



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No.99 of 2015

Thiru Rajendran Chingaravelu,
Plot No.4074 (SF No.84011)
Metropolis 3rd Cross Street,
Srinivasan Main Road,
Ram Nagar North Extension,
Madipakkam, Chennai.

..... Appellant
(Thiru. C.Rajendran on 2.3.2016 &
Thiru. S. Subramanian on 11.3.2016)

Vs

1) The Assistant Engineer/O&M,
Madipakkam,
Chennai Electricity Distribution Circle/South,
TANGEDCO,
33/11 KV Madipakkam SS Complex,
Near Madipakkam Bus Terminus,
Madipakkam, Chennai – 91.

2) The Chairman & Managing Director,
TANGEDCO,
NPKRR Maaligai,
144, Anna Salai, Chennai – 2.

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

..... Respondents
(Thiru. M.Sankar Ganesh , AE/O&M/Madipakkam)

Date of hearing : 2.3.2016 & 11.3.2016

Date of Order : 6.7.2016

The petition dt. 14.12.2015 filed by Thiru. Rajendran Chingaravelu, Ram Nagar, North Extension, Madipakkam, was registered as appeal petition No.99 of 2015. The above appeal petition came up for hearing before the Electricity Ombudsman on 2.3.2016 & 11.3.2016. Upon perusing the appeal petition, the counter affidavit and after hearing both sides the Electricity Ombudsman passes the following order.

1. Prayer of the Appellant :

The Appellant prayed that the Respondents to be directed not to insist on completion certificate and / or any NOC from CMDA and strictly follow the process as per section 43(1) of Electricity Act and Distribution Code thereof and provide service connection to their properties immediately.

2. Brief History of the case :

2.1 The Appellant submitted his application for availing electricity supply for the stilt +3 floor multi residential building by Registered Post. The Application was acknowledged but not processed for want of completion certificate from CMDA.

2.2 The Appellant submitted a petition before the CGRF of Chennai EDC /South on 2.9.2015, but not received any order even after expiry of 3 months. Hence, the appellant filed this appeal petition before the Electricity Ombudsman.

2.3 Meanwhile, CGRF has issued its order on the Appellant's petition on 30.12.2015

3. Orders of the CGRF :

The CGRF of Chennai EDC/South has issued its order on the petition of the Appellant on 30.12.2015. The relevant para of the order is extracted below :

“TANGEDCO is directed to furnish the copy of documents based on which the service connection is refused to the applicant immediately to the petitioner. TANGEDCO’s stand in refusing service connection to the above building without completion certificate is in order as it comes under the category of special building. Hence, the petition is treated as closed and disposed off.”

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

4.1 Para 32(v) of HC Judgment Consumer Action Group Vs The State of Tamil Nadu (23.08.2006)] clearly states special building must be categorized as those with actual construction of ground plus three floors. The stilt floor is not counted as floor was also clarified by CMDA letter to TANGEDCO vide EC1/15998/Spl/2012 dt : 18.3.2013. This was distributed within TANGEDCO vide Memo. No. CE/ Comm/ EE3/AEE2/ F. Planning Permission/D.184/13 dt 19.3.2013. Admittedly we have built only stilt + 3 floors, and thus this judgment is not at all applicable to our stilt+3 building.

4.2 It is a fact TANGEDCO (TNEB) requested TN Govt to withdraw the requirement of Completion Certificate as it is against the Electricity Act and the T.N govt issued G.O.Ms. No. 112, Energy (B1), Dt: 05.07.2004 to comply with Electricity Act, and thus the same is binding on TANGEDCO; as no one has challenged it till date.

4.3 New Service connection is an exclusive domain of Electricity Act and Distribution Code; They don't require completion certificate from CMDA; as seen from:

- a. Amended Electricity Act 2003, s.43(1) (covers new connections entirely)
- b. Amended Code 27 of TN Electricity Distribution Code
- c. TNERC Notification No. TNERC/DC/8-6 dt: 10.09.2007
- d. TNERC Notification No: TNERC/DC/8-21, dt: 7-10-2014.

4.4 S.43(1) of Electricity Act is a complete code and unambiguous. The same is recognized by TNERC by its amendments to distribution code #27 vide two notifications above; in which many restrictions were removed to make it to comply with S.43(1). No arbitrary procedures can be used to deny new service.

4.5 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.

4.6 It was for these reasons, the Hon'ble Madras High Court in W.P.No.17531 of 2014 (S.N.Rajkumar vs. TNEB & Ors, Dt: 17/07/2014) referring to the earlier decisions in W.P.Nos.3847 and 3848 of 2012, W.P.Nos.5661 and 5662 of 2013 and W.P.No.18314 of 2013, held that these judgments have become final and is in operation, and thus directed TANGEDCO to not to insist on completion certificate.

4.7 An appeal by TANGEDCO against one such writ order was dismissed recently by a "Division Bench of High Court in W.A.No:33/2015. Also referred to many other WPs therein in which TANGEDCO complied with the High Court orders.

4.8 The Electricity Act is a self-contained code with rules and regulations framed thereunder regulating practice and procedure; thus no court can interfere with the same as long as the Act/Rules is intra vires. It is a well-settled legal principle that a body created by an Act/Statute must conform to the provisions of the regulation/ Act/Statute. It was TANGEDCO's responsibility to tell the same to the High Court.

4.9 The respected Electricity Ombudsman, while dealing with the exact issue herein, in its order in O.P. No: 5/2007 dt: 20.06.2007 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; for the following reasons :

- a. The issue dealt with in that judgment is different from the issue at hand.
- b. The prayer in the judgment has nothing to do with the current issue.
- c. The respondent TNEB/TANGEDCO was only a proforma respondent.
- d. No prayers were sought against TNEB/TANGEDCO.
- e. Neither the issues involved in the said WPs nor the prayers relate to the functions of Chairman, TNEB/TANGEDCO and/or Electricity Act.
- f. The judgment and prayers neither challenged nor referred to Electricity Act and rules thereof. The decision is also not in consonant with Electricity Act.

4.10 In addition, TANGEDCO being just a licensee and service provider and TNERC being the authority under The Electricity Act in whose full control all licensees operate, no order(s) can be passed against any licensees without making TNERC a party to the list. Thus the 2006 High Court judgment, to the extent it purports to direct TANGEDCO, is fatal and thus can't be binding on TNERC and TANGEDCO.

