

Appellate Tribunal for Electricity
(Appellate Jurisdiction)
(Chennai Circuit Bench)

Dated: 13th March, 2014

Present:

HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

Appeal No. 75 of 2013

The Superintending Engineer,
Dindigul Electricity Distribution Circle,
Tamil Nadu Generation and Distribution Corporation Ltd.,
(TANGEDCO)
Dindigul-624 002, Tamil Nadu

... Appellant

Versus

- 1. M/s. Sreenivasa Balaji Papers Private Limited,**
Pechinaickanoor,
Muthunaickenpatty P.O,
Palani Taluk,
Dindigul District
Tamil Nadu 624 618
- 2. Tamil Nadu Electricity Regulatory Commission**
TIDCO Office Building,
No.19-A, Rukmini Lakshmi pathy Salai,
Egmore, Chennai-600 008

Respondent(s)

Counsel for the Appellant (s): Mr. S Vallinayagam

Counsel for the Respondent (s): Mr. N L Rajah, Sr. Advocate
Mr. K Narasmhan

J U D G M E N T

PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON

1. The Superintending Engineer, M/s. Dindigul Electricity Distribution Circle (TANGEDCO) is the Appellant herein.
2. Aggrieved by the Impugned Order dated 30.1.2013 passed by the Tamil Nadu State Commission directing the Appellant to make the payment of the penalty of Rs.1000/- for having not provided the service connection in time, the Appellant has filed this Appeal.
3. The short facts are as follows:
 - (a) M/s. Dindigul Electricity Distribution Circle (TANGEDCO) is the Appellant herein.
 - (b) M/s. Sreenivasa Balaji Papers Private Limited is the First Respondent. Tamil Nadu State Commission is the Second Respondent.
 - (c) 26.5.2011, M/s. Sreenivasa Balaji Papers Private Limited, the 1st Respondent, applied to the Appellant for HT Service connection with a demand of 3500 KVA for its new paper manufacture unit to be installed in and around Dindigul District requesting the

TANGEDCO, the Appellant for providing service connection.

(d) In pursuance of the said application, the Appellant conducted a site inspection on 15.6.2011. After the inspection, the Appellant sought for a feasibility report from the Executive Engineer.

(e) At that stage, the Appellant received a written objection on 16.6.2011 from one of the Directors of the Company stating that the land shown in Pollution Control Board Certificate produced by the Respondent Company belongs to his wife and the Respondent Company was not the owner or lessee of the said land.

(f) On receipt of this, the Appellant wrote a letter on 5.7.2011 to the Respondent Company requesting for proof of its lawful occupation of the land in occupation of the Company.

(g) The Respondent Company did not reply to the above letter. Therefore, in August, 2011, it sent another letter requesting for the proof of lawful occupation of the land.

(h) In the meantime, Pollution Control Certificate earlier filed along with the Application seeking for service connection expired on 28.6.2011. Therefore,

the Appellant asked the Respondent Company to produce the revalidated certificate from the Pollution Control Board.

(i) Thereupon, the Respondent Company sent a letter dated 20.3.2012 to the Appellant stating that the C Ramachandran, the Director of the Respondent Company had already been removed from the Respondent Company and the lands belonging to the said Remachandran which were proposed for discharge the treated effluent water were not part of the Company anymore and the Respondent Company has its own land for discharging the treated effluent water.

(j) However, the Respondent Company, was informed that the lease details in respect of the land not belonging to the Respondent Company were not produced as per the Distribution code. Therefore, the Respondent Company filed a fresh application to the Appellant on 1.4.2012 for 3500 KVA to provide service connection. The Respondent Company further requested the Appellant to process its application on the assurance that it will produce the amended pollution control board certificate soon. On the above assurance, the Appellant processed the application.

(k) Thereupon, the Appellant once again sought feasibility report from the Executive Engineer through the letter dated 21.4.2012.

(l) On 18.5.2012, the Appellant got a fresh feasibility report from the Executive Engineer. It was submitted in the report that due to the existing 22 KV double circuits and single circuit wind farm feeder on both sides of the road, the new HT connection line can only be extended through private lands.

(m) At that stage, the Respondent Company sent a letter on 4.6.2012 to the State Commission complaining that the Appellant officials are not complying with the provisions of the Act as well as the Regulations and praying for taking suitable action u/s 142 of the Electricity Act.

(n) In the meantime, the Appellant received another letter from Mr. C Ramachandran, the Former Director of the Company stating that the Pollution Certificate obtained by the Respondent Company was in respect of Mr. C Ramachandran's family property for which the case has been filed before the Company Law Board. It was also informed that the complaint was given by his wife against the Respondent Company to the police who in turn registered the FIR.

(o) In the above circumstances, the Appellant asked the Respondent Company to reply for the above complaints and also to produce Pollution Control Certificate with survey numbers of the land in respect of which it has proof of legal occupation of the land.

(p) At that stage, the State Commission on 16.7.2012, issued a Show Cause Notice to the Appellant on the basis of the complaint given by the Respondent Company on 4.6.2012 by initiating the suo-motu proceedings in SMP No.4 of 2012 for taking action u/s 142 of the Electricity Act., 2003 for non-compliance of the provisions of the Act as well as the Regulations.

(q) In reply to the said Show Cause Notice, the Appellant submitted its report on 30.7.2012 before the State Commission setting out all the relevant facts and communication between the Appellant and the Respondent. In addition to this, the Appellant also filed a detailed Affidavit before the State Commission referring to the reasons for the said non compliance of the provision of the Act and the Regulation on the part of the Respondent Company.

(r) The matter was taken up for inquiry by the Commission on 10.8.2012. During the course of

hearing, the Appellant opposed to connect the proposed HT SC to wind evacuation feeder. However, the State Commission suggested to the Appellant to extend the supply from Wind Feeder to the Respondent Company. Accordingly, the Superintending Engineer gave an undertaking to the effect that if the Respondent Company was ready to receive service connection from Wind Mill Feeder, the Appellant would give service connection immediately.

(s) Accordingly, the Respondent Company also expressed willingness to get service connection from Wind Mill Feeder. The said undertaking as well as the assurance given by the parties were recorded in the Order dated 10.8.2012 and on the basis of the same, directions were issued to the parties.

(t) In pursuance of the said order, the Superintending Engineer, the Appellant, requested the Respondent Company to remit the registration fee and EMD. Accordingly, the same was remitted by 24.8.2012.

(u) In the meantime, the matter was reported to the Consumer Redressal Grievance Forum also. Despite, the specific directions issued in the orders passed by the State Commission as mentioned earlier and

remittance of Registration Fee and EMD, the Appellant did not provide service connection.

(v) Having noticed the conduct of the Appellant, the State Commission passed the Impugned Order on 31.1.2013 holding that the action of the Appellant in denying the service connection to the Respondent Company is not sustainable in law and as such, the Appellant has violated the provisions of the Act and the Regulations and consequently, the Appellant is liable to pay Rs.1000/- as a penalty for the above said violation of Distribution Code and the Regulations, 2004.

(w) As against this Order, the Appellant has filed this present Appeal.

4. After admission of the Appeal, we have heard the learned Counsel for both the parties with reference to the interim orders sought for in the Application filed by the Appellant seeking for the stay of the operation of the Impugned Order.
5. After hearing both the parties, we have declined to grant stay and directed the Appellant to comply with the directions issued by the State Commission by paying the penalty of Rs.1000/- as ordered by the State Commission and also to provide the service connection as undertaken before the State Commission through the written order.

6. Initially, the Appellant did not incline to comply with the directions of this Tribunal. But when this Tribunal expressed displeasure over the conduct of the Appellant, ultimately, the directions have been complied with.
7. In the light of the above facts, we have to deal with the merits of the Appeal.
8. The Appellant has made the following submissions assailing the Impugned Order dated 31.3.2013:

(a) The State Commission is not justified in adjudicating a dispute between a consumer and the distribution licensee. The Hon'ble Supreme Court has held in the case of Maharashtra State Electricity Distribution Company Ltd., Vs Lloyds Steel Industries Ltd reported in AR 2008 SC 1042 that a dispute between a consumer and the distribution licensee cannot be adjudicated by the Commissions. Therefore, the finding rendered by the State Commission as well as the imposition of the penalty is without jurisdiction.

(b) The State Commission has not appreciated the provisions of Regulation 27 of the Tamil Nadu Electricity Distribution Code and GO (MS) No.111 dated 21.9.2011 correctly. The provisions of the Distribution Code require the proof of lawful possession, which is mandatory. The Respondent

Company did not produce the documents to show that the land mentioned in the Pollution Control Certificate was actually under its lawful possession. Under those circumstances, the service connection could not be granted under the Distribution Code.

(c) The State Commission in fact, has actually ignored the mandatory provisions of Distribution Code and the Relevant GO of the Government while directing the Appellant to provide service connection. The State Commission ought to have verified whether the GO (MS) No.111 which categorises the industries into red and orange categories, is applicable to both the categories of the industry. In fact, both the red and orange categories of industry require compliance of the said GO.

(d) The State Commission ought not to have passed the Order dated 10.8.2012 regarding the undertaking of the officers when the documents available on record, indicated to the contrary. The Regulatory Commission passed such an order without conducting any investigation as per Section 128 of the Electricity Act, 2003.

(e) The State Commission has not appreciated the provisions of the TN Electricity Distribution Standards

of Performance Regulations correctly. The mandatory information sought for by the Appellant under the approved format of Application annexed to the Distribution Code have not been furnished by the Respondent Company but this mandatory requirement has been overlooked by the State Commission.

9. In reply to the above submissions, the learned Counsel for the Respondent has elaborately argued that the reasonings given in the Impugned Order and the findings arrived at by the State Commission is perfectly justified especially when the State Commission has got the jurisdiction to deal with the violation of the provisions of the act as well as the Regulations.
10. In the light of the above rival contentions detailed above, the following questions would arise for consideration:
 - (a) Whether the dispute between the consumer and the Distribution Licensee raised in the present case could be adjudicated by the State Commission without referring the matter to the competent Forum constituted u/s 42 (5) of the Electricity Act, 2003?
 - (b) Whether the Impugned Order passed by the State Commission giving the findings as against the Appellant and imposing the penalty is in accordance

with the Distribution Code, Regulations, GO and provisions of the Act?

11. Let us now consider the above questions one by one.
12. The First Question relates to the jurisdiction of the State Commission in adjudicating the dispute between a consumer and the Distribution Licensee.
13. At the outset, it shall be stated that this question has not been raised by the Appellant before the State Commission. However, we are inclined to go into said question since it relates to jurisdiction.
14. It is true that the Hon'ble Supreme Court has specifically held in the case of Maharashtra State Electricity Distribution Company Ltd., Vs Lloyds Steel Industries Ltd reported in AIR 2008 SC 1042 that the dispute between the consumer and the Distribution Licensee cannot be adjudicated by the Regulatory Commission.
15. But, as correctly pointed out by the learned Counsel for the Respondents, the only issue that was raised before the State Commission is as to whether the provisions of the Act and the Regulations framed by the State Commission have been violated by the Appellant so as to warrant the interference by the Regulatory Commission u/s 142 of the Electricity Act, 2003 to punish the Appellant for the violation of the provisions and the Regulations.

16. Let us quote the relevant portion of the Impugned Order with reference to the issue raised in the Impugned Order.

“.....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 the Section 43 of the Act and the Regulations framed there under”.

17. So, in the light of the question framed above, by the State Commission, it was called upon only to decide as to whether Section 43 of the Act, Regulation 27 of the Distribution Code and Regulation 4 of the performance Regulations, 2004 have been violated by the Appellant. As such, the dispute raised does not relate to the dispute between the consumer and the distribution licensee. Hence, it has to be held that the Regulatory Commission has not adjudicated the dispute between a consumer and the distribution licensee. It was merely informed by the Respondent Company about the violation of the Act and Regulations committed by the Appellant. On receipt of the said information, the State Commission has initiated suo-motu proceeding against the Appellant to take action u/s 142 of the Electricity Act for violating the Regulations and the Act.

18. The following facts are relevant to be noticed at this stage:

(a) The letter dated 4.6.2012 was submitted by the Respondent Company to the State Commission reporting about the violations of the Appellant. On that information, the proceedings have been initiated suo-motu in Petition No.4 of 2012 against the Appellant.

(b) The cause of action for suo-motu proceedings is the show cause notice issued by the Commission on 16.7.2012. The Appellant made a reply on 30.7.2012. If the reply was satisfactory, the State Commission would not have continued the proceedings. On the other hand, it could have been dropped. That is not the case here. There was no satisfactory explanation. Hence, the State Commission proceeded with the matter further.

(c) It is important to point out that in these proceedings, no relief was granted to the consumer. The order in the Impugned proceedings merely imposes a penalty on the Appellant for disobedience and violation of the Regulations and the Act. The relief granted to the consumer was on the basis of the Appellant's consent made to the State Commission that they are willing to provide service connection to the Respondent Company, if they are ready to receive the service connection from the Wind Mill Feeder. This

consent and undertaking was recorded by the State Commission in the Impugned Order.

19. In view of the above factual situation, it is not correct for the Appellant to contend that the State Commission has adjudicated the consumer dispute which is barred. Hence, the authority cited by the Appellant has no application to the facts and circumstances of the present case.
20. Accordingly, we hold that the State Commission has got the jurisdiction to deal with the question as to whether the provisions of the Act and Regulations have been violated by the Appellant in order to take further action in this matter.
21. Accordingly, this issue is decided as against the Appellant.
22. Let us come to the **next Issue**. This is with reference to the validity of the Impugned Order.
23. According to the Appellant, the State Commission while rendering the findings as against the Appellant has completely ignored the mandatory provisions of the Distribution Code and relevant GO of the Government and as such the Impugned Order is not valid in law.
24. We are unable to accept this contention of the Counsel for the Appellant. As we stated earlier, the only question raised in the proceedings is this: “**whether there is any violation of the provisions of Section 43 of the Electricity Act,**

2003, Regulation 27 of the Tamil Nadu Electricity and Distribution Code and Regulations 4 of the Tamil Nadu Electricity Distribution Standards of Performance, 2004”?

25. The State Commission dealt with the above question and gave a finding that these provisions have actually been violated by the Appellant.
26. Let us quote those provisions.
27. Section 43 of the Electricity Act, 2003 reads as under:

“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”.

28. These provisions would make it clear that when a occupier of the premises gives an Application to the Distribution Licensee, the Distribution Licensee shall give supply of electricity to such premises within one month from the date of the Application. The 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. If a distribution licensee fails to supply electricity within the said period, he shall the liable to pay the penalty.

29. In this case, admittedly, the Distribution Licensee has not provided electricity connection within the specific period.

30. Let us now see Regulations 27 of the TN Electricity Distribution Code which reads as under:

“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".

31. According to these Regulations every Distribution Licensee on receipt of application of the occupier of the premises shall give supply of power to such premises within one month from the date of the receipt of the Application. The application means the same must be in the appropriate form along with the documents showing necessary charges and other compliances. In this case, there was not dispute that necessary charges have already been paid.

32. Now let us refer to Regulation 4 of the Tamil Nadu Electricity Distribution of Standards of Performance Regulations, 2004:

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

“4. Duties of the Licensees to Supply on Request

XXXXXXXXXX

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(2)</i>	
	<i>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 Sub-station</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”.

33. These Regulations also would make it clear that the licensee shall supply on request within one month subject to some conditions.

34. In this case, the suo-motu proceedings have been initiated by the State Commission in SMP No.4 of 2012 on receipt of the information about the violation of provisions of Section 43 of the Electricity Act and other Regulations.

35. In this context, we have to refer to the relevant Regulation 27(4) of the Tamil Nadu Electricity Distribution Code which is as under:

“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”.

36. The stand taken by the Appellant as a defence before the State Commission that the ownership certificate or the lease deed was not produced by the Respondent Company and hence the supply could not be effected. This contention cannot be sustainable since the ownership of the land is not a pre-requisite under Regulation 27 (4) of the Tamil Nadu Electricity Distribution Code. Despite this, said document was insisted on the strength of the Tamil Nadu Pollution Board Certificate.

37. It is the case of the Appellant during the course of the inquiry that the consent to establish the letter from the Tamil Nadu Pollution Board is mandatory only in the case of industries under the red category and not under the orange category.

38. As a matter of fact, as pointed out by the State Commission, even though the Application was submitted in March, 2012 till the Impugned Order was passed on 31.1.2013 there is no material placed by the Appellant to show that it has taken sincere efforts to address the concern of the Petitioner.
39. In the light of the above circumstances, the State Commission has passed the following order:

“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.

40. The above findings of the State Commission that the Appellant did not take interest in complying with the mandatory provisions u/s 43 of the Electricity Act, 2003 which is reproduced in the Regulations.
41. Regulation 27 of the Distribution Code requires compliance with existing Regulations. However, the question before the Commission was whether the Respondent Company falls in the red category or in the orange category.
42. When this question was put by the State Commission, it was clearly admitted by the Appellant before the Commission that the Respondent Company would only fall within the meaning of the orange category. So, the Appellant's Officer himself admitted before the Commission that the Pollution Control Certificate was not necessary since the Respondent Company falls under the orange category.
43. Hence, the question before the State Commission was that when the Respondent Company did not fall under the red category industry, but fell under the orange category industry as admitted by the Appellant before the

Commission, whether the Appellant is right in insisting that the Respondent company should produce Tamil Nadu Pollution Control Certificate. The State Commission in the Impugned Order has elaborately dealt with this issue and found that the Appellant (Respondent) admitted before the Commission that the Respondent Company would only fall only within the meaning of orange category. When the Appellant's Officer himself admitted before the Commission that the Pollution Control Certificate was not necessary, there was no question of State Commission over looking the applicability of the Code.

