

THE STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No. P/084/2024
(Present A. Chandrakumaran Nair)
Dated : 27-02-2025

Appellant : M/s. Swaraj Bio Fuel Energy
VIII/1256, NIDA, Mangadu P.O
Kanjikode, Palakkad – 678621

Respondent : The Assistant Executive Engineer
Electrical Sub Division,
KSE Board Ltd.,
Kanjikode, Palakkad(dt)

ORDER

Background of the case

The appellant is a company existing in Kanjikode industrial area and represented by its Managing Partner Shri. Asrudeen. The connection with Consumer No. 1165280017556 was effected on 09/11/2012 in the name of K.V Ratheesh, Temco Electricals and Electronic Devices (Pvt.) Ltd. under LT IV tariff with connected load of 41KW. On 16/08/2018 they have applied for the transfer of ownership to the present consumer and the connected enhanced to 89 KW and accordingly these effected in the month of 08/2018. On 02/07/2024 an inspection was conducted by AE, of Electrical section and found that the process what is happening in the factory is not eligible for tariff LT IVA and accordingly the tariff has been changed LT VII A (commercial). As per the proceedings of the General Manager, Palakkad, Industrial Centre, the name of the company has been changed to Swaraj Bio Fuel and business also has been changed to Dehydration and Distillation of the Oil. The Licensee has raised the demand for under changed amount for a period 24 months as per the regulation 134 of the Supply code 2014. The CGRF issued order stating

that the Licensee can recover the under charged amount for the whole period. Aggrieved by the order of CGRF this appeal petition is filed to this authority.

Arguments of the Appellant

It is submitted that the complainant firm which involved oil re-cycling firm which extracts the waste-oil collected from workshops and ships using reactors and other machineries. It is submitted that as per the tariff order issued by the Kerala State Electricity Regulatory Commission, Thiruvananthapuram dated 31.10,2023, the complainant's industry comes under LT4A tariff (industry). As per the above tariff order clause XVIII of LT 4A says that "the unit carrying out extraction of oil in addition to filtering and packing activities carried out in the same premise and under the same service connection shall come under industrial tariff i.e., LT 4A (industry)." The Kerala State Electricity Board charged the complainant under LT 4A tariff till 03.07.2024.

It is submitted that, the Board issued a notice on 03.07.2024 intimating that the tariff applicable to the complainant is LT 7A(commercial) tariff instead of LT 4A (industrial) tariff. In the above notice the complainant was directed to submit the objection within 30 days. Immediately the complainant submitted a detailed objection on 03.07.2024 itself and produced all the relevant records to prove that the complainant firm is an industry which comes under LT 4A tariff. Thereafter the office of the respondent orally instructed the complainant to approach the CGRF for redressal of its grievance. Hence, the complainant preferred the petition before the Hon'ble CGRF along with the process flow chart. It is submitted that the respondent filed an objection before the CGRF and contended that the activities carried out in the premises of the complainant Firm are coming under the LT4A tariff but the applicable tariff to the complainant Firm is LT7A tariff which provides "units carrying out filtering, packing and other associated activities of oil brought from outside." It is submitted that the complainant is collecting the waste-oil, a raw material from ships and workshops, and new products are made out of this raw material by way of oil distillation/waste-oil extraction. It is submitted that the commercial tariff i.e., LT 7A is applicable only for oil filtration, packing and other associated activities of oil brought from outside. The LT 4A tariff is applicable to the units carrying out extraction of oil in addition to the filtering and packing activities carried out in the same premises and under the same service connection. The complainant Firm is carrying out extraction of bottom carbon residue, plant base oil and clay residue. The above process is completely an industrial process and the same comes under LT 4A tariff. The LT7A tariff is only applicable for filtration but in LT 4A tariff extraction of oil is also included. Hence, the tariff applicable to the complainant Firm is LT 4A (Industrial).