4.11 Respondent's illegal action cannot be legitimized by using mere suggestion (since it is only an obiter dicta) of High Court; as observed by Hon'ble Calcutta High Court in Banwari Lal vs Sheo Sankar Misser (26.03.1907), "a practice which is in contravention of the law, even if such practice be the practice of a High Court, cannot make lawful that which is unlawful, nor can a practice of a Court justify a Court in putting upon an Act of the Legislature a construction which is contrary to the plain wording of the Act". Since the law is clear in the instant case, even a High Court cannot make a direction against the valid law.

4.12 Further, as stated by the Hon'ble Supreme Court in Union Of India & Anr vs Shardindu (C.A. No: 2676 of 2007): "the Court can merely interpret a provision so as to make explicit the intention of the legislature. It cannot rewrite, recast or redesign the provisions, since the power to legislate has not been conferred on the court.

4.13 This respected Ombudsman's office held in A.P. No. 14 of 2014, if the subject matter is already decided then the same must apply to all parties so long as the subject matter is same. Since this subject matter {whether the 2006 Division Bench judgment is binding or not} was already decided in O.P. No: 5/2007 dt: 20.06.2007 (TNEO). and TANGEDCO having complied with it, the same is binding on TANGEDCO; which is also correct position of the law and legal principles. Since no negative changes to the Distribution Code or Electricity Act has taken place to void the TNEO's decision in O.P. No: 5/2007 and thus it must be up held.

4.14 Combined reading of "other compliances" referred in explanation of S.43(1), S.46. S.86 and S.181 of Electricity Act makes it obvious that it is only for enabling the licensee to provide service and cannot be used to abrogate the rights of the owner /occupier by applying unrelated restrictions. Restrictions such as completion certificates or others unrelated to S.46, S.86 and S.181 cannot be imposed by the licensee and/or the TNERC as they are not covered in S.46 or S.86 or S.181. Thus the "degree or order or judgment" referred in TNERC Notification No: TNERC/DC/8-21, dt:7-10-2014 must only be related to distribution of electricity & nothing else.

4.15 Further, a perusal of page 34(item#6) of TNERC Note file dated 25.03.2014 (attached) regarding the amendments of regulation 27 of the Distribution Code makes it clear that the Hon'ble TNERC did not mean to include building violations

and Completion Certificate thereof in "other compliances". The commission's note clearly acknowledges and accepted that (page 34, item#6) (as per W.P. No: 17608 of 2013 and legal opinion taken by TNERC) "even if a person violates building regulations or runs a business that pollutes the environment. electricity cannot be denied on that count, and it is for the competent authorities to deal with such violations in a manner known to law" and also went onto acknowledge that in many cases of building violations, the High Court has issued directions to TANGEDCO to effect supply; which was the root cause of the said amendment. Thus it is absolutely clear that Hon'ble TNERC did not intend to include compliance certificate or 2006 judgment in the explanation of "other compliances" and since this amendment was done many years after the 2006 High Court Judgment, the judgment cannot be applicable (even if it was a valid one in the past) and it is also against the Electricity Act.

4.16 Hon'ble Apex Court in Chameli Singh vs State of U.P [(1996) 2 SCC 549; (AIR 1996 SC 1051)], held that access to Electricity is a fundamental right and a human right under Article 19(1) of the Constitution. Similarly Madras High Court in T.M.Prakash vs The District Collector (WP No: 17608 of 2013), dt: 27.09.2013 declared 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 per electricity law, are different and distinct. Same is true in the

instant case and the same is recognized by TNERC in the file note referred above.

4.17 The 2006 High Court judgment in Consumer action (supra) is not a ratio decidendi as it does not even mention the G.O 112/2004 and the Electricity Act, and thus is NOT binding on authorities as held by Supreme Court in Municipal Corporation Of Delhi vs Gurnam Kaur [1989 AIR 38, 1988 SCR Supl, (2) 929]:

"Precedents sub silentio and without argument are of no moment--What is binding on an authority is the principle upon which the case was decided-Obiter dicta are not binding."

"Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative."

"A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute."

4.18 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 deal 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.

4.19 Further, as highlighted before, our building being a stilt + 3 floors only, para 32(v) of High Court Judgment [Consumer Action Group vs Tamil Nadu (23.08.2006)] makes it amply clear that the judgment is only applicable for buildings with 4 or more floors And given the same being clarified by CMDA, it is not clear as to why TANGEDCO and CGRF is still insisting on completion certificates for stilt + 3 floors buildings.

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

5.1 The building constructed by the petitioner Thiru. Rajendran Chingaravelu with Stilt + 3 floors at Plot. No. 4074, Metropolis, 3rd Cross street, Srinivasan main road, Ram nagar North Extn., Madipakkam, Chennai - 91 was inspected and checked the status of the. building and found as building constructed in Stilt+3 floors only.

5.2 In his petition the builder had requested us to provide services without insisting completion certificate for the building constructed with Stilt+.3 floor, indicating as per the Memo. No. CE/ Commercial /EE3/AEE2/Planning permission/D.653/15 dt 03.12.2012 and CE/ Commercial/EE3/ AEE2/F. Planning permission/D 184/13 dt 19.03.2013. Where in it was clearly instructed vide Memo. No. CE/ Commercial /EE3/AEE2 /F.Planning permission/D.731/15 dt 27.08.2015 to get the Completion certificate from the applicants before effecting services for special and multi storied buildings constructed more than 2 floors (or) dwelling exceeds more than 6 units.

5.3 In writ petition 17531/2014 (Thiru.S.N.Rajkumar Vs TNEB) where in it was instructed to effect the service connection without insisting completion certificate, but immediately stay petition filed and got interim stay order against the writ petition no. 17531/2014. And till this time no service was effected to the premises owned by Thiru. S.N. Rajkumar as stated by the petitioner since stay granted.

5.4 The W.A. No. 33/2015 dt 01.07.15 was dismissed by Hon'ble court Chennai due to the reasons prayed by the petitioner was satisfied Hon'ble court.

5.5 The case had already been handled in CGRF/ South on 30.12.15, and ordered as detailed below:

"TANGEDCO is directed to furnish the copy of documents based on which the service connection is refused to the applicant immediately to the petitioner TANGEDCO's stand in refusing service connection to the above building without completion certificate is in order as it comes under the category of special building. Hence the petition is treated as closed and disposed off".

Immediately on the same day itself the copy of document based on which service connection is refused had been handed over to the petitioner.

6. Hearing held by the Electricity Ombudsman :

6.1 To enable the Appellant and the Respondents to put forth their arguments in person, hearing were conducted on 2.3.2016 and 11.3.2016.

6.2 The Appellant Thiru. Rajendran attended the hearing on 2.3.2016 and Thiru. S. Subramanian has represented the Appellant on 11.3.2016.