44. The Order passed by the State Commission on 10.8.2012 giving directions to give connection was on the basis of the consent given by the officer of the Appellant. This order has not been challenged either before the Commission or before this Tribunal by the Appellant.
45. Now it is pleaded that the finding with regard to the undertaking given by the Officer of the Appellant to give supply is not on the basis of the true facts.
46. As pointed out by the learned Counsel for the Respondent, this belated plea has not even been mentioned in the grounds of Appeal.
47. Therefore, we cannot accept this belated plea at this stage especially when the Order passed by the State Commission

on 10.8.2012, had not been challenged nor raised in the grounds in the Appeal with regard to the said Order.

48. The Appellant's interpretation about Regulation 27(4) of the Distribution Code is misconceived. Regulation 27(4) of the Distribution Code solely deals with the land in which the Respondent Company would establish building and get service connection and not with any other property. Further GO(MS)111 dated 21.9.2011 clearly states that the certificate issued by the Pollution Control Board be enclosed and no other documents.

49. In fact, admittedly, the notice to make payment of EMD (Earnest Money Deposit) was issued on 17.8.2012 subsequent to the order passed by the Commission on 10.8.2012. This shows that the Appellant was fully satisfied that all the conditions were complied with by the Respondent Company as per the directions given by the State Commission by the Order dated 10.8.2012. In fact, the Respondent Company paid the EMD and Registration Fee on 24.8.2012 itself and the application was registered as CDO15/2012-2013 dated 24.8.2012. When the Appellant issued a Notice to the Respondent Company to make payment of EMD and having received the said payment towards Registration Fee and EMD and registered the same by furnishing an office code number, the Appellant cannot

be permitted to refuse to effect service at this stage as per the standard of performance.

50. As indicated earlier, the Appellant accepted EMD and registered an application only after it was satisfied that all the documents have been submitted by the Respondent Company and they are in order, as per the directions in force at the time of submission of the Application.
51. From the above facts, it is clear that despite the receipt of the EMD and Registration Fee on 24.8.2012, there has been no effort made by the Appellant to give the service connection to the Respondent Company in spite of the repeated requests and the directions issued by the State Commission.
52. As mentioned earlier, even during the course of proceedings in this Appeal before this Tribunal, we have directed to give connection to the Respondent Company as undertaken by the Appellant before the State Commission and as directed by the State Commission.
53. But, even then, there was reluctance on the part of the Appellant to comply with the above Order. However, when we indicated to the Appellant that non compliance of this Tribunal Order would be viewed seriously, only then the Appellant has ultimately complied with the order. Thus, as of now the Impugned Order has been fully complied with.

54. To Sum-UP

i) The State Commission has the jurisdiction to deal with the question as to whether the provisions of the Act and Regulations have been violated by the Distribution Licensee in order to take further necessary action in the matter. However, the State Commission cannot adjudicate a dispute between the consumer and the Distribution Licensee. In this case the issue raised before the State Commission was whether the provisions of the Act and the Regulations have been violated by the Appellant so as to warrant any action under Section 142 of the Electricity Act, 2003. The order in the impugned proceedings merely imposes a penalty on the Appellant for disobedience and violation of the Regulations and the Act. The relief granted to the consumer was on the basis of the Appellant's consent made to the State Commission to the effect that they were willing to provide service connection to the consumer. Thus, the issue of jurisdiction is decided against the Appellant.

ii) The State Commission's findings against the Appellant regarding the failure to provide service connection to the consumer and the imposition of penalty on the Appellant is in accordance with the Regulations and the provisions of

the Electricity Act, 2003. Thus, this issue also is decided against the Appellant.

55. In view of our above findings, there is no merit in the Appeal.

56. Hence, the Appeal is dismissed as devoid of merits.

57. However, there is no order as to costs.

58. Pronounced in the open court on this 13th day of March, 2014 at Chennai Circuit Bench.

(Rakesh Nath)

Technical Member

Dated: 13th March, 2014

√REPORTABLE/~~NON-REPORTABLE~~

(Justice M. Karpaga Vinayagam)

Chairperson