It is submitted that during the pendency of the complaint before the CGRF, the respondent Board issued bill under LT 7A tariff to the complainant on 1-8-2024 without attaining finality on the objection filed by the complainant before the respondent or in the complaint pending before the Hon'ble CGRF. It is submitted that on 5-10-2024, the Hon'ble CGRF conducted a hearing. To the utter shock and surprise to the complainant, on 10-12-2024 the respondent Board issued a notice directing the complainant to remit an amount of Rs.5,20,434/- within 15 days from the copy of receipt of the notice. Further it is informed that the complainant is failed to remit the amount, the electricity connection will be disconnected.

It is submitted that Annexure-12 order passed by the CGRF without considering any of the contentions raised by the complainant or without appreciating any of the documents produced before the CGRF. It is submitted that the petitioner specifically contented before the CGRF that as per Annexure-1 UDYAM registration certificate, the complainant's activity is specifically entered as manufacturing and as per Annexure-2 issued by the Government of Kerala, Department of Factories and Boilers, the description of manufacturing process in the complainant's Firm is de hydration oil and distillation and lubricating oil and industrial oil. As per Annexure-4 tariff order published in the Kerala Gazette, the manufacturing units are come under the tariff of LT-IVA industrial. Further, the de-siltation plants are also coming under LT IV A tariff. Further, the units carrying out extraction of Oils in addition to the filtering and packing activities carrying out in the same premise and under the same service connection will also come under LT IVA tariff. Copy of the tax invoices of different products manufactured in the complainant's firm is produced herewith and marked Annexure-13. The above factors were placed by the complainant before the CGRF along with the documents. Even then the CGRF failed to consider the same. Hence the finding of the CGRF is that the complainant has not produced the documents to prove that the tariff applicable to the complainant is LT IVA is not correct. The Hon'ble CGRF without appreciating any of the contentions raised by the complainant dismissed the petition preferred by the complainant. The above order passed by the CGRF., Kozhikode in OP.No.,34/2024-25 dated 5-10-2024 is illegal and the same is liable to be set aside by this Hon'ble Ombudsman. Aggrieved by the order passed by the CGRF, the representation is preferred.

It is submitted that in a similar circumstance the Hon'ble High Court of Kerala has passed an interim order in WP No: 35033 of 2023. Copy of the interim order dated 27.10.2023 in WP No: 35033 of 2023 is produced herewith and marked as Annexure 14. In the above interim order, the Hon'ble High Court of Kerala was pleased to stay the notice issued by the Board and the demand notice and permitted the complainant therein to pay the bill under the existing

tariff. In the above circumstances, the complainant is also filing a petition to stay Annexure 6 notice, Annexure 10 bill, Annexure 11 demand and Annexure 12 order of the CGRF, Kozhikode and seeking further direction against the respondent to issue bill under LT 4A tariff to the complainant Firm pending disposal of the representation. If the above notice, order and demand issued under LT 7A is not stayed, the same will cause irreparable injury and hardship to the petitioner. A separate petition is filed for the same purpose. In the above circumstances, this Hon'ble Ombudsman may be pleased to allow the complaint filed by the complainant by setting aside Annexure 6 notice, Annexure 10, Annexure 11 demand and Annexure 12 order of the CGRF, Kozhikode issued by the respondent and further direct the respondent to bill the complainant's Firm under LT4A tariff.

Arguments of the Respondent

According to the office records the service connection was effected as consumer no 1165280017556 on dated 09-11-2012 in the name of K.V Ratheesh Temco Electricals and Electronic Devices (P) LTD 8/1256 NIDA, Kanjikode in LT 1V tariff with a connected load of 41KW. During the inspection of the site at the time of submission of the application for the connection it was found that the connection was being provided for the industrial purpose ie, for LT 1V tariff hence allotted for that tariff. This connection was maintaining these condition till 1-10-2016 then considering the request submitted on 16-08-2018 its connected load enhanced to 89KW and ownership has been transferred to the name of a new person. It is submitted that later an inspection by the officials of the electrical section Kanjikode found that the current functioning of the company is for the commercial purpose hence the tariff fully billed under LT V11(A) tariff.