6.3 Thiru. M. Sankar Ganesh, Assistant Engineer, Madipakkam attended the hearing on both the days

6.4 As the AE/Madipakkam prayed for an adjournment the hearing on 2.3.2016 was adjourned and held on 11.3.2016.

7. Arguments putforth by the Appellant on the hearing dates:

7.1 The Appellant reiterated the contents of the appeal petition.

7.2 The Appellant argued that the definition of Special Building has been given in 2006 judgment. Hence, the same has to be taken for adoption of the Court direction. The new definition cannot be applicable.

7.3 The Appellant also argued that for getting metro water connection, the definition

given in the judgment alone is being followed. He has cited G.O. (Ms) No.139 MAWS Dept dt.15.10.2007 in support of his argument. He has also furnished copy of judgment in W.P.No.2369 of 2011 for reference.

8. Argument of the Respondent :

8.1 The Assistant Engineer/Madipakkam furnished a copy of written argument (counter affidavit). In the above written argument the respondent has furnished the following arguments.

(i) Similar nature of prayer had already been dealt in TNEO appeal nos 62/2015,63/2015,65/2015 and 66/2015 and the honorable Tamil Nadu Electricity Ombudsman passed order concurring the CGRF petition prayer stating that "insisting of completion certificate as per the direction of the Honble High Court in the W.P.No.18898 of 2000, W.P.No.19998 of 2001, W.P.No.24316 of 2002 and W.P.No.17646 of 2006 is confirming to the Distribution code is acceptable to me "and I am unable to interfere with the orders of CGRF of CEDC/South.

(ii) In the Divisional bench on W.P. No. 16780 of 2013 in all the common cases to effect service without insisting completion certificate from CMDA, the honorable High court has considered the following on not effecting service connection cc violation case and from the order in paragraph 12 "The violation of regulatory rules on such massive scale can result in development plan becoming merely a scrap of paper . On the one hand, various laws are enacted, master plans are prepared by expert 'planners, provision is made in the regulations also to tackle the problem of unauthorized constructions and misusers, and on the other hand, such illegal activities go on unabated openly under the

gaze of everyone ,without having respect for the law and other citizens. There is no gainsaying that the application and observation of the Development control rules is vital for the proper and planned growth and development of the city".

Para 13 of the order, "Regularising the construction erected in violation of the regulations has serious consequences. Regularisation in many cases for the violation of the front setback, will not make it easily feasible for the Corporation to widen the abutting road in future and bring the incumbent closer to the danger of the road. The waiver of requirement of side set back will deprive adjacent buildings and their occupants of light and air also make it impossible for a fire engine to be used to fight fire in a high-rise building . The violation of the floor space index, will result in undue strain on the civil amenities such as water, electricity, sewage collection and disposal. The waiver of requirements regarding fire stair case and other fire prevention and fire fighting .measures would seriously endanger the occupants resulting in the building becoming a very veritable death trap. The waiver of car parking and abutting road width requirements would inevitably lead to congestion on public roads cause severe inconvenience to the public at large.

Further the paragraph 17 "special building should be catrgorized as those with actual construction of ground plus three floors. In case of commercial special buildings, the same measured that apply to multi-storied buildings as above should be followed . In the case of residential committee may suggest less stringent measures, bearing in mind the impact of retaining the building.

(iii) To avoid future violations, buildings should be certified as having been constructed in compliance of planning permit and other applicable laws. The

certifying Officer will be personally responsible if any illegal building is certified. Electricity, water connection and occupation should be contingent on such certificate. In respect of the builders who have been identified by the Monitoring Committee as having put up illegal buildings, constructions by such builders should be certified for compliance only by the Chief Planner, who shall bear personal responsibility.

(iv) Further the honorable High Court also considered the CMDA categorization of special building and multi storied building in the said order. Which are reproduced in paragraph 28 which is narrated below.

"Multi- storeyed buildings means buildings exceeding 4 floors and or 15.25 meters in height. (However in cases of hospital, buildings not exceeding 4 floors and 17 meters in height will be constructed as non multi-storeyed buildings.

Ordinary building means a residential or commercial building, which does not fall within the definition of special building, group development or multi – storeyed building.

Special building means

- a) a residential or commercial buildings with more than 2 floors ;or
- b) a residential building with more than six dwelling units; or a commercial building exceeding a floor area of 300 square meters;"

(v) All the / buildings involved in these writ petitions are not ordinary buildings. The buildings are either special buildings/multi-storeyed buildings or group development Regulations for Chennai Metropolitan Area is attracted in these cases.

considering all the above parameters the Honorable High Court passed the following common order :- " I am not inclined to give direction, as sought for by the petitioners, based on the orders of the learned single judges referred to above. Hence, all these writ petitions fail and the same are liable to be dismissed."

8.2 The Assistant Engineer/Madipakkam has also furnished a copy of common order dt.6.9.2013 in W.P.Nos.16780, 16942, 16974, 17167, 17712, 18155, 18157,18235, 18606 and 20473 of 2013 & M.P.No.1 of 2013 in W.P.No.18235 of 2013.

9. Written Arguments of the Appellant :

9.1 The 2006 judgment, it is definitely not applicable to 3 floor buildings, since

(i) As seen in '2006 Judgment' the directions are applicable to special buildings and multi- storeyed buildings only and the same is admitted by respondents and CMDA.

(ii) Para 32(v) of 2006 judgment explicitly directs that special building must be categorized as those with ground+3 (i.e. 4) floors! It is common knowledge that stillt floor is not counted as floor and same is confirmed by CMDA by its letter EC1/15998/Spl/2012 dt: 18.3.2013.

(iii) The G.O.(Ms) No.139, Municipal Administration and Water Supply Dept, dt: 15.10.2007 clearly defines Special Buildings as buildings with ground +3 floors and Multi-storeyed buildings as buildings with more than four floors and in compliance of the 2006 judgment.

(iv) Per para #3 of the G.O. No. 139, admittedly the TANGEDCO circular CE/Comml/ EE3/ AEE2JF.Planning Permission /D.No.874/2006 dt 22.11.2006 was the basis for the above G.O and which was issued in compliance of the 2006 Judgment.

(v) The above TANGEDCO circular was never contested to be against the 2006 judgment (it can't be anyway), and nor has it been withdrawn by TANGEDCO chairman who issued it.

(vi) CMDA is NOT the authority to keep providing clarifications on 2006 judgment; especially when the language of the judgment is clear and the legal opinion (in G.O) also confirms it.

(vii) Both CMDA and TANGEDCO have accepted the above G.O. No. 139 and the definition of special building and complied with it per the following decisions of the Hon'ble High Court:

- (1). R. SEKAR Vs TNEB, CMDA and Ors (W.P.No:2252 of 2010)
dated :8.2.2010
- (2). S.Kavitha vs TNEB, CMDA and Ors (W.P. No: 3157 of 2010)
dated : 17-02-2010
- (3). G.Thyagarajan Vs Metro Water, CMDA and Ors (W.P.No:1065 of 2010)
dated :21-01-2010
- (4). M.Mohan vs Metro Water, CMDA and Ors (W.P.No:1548 of 2010)
dated : 29-01-2010.

(viii) Above decisions have also been complied by TANGEDCO, CMDA and Metro Water. The respondents have never appealed against the G.O.No:139 or the decisions in the above writ petitions to this date. There exists no judgment that is contrary to para 32(v) of the '2006 Judgment' and G.O.(Ms) No.139, MAWS Dept dt: 15.10.2007 or TANGEDCO circular 874/2006 and thus it is clear that the directions in '2006 Judgment' is not applicable to 3 floor buildings.

(ix) It is respectfully submitted that the '2006 Judgment' has no precedential value (i.e is not a ratio decidendi) for the instant case if we apply the 'principles of precedent' seen above, since:

- (a) The judgment did not discuss Electricity Act and codes thereof.
- (b) The judgment was not dealing with disputes on new service under Electricity Act.
- (c) The prayer in the judgment has nothing to do with the current issue and no prayers were sought against TNEB/TANGEDCO.
- (d) Neither the issues involved in the said WPs nor the prayers relate to the functions of Chairman, TNEB/TANGEDCO and/or Electricity Act.
- (e) The judgment and prayers neither challenged nor referred to any

sections/rules of the Electricity Act and rules thereof.

(f) More importantly the judgment is not in consonant with the letter and spirit of the valid Electricity Act, especially given:

a. that the Hon'ble Apex Court in Chameli Singh Vs State Of U.P [(1996) 2 SCC 549; (AIR 1996 SC 1051)], held that access to Electricity is a fundamental right and a human right under Article 19(1) of the Constitution, and

b. that the Hon'ble Madras High Court in T.M.Prakash Vs The District Collector (W.P. No: 17608 of 2013), dt: 27.09.2013 declared that access to Electricity should to 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 also held: The law applicable for removal of encroachment and the mandatory duty to provide electricity per electricity law, are different and distinct.

(g) The issue at hand in that judgment was regularization/prevention of illegal constructions and not about providing new electrical service connections u/s.43 (1) of Electricity Act.

(h) The judgment has no mention and reasoning whatsoever against Electricity Act or Codes, thus making it clear that Hon'ble court was absolutely unaware of the rights of the citizens and the duty of the licensees under Electricity Act.

It is thus clear that the '2006 Judgment' has no 'precedential value' (i.e not a ratio decidenti) and is simply a 'sub silentio' as well as 'per incuriam' since it is both silent on Electricity Act and also was unaware of the rights as well as the duty mandated by the Electricity Act! It is this aspect that was rightfully upheld in (TNEO) O.P. No: 5/2007 dt: 20.06.2007.

(x) The appellant respectfully submits that once a judgment is not legally binding, the same cannot be brought into force by Hon'ble TNERC or any authority for that matter, since:

(a) It is against legal rights and statutory obligations u/s.43(1) of the Electricity Act.

(b) Section 43(1) of the Electricity Act is a complete Code enacted by Hon'ble parliament.

(c) The parliament did not empower the Hon'ble TNERC to make rules relating to s.43(1) of the Electricity Act; as no such power has been given to TNERC to regulate 5.43(1).

(d) The "other compliances" occurring in the Explanation to section 43(1) of the Electricity Act is in the domain of the Hon'ble parliament and thus only the parliament, or by judicial reference to constitutional courts, can provide clarification on what it means.

(e) TNERC being a creature of the Electricity Act, it is legally forbidden to clarify or regulate any part of the Electricity Act and thus any regulations or clarifications issued by TNERC that offends or runs contrary to the Electricity Act is null and void.

(xi) Further, if TNERC's 'Explanation' of the 'Explanation' to s.43(1) of the Electricity Act is to be accepted to mean that the rights, obligations and mandatory duty conferred/directed by the Electricity Act [s.43(1)] should be given a go by, then it is nothing but TNERC acting against wishes of the parliament for which the Hon'ble TNERC has no power/jurisdiction to do so. Thus the amended explanation in Regulation 27 (16) of the Distribution Code by TNERC wherein it refers "and any decree or order or judgment of Courts. " can only mean any civil decree or order or judgment of courts relating to that specific property for which service connection is sought. If it was meant anything beyond that and/or if it includes the '2006 judgment', then it is clearly a nullity as it is untenable in law and can't be done by Hon'ble TNERC It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely. An authority cannot be permitted to evade a law by

"shift or contrivance"; as observed by Supreme Court in Sant Lal Gupta and ors Vs. Modern Co-operative Group Housing Society Ltd. and ors [JT 2010\ (11) SC 273].

(xii) In any case, our building is only a stilt + 3 (i.e 3) floors and given para 32(v) of '2006 judgment', G.O.(Ms) No.139, MAWS, dt: 15.10.2007 and TANGEDCO circular D.No.874/2006 dt 22.11.2006 all agree that "special buildings" are of ground+3 floors (i.e 4 floors), it is clear that we do not need to produce Completion Certificate while seeking new service connections.

9.2 In the additional final argument dt.8.3.2016, the Appellant has furnished the following arguments.

(i) Completion Certificate requirement apply only to Special Buildings & above Based on our research on this topic, we submit the following in support of the same :

(i) CMDA Development Regulations (D.R)does not regulate service connections such as Electricity and Water; as they are covered under separate rules/regulations.

(ii) D.R No. 4(5)(a), makes it very clear that the Completion Certificate before Occupation is required only for Special Buildings and above; and not for seeking service connections.

(iii) The D.R has no requirement to insist Completion Certificate for Service Connections (water and electricity) and also no completion certificate is required for buildings with lessor number of floors than Special Building. There exists no notifications against these rules.

The fact that Completion Certificate for Service Connections are being insisted ONLY for Special Buildings and above is as per the 2006 judgment is admitted by CMDA in its letter EC1/15998/SpII2012 dt: 18.3.2013 (first para on 2nd page) and many more such notifications. There is no dispute on this; Dispute is only on what is Special Building?

(iv) The 2006 judgment never questioned the Development Regulations No: 4(5) either.

(v) Para 32(v) of the 2006 judgment is a specific direction to ALL respondents to categorize the Special buildings as those with actual construction of ground plus three floors. Thus, this is applicable to ALL respondents and not just for Metro Water. The court was obviously aware of existing definition of Special Building and thus revised it.

(vi) Para 32(ix) of the judgment further makes it clear that the completion certificate requirement is common for Electricity and Water connections and thus this is an additional direction that the application of 2006 judgment & completion certificate requirement has to be consistent between TANGEDCO and Metro Water.

(vii) It was for the above reason and after taking legal opinion the TANGEDCO Chairman rightly issued circular CE/Comml/EE3/ AEE2/F. Planning Permission / D.No.874/2006 dt 22.11.2006 in compliance of the 2006 Judgment and the same is valid to this date.

(viii) Similarly, the Govt of Tamil Nadu also issued G.O.(Ms) No.139, MAWS Dept, dt: 15.10.2007 only for the purpose of complying with the 2006 Judgment; i.e completion certificate are to be insisted only for Special Buildings and above. The fact the completion certificate requirement and the special buildings definition has to be same between TANGEDCO and Metro Water is also acknowledged in this G.O.

(ix) The above G.O is also binding on TANGEDCO as it was issued to comply with para 32(ix) of the 2006 Judgment which is common for TANGEDCO and Metro Water.

(x) Neither the TANGEDCO circular (874) and nor G.O No:139 have been withdrawn by TANGEDCO chairman and the Government of Tamil Nadu who issued it.

(xi) As pointed out in G.O.No:139, the 2006 judgment was appealed at Supreme Court and the Court refused to stay or revise the same and also the govt cannot re-write the judgment anymore and thus the Definition of Special Buildings must confirm to the judgment.

(xii) There is no court order, notification or rules (published in Gazette) that requires Completion Certificate for Non Special Buildings i.e floors less than Special Buildings. From above, it is very clearly admitted by all authorities that the completion certificate requirement is ONLY for special buildings and above and not for less floor buildings.

9.3 The Appellant has furnished the following additional arguments in their submission dt.14.3.2016.

(i) Respondents state that the current dispute herein has already been dealt with in TNEO Appeal Nos: 62-66 of 2015. This is absolutely a false statement in as much as our primary issue here is of whether or not 3 floor buildings comes under the definition of Special Building for the purpose of service connections as per 2006 judgment.

(ii) It is stated that the W.P.No.16780/2013 is a Division Bench order which is not correct, as it is only a single judge Writ order. Secondly the two observations in that judgment in para 12 and 13 are irrelevant to the current dispute as we are not under notice by CMDA for any violations as such and we have the actual approvals for 3 floors.

(iii) we respectfully submit that this judgment is not relevant to the current dispute at all, since the main dispute here is whether or not 3 floor building comes under Special Building for the purpose of service connections as mandated by the 2006 judgment. Para 2 of this judgment makes it clear that the judgment is about special building/group development etc.,

2. Hence, the issue that arises for consideration in all these cases is as to whether the petitioners, who have built special building/group development/multi-storeyed buildings, can seek electricity service connection without producing the completion certificate from the CMDA?

Thus the question whether or not a 3 floor building is a Special Building for service connection has not been dealt with at all. In addition, the judgment itself brings out the problem in the definition of what is Special Building? At para 17 it is shown as 4 floors but in para 22 it is shown as more than 2 floors (simply referring to development regulations by CMDA). This is the crux of the dispute which has not

been addressed by this judgment and thus we respectfully submit that this judgment is not relevant to the current dispute.

(iv) It is a fact and common knowledge that there are many conflicting judgments on the top of completion certificate for Special and Multistoyred buildings. From the case history, there are two group of cases:

- (1) Where a completion certificate was denied by CMDA due to some violations.
- (2) Where no violations have been reported officially and petitioners went to court seeking remedy against insistence of completion certificate by TANGEDCO.

The W.P.No.16780/2013 comes under the second group above. Though this judgment is in favor of respondents claim (for Special Buildings and above as defined in 2006 judgment), there are very few such judgments. But whereas there are many more judgments that has been decided against this judgment's view. These judgments are not on merit of small violations. I am quoting some of the recent judgments for the kind perusal of this respected office just to show that even this issue is not in favor of the respondents as such :

- (1) W.A. No.33 of 2015 dt.1.7.2015 against W.P.No.17612 of 2014 (Division Bench).
 - (2) W.P.No.17612 of 2014 dt.19.11.2014-No copy but is covered in appeal above.
 - (3) W.P.No.27453 of 2014 Vs The Chairman on 17 December 2014
 - (4) W.P.No.27454 of 2014 Vs The Chairman on 17 December 2014
 - (5) Writ Petition No.32995 of 2013 – don't have a copy but referred in above judgments.
 - (6) M/s Hariraj Homes Vs Tamil Nadu Electricity Board on 17 July, 2014
 - (7) S.N. Rajkumar Vs Tamil Nadu Electricity Board 17 July, 2014
 - (8) P. Rajesh Vs The Chairman on 17 December 2014 (W.P.No.15810 of 2014)
 - (9) N. Ganesh Natraj Vs TANGEDCO & on 10 December 2014
 - (10) B. Mohamed Siddiq Basha Vs The Asst. Engineer on 4 December 2014.
- (v) In all of the above, 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 judgment (Division Bench) But petitioners succeeded.

10. Findings of the Electricity Ombudsman :

I have heard the argument of both sides. On a careful consideration of the arguments put forth by the Appellant and the Respondents, the issues to be decided in this appeal are -

- (i) Whether insisting of completion certificate based on the directions given by the Hon'ble High Court of Madras in W.P.No.18898 of 2000, W.P.No.19998 of 2001, W.P.No.24316 of 2002 and 17646 of 2006 is in line with the Distribution Code ?
- (ii) Whether the contention of Appellant that his building is not coming under 'Special Building' as defined in the 2006 judgment and hence insisting of Completion Certificate for effecting service is not applicable to his case is correct ?
- (iii) Whether service could be effected.

11. Findings on the first issue :

11.1 The Appellant argued that the 2006 judgment has no prudential value (ie) is not a ratio decidendi since,

- (i) The judgment did not discuss Electricity Act 2003 and Codes thereof ;
- (ii) The judgment was not dealing with disputes on new service connection under Electricity Act 2003;
- (iii) The prayer in the judgment has nothing to do with the current issue and no prayers were sought against TNEB/TANGEDCO ;
- (iv) Neither the issues involved in the said WPs nor the prayers therein relate to the functions of TNEB/TANGEDCO and or Electricity Act ;
- (v) The W.Ps neither challenged nor referred to any section/rules of the Electricity Act 2003 and rules made thereof ;
- (vi) More importantly the judgment is not in consonance with the letter and spirit of

the Electricity Act ;

11.2 The Respondent argued that in Appeal No.62 of 2015, 53 of 2015, 65 of 2015 & 66 of 2015, the Electricity Ombudsman has ordered that insisting of Completion Certificate as per the direction of Hon'ble High Court in W.P.No.18898 of 2000, W.P.No.19998 of 2001, W.P.No.24316 of 2002 and W.P.No.17646 of 2006 is in conformity with the Distribution Code. As the Electricity Ombudsman has already given his order on the above issue, the Respondent argued that the above is a settled issue.

11.3 As the same issue was settled by the Electricity Ombudsman in Appeal No.62 of 2015, 53 of 2015, 65 of 2015 & 66 of 2015, in order dt.12.1.2016 the same order is applicable to this issue also.

11.4 Accordingly, it is held that insisting of completion certificate based on the direction of Hon'ble High Court of Madras in W.P.No.18898 of 2000, W.P.No.19998 of 2001, W.P.No.24316 of 2002 and 17646 of 2006 is in line with the explanation given under regulation 27(6) of the Distribution Code.

12. Findings on the Second Issue :

12.1 The Appellant argued that as per the Court order only Special Buildings and Multistoreyed Buildings have to furnish completion certificate to get electricity service connection and water connection.

12.2 He further argued that the Multistoreyed Buildings and special Buildings have been defined in the judgment in para 32(iv) & 32(v). Hence, the said judgment has to be applied only to categorise a Building as Special Building or Multistoreyed Building.

The Appellant argued that as per the definition given in para 32(v) of the judgment, the Special Building shall be the building with Ground floor plus three floors.

12.3 The Appellant argued that they constructed a stilt + 3 floor Multi residential Building. He has also argued that he got approval from CMDA and Corporation of Chennai permit No.B/Spl-BLDG/462/2012, Planning permit file No.B2/5140/2012 and Building permit No.CEBA/CD14/00068/2013.

12.4 The Appellant also informed that the stilt floor is not counted as floor as clarified by CMDA to TANGEDCO vide letter ECI/15998/Spl/2012 dt.18.3.2013 and the same has been communicated in TANGEDCO circular No.CE/Comml/EE3/AEE2/F.Planning Permission/D184/13, dt.19.3.13 .

12.5 As the construction is stilt plus three floors, the Appellant argued that the judgment referred by the Respondent is not applicable to his case.

12.6 He also cited G.O.Ms. No.139 , dt.15.10.2007 and argued that for obtaining water/sewer connection, the completion certificate are to be insisted for Special Buildings and Multistoreyed Buildings which are defined as below :

Special Building means : Building with Ground plus three floor

Multistoreyed Building means : Building with more than four floor.

12.7 The Appellant also pointed out the opinion of the Advocate General referred in G.O.Ms.No.139 dt.15.10.2007 and argued that his Building is not coming under the category of Special Building and hence, insisting of Completion Certificate is not correct. He also argued that any modification of definition Special Buildings and Multistoreyed Buildings amounts to rewriting of the 2006 judgment.

12.8 The Appellant also cited the following judgments of the High Court of Madras and argued that insisting of completion certificate in his case is not in order :

- (1) R. SEKAR vs TNEB, CMDA and Ors (W.P.No:2252 of 2010)
dated: 8.2.2010.
- (2) S.Kavitha vs TNEB, CMDA and Ors (W.P.No: 3157 of 2010)
dated: 17-02-2010
- (3) G.Thyagarajan vs Metro Water, CMDA and Ors (W.P.No:1065 of 2010)
dt: 21-01-2010
- (4) M.Mohan vs Metro Water, CMDA and Ors (W.P.No:1548 of 2010)
dt: 29-01-2010.

12.9 The Appellant also argued that there are many complicating judgments on the topic of completion certificate for Special & Multistoreyed Buildings. There are two groups of cases.

- (i) Where a completion certificate was denied by CMDA due to some violation.
- (ii) Where no violation have been reported officially and petitioner went to Court seeking remedy against insistence of completion certificate by TANGEDCO.

12.10 The W.P.No.16780 of 2013 comes under second group. Though the above judgment is in favour of the Respondent there are very few such judgments. But, whereas there are many more judgments that have been decided otherwise. Some of them are listed below :

- (i) W.A. No.33 of 2015 dt.1.7.2015 (against W.P.No.17612 of 2014)
- (ii) W.P. No.17612 of 2012 dt.19.11.2014
- (iii) W.P. No.27453 of 2014 dt.17.12.2014
- (iv) W.P. No.27454 of 2014 dt.17.12.2014
- (v) W.P. No.32995 of 2013
- (vi) W.P. No. 8169 of 2014 dt. 17.7.2014
- (vii) W.P. No.17531 of 2014 dt.17.7.2014

(viii) W.P. No.15810 of 2014 dt.17.12.2014

(ix) W.P. No. 7501 of 2014 dt. 10.12.2014

(x) W.P. No. 3502 of 2014 dt. 4.12.2014

12.11 The Appellant also argued that the W.P.No.16780 of 2013 has not dealt the question of whether or not a 3 floor building is a Special Building for providing a service connection. The issue taken for consideration in the above case is whether Special Building/Group Development/Multistoreyed Buildings can seek electricity service connection without completion certificate.

12.12 He also informed that W.A. No.33 of 2015 is a Division Bench order and the above judgment has not been stayed. But appeal has been filed by the TNEB against the above order. In view of the judgment in the order referred in previous paras, the Appellant argued that reference to W.P.No.16780 of 2013 is not relevant to the dispute in the case.

12.13 The Respondent argued that in the judgment dt 6.9.2013 in W.P.No.16780 of 2013, and other cases the Hon'ble High Court has observed that the application and observation of the Development Control rules is vital for the proper and planned growth and development of the city. Hence, citing the above the Respondent argued that insisting of completion certificate for the Appellant's building is conforming to the Development Regulations only.

12.14 The Respondent argued that as per the judgment given in W.P.No.16780 of 2013, insisting of the completion certificate for the Special Building of the Appellant is correct.

12.15 As the Respondent has referred the judgment in W.P.No.16780 of 2013 dt.6.9.2013 the relevant paras of the judgment are extracted below :

xxxx xxxx xxx xxx

34. *At this juncture, it is relevant to take note of the fact that as per the direction of this Court, CMDA filed its inspection reports in these writ petitions and in most of these cases, the petitioners made applications for issuance of completion certificate before the CMDA. In some cases it was declined and in some cases, the process is not yet over. But the same is not pleaded in the affidavit filed in support of these writ petitions. They simply sought for a direction to the electricity authorities to effect electricity connection without insisting upon the completion certificate, based on the order dated 26.07.2012 in W.P.No.2219 of 2012 and the orders dated 29.04.2013 and 30.04.2013 in W.P.Nos.5661 and 5662 of 2013 and 11649 of 2013 respectively. But I am not inclined to follow those orders.*

35. *In my view, the petitioners should have questioned the order of the CMDA refusing to issue completion certificate due to the violation/deviations in the construction of the building. If CMDA takes undue delay for processing the issuance of the completion certificate, still the petitioners could ask for a direction from this Court to the CMDA to issue completion certificate expeditiously by filing writ petition. I am of the considered view that without obtaining completion certificate from the CMDA, the petitioners cannot seek for electricity service connection based on the orders of the learned single Judges referred to above.*

36. *In the circumstances, in view of the categorical pronouncement of the First Bench of this Court in Consumer Action Group V. State of Tamil Nadu reported in 2006 (4) CTC 483, and also the Regulation 5(a) of the Development Regulations for Chennai Metropolitan Area, I am not inclined to give direction, as sought for by the petitioners, based on the orders of the learned Single Judges referred to above. Hence, all these writ petitions fail and the same are liable to be dismissed ”.*

xxxx xxx xxxxx

12.16 On a careful reading of the said judgment , it is noted that the Hon'ble High Court has ordered that in view of the categorical pronouncement of the first bench of the High Court in Consumer Action Group Vs State of Tamil Nadu reported in 2006(4) CTC 483 and as per the regulation 5(a) of the Development Regulations for Chennai Metropolitan area, the service could not be effected to the Building of the petitioner.

12.17 In para 22 of the above judgment the definition of the Multistoreyed Buildings and Special Buildings have also been extracted which are as below :

"22. It is also relevant to extract Regulation 2(23) that defines Group Development, 2(28) that defines Multi-Storeyed Buildings, 2(29) that defines Ordinary building and 2(40) that defines Special Building as hereunder :

"2. Definition -

(23) Group Development means accommodation for residential or Commercial or combination of such activities housed in two or more blocks of buildings in a particular site irrespective of whether these structures are interconnected or not. Any inter link between the structures in terms of connecting corridors shall not be construed as making any two structures into one block. However, if these blocks are connected solidly atleast for one-third the width of any one block on the connecting side, then such blocks shall be construed as a single block.

(28) Multi-storeyed Buildings means buildings exceeding 4 floors and or 15.25 meters in height. (However in cases of hospitals, buildings not exceeding 4 floors and or 17 meters in height will be construed as non multi-storeyed buildings.)

(29) Ordinary building means a residential or commercial building, which does not fall within the definition of special building, group development or multi-storeyed building;"

"xxxx xxxx xxxxx

(40) Special Building means -

(a) a residential or commercial buildings with more than 2 floors; or

- (b) a residential building with more than six dwelling units ; or*
(c) a commercial building exceeding a floor area of 300 square meters:"

12.18 In para 23, it has been ordered that as the buildings involved in these Writ Petition are not ordinary Building but either Special Building/Multistoreyed Building or Group Developments, regulation 5(a) of Development Regulations for Chennai Metropolitan Area is attracted in these cases.

12.19 As the Appellant has cited the order dt.23.8.2006 in W.P.No.18898 of 2000, 19998 of 2001, 24316 of 2002 etc., and argued that as per the definition given in the above judgment his premises cannot be classified as Special Building/ Multistoreyed Building, para 32(iv) & 32(v) of the said order are extracted below :

" 32. In the result, in view of the foregoing discussion, we pass the following order:-

xxxxx xxx xxxxxx

iv) The Committee shall first take up the multi-storied commercial complexes for consideration. This should cover all buildings which are more than four floors in height. Where the construction of the entire building is illegal, the building has to be demolished. Where an extra floor has been put up illegally, the same should be demolished. Necessary modifications/demolitions must be done for satisfying the norms for fire safety and car parking facilities within the building premises.

v) Special buildings should be categorized as those with actual construction of ground plus three floors. In the case of commercial special buildings, the same measures that apply to multi-storied buildings as above should be followed. In the case of residential multi-storied buildings and special buildings, the monitoring committee may suggest less stringent measures, bearing in mind the impact of retaining the building.

xxx xxxx xxxxxx"

12.20 On a careful reading of the said paras, it is noted that the Multistoreyed Buildings means Building which are more than four floors and Special Building is the Building with actual constructions of ground plus three floors.

12.21 As the Appellant has cited G.O.MS No.139, dt.15.10.2007 and argued that Chennai Metropolitan Water Supply Sewerage Board has adopted the definition

given in the Court for Multistoreyed Building and Special Building. The relevant paras of the said G.O.Ms No.139, dt.15.10.2007 is extracted below :

“ORDER

In the Government order fifth read above, the Government has directed the Chennai Metropolitan Water Supply and Sewerage Board to follow the procedure laid down below while providing sewer / water connections to the newly constructed buildings:-

- (i) To insist the completion certificate from the competent authority i.e. Corporation of Chennai/CMDA for multi-storeyed buildings and special buildings ; and*
- (ii) For all other buildings to register and sanction the water/sewer applications on the basis of production of sanctioned plan approved by the Corporation of Chennai or CMDA or Assessment of the property by the Corporation of Chennai before sanctioning and effecting water/sewer connections.*

Definition for the Special Buildings and Multi-storeyed buildings are as follows as furnished by the CMDA.

Special Building means :

- a) a residential or commercial building with more than 2 floors; or stilt + 2 floors
(or)*
- b) a residential building with more than 4 dwelling unit ; (or)*
- c) a commercial building exceeding a floor area of 300 sq. mt;*

provided that any construction on the 2nd floor as an addition to an individual existing ground and first floor building which is three years old shall not be construed as a “Special Building”

The height of the building should not exceed 15 mt and the building should not be more than Ground + 3 floor or stilt + 4 floors.

A dwelling unit is the unit having one kitchen.

Multi Storeyed Building Means :

Building with more than Ground + 3 floors / Stilt + 4 floors and or exceeding 15 meter in height. (If height of the building is more than 15 meter due to architectural features like gopurams, minarets, steeples, flag masts, water tanks or similar structures, it is not considered as Multi-storeyed Building).

2) *The Managing Director, Chennai Metropolitan Water Supply and Sewerage Board, in his letter sixth read above, has stated that, Public and representatives of builders associations are approaching the Area offices and Head office to effect water /sewer connection by following the rules for the Special & Multi Storeyed buildings as followed by Electricity Board. A petition has been received from Thiru. C.R. Rajan. General Secretary, Association Engineers, Metro water addressed to Hon'ble Chief Minister with copies to Hon'ble Minister, Chief Secretary, the Secretary (MAWS). In the petition it has been stated that the Tamil Nadu Electricity Board has issued a circular dated 22.11.06 and made It clear that no completion certificate is required for effecting service connection for buildings having ground plus two floors and requesting Metro water to follow the Tamil Nadu Electricity Board circular dated 22.11.06.*

3) *Based on the above, opinion was requested from the Advocate General of Tamil Nadu regarding the specifications for Special Building and Multi Storeyed Buildings to be followed by Chennai Metropolitan, Water Supply and Sewerage Board in effecting fresh sewer and water connections and the Advocate General has furnished his opinion is as follows:*

The multi storeyed buildings and special buildings as mentioned in my earlier opinion has reference only to the' multi storeyed and special buildings as stated in paragraph-32 (IV) and (V). Importing the provisions of Tamil Nadu Town and Country Planning Act 1971 or the provisions of the Development Control Rules would amount to re-writing the judgment of the of the High Court Which is impermissible in law especially when the special leave petition against the judgment was dismissed by the Supreme Court. The purport of the opinion had been appropriately understood by the Tamil Nadu Electricity Board which had issued circular dated: 22.11.2006 which is fully in accordance with the judgment of the High Court of Madras. In the same way, it is just and necessary that the Water Board also follows the definition of multi storeyed building, and special buildings as contained in paragraph-32 (iv) and (V) of the judgment. Multi Storeyed buildings or buildings which have more than four floors in height and special buildings or buildings which have ground plus three floors.

In the light of the above, I am of the considered opinion that the specifications for Multi storeyed buildings and Special Buildings to be followed by the Chennai Metropolitan Water Supply and Sewerage Board effecting fresh sewer or water connections should be strictly in

accordance with the categorization as contained in paragraph-32 (iv) and (v) of the judgement rendered in W.P.No.18898/2000 and batch dated 23.8.2006.”

4. In view of the above position, the Managing Director, Chennai Metropolitan Water Supply and Sewerage Board has requested to issue necessary amendments to G.O (Ms) No.152, MAWS Department, dt.13.12.06 for registering, sanctioning and effecting water/sewer connections by CMWSSB as follows:

1) To insist the completion certificate from the Competent Authority i.e. Corporation of Chennai CMDA for Special Buildings and Multi storeyed Buildings and

2) For all other Buildings to register and sanction the water/sewer applications on the basis of production of sanctioned plan approved by the Corporation of Chennai or CMDA or Assessment of the property by the corporation of Chennai before sanctioning and effecting water sewer connections.

Special Buildings and Multi-storeyed Buildings are defined as below:

Special Building means: Buildings with ground floor plus three floors (Total four floors),

Multi-storeyed Buildings means: Buildings with more than four floors,

5. The Government have examined the above proposal of the Managing Director, Chennai Metropolitan Water Supply and Sewerage Board, and decided to follow the opinion offered by the Advocate General in para 3 above, The Government accordingly direct the Managing Director, Chennai Metropolitan Water Supply and Sewerage Board, to follow the procedure laid down below while providing sewer / water connections to the newly constructed buildings:-

- (i) To insist the completion certificate from the Competent Authority i.e, Corporation of Chennai I CMDA for multi- storeyed buildings and special buildings; and
- (ii) For all other buildings to register and sanction the the water/sewer applications on the basis of production of sanctioned plan approved by the corporation of Chennai or CMDA or Assessment of the property by the Corporation of Chennai before sanctioning and effecting water sewer connections.

Special Buildings and Multi-storeyed Buildings are defined as below :

Special Building means : Building with Ground floor plus three floors (total four floors)

Multistoreyed Building means : Building with more than four floors. ”

12.22 On a careful reading of the said G.O.Ms.No.139 , dt.15.10.2007, it is noted that the Govt has directed the Chennai Metropolitan Water Supply and Sewerage Board to insist the completion certificate for Multi-storeyed Buildings and the Special Building and defined the Multi-storeyed Buildings and Special Building as below :

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

Multi-storeyed Building Means : Building with more than four floors.

12.23 As per the above G.O., it is 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 instead of the definition of Multistoreyed Building and Special Building as furnished by the CMDA which are given below :

Special Building Means :

- a) a residential or commercial building with more than 2 floor (or) Stilt +2 floors (or)
- b) a residential building with more than 4 dwelling unit (or)
- c) a commercial building exceeding a floor area of 300 sq. mt.

Multi-storeyed Building :

Building with more than ground + 3 floors/stilt + 4 floors and or exceeding 15 meter in height.

12.24 As per my findings in first issue, insisting of the completion certificate is in line with the explanation given under 27(16) of the Distribution Code. The explanation given under Regulation 27(16) is extracted below:

27. Requisitions for Supply of Energy:

Xxx xxxx xxxx

Xx xxx xxxxx

(16) In case of non compliance by the Licensee, of the provisions as above, the intending consumer can approach the Consumer Grievance Redressal Forum 2 established under section 42(5) of the Electricity Act 2003 .

Explanation:- For the removal of doubts, it is hereby declared that the expression “other compliances” occurring in the Explanation to section 43(1) of the Act as reproduced in sub- regulation (1) shall mean the documents mentioned in the Forms specified in ANNEXURE III to this Code and any decree or order or judgment of Courts.”

12.25 On a careful reading of the Explanation, it is understood that the expression other compliances shall mean the documents specified in the Annexure-III to the Distribution Code and any decree or order or judgment of the Court.

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.

12.28 In view of the discussion in the previous para, the contention of the Appellant that his building is not coming under the category of the Special Building as defined in the 2006 judgment and hence, the contention of this Appellant that production of completion certificate for effecting service for his premises cannot be insisted is acceptable to me.

13. Findings on the Third issue :

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.

14. Conclusion :

14.1 In view of my findings given in First, Second & Third issues furnished in para 11, 12 & 13 above, the Respondent is directed to effect the service connection to the Appellant's premises without insisting completion certificate from CMDA as their Building 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 & batch.

14.2 With the above findings, the A.P.No.99 of 2015 is finally disposed of by the Electricity Ombudsman. No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To

1) Thiru Rajendran Chingaravelu,
Plot No.4074 (SF No.84011)
Metropolis 3rd Cross Street,
Srinivasan Main Road,
Ram Nagar North Extension,
Madipakkam, Chennai.

2) The Assistant Engineer/O&M,
Madipakkam,
Chennai Electricity Distribution Circle/South,
TANGEDCO,
33/11 KV Madipakkam SS Complex,
Near Madipakkam Bus Terminus,
Madipakkam, Chennai – 91.

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

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

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

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