

**THE STATE ELECTRICITY OMBUDSMAN**

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**APPEAL PETITION No. P/009/2022****(Present: A.S. Dasappan)****Dated: 25<sup>th</sup> April, 2022**

Appellant : Sri. Vijil George,  
Secretary,  
Valkulambu Ksheerolpathaka Sahakarana  
Sangham Ltd.,  
P48 (D), Koranchira P.O.,  
Palakkad Dist. 678 684

Respondent : Assistant Executive Engineer,  
Electrical Sub Division, KSEB Ltd.,  
Vadakkancherry, Palakkad Dist.

**ORDER****Background of the case:**

The appellant is a consumer of Electrical Section, Kizhakkanchery, KSEB Ltd. with consumer number 1167548011550. The premises of the appellant is functioning as a Co-operative Milk Society and the tariff allotted is LT VIIA. As per the Gazette Notification dated 28-06-2017, LT VB Agriculture tariff is applicable to facilities for processing of milk including pasteurization and its storage and packaging or for retail sales outlet, if the connected load of such facilities or sales does not exceed 10% of the total connected load. But the appellant argued that the society is eligible for LT VB tariff like similar societies in the State. The appellant filed petition before the Consumer Grievance Redressal Forum (CGRF), Northern Region, Kozhikode for reassigning LT VB tariff. The Forum registered the petition vide OP No. 18/2021-22 and issued order on 18-01-2022 as follows:

“The tariff category grouping for each type of consumer is finalized by the Hon’ble KSERC. When a consumer/consumer group wants to change their tariff category type, they have to approach the Hon’ble KSERC.”

Aggrieved by the decision of the Forum, the appellant filed the appeal petition before this Authority.

**Arguments of the appellant:**

The appellant is the Secretary of Valkulambu Milk Producers Co-operative Society. The appellant is eligible for LT VB tariff, but the billing is done under LT VIIA tariff. The appellant filed petition before the CGRF, Kozhikode with a request to change tariff from LT VIIA to LT VB, but the Forum rejected the request vide order OP No. 18/2021-223 dated 18-01-2022.

The Valkulambu Milk Producers Co-operative Society is run by the dairy farmers residing around Valkulmambu. The activity of the Society is collecting milk from the members of the Society, selling it locally and sending the balance milk to “Palakkad Dairy”. Earlier the balance milk was being sent to the Dairy or chilling plants at the same temperature of the milk, which led to the damage of milk and thereby huge loss was happened to the poor members. As a solution to this, the Society was given a machine by name “Bulk Milk Cooler” under the scheme “Rashtriya Vikas Yojana” launched by Government for cooling the milk in the society itself and sending to the Dairies. By using the “Cooler”, temperature of the milk can be maintained below 10°C and safely sent to the Dairy, where the milk is processed.

The appellant and similar societies had approached State Govt., Regulatory Commission and KSEB Ltd. for a tariff change from LT VIIA, and as a result KSEB Ltd. issued a circular vide KSEBL/TRAC/TARIFF REVISION/2017-‘18/4103 dated 13-072017 assigning tariff to the milk societies as LT VB. But the tariff of societies was not changed to LT VB by certain employees of KSEB Ltd. and the appellant’s society is one among them. The appellant’s society is functioning in accordance with Section 3 (iii) (b) of the circular of KSEB Ltd. The very similar milk society at “Manamthavady” and the

society by name “Thanneerpanthal” were already given the tariff applicable to LT VB.

There is no activity of cooling the milk is being carried out in the appellant’s society. As such, the appellant wants to allow the following:

- (1) to quash the order dated 18-01-2022 of Consumer Grievance Redressal Forum, Kozhikode;
- (2) to assign LT VB tariff;
- (3) to refund the excess amount collected from 14-07-2017 under LT VIIA tariff with interest.

**Arguments of the respondent:**

As per Section 62 of Electricity Act, 2003, the power of determination of tariff is vested in the State Regulatory Commission and hence any decision on the Tariff by any other Forum is highly prejudicial and violation of statute. The authority to adjudicate on the matter of fixing tariff is Kerala State Electricity Regulatory Commission (KSERC) and hence it is submitted that this complaint is not maintainable before this Authority. The Appellant may be directed to file a Petition before the Hon'ble KSERC who is the Statutory adjudicating authority in the above referred matter.

The appellant is engaged in the business of collection and freezing of milk till sale to processing units in bulk. The appellant is basically using electricity for chilling/ freezing of milk stored in large tank. As per Kerala Gazette No. 2292 dated 30.09.2019 (Tariff Order w.e.f 08/07/2019), the applicable tariff for “*milk chilling plants*” is LT VII-A. In the Tariff Order published vide Gazette No. 782 dated 21.04.2017, the tariff for “*Freezing plants, cold storages and milk chilling plants*” comes under LT VII-A.

In the Tariff Order Vide Gazette No. 2292 dated 30.09.2019, LT V-B tariff was allowed to certain milk societies, which is reproduced below:

*Note-2. LT-V (B) Agriculture tariff is applicable to the dairy farms, which have facilities for collection and storing of milk, till it is sent to the processing units, and also applicable to the primary milk producer’s co-operative societies, the primary function of which is the collection of milk from the farmers and to sell the same to*

*the processing units in bulk. This tariff will be also applicable for retail sales outlets if the connected load of sales outlets does not exceed 10% of the total connected load.*

Here there is no mention in the Tariff Order about the chilling of milk. Whereas in page 17 of the same Gazette notification, “milk chilling plants” are clearly categorized under LT VII A tariff. Hence the right classification of the consumers like the appellant is LT VII-A.

On a clarification by the Deputy Chief Engineer (Tariff and Regulatory Affairs Cell), KSEBL, it was clarified that LT V-B tariff is applicable to live stock farms and combination of live stock farms with dairy and such other firms using electricity for creating conducive atmosphere for high and sure yields. LT V-B tariff can be made applicable to the (1) diary farms which have facilities for collection and storing of milk till it is sent to processing units and (2) primary milk producers co-operative societies the primary functions of which is the collection of milk from farmers and sell the same to the processing units in bulk, provided that the load set apart for retail sale outlets provided if any, in the above said two premises is below 10% of the total connected load.

The appellant, Valkulamb Ksheerolpadaka Sahakarana Sangham, is not a dairy farm and hence, not eligible for LT V B tariff. As per the Tariff Order “*milk chilling plants*” are categorized under LT VII A. Even though the activities taking place in the unit are collection and storing of milk till it is transported to processing unit, storing does not include chilling of milk which is included in yet another classification. Since as per Section 62 of the Electricity Act 2003, determination of tariff is entrusted with the Regulatory Commission, KSEBL has to act in accordance with the decision of the Commission. The milk chilling plants are categorically included in the LT VII-A and hence any deviation from this definition requires permission of the Commission as per the statute. Hence the only way for the appellant is to file a Petition before the Hon'ble KSERC for an adjudication.

The major load in the premises is that of the freezer which comes to 2984W, which is used for “chilling” the milk, the purpose of which is clearly

depicted in LT VII A tariff as per the Tariff notification. The appellant is selling the chilled milk to the processing plants of Milma where the milk is stored and then pasteurized, processed, packed and sold in retail pouches. The chilling of milk at societies is aiding the storing and processing of milk at milma plant thereby reducing the power consumption of the processing plants of milma. Hence, the processing of milk starts from the milk societies where milk is being chilled. Hence, the milk society where the milk is collected, stored, chilled and sold to processing unit in bulk are not eligible for LT V-B tariff. The above facts have been admitted as true by the appellant himself in the Appeal in which it is stated that the function of the Sangham is selling of milk locally. Also, the appellant admitted that they are using Bulk milk cooler that can cool the milk up to 4°C before despatch to dairy. These facts need not be proved. In the website of Rashtriya Kisan Vikas Yojana, it is specifically stated that the objective of providing Bulk Milk Cooler to milk societies is to cool the milk preferably to 4°C as per Codex Alimentarius (internationally agreed guidelines for national food control systems) in order to reduce transportation cost by regulating transportation of the milk on alternate days or once in a day for two collections. Hence the Yojana provided milk coolers not for temporary cooling of milk but for prolonged cooling to prevent deterioration and for preserving for longer duration.

The case in P/025/2020 before the Ombudsman is totally different from this case. The former case is regarding the change of tariff and consequent issue of short assessment bill which has been allowed by the Ombudsman on the ground that a site mahazar was not prepared by the Respondent and provisions under Regulation 97 of the Supply Code 2014 was not followed. But in the case of this complaint, the tariff of the appellant has not been changed and so also no short assessment bill has been issued. Hence the averment of the appellant that the case of P/025/2020 is squarely applicable to the appellant is false and against the facts.

The main purpose of the society itself is commercial. The society collects milk from farmers after paying them a rate. Then the society chills the milk to 4°C and sells the milk to milma at a higher rate. The milma accepts only the

chilled milk as it reduces their chilling cost and also to avoid deterioration. The society earns profit during this process of sale to milma. It is to be noted that storing of milk and chilling of milk are dealt within two different categories of tariff by the Hon'ble KSERC. Storing, as its name implies, is simply the keeping of milk in large containers (milk cans) for its transportation to milma plant. Storing is the process of cooling the milk to a desirable temperature (mostly 4°C) thereby increasing its shelf-life and then transporting to milma plant. Chilling requires large freezers and consume much energy. That is why the Hon'ble KSERC has rightly classified the milk chilling plants in LTVII A.

Hence, the contention raised in the appeal is baseless, unfounded and fictitious. The appellant is liable to remit the energy charge in the appropriate tariff depending upon the purpose for which the energy is used. The Appellant has no locus standi to claim a lower tariff. The tariff was fixed by the Kerala State Electricity Regulatory Commission and not by this licensee. Therefore, the respondent requested to dismiss the appeal petition.

**Analysis and findings:**

An online hearing of the case was conducted on 06-04-2022 with prior intimation to both the appellant and the respondent. Sri. C.K. Jayakumar, attended the hearing for the appellant and Sri. K.V. Ramaprakash, Assistant Executive Engineer, Electrical Subdivision, KSEB Ltd., Vadakkanchery and Sri. N. Vipin, Nodal Officer, Electrical Circle, Palakkad from the respondent's side attended the hearing. On examining the appeal petition, the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

The dispute is regarding the assignment of tariff for the co-operative milk society functioning at Valkulambu. The present tariff of the society is LT VIIA and the request is for LT VB. The appellant is engaged in the collection of milk from the members of the Society, selling it locally and sending the balance milk

to “Palakkad Dairy” of Milma. The appellant collects milk from small units at normal temperature and have facility to lower the temperature. The appellant revealed in the hearing conducted on 06-04-2022, that the milk collected per day is more or less 1000 liters. The balance of the collected milk after the sale is cooled in the Society using Milk Bulk Cooler and transported to the dairy using tanker vehicles. The average monthly electricity consumption in the premises having bimonthly billing is only 450 units.

On the basis of the argument put in by the appellant and respondent, this Authority has found the following issues to be answered.

Whether the appellant’s Society falls under Agricultural tariff LT V (B) or Commercial Tariff LT VII (A) as per the norms fixed by the Hon’ble Commission?

The appellant has submitted that their unit is a Milk Producers Co-operative Society run by the dairy farmers and the activity of the Society is collecting milk from the members of the Society, selling it locally and sending the balance milk to “Palakkad Dairy”. Usually, the milk processing involves receiving raw milk, preheating, filtration, standardization, homogenization, cooling, packing and storage. The milk chilling/freezing plant/ cold storages were categorized under LT IV industrial tariff till 11/2007 by the Hon: Regulatory Commission. But as per the tariff order dated 27-11-2007, they were categorized under LT VII A commercial tariff. Further, it was clarified that the dairy farms/milk chilling plants with or without chilling/freezing/cold storage activity shall be treated under industrial category provided the chilling/freezing/cold storage load is limited to 20% of the total connected load. On the other hand, if the said load exceeds 20%, LT VII A commercial tariff shall be applicable. Later, in disposing a petition No. TP/76/2009, the Hon: Commission had deleted the norm of 20% limit of freezing/chilling load with effect from 21-06-2010. In short, the complete processing of pasteurization of milk, its storage and packing is considered as industry and LT IV industrial tariff made applicable to them from 21-06-2010 only.



As per the corrigenda notified by the Hon: Kerala State Electricity Regulatory Commission on 28-06-2017, some changes in the norm of tariff classification were introduced and one among them was LT V B Agriculture tariff applicable to dairy farms in case the consumer utilizes the electrical load for chilling/ freezing purpose not in excess of 10% of the total connected load of the plant. In this case under dispute, according to the respondent, the activity of the appellant's premise is of a "Milk Chilling Plant" and hence, the appellant was assigned the tariff LT VIIA from the year 2017 onwards. But the appellant insists that his unit is still an agricultural one and the agriculture tariff shall be made applicable.

As per tariff notification order dated 17-04-2017, dairy, processing of milk by pasteurization and its storage and packing comes under LT IV industry category. It means that irrespective of the rated load or capacity of the electrical equipment used for chilling/freezing purpose, a dairy processing of milk by pasteurization and its storage and packing comes under LT IV industry category. At the same time, LT V (B) Agriculture tariff is applicable to facilities for processing of milk including pasteurization and its storage and packaging or for retail sale outlets, if the connected load for such facilities or sales outlets does not exceed 10% of the total connected load.

As per the corrigenda notified by the Hon: Kerala State Electricity Regulatory Commission on 28-06-2017, the following notes is inserted, under the heading LT-V- Agriculture (B) [LT-V (B)]

"Note-2. LT-V (B) Agriculture tariff is applicable to the dairy farms, which have facilities for collection and storing of milk, till it is sent to the processing units, and also applicable to the primary milk producer's co-operative societies, the primary function of which is the collection of milk from the farmers and to sell the same to the processing units in bulk. The tariff will be applicable to the facilities for processing of milk including pasteurization and its storage and packaging or for retail sales outlets if the connected load for such facilities or sales outlets does not exceed 10% of the total connected load."



“LT V (B) Agriculture:

- a) LT V (B) Agriculture tariff is applicable to the Dairy farms which have facilities for collection and storing of milk, till it is sent to the processing units.
- b) LT V (B) Agriculture tariff is also applicable to primary milk producer’s co-operative societies, the primary function of which is the collection of milk from the farmers and to sell the same to processing units in bulk.
- c) LT (B) Agriculture tariff is also applicable to facilities for processing of milk including pasteurization and its storage and packaging or for retail sale outlets, if the connected load for such facilities or sales outlets does not exceed 10% of the total connected load.”

On the basis of the above classification, there is no need to inter connect these three categories. The appellant’s society is a primary milk producer’s co-operative society, the primary function of which is the collection of milk from the farmers and to sell the same to the processing unit in bulk. The respondent has not raised argument that the appellant’s society has the facility for processing of milk including pasteurization and its storage and packing. The Hon: Commission, in its order in petition No. TP/76/2009, has observed that the complete processing of Milk by pasteurization storage, packing etc. is to be considered as industry and LT IV Tariff shall be applicable to them. Units having cold storage chilling, freezing and or packing alone, shall be treated as Commercial and LT VII (A) Tariff shall apply. The Clause “But dairy farms/ milk chilling plant with or without chilling / freezing /cold storage activity shall be charged under industrial category provided the chilling / freezing /cold storage load is limited to 20% of total connected load. If it exceeds 20% LT VII A Tariff shall be applicable” shall be deleted and the order amended accordingly.”

Pasteurization is the process of heating milk up and then quickly cooling it down to eliminate certain bacteria. For effective pasteurization, milk can be heated up to 145 degrees Fahrenheit for 30 minutes. It is pertinent to note that,

the appellant's society is using only the bulk milk coolers for cooling the milk so as to prevent the damage of the milk.

The tariff under LT VII A category is applicable to commercial and trading establishments such as freezing plants, cold storages and milk chilling plants. The units used exclusively for cold storage, chilling/freezing or packing purpose alone shall be treated as commercial and LT VII A tariff shall be applicable to such units. If the consumer has the facilities for processing of milk including pasteurization and its storage and packaging, the applicable tariff shall be LT IV A industry. The appellant's premises is not a "plant" since there is no machinery or fixtures used in industrial process or the premises is not a factory.

The Society is not a chilling plant, but an intermediate point where collecting milk from dairy farmers and sending to the milk processing units. The Society is neither a commercial premises nor a trading point as chilling plant. The respondent assigned tariff LT VII A on the ground of chilling the milk up to a temperature of 4° C and not for the activities. The average monthly consumption is around 450 kWh and daily average of 15 kWh against the connecting load of less than 4 kW is not sufficient for a chilling plant. The dairy like Milma having the facilities of pasteurization and its storage and packaging or for retail sale outlets is availing the tariff under industry only.

Since there is a specific classification under tariff order for primary milk producer's co-operative society and the appellant's society comes under the purview of this classification, the application of LT VII A tariff is not justifiable and not sustainable.

The appellant had filed a complaint to the Assistant Engineer on 23-03-2021 for retaining tariff under LT VB, since no reply was received, the appellant filed the petition before CGRF.

### **Decision**

From the discussions and conclusions arrived at as detailed above, the respondent is directed to retain the tariff of the appellant under LT V (B) tariff category. The respondent is also directed to refund or adjust in future bills the

excess amount collected from the appellant under LT VII (A) tariff category from 23-03-2021, a date of application for tariff change of the appellant to the Assistant Engineer.

Having concluded and decided as above, it is ordered accordingly. The appeal petition filed by the appellant is allowed to this extent as ordered and stands disposed of as such. The orders of CGRF, Kozhikode in OP No.18/2021-22 dated 18-01-2022 is set aside. No order on costs.

#### **ELECTRICITY OMBUDSMAN**

P/009/2022/\_\_\_\_\_ dated \_\_\_\_\_.

Delivered to:

1. Sri. Vijil George, Secretary, Valkulambu Ksheerolpathaka Sahakarana Sangham Ltd., P48 (D), Koranchira P.O., Palakkad Dist. 678 684
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Vadakkancherry, Palakkad Dist.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Gandhi Road, Kozhikode