prashanth Fertility Research Centre Pvt. Ltd. & Prashanth Multi speciality Hospitals has applied for a new HT service connection for hospital premises.

2.2 Having paid all the estimate charges by the Appellant, the TANGEDCO had not even completed their basic works to extend supply, but issued a SA notice without proper verification of completion of works.

2.3 Hence the appellant has filed a petition with the CGRF of Chennai EDC/North on 14.02.2022 requesting to refund of excess estimate charges and the minimum charges collected through the SA notice issued.

2.4 The CGRF of Chennai EDC/North has issued an order dated 30.03.2022. Aggrieved over the order, the appellant has preferred this appeal petition before the Electricity Ombudsman.

3.0 Orders of the CGRF :

3.1 The CGRF of Chennai Electricity Distribution Circle/North issued its order on 30.03.2022. The relevant portion of the order is extracted below :-

“There is no merit on the claim of petitioner in respect of a refund of Monthly minimum charges and revised the estimates charges as per Regulation 29, Sub Regulation 11, Sub Clause (c) of Tamil Nadu Electricity Distribution Code, 2004.”

4.0 Hearing held by the Electricity Ombudsman:

4.1 To enable the Appellant and the Respondents to put forth their arguments, a hearing was conducted in person on 12.10.2022. As per the request of the Respondent, the hearing scheduled on 12.10.2022 was adjourned and the same was conducted on 10.11.2022 in person.

4.2 On behalf of the Appellant Thiru N. Senthil Viswarooban and Thiru Franklin Stephen, Advocates of M/s. Stephen & Stephen Advocates Associates attended the hearing and put forth their arguments.

4.3 The Respondents Thiru P. Chandrasekaran, SE/CEDC/North, Thiru C.Jeyachandran, EE/O&M/Vyasarpadi, Thiru K.Arunachalam, AEE/O&M /Madhavaram, Thiru M.Gokul, AE/O&M/Madhavaram-II and their authorized representative Thiru M.Gopinathan, Standing Counsel attended the hearing and put forth their arguments.

4.4 As the Electricity Ombudsman is the appellate authority, only the prayers which were submitted before the CGRF are considered for issuing an order. Further the prayer which requires relief under the Regulations for CGRF and Electricity Ombudsman, 2004 alone are discussed hereunder.

5.0 Arguments of the Appellant:

5.1 The Appellant has stated that M/s.Prashanth Fertility Research Centre Pvt. Ltd. & Prashanth Multispeciality Hospitals has applied for a new HT service connection for the Hospital premises at T.S.No.1/4 & 1/5, Block No.45 of Madhavaram Village, abutting Jawaharlal Nehru Salai. The HT application was registered on 06.01.2021. All the estimate charges as claimed contrary to the provisions of the regulations & directions of TNERC were also paid on 19.01.2021 without prejudice to the rights to claim a refund at a later period as per TNERC Codes & Regulations.

5.2 The Appellant has stated that having paid all the estimated charges claimed, it is an obligation on the part of the Distribution Licensee to complete the network-related works in all manners to effect/extend supply at any point in time when the prospective consumer is ready to avail the supply. As per Reg 29(17), the entire service line is the property of the Licensee and the licensee will maintain it at his/her cost. It is implied that the distribution Licensee has to complete all the service-related extension works based on the point of supply as agreed upon by the intending consumer and the distribution licensee.

5.3 The Appellant has stated that as per Reg 30 of the TNE Distribution code M/s.Prashanth Fertility Research Centre Pvt. Ltd. & Prashanth Multispeciality Hospitals have completed all the installation-related works obligated on the part of the consumer.

5.4 The Appellant has stated that as per Reg 31 of the Tamilnadu Electricity Distribution Code, the Distribution Licensee can issue the supply availability notice only after ensuring the absolute completion of the network extension-related works to extend supply to the prospective consumer. However, in the present case TANGEDCO has not even completed their very basic obligated works to extend supply but were in a larger hurry to issue a Supply Availability without completion of network extension work to extract more revenue contrary to the regulation prescribed. Copy of the photographs enclosed herewith will confirm your good selves that the works have been carried out by TANGEDCO officials/staff only

during August 2021 but the supply availability notice was issued on 10.05.2021 with an ulterior motive to fetch more revenue without discharging the responsibilities devolved.

5.5 The Appellant has stated that issuing of Supply availability notice without proper verification of completion of works would only invite legal ramifications. Even after making representations in writing & in person, no fruitful action has been taken by the officials of TANGEDCO to set right the mistake committed.

5.6 Therefore M/s. Prashanth Fertility Research Centre Pvt. Ltd & Prashanth Multispeciality Hospitals would like to apprise Hon'ble CGRF/CEDC/ North for a corrective direction as per the Electricity Act 2003 to the officials of the Distribution Licensee for their improper means of issuing SA notice without completing the necessitated works for extending the supply as envisaged in the regulations of Hon'ble TNERC.

5.7 The Appellant has stated that it is a well-known fact that the supply of materials to TANGEDCO extending 11 KV HT supply might have got delayed because of the pre-Covid-19 Pandemic 2nd wave during the above period and the consequent decision of the Board of the TANGEDCO resolving to extend the time for the supply of materials for further 4/6 months leading to the delay in execution of TANGEDCO related works.

5.8 The Appellant has stated that having very well understood all the reasons behind delays in the execution of the TANGEDCO-related works for extending supply TANGEDCO should not have preferred to issue a Supply Availability notice on 10.05.2021. The prospective consumers/applicants should not be penalized for the delay on the part of TANGEDCO in executing their work.

5.9 The Appellant has submitted that the issue was already brought to the notice of the Hon'ble TNERC and it was pleased to direct us to approach the CGRF/CEDC North for corrective action accordingly we have complied with the same by filing the appeal petition.

5.10 The Appellant has stated that the request was not considered and went on futile reposing much faith it was brought to the kind notice of the Hon'ble CGRF about the violation of all the norms framed by Hon'ble TNERC and for a further/immediate interference in this matter to set right the illegality in issuing the Supply Availability Notice by directing the officials concerned to rework the valuation as per the actual date of completion. The records showing the actual date of execution of works are also submitted for your kind perusal. But the CGRF/CEDC North blindly rejected the request without adhering to the distribution code or the directions of the Hon'ble TNERC in the Taramurali Case.

5.11 In this regard as the process of effecting service connection was already delayed because of utility side network improvements works as the Hospital was ready to function, all the payments as claimed by the utility made under protest with a faith that the CGRF would come for the rescue of this Hospital petitioner for refunding the excess estimated charges /monthly minimum charges paid, the Appellant stated.

5.12 The Appellant has stated that after having paid all the charges as claimed by the utility without prejudice to the rights to appeal and the HT service connection was effected on 25-09 2021 with HT A/c No. 019094042143.

5.13 This Appellant /petitioner has brought before the CGRF the judgment passed by the Hon'ble TNERC in the Taramurali case concerning the collection of estimate charges by the utility.

The operating portion of the judgment is as follows:

“As the decision made in this case is squarely applicable to all the similar cases, the amount collected towards extension cost/ estimate cost is refundable to all the petitioners of similar cases after adjusting the cost pertaining to the portion of HT Line /LT Installation works (The distribution transformer and structure cost is to be borne by the licensee) as stipulated in Regulation 3(1)(b) of the Supply Code and Regulation 29(11) of the Distribution Code. In regard to other prayer of the petitioner in this case to punish the respondents for violation of the regulation, the Commission is of the view that after filing the case, the respondents themselves revised the estimate and also the cost demanded from the petitioner in line with the Regulation and as such no proceedings under section 142 of the Electricity Act 2003 is warranted for the present. In effect, it is ordered.”

(i) The charges of Rs.2,78,100/- paid by the petitioner are sustainable by Regulation 29(11) of the TN Electricity Distribution Code as discussed in para 8.20 of this order and hence not refundable.

(ii) The Respondent is directed not to collect the Extension cost or Estimate charges directly or indirectly (except charges about HT line/LT installation work inside the consumer premises as stipulated in Regulation 3(1)(b) of the Supply Code and Regulation 29(11) of the Distribution Code), forthwith. If any such cost is collected unlawfully, the same shall be viewed by the Commission seriously and due statutory action shall be proceeded with against the officials concerned. In this case, as the respondents themselves revised the estimate and also the charges demanded from the petitioner in accordance with the Regulations, the Commission refrains from proceeding under Section 142 of the Electricity Act 2003.

5.14 The Appellant has brought before the CGRF/CEDC North all the judgments passed by Hon'ble TNERC, the Suo moto petition initiated by Hon'ble TNERC and the consequent undertaking given by the TANGEDCO to comply with the same in letter & spirit and the further other orders passed, apart from the instructions issued by CE/Commercial to their subordinate regional officials to comply with the orders of TNERC and the orders passed by the other CGRFs in similar matter and refund of charges.

5.15 The Appellant has stated that the order of the CGRF/North rejecting the request of this petitioners will not sustain in the eyes of law and the facts and circumstances of the case and is liable to be set aside. The learned CGRF has deviated expressly from the direction of Hon'ble TNERC in orders Proceedings No.TNERC/ DE/DDE2/F.CORF/2021 41.06.06.2021.

5.16 The Appellant has prayed (i) to set aside the orders passed by the CGRF /North pertaining to the Supply Availability notice issued to M/s. Prashanth Fertility Research Centre Pvt Ltd. & Prashanth Multispeciality Hospitals, (ii) to refund excess estimate charges collected in violation of the distribution code and judgment in the Taramurali case, (iii) to ascertain the facts with relevant records, (iv) to direct the Superintending Engineer/CEDC/North to immediately refund the minimum charges collected through the SA notice issued vide his Letter No.SE/CEDC/N/EE/ OL/ AEE/ Dev/AE / D2/F.HT Prashanth new/D143/ 21 dt. 10.05.21 under the guise of implied completion without verifying the physical completion through unfair means, penalizing the prospecting consumer without any

justification, (v) to direct the Superintending Engineer/CEDC/North to immediately refund the excess estimate charges collected violating the TNERC Codes & Regulation and in conjunction with the judgment rendered by Hon'ble TNERC in Taramural and other related cases and (vi) to give any other further instruction/direction/orders in this regard to protect the rights of Consumers.

6.0 Counter submitted by the Respondent:

6.1 The Respondent has submitted that M/s.Prasanth Fertility Research Centre Pvt Ltd has requested to effect a new HT service connection for a maximum demand of 950 KVA at 11 KV for the Super Specialty Hospital at Old S.No.1354, New No.1354/1A & 1B, T.S.No.1/4 & 1/5, Jawaharlal Nehru Road, Kolathur, Chennai-600 099 and the same was registered on 06.01.2021 after making necessary Registration fees along with applicable EMD as per rule in force.

6.2 The Respondent has submitted that the proposals for the extension of HT supply for a maximum demand of 950 KVA at 11 KV was evolved and after obtaining sanction from the competent authority, advice towards Service Connection charges, Development charges and Meter Caution Deposit along with load sanction was communicated vide Lr.No.SE/ CEDC/N /EE/GL/ AEE/ DEV/ AE/ 02/F.HT Prasanth New/D/2065 and D/2066/20,dated.19.01.2021 and requested payment of the same within 15 days from the date of receipt of mail.

6.3 The Respondent has submitted that the petitioner has requested to approve the time extension to make the payment of the above-said amount and the time extension approval was granted and communicated vide Lr.No.SE/CEDC/ N/EE/GL/AEE /DEV/AE /D2/ F.HT.Prasanth New/ D.2174/20 dated 09.02.2021.

6.4 The Respondent has submitted that the petitioner paid the above-said amount on 04.03.2021 without any protest and the petitioner was informed vide letter dated 19.01.2021 and 09.02.2021 stating that "You are requested to produce the CEIG/CEA safety certificate and completion certificate on or before the date of completion of the TANGEDCO side works and avail the HT supply, failing which the 1st 3 months supply availability notice will be issued to you from the date of

completion of TANGEDCO works to avail the HT supply and you will be levied monthly minimum charges from the date of issue of the 1st 3 months notice as per Regulation 21 Sub regulation 3 of Tamil Nadu Electricity Distribution Code, 2004.

6.5 The Respondent has submitted that the TANGEDCO side work towards extension of supply such as the erection of 11 KV Breaker, C&R Panel along with accessories at 33/11 KV CMBTT SS and laying of 11 KV UG cable to a length of 700 mtr under Trenchless technology method and conversion of existing 2 poles into 3 pole structure were completed on 10.05.2021 except to connect the part of the cable to the RMG unit which is to be supplied and erected by the petitioner as per the request of petitioner instead of outdoor metering arrangement which is normally provided by the TANGEDCO.

6.6 The Respondent has submitted that the part of the 11 KV UG cable which is to be connected to the proposed RMG unit also was kept ready in the petitioner's premises in respect of a safety point of view. He stated that the above extension work was completed during the Covid-19 period only.

6.7 The Respondent has submitted that after TANGEDCO side works were completed, the 1st Supply Availability notice was issued on 10.05.2021. Due to non producing of CEIG/CEA safety certificate and Completion Certificate on or before TANGEDCO side work completed and the applicant was requested to avail the HT supply within three months from the date of issuance of Supply Availability notice ie., 09-08-2021 and there was no objection raised or letter correspondence sent by the applicant on receipt of 1st Supply Availability Notice.

6.8 The Respondent has submitted that further a reminder letter was communicated vide letter dated 22.07.2021 stating that they can avail extension of time for another 3 months on payment of monthly minimum charges of Rs 19,95,000/- (Rupees nineteen lakhs ninety five thousand only) for six months period from 10.05 2021 to 09.11.2021 in advance before expiry of 1st 3 months Supply Availability notice period as per the regulation.

6.9 The Respondent has submitted that it was clearly explained to the applicant vide letter dated 18.08.2021 that due to the non-erection of the RMG unit which is to be supplied and erected by the petitioner as per sanction, the UG cable could not be connected to the RMG unit and however the materials were kept readily available in their premises.

6.10 The Respondent has submitted that the building debris, building construction materials were placed on the ground level of the petitioner's premises, and the petitioner has not come forward to clear the material for laying the HT service cable from the tapping point to the proposed RMG unit. After the removal of the debris and after the erection of cement pipes in the premises by the petitioner, the conversion of 2 Pole to 3 Pole work and laying of service cable was carried out and completed.

6.11 The Respondent has submitted that the petitioner paid the monthly minimum charges on 23.09.2021 for the six months period from 10.05.2021 to 09.11.2021 and collection of monthly minimum charges is as per regulation.

6.12 The Respondent has submitted that the petitioner has submitted the CEIG safety certificate issued on 23.09-2021 by the competent authority along with the building Completion Certificate issued on 17.09.2021 by the competent authority on 24.09.2021 (after 5.15 pm) and the service connection was effected on the next day itself i.e., on 25.09.2021 without any delay even though it was a holiday.

6.13 The Respondent has submitted that the estimate for effecting a new HT service connection for a maximum demand of 950 KVA to M/s.Prasanth Fertility Research Centre Pvt.Ltd., was sanctioned as per the rule in force on 19-1-2021 i.e. well before the amendment made in the Distribution Code and published in the Government of Tamil Nadu Gazette on 27-1-2021 under Regulation 29(11).

6.14 The Respondent has submitted that the Review Petition under R.P.No.1 of 2022 in MP No.2 of 2021 and others has been filed by TANGEDCO before this commission and the same has been heard on 19-4-2022 and the case is adjourned to 10-5-2022 for arguments.

6.15 The Respondent has submitted that the following Writ petitions and Stay application have been filed before the Hon'ble High Court of Madras by TANGEDCO against the TNE Ombudsman common order dated 24-9-2021 in AP No.31, 32, 48, 49, 56, 63, 64 and 70 of 2021.

Name of the Petitioner	AP No. of Ombudsman	Hon'ble High Court Case No.
M/s.Navin Housing Properties Pvt.,Ltd.	AP.No.32 of 2021	WMP.No.28585 of 2021 in WP.No.27115 of 2021
M/s.Kamalaya Hi Soft Ltd.,	AP.No.31 of 2021	WMP.No.28587 of 2021 in WP.No.27117 of 2021
M/s.Akshaya Pvt.Ltd.,	AP.No.48 of 2021	WMP.No.28590 of 2021 in WP No.27120 of 2021
M/s.Casa Grand Pvt.Ltd.,	AP.No.49 of 2021	WMP.No.28594 of 2021 in WP.No.27122 of 2021
M/s.High Value Developers	AP.No.56 of 2021	WMP.No.28596 of 2021 in WP.No.27124 of 2021
M/s.Arun Excello Construction Mathur Village,	AP.No.63 of 2021	WMP.No.28598 of 2021 in WP. No.27126 of 2021
M/s.Arun Excello Construction Mathur Village,	AP.No.64 of 2021	WMP.No.28599 of 2021 in WP No.27130 of 2021
M/s.Ramaniyam Real Estate Pvt.Ltd.,	AP.No.70 of 2021	WMP.No.28603 of 2021 in WP.No.27131 of 2021

6.16 The Respondent has submitted that the Hon'ble High Court of Madras has granted an order of Interim stay until further order on 22-12-2021 the operation of the order the Hon'ble TNE Ombudsman common order dated 24-9-2021 made in AP No. 31, 32, 48, 49, 56, 63, 64 and 70 of 2021.

6.17 The Respondent has submitted that the petitioner has filed an appeal to TN Electricity Ombudsman and the same was registered as appeal petition No.53 of 2022 is not maintainable either on law or on facts and prayed to dismiss the appeal petition.

7.0 Findings of the Electricity Ombudsman:

7.1. I have heard the arguments of both the Appellant and the Respondent. Based on the arguments and the documents submitted by them the following are the issues to be decided.

- i) Whether the contentions of the Appellant against the Respondent for claiming monthly minimum charges from the date of issue of supply availability on 10.05.2021 without completion of the Board's side work as per load sanction is tenable?
- ii) Whether the claim of the Appellant to refund the excess estimate cost is legitimate?

8.0 Findings for the first issue:

8.1 The Appellant has claimed that the respondent had issued a supply availability notice on 10.05.2021 without completion of network extension work but in hurry to extract more revenue. The Appellant also reported that the learned CGRF failed to verify the records of TANGEDCO regarding the date of drawl of material for the execution of works and the corresponding labour payment made.

8.2 The Appellant claimed that the RMG erection work had been completed way back on 15.03.2021 and substantiated the same with proof of photos taken on 7-8-2021 that the respondent hadn't completed the following works before issue of supply availability notice;

- a) Erection of triple pole structure,
- b) AB Switch
- c) laying of 35 m, 3x300 sqm 11 kv cable

8.3 The Respondent has submitted that the proposals for the extension of HT supply in the name of M/s. Prashanth Fertility Research Centre Pvt Ltd, for a maximum demand of 950 KVA at 11 KV was sanctioned and communicated on 19.01.2021. Further averred that the Appellant had already been informed vide letters dated 19.01.2021 and 09.02.2021 and the relevant portions of the letters reproduced below:

“You are requested to produce the CEIG/CEA safety certificate and completion certificate on or before the date of completion of the TANGEDCO side works and avail the HT supply, failing which the 1st 3 month supply availability notice will be issued to you from the date of completion of TANGEDCO works to avail the HT supply and you will be levied monthly minimum charges from the date of issue of the 1st 3 months notice “ as per Regulation 21 Sub regulation 3 of Tamil Nadu Electricity Distribution Code, 2004.

8.4 The Respondent further argued that the TANGEDCO side work towards extension of supply such as the erection of 11 KV Breaker, C&R Panel along with accessories at 33/11 KV CMBTT SS and laying of 11 KV UG cable to a length of 700 mtrs. under Trenchless technology method and conversion of existing 2 poles into 3 pole structure at Reliance SS was completed on 10.05.2021. The Respondent also mentioned that the UG cable could not be connected to the RMG due to the non-erection of RMG by the Appellant. The Respondent also stated that the laying of short bit cable inside the premises could not be carried out due to non-erection of cement pipes by the Appellant. Moreover the conversion of 2 pole to 3 pole could not be carried out due to the dumping of debris, building materials at the site by the Appellant and the respondent stated that even after the request to clear, the same had not been taken up seriously by the Appellant. After the Respondent site work was completed, first supply availability three months' notice was issued on 10.05.2021 to avail supply before 09.08.2021. Even after completion of TANGEDCO's side work the Appellant had not submitted the completion certificate and CEIG certificate. The respondent further informed that the Appellant was reminded again on 22.07.2021 to avail extension of time for another three months ie up to 9.11.2021 subject to payment of monthly minimum charges for Rs.19,95,000/- and the Appellant paid the amount on 09.11.2021.

8.5 The Respondent also informed that the Appellant furnished the CEIG safety certificate issued by the competent authority dated 23.09.2021 as well as the building Completion Certificate issued by the competent authority dated 17.09.2021 on 24.09.2021 and the service was effected on the next day 25.09.2021 despite the fact that it was not a working day.

8.6 The issue of the supply availability notice is the main contention between the Appellant and Respondent and this is to be decided by this Ombudsman. Hence I have to find out the conditions for the issue of the supply availability notice. In this context I would like to refer to Regulation 31 (2), (3) & (5) of Tamilnadu Electricity Distribution Code as existed during the disputed period i.e. 10-05-2021 is given below:

“31 INSPECTIONS, TESTING AND EFFECTING SUPPLY:

(2) The intending consumer shall avail himself of the supply within three months in case of HT and one month in case of LT from the date of issue of notice in writing, informing him that supply is available.

(2A) ...

(3) If the intending consumer fails to avail the supply within the above period, a further three months extension in case of HT and one-month extension in case of LT will be granted by the licensee after collecting the monthly minimum for the notice period including the extended period in advance. If he does not avail himself the supply during this notice period, the application will be treated as lapsed and cancelled in the case of Low Tension supply and the application shall be treated as cancelled, terminating the agreement, in the case of High Tension supply. The service connection charges, the Security Deposit, development charges, monthly minimum charges etc. except Meter Caution Deposit will be forfeited. In case the intending consumer could not avail the supply under force majeure conditions, the Security Deposit and meter caution deposit shall be refunded to the intending consumer.

*(4)******

(5) If the intending consumer avails supply during the notice period of availability of supply he shall pay the monthly minimum charges at the notified tariff rate for the period from the date of issue of first notice of supply availability till the date of availing supply.”

8.7 On a careful reading of Regulation 31(2), 31(3), and 31(5), it is understood that the intending consumer shall have to avail himself of the supply within three months from the date of issue of the supply availability notice in writing and the consumer is liable to pay the monthly minimum charges at the notified tariff rate for the period from the date of issue of first notice of supply availability till the date of availing supply.

8.8 In the case on hand, the Respondent had given the supply availability notice on 10-05-2021 claiming that Board's side work had been completed in all respects. But the Appellant has denied that despite pending works, the Respondent had issued a supply availability notice intending to extract more revenue through falsification of records and pending works were completed only in August 2021.

8.9 The Appellant's contention is that the respondent had completed the work of Erection of the triple pole structure, AB Switch, laying off 35 m, 3x300 sqm 11 kv cable during August 2021 ie only after the issue of supply availability notice and substantiated them with proof of photos taken during 7-8-2021. However the Respondent denied that the delay of above said work was due to non-erection of RMG and dumping of debris at the work site. The appellant also accepted that building materials, debris were dumped in their work site.

8.10 Further on perusal of the documents furnished, the following are observed.

- 1) The respondent had completed the inspection of CT, PT by 09-03-2021
- 2) RMG inspection had been completed on 25-03-2021.
- 3) 11KV Reliance Breaker drawl had been done by 08-04-2022, erection and pre-commissioning at CMBTT indoor SS had been completed by 15-04-2021.
- 4) Drawl of the work order 404/696/154/1/1/2020-21/dt.02-04-21 for terminating with RMG had been done before 10-05-2021.
- 5) For Laying of 11 KV 3x300 sq mm XLPE cable for a length of 730 mts, the cable had been drawn in work order 404/626/1531/1/2020-21/dt 02-04-21 and the works had been completed before 10-05-2021.
- 6) Further the respondent had reminded the appellant vide letter dt 18-08-2021 that the UG cable could not be connected to RMG, due to non-erection of RMG.

8.11 The Appellant denied access to the respondent for completing certain works due to the non-removal of debris /building material, which in another way could be mentioned as the non-provision of the site front/way left. The Respondent's communication to the Appellant on 18-08-2021 too confirms a total lapse on the

part of the Appellant on completion of the work. This fact also tallies with the CEIG safety clearance issued by the competent authority on 23-09-2021 which was received by the respondent on 24-09-2021.

8.12 The Appellant blaming of the respondent totally is unjustified. It is very well understood that the arguments and later thoughts articulated by the Appellant to counter his action of not permitting the Respondent to complete a very minor nature of work of laying 35 m cable and the non-removal of debris by the Appellant that led to the delay in the conversion activities of structure which is not a time consuming work. CEIG clearance would be issued by the competent authority subject to completion of work by the Appellant and this fact is taken as strong material for evidence. Further, I would like to know whether the CEIG safety certificate is mandatory for effecting the load of the Appellant and in this context I would like to refer TNE Distribution code 27 clause (11) and 30 clauses (9) is reproduced below

“Regulation 27(11)

The requirement to be notified by the authority through regulations shall be complied with the availing the service condition.

Regulation 30(9)

All the high installations and their associated medium voltage and low voltage installations will have to comply with the applicable safety and security rules prescribed by Authority/Government/Commission”.

8.13 The plain reading of the above regulations establishes that it is mandatory to ensure safety and security on the new installations of the Appellant industry. Further, the Respondent had also informed the Appellant vide his letter No. SE/CEDC/N/EE/GL/AEE/DEV/AE/D2/F.HT Prashanth.new /D 366/20 dt 19-01-2021 which is reproduced below.

“The work will be taken up immediately after payment of the aforesaid amount and execution of agreement by you and the demand will be effected on completion of TANGEDCO side works and on production of CEIG/CEA certificate and completion certificate by you”

8.14 The Respondent informed of the above to the appellant well in advance. The Appellant on the other hand submitted the CEIG certificate dt.23.09.2021 and the completion certificate dt. 17-09-2021 on 24.09.2021. The Appellant produced the CEIG /CEA Safety Certificate and Completion Certificate after the S.A notice issued date on 10-05-2021. Hence the Appellant's request to refund the monthly minimum charges collected on the issue of the SA notice has no merit and rejected.

9.0 Findings on the second issue:

9.1 The Appellant's claim to refund the Estimate charges mentioned vide respondent D.No.2066/20, dt 19-01-2021 for an amount of Rs 77,00,860/- is to be decided herewith.

9.2 This Appellant has brought before the CGRF, the judgment passed by the Hon'ble TNERC in M.P No 2 of 2021 dt 9-11-2021 Taramurali case concerning the collection of estimate charges by a utility.

The operative portion of the judgment is as follows:

"8.26 As the decision made in this case is squarely applicable to all the similar cases, the amount collected towards extension cost/ estimate cost is refundable to all the petitioners of similar cases after adjusting the cost pertaining to the portion of HT Line /LT Installation works (The distribution transformer and structure cost is to be borne by the licensee) as stipulated in Regulation 3(1)(b) of the Supply Code and Regulation 29(11) of the Distribution Code.

8.27 In regard to other prayer of the petitioner in this case to punish the respondents for violation of the regulation, the Commission is of the view that after filing the case, the respondents themselves revised the estimate and also the cost demanded from the petitioner in line with the Regulation and as such no proceedings under section 142 of the Electricity Act 2003 is warranted for the present.

In effect, it is ordered.

(i) The charges of Rs.2,78,100/- paid by the petitioner are sustainable by Regulation 29(11) of the TN Electricity Distribution Code as discussed in para 8,20 of this order and hence not refundable.

(ii) The Respondent is directed not to collect the Extension cost or Estimate charges directly or indirectly (except charges pertaining to HT line /LT installation work inside the consumer premises as stipulated in Regulation 3(1)(b) of the Supply

Code and Regulation 29(11) of the Distribution Code), forthwith. If any such cost is collected unlawfully, the same shall be viewed by the Commission seriously and due statutory action shall be proceeded with against the officials concerned. In this case, as the respondents themselves revised the estimate and also the charges demanded from the petitioner following 60 of the Regulations, the Commission refrains from proceeding under Section 142 of the Electricity Act 2003. ”

9.3 On the day of the hearing, the Appellant further referred to the refund of Estimate charges on the HT applicant case of Thiru Manivasagan Vs TANGEDCO and others passed by the TNERC in M.P.No 45 of 2021 dt 15-12-2021.

“4.1 The present case is covered by the orders passed in the M.P. No.2 of 2021 in the matter of Tmt Tara Murali Vs TANGEDCO and others, the fact of the present case being similar to the said case .

4.2 It may be seen from the above that the subject matter is similar in both cases and hence, the order passed therein would apply Mutatis Mutandis to the instant case as well. Given the above, the impugned demand notice demanding the entire extension cost / estimate charge is set aside. However, given the fact that the issue has assumed state-wide ramifications and there is doubt as to whether steps have been taken by the licensee to ensure that the orders issued by the Commission percolate to the field and whether the spirit of the orders on this subject have been understood in the correct perspective by the respondent, it has become necessary to issue the following guidelines for strict compliance as follows and the present order may be seen as an order in rem and not order in personam. The following are the guidelines

4.3 The Licensee shall not insist on payment of extension cost or estimate charges (except charges pertaining to HT line / LT installation work inside the consumer premises as stipulated in Regulation 3 (1) (b) of the Supply Code, 29 (11) and (12) of the Distribution Code) directly or indirectly and shall revise the demand notices immediately.

4.4 While doing so, the Licensee is also directed to revise the estimate strictly in line with the Regulations and collect only the charges authorized therein.”

9.4 Further the Appellant has strengthened his points by citing the relevant para in SMP No 2 of 2021 dt 28-11-2021 Coimbatore consume cause Vs The CMD/TANGEDCO and others alleging that despite Electricity ombudsman and commission’s orders, the licensee TANGEDCO is collecting extension cost illegally against the TNE Distribution code. The relevant para of the orders is reproduced below:

“15.3 Given the above, the Commission is satisfied that there is sincere compliance on the part of TANGEDCO regarding the orders of the Commission in

the collection of extension cost and hence the present S.M.P. is closed with direction to follow the orders passed in Tmt. Tara Murali and other cases in letter and spirit. Not only that, as directed in the Thiru Gunalan case, the consumer grievances at various circles shall be settled at the Headquarter of TANGEDCO itself and the consumers shall not be put to necessary hardship and driven to the Commission for relief.

The Registry is directed to send a copy of this order to the Chairman and Managing Director, TANGEDCO and Superintending Engineers of all Distribution Circles for compliance.

With these observations, the S.M.P. is closed.”

9.5 Further the Appellant vehemently put forth his complaint against the respondent that either the learned CGRF ought to have abided by the TNERC Distribution Code or the Judgement in the Taramurali case. Even the utility itself directed its subordinates to adhere to the regulations of TNERC & orders in the Taramurali Case, and others.

9.6 The Appellant further argued that the respondent wrongly concluded that the amendment came on 27.01.2021, whereas the estimate was sanctioned on 19.01.2021 and failed to understand that the issue discussed pertaining to Taramurali was of the year 2020.

9.7 The Respondent argued that the estimate towards effecting new HT service connection M/s.Prasanth Fertility Research Centre Pvt.Ltd., was sanctioned as per the rule in force on 19-1-2021 i.e. well before the amendment made in the Distribution Code and published in the Government of Tamil Nadu Gazette on 27-1-2021 under Regulation 29(11). As the intending consumers have to be referred with the Distribution code on effecting service, the sanction of the estimate had been completed by 19-01-2021 and against the amendment date of 27-01-2021

9.8 The respondent further reiterated that the operation of the order of the Hon'ble TNE Ombudsman common order dated 24-9-2021 was made in AP No. 31, 32, 48, 49, 56, 63, 64 and 70 of 2021 based on the main point which was identical and remained the same in M.P.No.2 of 2021 Mrs. Taramurai Vs TANGEDCO and others had been got stayed by the Hon'ble High Court of Madras by an order of Interim stay until further orders on 22-12-2021.

9.9 Further, the respondent submitted that a Review Petition under R.P.No.1 of 2022 in MP No.2 of 2021 and others has been filed by TANGEDCO before the Hon'ble Commission and the same has been heard on 19-4-2022 and the case was adjourned to 10-5-2022 for arguments.

9.10 Adverting to the arguments of both sides I have to decide on the adjudication of facts, but it is understood that there is stay on Ombudsman orders for the similar cases by Hon'ble High Court and a review petition for the same subject matter is also pending before the Hon'ble Commission in R.P No 1 of 2022 in M.P No 2 of 2021 & others. Under these circumstances, I would like to refer the regulation 17(4)(d) of the Consumer Grievance Redressal Forum and Electricity Ombudsman which is furnished below.

“17

(1) xxxx

(2) xxxx

(3) xxxx

(4) *No complaint to the Electricity Ombudsman shall lie unless:*

(a) xxxx

(b) xxxx

(c) xxxx

(d) *The complaint does not pertain to the same subject matter for which any proceedings before any court is pending or a decree or award or a final order has already been passed by any competent court; and*

(e) *The complaint is not frivolous or vexatious in nature.”*

9.11 On a plain reading of the above, it is understood that the Ombudsman cannot undertake an appeal petition where the legal dispute is pending before any court or a decree or award, or final order has already been passed by any competent Court for the same subject matter. Further, I would like to refer the prayer in the case of R.P No 1 of 2022 in M.P No 2 of 2021 filed by TANGEDCO which is reproduced below:

“7.1 TANGEDCO requests the Hon'ble Commission to admit the Review Petition in accordance with Section 94(1)(f) of the Electricity Act, 2003 and Clause 43(1) of TNERC (Conduct of Business) Regulations, 2004 and pass favourable Orders:-

(i) To include the cost of DT erected within the consumer premises with respect to extension of LT service connections.

(ii) To include the actual cost of extension with respect to extension of HT Service connections.”

9.12 On a plain reading, it is noted that TANGEDCO has prayed to include the actual cost of extension with respect to extension of HT service connections. Further, it is observed that the above review petition has been filed in response to the Hon'ble Commission Order 9th November 2021 in M.P.No.2 of 2021 filed by Tmty.Tara Murali and others and four other orders in M.P.No.33 of 2021, M.P.No.34 of 2021, M.P.No.35 of 2021 and M.P.No.36 of 2021 with regard to effecting of LT service connection for the petitioner's premises in the Misc petition and also the Orders of the Hon'ble Commission dated 23.11.2021 and 15.12.2021 in T.A.No.7 of 2021 and M.P.No.45 of 2021 with respect of extension of HT Supply.

9.13 Also, the orders passed by the Electricity Ombudsman in AP No. 31, 32, 48, 49, 56, 63, 64 and 70 of 2021, dated 24-9-2021 had already been got stayed by the Hon'ble High Court of Madras by an order of Interim stay until further orders on 22-12-2021 for the same subject matter as in M.P.No.2 of 2021 of Mrs. Taramurai Vs TANGEDCO and others.

9.14 As per regulation 17(4)(d) of the Consumer Grievance Redressal Forum and Electricity Ombudsman Regulations, no complaint to the Electricity Ombudsman shall lie unless, the complaint does not pertain to the same subject matter for which any proceedings before any court is pending or a decree or award or a final order has already been passed by any competent court. Therefore, the prayer of the Appellant could not be concluded by this Ombudsman until the legal dispute arrives finality.

10.0 Conclusion:

10.1 From the findings in para 8 above, I conclude that there is no need to refund the Monthly minimum charges collected through the Supply Availability notice from the date of work completion report on 10.05.2021 and this fact is very well

established with the date of issue of CEIG certificate i.e. on 23-09-21. The CEIG certificate is also mandatory on the part of the Appellant for availing supply from the Respondent. Hence the Appellant's claim for refund of monthly minimum charges is rejected.

10.2 Further to refund the excess estimate charges, I have to conclude that this prayer of the appellant could not be concluded by this Ombudsman until the legal dispute arrives finality.

10.3 With the above findings AP No. 53 of 2022 is finally disposed of by the Electricity Ombudsman. No costs.

(N. Kannan)
Electricity Ombudsman

“நுகர்வோர் இல்லையேல், நிறுவனம் இல்லை”
“No Consumer, No Utility”

To

1. M/s. Prashanth Fertility Research Centre Pvt. Ltd. – BY RPAD
& Prashanth Multispeciality Hospitals,
C/o. Oswin & Jacob,
BRIO Hall, No.4/23E, Kamaraj Nagar,
4th Main Road, Thiruvanmiyur,
Chennai – 600 041.
2. The Superintending Engineer,
Chennai Electricity Distribution Circle/North,
TANGEDCO, Ground Floor, 5B Block,
144, Anna Salai, Chennai - 600002.
3. The Executive Engineer/O&M/Vyasarparadi,
Chennai Electricity Distribution Circle/North,
TANGEDCO, 110/33KV SS Vyasarparadi,
Opp Ramalingam Temple,
Vyasarparadi, Chennai -600039.
4. The Assistant Executive Engineer/O&M/Madhavaram,
Chennai Electricity Distribution Circle/North,
TANGEDCO, 33/11 KV SS, CMBTT,
Vadaperumbakkam, Chennai- 600060.

5. The Assistant Engineer/O&M/Madhavaram-II,
Chennai Electricity Distribution Circle/North,
TANGEDCO, 33/11 KV SS, CMBTT,
Vadaperumbakkam, Chennai- 600060.

6. The Chairman & Managing Director, – By Email
TANGEDCO,
NPKRR Maaligai,
144, Anna Salai, Chennai -600 002.

7. The Secretary,
Tamil Nadu Electricity Regulatory Commission, – By Email
4th Floor, SIDCO Corporate Office Building,
Thiru-vi-ka Industrial Estate,
Guindy, Chennai – 600 032.

8. The Assistant Director (Computer) –**For Hosting in the TNERC Website**
Tamil Nadu Electricity Regulatory Commission,
4th Floor, SIDCO Corporate Office Building,
Thiru-vi-ka Industrial Estate,
Guindy, Chennai – 600 032.