It is submitted that the complainant company is collecting waste oil as raw materials from ships and workshops and brought from outside and this waste oil is passed through processes such as heating, filtration and cooling to convert this to then marketed. It is submitted that in the proceedings of the General Manager of Palakkad Industrial Centre dated 04-11-2019, the name of the firm has been changed to Swaraj Bio Fuel and the business has been changed to Dehydration and Distillation of the oil. According to this it was also ordered to submitted an affidavit that the name type of business and constitution of the firm will not be changed for the next 5 years. It is submitted that the tariff order published in the Kerala Gazette dated 02-11-2023 the KSERC the tariff under LT V11(A) category is applicable to commercial and trading establishments such as **(X) Units carrying out filtration, packing and other associated activities of oil brought from outside** here the complainant firm is import the waste oil from outside, then it is filtered and make other associated activities are being done for recycle and

convert it into recycled base oil, which is an activity comes under LTV11(A) tariff for billing as per the tariff order in force.

It is submitted that LT1V (A), industrial tariff is applicable for the general purpose industrial loads (single and three phase) which includes

(1) manufacturing units

Units carrying out extraction of oil in addition to the filtering and packing activities carrying out in the same premises and under the same service connection The nature of the works in this tariff means that the oil to be filtered and packed shall be extracted and produced at the company and in the same service connection, For example the copra company (Cocconut) that extract oil and makes coconut and other companies that separate oil from soybeans, sesame, ground nuts and filter then packing will come under LT 1V (A) tariff. Here the oil is not brought from outside and completing the process in same premises and same service connection. It is submitted that from the procedure of the General Manager DIC Palakkad has been ascertained that the company Swaraj Bio fuel has brought waste oil from outside and is carrying out the dehydration and distillation activities. This is purely comes under LTV11(A) tariff. It is submitted that the process flow chart (produced here as EXHIBITNO 7) submitted by the complainant the products obtained at the end of waste oil process were indicated as plant base oil and clay residue. But the materials mentioned in the invoice dated 07-07-2024 and 20-07-2024 are rubber mixing oil and recycled base oil .12. It is submitted that the WP(C) No 35033/2023 dated 27-10-2023 is the matter under the consideration of the Hon'ble High court of Kerala.

It is submitted that the reply given to the CGRF sought permission to recover the loss incurred by the KSEBL under the undercharged bills under regulation 134 of supply code 2014 which permits for 24 months back assessment But the forum permits the licensee to recover the amount from 04-11-2019 without 2 year limitations since the judgements on civil appeal no 7235 of 20090 (m/s apex cottex versus Uttar Hariyan Bijil, Vitran nigam Ltd & others) filed against the order of national commission dated 05-10-2021 of supreme court,civil appeal no 1672 of 2020 (Assistant engineer (D1), Ajmer vidyuth vitran nigam Ltd & another, versus Rehmathulla khan alias rehmathulla) dated 18-02-2020 of supreme court RP 3/2021(KSEB Ltd versus M/s Bennet colernan & co Ltd, Kochi) dated 15-11-2021 of KSERC permits to recover the under charged bills considering the explanations given so far praying before this forum to confirm the order of the Hon'ble CGRF Kozhikode dated 05-10-2024.

Analysis and Findings

The hearing of the case was conducted on 13/02/2025 at 10.30 a.m in the KSEB IB, Sulthanpett, Palakkad(dist). The hearing was attended by the appellant representative Adv.Arun Thomas and the respondent Sri. A. Shajahan, Assistant Executive Engineer, Electrical Subdivision, KSE Board Ltd., Kanjikode, Palakkad(dist.).

M/s. Swaraj Bio Fuel Energy is an industrial unit established in the Kanjikode, Industrial Estate of Palakkad. The Industry named M/s. Temco Electrical & Electronics Devices Pvt. Ltd. owned by Shri. K.V. Ratish was the consumer in the same premises since 11/2012 and has been transferred to Shri. Asrudeen, Managing Partner of M/s. Swaraj Bio Fuel Energy, Kanjikode on 2018. The connected load was also enhanced from 41 KW to 89 KW as per the request of the consumer. The order of General Manager District Industrial Centre, Palakkad states the process of M/s. Swaraj Bio Fuel Energy is the Waste Oil dehydration and distillation. The tariff initially allotted to this connection was LT IV A (industrial) and then changed to LT VII A (commercial) based on the site inspection conducted on 02/07/2024.

The tariff order issued by Kerala State Electricity Regulatory Commission describes the industries for which the tariff LT IV A is applicable in which the clause (XVIII) states about oil extraction.

Clause(xviii). units carrying out extraction of oil in addition to the filtering and packing activities carrying out in the same premise and under the same service connection

Then the LT VII A is a commercial tariff which is applicable for commercial establishments. The tariff order item (X) of the LT VII A states that this tariff is applicable for units carrying out filtering, packing etc.

Clause(x) units carrying out filtering, packing and other associated activities of oil brought from outside

The main dispute in the case in hand is whether process adopted by the company is industrial or commercial as per the tariff point of view. The site has been inspected by the Ombudsman in presence of AEE, ESD, Kanjikode and other officials of KSEB and understood the process clearly. The waste oil is collected from vehicle workshops, from ships and store in the tanks. The waste oil is the raw material for them. This is sent to Boiler and heat up to 400 degree Celsius. This is circulated in the boiler using centrifugal pump. Then the evaporated oil in the gaseous form is sucked out using Heavy Vacuum pump and sent to the condenser. On condensation gaseous form converted into liquid oil and this is called 'Inter Product'. The carbon residue

is obtained from the bottom of the boiler. The inter product is sent to cool tank to cool down. Next day this is transferred to chemical wash tank. The oil from the bottom of chemical wash tank is send to clay mixing tank. The clay they used is special type of clay brought from Hyderabad. The interproduct oil and clay is mixed and boiled up to 200 degree Celsius in another Boiler. Then the clay is removed using 5 micron cloth filter. Then the filtered oil is send to product storage tank. There are three product available from the process. (1). Plant Base oil (2). Carbon residue. (3) Clay residue. The process is called Oil distillation or Waste oil extraction. They are extracting oil available from the waste oil and all the products obtained from this process is reused for various purposes. This process is reducing the environmental pollution to a great extent as the waste oil is recycled and reused. Otherwise the waste oil would have been thrown out and this would have resulted soil and water pollution.

The registration certificate issued by Ministry of MSME states that the activity is Manufacturing. The Licensee issued by the Department of Factories and Boilers also states that the process is Manufacturing process. The proceeding of District Industrial Centre is also states that this is an industry.

Then process of refining petroleum oil from the crude oil has been examined. “ The crude oil is heated and is sent to a distillation tower, where it is separated by boiling point. “ In the crude oil refining the fractional/ partial distillation process is adopted to extract various petroleum products based on their boiling points. Here only one distillation process as only one product is made out from this. This process is an extraction similar to that of oil extraction process. Then this process is coming under the item (XVIII) of the tariff order for tariff LT IV A. Hence industrial tariff is applicable.

Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. The appellant is eligible for LT IV A tariff as this is an industry.
2. The order of CGRF is set aside herewith.
3. The short assessment demand raised by the Licensee is quashed.
4. No other costs ordered.

ELECTRICITY OMBUDSMAN

No. P/084/2024/ dated: 27-02-2025

Delivered to

1. M/s. Swaraj Bio Fuel Energy, VIII/1256, NIDA, Mangadu P.O, Kanjikode, Palakkad- 678621.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Kanjikode, Palakkad (dt)

Copy to

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram – 10.
2. The Secretary, KSE Board Limited, Vydyuthi Bhavanam, Pattom, Thiruvananthapuram – 4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydyuthi