

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act 2003)
(Central Act 36 of 2003)

PRESENT:-

Thiru.K.Venugopal Member

and

Thiru.S.Nagalsamy Member

S.M.P.No.4 of 2012

M/s.Sreenivasa Balaji Papers Private Limited
Pechinaickanoor
Muthunaickenpatty P.O.
Palani Taluk
Dindigul District

..... Petitioner

Vs

The Superintending Engineer
Dindigul Electricity Distribution Circle
Dindigul – 624 002.

..... Respondent
(Thiru PH.Vinod Pandian,
Advocate for Respondent)

Date of hearing : 10-08-2012

Date of order : 30-01-2013

The above S.M.P. No.4 of 2012 came up before the Commission for hearing on 10-08-2012. Upon perusing the relevant papers relating to the above S.M.P. No.4 of 2012 and upon hearing the respondent namely, Thiru R.Kumaresan, Superintending Engineer, Dindigul Electricity Distribution Circle, the Commission passes the following order:-

ORDER

1. Letter dated 04-06-2012 from the Petitioner:-

The aforesaid Petitioner M/s. Srinivasa Balaji Paper Private Limited in its letter dated 04-06-2012 stated that on 23-03-2011 it has applied to the Superintending Engineer, Dindigul Electricity Distribution Circle for the supply of electricity (3500 KVA) to the paper mill installed by it and the service connection has not been given inspite of lapse of 60 days. In the above letter, the Petitioner has further stated that the refusal of the respondent to give service connection is against the provisions of Section 43 of the Electricity Act, 2003 and regulation 27 of Tamil Nadu Electricity Distribution Code and regulation 6 of TNERC Distribution Standards of Performance Regulation. Hence the Petitioner in the above letter prayed for taking suitable action under section 142 of the Electricity Act, 2003 against the concerned officials of the TANGEDCO.

2. Issue of Show Cause Notice dated 16-07-2012 to the Respondent herein:-

In the Show Cause Notice dated 16-07-2012 (TNERC/Legal/DD(L)/F/Show Cause Notice/D.912/2012 dated 16-07-2012), the Commission while referring to sections 43 and 142 of the Electricity Act, 2003, regulation 27 of the Tamil Nadu Electricity Distribution Code, regulation 4 of TNERC Distribution Standards of Performance Regulation and regulation 16 (1) of TNERC Conduct of Business Regulation, 2004, directed the respondent herein to show cause by 25-07-2012 as to why appropriate proceeding should not be initiated against him under section 142 of the Electricity Act, 2003.

3. Reply by the Respondent to the Show Cause Notice:-

The Respondent has in his letter D.No.988 dated 30-07-2012 addressed to the Secretary to the Commission submitted a detailed report to the show cause notice. The following portion in the above letter would be relevant for the issue involved in the instant case.

“It may be noted that, the applicant has neither produced the ownership certificate / lease deed for land in the S.F.No.355/1, 356, 357 & 358/1 which are shown in the Tamil Nadu Pollution Control Board Certificate nor produced the ownership certificate / lease deed for alternative land nor produced amended TNPCB’s Certificate with their own lands so far.

In the meantime, an e-mail addressed to the Director / Distribution TANGEDCO by Thiru C.Ramachandran, in which he has claimed that the applicant has got the pollution clearance against his family properties, for which a case is also filed (case number 17/2009) before Hon’ble Company Law Board which is at final stage.

Further it has brought to the notice of the undersigned that a FIR is filed against the Directors of M/s.Sreenivasa Balaji Papers (P) Ltd. at District Crime Branch, Tirupur by Tmt.R.Lakshmi, W/o. Thiru.C.Ramachandran.

Hence the applicant was asked to reply for the above contents and also to produce Pollution Control Certificate to take further action vide this office Letter No.SE/DEDC/DGL/AEE/GL/AEI/F.HT/DOC/D.No.688/12 dated 08-06-2012.

Furthermore the Executive Engineer / Palani has reported that there is way leave problem for erection of 22 KV line for extending supply. In this connection, the

consumer was addressed to clear the way leave problem vide this office letter No.SE/DEDG/DGL/AEE/GL/AE1/F.HT DOC/D.No.689-1/12, dated 08-06-2012.

Since the application has not been registered for want of sufficient proof of ownership as well as want of clear Pollution Control Board Certificate, the provisions mentioned by the applicant in various regulations are not applicable.

It is also reported that, since the application has not been registered due to non-production of ownership documents for the lands mentioned in Pollution Control Certificate, the violation of Electricity Act, 48 and Tamill Nadu Electricity Distribution Code Regulation 27 does not arise.

4. Affidavit filed by the Respondent:-

The Respondent has subsequently filed an affidavit on 10-08-2012. The following portion of the affidavit would be relevant:-

"In continuation of reply submitted to the show cause notice of the Hon'ble Commission on 30-07-2012, I would like to submit the following:-

When the applicant submitted a fresh application on 01-04-2012, it was informed to the applicant that the application could not be registered due to the query regarding the lands furnished in the TNPEC certificate has remain unattended and the details furnished in this regard is not acceptable.

The applicant pleaded to process application with the assurance of producing the amended Pollution Control Board Certificate with their own land very shortly and the application may be processed to speed up the proceeding after submission of amended TNPCE certificate. Hence, as requested by the applicant, feasibility report was called from the Executive Engineer, Palani on 21-04-2012.

Since the consumer has submitted an incomplete application, acknowledgement could not be given. However, necessary action has been taken as per the assurance of the applicant to submit the relevant records.

It may be noted that, the applicant has neither produced the ownership certificate / lease deed for land in the S.F.No.355/1, 356, 357 & 358/1 which are shown in the Tamil Nadu Pollution Control Board Certificate nor produced the ownership certificate / lease deed for alternative land nor produced amended TNPCB's certificate with their own lands so far. It is clear from the above facts that the prospective consumer does not possess any land as substituting the same.

If the consumer has produced necessary document about ownership for the land shown in the TNPCB Certificate, their application will be registered immediately and action will be taken to effect the supply within the prescribed time schedule”.

5. Hearing held on 10-08-2012:-

The hearing was held by the Commission on 10-08-2012 with regard to the S.M.P.No.4 of 2012. The Commission has passed the following order:-

“Thiru.Chandrasekaran, Consultant of the Petitioner Company represented on behalf of the Petitioner Thiru.C.Velusamy. Thiru.R.Kumaresan, Superintending Engineer, Dindigul Electricity Distribution Circle was present. The Petitioner in support of his arguments, filed the following documents (1) Petition submitted to Consumer Grievance Redressal Forum (2) Single Diagram (3) Pollution Control approval. The Superintending Engineer, Dindigul, Electricity Distribution Circle filed affidavit and type set of paper. He stated that if the Petitioner was ready to get service connection from wind mill feeder, he can give service connection

immediately provided that the Petitioner has to give undertaking in this regard. Petitioner agreed to give undertaking. Arguments heard. Orders reserved”.

6. Finding of the Commission:-

We have heard both sides. We have also examined the material records adduced as evidences. On a careful consideration of the same we find that the only issue which arises for consideration is as to whether there is any undue delay on the part of the respondent in not effecting the service connection within the stipulated period under section 43 of the Electricity Act, 2003 and if so whether proceedings may be taken under section 142 of the said Act, for violation of the provisions of section 43 of the Act and the regulations framed thereunder.

In order to answer the above issues, it is necessary to reproduce the relevant provisions of section 43 of the Electricity Act, 2003, regulation 27 of the Tamil Nadu Electricity Distribution Code and Regulation 4 of the Tamil Nadu Electricity Distribution Standards of Performance Regulations 2004.

Section 43 of the Electricity Act, 2003

*“43.Duty to supply on request – (1) save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, **within one month after receipt of the application** requiring such supply:*

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

*Explanation – For the purposes of this sub-section, “application” means the application **complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances:**”.*

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1) :

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default”.

Regulation 27 of the TN Electricity Distribution Code:

“27. Requisitions for Supply of Energy:-

(1) The provision regarding the duty of Licensee as detailed in section 43 to supply electricity on request is reproduced below:

" (1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply :

Provided that where such supply requires extension of distribution mains, or Commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or Commissioning or within such period as may be specified by the Appropriate Commission.

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Provided that the licensee will refuse to supply electricity to an intending consumer who had defaulted payment of dues to the licensee in respect of any other service connection in his name

Explanation:- For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

(2). It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission".

Regulation 4 of the Tamil Nadu Electricity Distribution of Standards of Performance Regulations, 2004

"4. Duties of the Licensees to Supply on Request

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Licensees shall endeavor to give supply within a week but not exceeding 30 days wherever no extension or improvement works are involved in giving supply. The Licensees shall observe the following time schedule for supply of electricity involving extension of distribution lines, etc.

Table I :

<i>Category (1)</i>	<i>Time Schedule for LT (2)</i>
<i>(a) Involving no extension or improvement work</i>	<i>Preferably within a week but not exceeding 30 days</i>
<i>(b) Involving Extension and Improvement without Distribution Transformers</i>	<i>60 days</i>
<i>(c) Involving Extension and Improvement with Distribution Transformers</i>	<i>90 days</i>

Table II :

<i>Category (1)</i>	<i>Time Schedule for HT / EHT</i>	
	<i>(2) HT</i>	<i>EHT</i>
<i>(a) Involving Extension & Improvement</i>	<i>60 days</i>	<i>150 days</i>
<i>(b) Involving the enhancement of Power Transformer/Addition of Power Transformers</i>	<i>120 days</i>	<i>180 days</i>
<i>(c) Involving the Commissioning of new substation</i>	<i>180 days</i>	<i>270 days</i>

(I) The Licensee shall issue advice slip/notice/letter indicating the prescribed charges payable with proper acknowledgement.

(II) The Consumer shall remit the above charges within the stipulated period but not exceeding fifteen Days from the date of receipt of advice slip/notice/letter.

(III) In exceptional / deserving cases, permission may be granted by the respective Chief Engineer and Superintending Engineer or the person designated for this purpose by the Licensee for remittance of charges by the Consumer beyond the prescribed fifteen Days for HT/EHT and LT services respectively.

(IV) The time taken by the Consumer to remit the prescribed charges from the date of receipt of demand notice will not be covered in the above time schedule.

(V) The time schedule is also applicable for additional loads”.

It must be noted that SMP No. 4 of 2012 was initiated consequent to the alleged violation of section 43 of the Electricity Act, 2003, Regulation 27 of the Tamil Nadu Electricity Distribution Code and Regulation 4 of the Tamil Nadu Electricity Distribution Standards of Performance Regulations, 2004 by the respondent. Though certain documents relating to the proceedings held before the Consumer Grievance Redressal Forum were produced before the Commission during the hearing in regard to the present case by the Petitioner, we are of the view that the issue herein has to confine itself to section 43 of Electricity Act, 2003 and regulation 27 of the Tamil Nadu Electricity Distribution Code and regulation 4 of Tamil Nadu

Electricity Distribution Standards of Performance regulations, 2004. To put it otherwise, we are of the view that any decision on the petition filed by the petitioner herein has to be made solely with reference to section 43 of the Electricity Act, 2003, regulation 27 of the Tamil Nadu Electricity Distribution Code and regulation 4 of the Tamil Nadu Electricity Distribution Standards of Performance Regulations, 2004. The Regulation 27(4) of the Tamil Nadu Electricity Distribution Code is reproduced below:

“27(4) An intending consumer who is not the owner of the premises shall produce a consent letter in Form 5 of Annexure III to this code from the owner of the premises for availing the supply. If the owner is not available or he refuses to give consent letter, the intending consumer shall produce proof of his/her being in lawful occupation of the premises and also execute an indemnity bond in Form 6 of the Annexure III to this code indemnifying the licensee against any loss on account of disputes arising out of effecting service connection to the occupant and acceptance to pay security deposit twice the normal rate”.

Now coming to the reply filed by the respondent to the show cause notice issued by the Commission it is to be noted that the defence was set up by the respondent mainly on the ground that the ownership certificate or the lease deed as required in the Tamil Nadu Pollution Control Board certificate was not produced by the petitioner and hence the supply could not be effected. In this connection, it is to be noted that ownership of the land is not a pre-requisite under regulation 27(4) of the Tamil Nadu Electricity Distribution Code and only on the strength of the Tamil Nadu Pollution Control Board's certificate that the same is insisted upon by the respondent. On the other hand, it is submitted by the respondent during the enquiry that the consent to establish letter from the Tamil Nadu Pollution Control Board is mandatory only in the case of industries under Red category and the complainant's

industry would fall under Orange Category and hence we are at a loss to understand as to why Pollution Control Board certificate was insisted upon by the respondent from the petitioner when obtaining of certification from the Pollution Control Board is necessary only in respect of industries falling under Red Category.

Without viewing the scope and extent of section 43 of the Electricity Act, 2003 in the right perspective, the respondent, in our opinion, resorted to perfunctory and desultory reading of the explanation appended to section 43 and took a leaf out of Tamil Nadu Pollution Control Board certificate selectively and insisted on ownership / lease deed for no plausible reason. We see no reason as to why the service connection should not be extended to the Petitioner, which falls only under Orange category, even according to the respondent.

During the proceedings, the respondent was unable to substantiate the grounds on which the service connection was not effected in time. What is more, it transpired during the hearing that the respondent failed to acknowledge the receipt of the application by the petitioner herein.

In this connection, the "Note" under sub-regulation (3) of the said Regulation 27 specifically mentions that the applications even if incomplete should be acknowledged. This specific provision of the Distribution Code has also been violated by the respondent. The delay on the part of the respondent, in our opinion, is inordinate and inexplicable. There is no reason on the part of the respondent licensee to deny service connection to the petitioner as may be seen from the material evidences adduced before us. The mechanical insistence on the part of the

respondent for ownership certificate or lease deed, that too, solely on the basis of Pollution Control Board's letter without reference to the regulations framed by the Commission which are the governing laws in regard to the distribution of electricity, is the evidence of the lackadaisical approach on the part of the respondent.

It must be noted that the application was submitted in March 2012 and still there is no evidence to suggest that the respondent has taken sincere efforts to address the concerns of the petitioner.

In the result, we are of the considered view that the action of the respondent in denying the service connection to the petitioner solely on the basis of the mention made in the Tamil Nadu Pollution Control Board certificate for production of ownership certificate / lease deed from the petitioner is not sustainable in law, more so, when the regulations framed by the Commission have become the governing law on the subject and obtaining of such certificate is necessary only for industries falling under Red Category. From the material records placed before us, it has not been proved that the petitioner's industry falls under the Red Category and in fact, it is an admitted fact by the respondent that the petitioner's industry does not fall under Red category. The respondent during the hearing has admitted that the petitioner's industry would only fall within the meaning of Orange Category.

Considering the fact that the respondent during the hearing on 10-08-2012 has agreed to effect service connection from the wind mill feeder and the petitioner is ready to give undertaking to the effect, we are taking a lenient view of the lapse on the part of the respondent in the matter of levying penalty on the respondent herein. However, the patent illegality committed by the respondent cannot be overlooked

and for this reason, Commission is of the view that imposing a token penalty is necessary. The respondent shall file a compliance report in this regard within 30 days after the petitioner gives necessary undertaking as agreed by him during the hearing for consenting his service through wind mill feeder.

The Commission did not take cognizance of the affidavits filed by the respondent subsequent to conclusion of hearing and reserving orders.

In the result, Commission decides that a penalty of Rs.1,000/- (Rupees One Thousand Only) may be imposed on the respondent for violation of section 43 of Electricity Act, 2003, regulation 27 of the Tamil Nadu Electricity Distribution Code and regulation 4 of the Tamil Nadu Electricity Distribution Standards of Performance Regulations, 2004. The petition is disposed of accordingly. There will be no order as to cost. The penalty imposed in this order shall be paid within a period of one month from the date of this order.

7. Appeal:-

An appeal against this Order lies before the Appellate Tribunal for Electricity under section 111 of the Electricity Act, 2003, within a period of 45 days from the date of receipt of the copy of this order by the aggrieved person.

(Sd.....)
(S.Nagalsamy)
Member

(Sd.....)
(K.Venugopal)
Member

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission