

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

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Before The Tamil Nadu Electricity Ombudsman, Chennai
Present : Thiru. N.Kannan, Electricity Ombudsman

A.P.No. 26 of 2022

Thiru G.Prabhu Joshua,
Varun Apartment,
Block No.50, Flat No.61,
Venugopal Street,
Mugappair East,
Chennai – 600 037.

. Appellant
(Thiru G.Prabhu Joshua)

Vs.

The Executive Engineer/O&M/Ambattur,
CEDC/West, TANGEDCO,
110/33-11KV Ambattur Indl. Estate,
3rd Main Road SS campus,
AMBIT IT Park Road,
Ambattur Indl. Estate,
Chennai-600 058.

. . . . Respondent
(Tmt.J. Vijaya Parvathi, EE/O&M/Ambattur)

Petition Received on: 17-03-2022

Date of hearing: 21-07-2022

Date of order: 11-08-2022

The Appeal Petition received on 17.03.2022 filed by ThiruG.Prabhu Joshua, Varun Apartment, Block No.50, Flat No.61, Venugopal Street, Mugappair East, and Chennai – 600 037 was registered as Appeal Petition No. 26 of 2022. The above appeal petition came up for hearing before the Electricity Ombudsman on 30.03.2022. Upon perusing the Appeal Petition, Counter affidavit, written argument,

and the oral submission made on the hearing date from both the parties, the Electricity Ombudsman passes the following order.

Order

1. Prayer of the Appellant:

The Appellant has prayed to refund the amount collected from him towards erection charges in SC No. 431-021-817.

2.0 Brief History of the case:

2.1 The Appellant has prayed to refund the amount of Rs.10,000/- collected from him towards erection charges.

2.2 The Respondent has stated that the amount towards erection charges was collected based on the audit slip raised by BOAB audit wing and hence the request for a refund of the amount was not feasible.

2.3 Not satisfied with the reply of the Respondent, the appellant has filed a petition before CGRF of Chennai Electricity Distribution Circle/West on 24.11.2021. The CGRF of Chennai Electricity Distribution Circle/West has issued order No. CGRF/CEDC/W/No.157/21 dated 16.02.2022. 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/West issued its order on 16.02.2021. The relevant portion of the order is extracted below:-

“Order: (Operative portion)

The request of the petitioner to refund the amount paid towards erection charges is not feasible of compliance.

With this, the petition is disposed of.”

4.0 Hearing held by the Electricity Ombudsman:

4.1 To enable the Appellant and the Respondent to put forth their arguments in person, a hearing was conducted on 21.07.2022.

4.2 The Appellant Thiru G.Prabhu Joshua has attended the hearing and put forth his arguments.

4.3 The Respondent Tmt.J.Vijaya Parvathi, EE/O&M/Ambattur, Chennai Electricity Distribution Circle/West attended the hearing and put forth her arguments.

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

5.0 Arguments of the Appellant :

5.1 The Appellant has stated that he has been residing in a housing board apartment under allotment which has 64 flats. He stated that out of 64 flats he had been only for an amount of Rs.10,000/. This issue was pending since September 2021. Despite multiple visits to EB office and exchanging letters, the issue was not resolved. As his name was listed in the Defaulter and EB men had come to the house to remove fuse, he underwent mental agony and stress and paid the amount on 04-01-2022 to avoid Disconnection.

5.2 The Appellant has stated that the erection charges are as per 2003 order which is no longer valid and the only appellant being charged this fine is against the other 64 flats in the apartment. He claimed that he had been paying his EB charges without any default. Hence he has requested to expunge the Rs.10,000 erection charges.

6.0 Arguments of the Respondent:

6.1 The Respondent has stated that the appellant had represented that the erection charges are as per the 2003 order which is no longer valid and he has been charged this fine as against 64 flats in the apartment and requested to expunge the erection charges for his service No.431-021-817.

6.2 The Respondent has stated that during September 2021, BOAB audit wing of TANGEDCO has raised an audit slip for an amount of Rs.10,000/- towards erection charges following BP No.45 dated 16.03.2000 in the service connection no.431-021-817 which was effected on 17.07.2001 under tariff LA1A. This Service connection stands in the name of Thiru.G.Prabhu Joshua. The Petitioner has paid the amount under protest and requested a refund.

6.3 The Respondent has stated that the amount towards erection charges was collected following B.P. No. 45 dated 16.03.2000 and hence the request of the petitioner to refund the amount paid towards erection charges is not feasible for compliance.

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 conclusion is arrived.

7.2 The appellant has the following grievances before this Electricity Ombudsman.

The appellant claimed that the erection charges of Rs 10000/- collected from his service No 431-021-817 is not in order as he was an allottee from TNHB, and requested to expunge the erection charges.

7.3 The Appellant has stated that the erection charges of Rs 10000/- collected from his service No 431-021-817 is not in order since erection charges are as per the 2003 order which was no longer valid. Further the appellant has stated that only he alone charged erection charges as against 64 flats in the apartment and requested for refund since he was an allottee from TNHB.

7.4 The Respondent has stated that during September 2021, BOAB audit wing of TANGEDCO has raised an audit slip for an amount of Rs.10,000/- towards erection charges in the service connection no.431-021-817 which was effected on 17.07.2001 under tariff LA1A. Erection charges were collected following B.P. No. 45

dated 16.03.2000 and submitted that the request of the petitioner to refund the amount paid towards erection charges is not feasible.

7.5 From the foregoing paras it is noted that the erection charges claimed from the appellant is as per B.P. No. 45, dated 16.03.2000. The Board's proceeding was issued prior to the Distribution / Supply Code Regulations notified by the Hon'ble TNERC which came into effect from 21.07.2004 and also prior to issue of Tariff order on Misc Charges which came into effect from 1.10.2004. The appellant service connection no.431-021-817 under tariff LA1A was effected on 17.07.2001 i.e. prior to issue of TNERC's regulations. In this regard, I would like to refer B.P. No. 45 dated 16.03.2000 which is reproduced below:

*“(Permanent) B.P. (FB) No.45 (Technical Branch) Dated 16.3.2000.
Panguni 3, Pramath
Tiruvalluvar Aandut*

Read:

- 1. Permanent B.P. Ms (FB) No.61. Administrative Branch dt.24.12.88.*
- 2. Permanent B.P. Ms (FB) No.23, Technical Branch 01.21.2.2000.*
- 3. Permanent B.P. Ms (FB) No.59. Technical Branch dt.4.3.2000.*

Proceedings:

In order to avoid delay in effecting supply to residential/commercial Flats, orders were issued reference second and third cited to collect flat rates as erection charges towards the cost of service connection chargeable to the consumer from the applicant for giving single phase or three phase connection residential/commercial Flats, promoted by flat promoters in the city of Chennai, apart from the miscellaneous charges such as service connection charges, current consumption deposit, meter of deposit, development charges etc.

Hence, in exercise of the powers conferred by section 49 of Electricity (Supply) Act 1948, Central Act (LIV of 1948), read with section 79 (J), the following amendments are issued to the clause 38 Schedule Part II of Terms and Conditions of Supply of Electricity notified in B.P. Ms. (FB) No.61 (Adm. Br.) dt.24.12.88 and amended up to 31.8.95 and published in Part Vi Section 3(b) of the Tamil Nadu Government Gazette No.7, dt.21.2.96 and further amended subsequently. The amendment shall come into force with effect from 21.02.2000.

AMENDMENT

The following new sub-clause shall be added to the clause 38 schedule part II of Terms and Conditions of Supply of Electricity as sub clause 12.00.

12.00 Erection Charges

The Flat promoters applying for the new service connection for their newly constructed flats have to pay the Erection charges towards the cost of service connection work chargeable to consumer as noted against each.

<i>Category of service</i>	<i>Quantum of erection charges</i>	
	<i>Single phase</i>	<i>Three Phase</i>
<i>Domestic Service</i>	<i>Rs.10,000/- Per service</i>	<i>Rs.15,000/- per service</i>
<i>Commercial Service</i>	<i>Rs.15,000/- Per service</i>	<i>Rs.25,000/- per service</i>

In addition to the above charges, the applicants, have to pay other miscellaneous charges as per rules in vogue.

The above charges are effective in Chennai City Area only.

The above rates will not be applicable to individual houses or expansion to individual houses for which the existing procedures will be followed.

(By Order of the Board)

*Frederick David,
Member (Distribution)”.
”*

7.6 On a plain reading of the above B.P., it is noticed that the flat promoters applying for the new service connection for their newly constructed flats have to pay the Erection charges towards the cost of service connection work chargeable to consumer and it is effective only for the Chennai City Area. In addition, the applicants, have to pay other miscellaneous charges as per rules in vogue. Further, the above rates of erection charges will not be applicable to individual houses or expansion to individual houses.

7.7 The said Board's proceedings was challenged by the Tamil Nadu Flat Promoters Association in the Hon'ble High court vide W.P.No.15194/03-09-2003. However, consequent to the dismissal of W.P. No 15194/03-09-2003, the CE/Commercial had issued a direction in Memo No CE/Comml./EE3/AEE3/F.Erection Charges /D.383/10, dt.23-01-2010 to collect the erection charges as per

B.P. No. 45 (Technical Branch) dated 16.03.2000. The relevant para of the said memo is reproduced below:

“Consequent to the dismissal of the W.P. No.15194/2003 filed by the Tamil Nadu Flat Promoters Association against the proceedings in B.P. (F.B) No.45, (Technical Branch), dt.16.3.2000, the Chief Engineers/Distribution/Chennai Region/ North & South are requested to take necessary action to collect the erection charges as per the B.P. (F.B.) No.45, (Technical branch), dt. 16.3.2000 until the period 30.9.2004 i.e. prior to the issue of TNERC’s Order on Miscellaneous charges effective from 1.10.2004, except from M/s. Ramaniyan Real Estates, who have obtained a Stay from the Hon’ble High Court, Madras.

*Signed
(V.NALENDRAN),
CHIEF ENGINEER/ COMMERCIAL,
For CHAIRMAN.”*

7.8 From the above, it is noted that the licensee had given direction to collect the erection charges from the flat promoters in Chennai city during the period from 21-02-2000 upto 30-09-2004 consequent to the dismissal of W.P.No.15194/2003.

7.9 The appellant service connection No 431-021-817 was affected on 17-07-2001. On perusal it is noted that the erection charges were not collected at the time application as there was stay granted by the Hon’ble High Court of Madras in W.P.No.6512 and W.No.10133 of 2000 filed by Tamilnadu Flat Promoters Association. Further, consequent to the dismissal of W.P. No 15194 of 2003, the CE/Commercial had issued a direction on 23-01-2010 to collect the erection charges as per B.P. No. 45 (Technical Branch) dated 16.03.2000. However, the demand for erection charges in the case of appellant had only been made on 21.09.2021. The appellant's argument as to whether the Respondent has a right to claim erection charges during September 2021 for his service connection No.431-021-817 effected on 17.07.2001 has to be examined. In this regard, I would like to refer clause 19.12 and 19.16 of the Terms and Conditions of Supply of Electricity which was in force prior to issue of TNERC’s regulations. The said para 19.12 and 19.16 are reproduced below:

“19.12 In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Board, the Board will have the right to demand an additional amount in case of undercharging and the consumer will have the right to

get refund of the excess amount in the case of overcharging (Also refer to clause 19.16).

19.16 Revision of bills of Low Tension service connection arising out of any reason attributable to the Board like defective meter, defective metering arrangement, incorrect application of tariff, wrong billing etc., will be made for the duration of the period for which such revision is called for, subject to a maximum back period of three years from the date of billing.”

7.10 The plain reading of the above, it is clearly stated that in the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Board, the Board will have the right to demand an additional amount in case of undercharging and the consumer will have the right to get refund of the excess amount in the case of overcharging. Further, revision of bills of Low Tension service connection arising out of any reason attributable to the Board will be made for the duration of the period for which such revision is called for, subject to a maximum back period of three years from the date of billing.

7.11 In the case on hand, the appellant service connection was effected prior to issue of TNERC's regulation, but the period of claim falls when the TNERC's regulation is in force. In this regard, I would like to refer regulation 21(2) of TNE Supply code, which is reproduced below:

“21. DISCONNECTION OF SUPPLY

Section 56 of the Act with regard to disconnection of supply in default of payment reads as follows:

*(1) ****

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrears of charges for electricity supplied and the Licensee shall not cut off the supply of the electricity”.

7.12 Regarding the applicability of section 56(2) of the Electricity Act 2003, for limitation of the claim of the period as per Judgment dated 14.11.2006 of Appellate Tribunal for Electricity in appeal Nos. 202 and 203 of 2006 is relevant. Para 17 of the said order is reproduced below;

“17. Thus, in our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first bill/demand notice for Payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running. In the instant case, the meter was tested on 03.03.2003 and it was allegedly found that the meter was recording energy consumption less than the actual by 27.63%. A joint inspection report was signed by the consumer and licensee and thereafter, the defective meter was replaced on 05.03.2003. The revised notice of demand was raised for a sum of Rs. 4,28,0341/- on 19.03.2005. Though the liability may have been created on 03.03.2003, when the error in the recording of consumption was detected, the amount become payable only on 19.03.2005, the day when the notice of demand was raised. A period of two years, prescribed by Section 56(2), for recovery of the amount started running only on 19.03.2005. Thus, the first respondent cannot plead that the period of limitation for recovery of the amount has expired.”

7.13 It is clear from the above judgment that, even though the liability to pay energy charges is created on the day the electricity is consumed, the charge would become first due only after a bill or a demand notice is served. Therefore, the limitation in the present case also shall run from the date of demand notice. Further, it has to be ensured whether any limitation is prescribed for collection of short levy after the defect is found. In this regard, I would like to refer Hon'ble APTEL orders issued in Appeal No.74 of 2007. The relevant paras are reproduced below:

“39) The section 56 read as a whole does not at all give any period of limitation for recovery of dues in the usual legal process which is through a civil suit. Limitation of two years is only for the method of recovery given in section 56(1). This does not mean that the distributing company can raise a bill even after the dues have become barred by limitation. Nor does it say that limitation vis-à-vis the distributing company or the creditor, will start running only after the bill is raised. The appellant however, says that only after November 2005 when it raised the bill, the limitation shall start running.

48) The appeal No. 202 & 203 of 2006 was also a case of defective meter. The meter was replaced but the bill for the dues had not been immediately raised. The bill was raised after two years. Till then the claim of the Electricity Distributing Company had not become barred by limitation on account of application of section 17 of the Limitation Act. Therefore, the appeal deserved to be allowed. This Tribunal did allow the appeal although on a different analysis. It will not be correct to say that the judgment in Appeal Nos. 202 & 203 of 2006 lays down a law that the period of limitation shall not run even if the DISCOM is negligent in raising the bill and allows three years to pass even after the defect in the meter was discovered.”

7.14 On a careful reading last sentence of para 48 of the order of APTEL in 74 of 2007, one may understand that the Discom / licensee cannot raise a bill after three years from the date of discovering the defect in the meter (ie) in other words the bill has to be raised within 3 years of discovering the defect for application of section 56(2) of Act for recovering the dues.

7.15 On a conjoint reading of para 17 of the Orders of APTEL in Appeal No.202 and 203 of 2006 and para 48 of the Orders of APTEL in Appeal No.74 of 2007, it may be concluded that a sum become first due when the notice of demand was issued and time period of two years, prescribed by section 56(2) for recovery of amount starts only from the date of the demand notice issued. However, the demand notice issued due to discovering of any defect in the meter /mistake in billing after 3 years from the date of discovering the defect/mistake, the section 56(2) could not be applied.

7.16 In the case on hand, it is a well established fact that the erection charges are to be collected from the Flat promoters of Chennai City Area based on B.P.No.45, dated 16.03.2000. The appellant service connection 431-021-817 was effected on 17.07.2001 under tariff LA1A and the erection charges were not collected at the time of application by the Flat promoters as there was a Stay granted by the Hon'ble High Court of Madras. Consequent to the dismissal of W.P. No 15194 of 2003, the CE/Commercial had issued a direction on 23-01-2010 to collect the erection charges as per B.P. No. 45 (Technical Branch) dated 16.03.2000. However, the claim for erection charges was made to appellant's service connection only on 21.09.2021 i.e. after a lapse of 11 years from the CE/Commercial's direction dated 23-01-2010.

7.17 As per my findings in the foregoing paras, I am of the view that the appellant service connection 431-021-817 was effected on 17.07.2001 under tariff LA1A. The bill of demand for erection charges was not made to appellant's service connection within 3 years from the CE/Commercial's direction dated 23-01-2010. The bill of demand was made only on 21.09.2021 i.e. after a lapse of 11 years from the CE/Commercial's direction dated 23-01-2010. A sum become first due when the notice of demand was issued and time period of two years, prescribed by section 56(2) for recovery of amount starts only from the date of the demand notice issued. However, the demand notice issued due to discovering of any defect in the meter / mistake in billing after 3 years from the date of discovering the defect / mistake, the section 56(2) could not be applied. Therefore I am of the considered view that the claim of erection charges for the appellant's service connection is barred by limitation and hence the respondent is directed to refund the erection charges paid by the appellant under protest within 15 days.

8.0 Conclusion:

8.1 As per my findings in para 7, the appellant service connection 431-021-817 was effected on 17.07.2001 under tariff LA1A. The bill of demand for erection charges was not made to appellant's service connection within 3 years from the CE/Commercial's direction dated 23-01-2010. The bill of demand was made only on 21.09.2021 i.e. after a lapse of 11 years from the CE/Commercial's direction dated 23-01-2010. A sum become first due when the notice of demand was issued and time period of two years, prescribed by section 56(2) for recovery of amount starts only from the date of the demand notice issued. However, the demand notice issued due to discovering of any defect in the meter / mistake in billing after 3 years from the date of discovering the defect / mistake, the section 56(2) could not be applied. Therefore I conclude that the claim of erection charges for the appellant's service connection is barred by limitation and hence the respondent is directed to refund the erection charges paid by the appellant under protest within 30 days from the date of receipt of this order. Further such refund shall be made in line with regulation 12(2) of TNE Supply Code Regulations, 2004.

8.2 A compliance report in this regard shall be furnished within 45 days from the date of receipt of this order.

8.3 With the above findings AP No.26 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

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Chennai – 600 037.

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3. The Superintending Engineer,
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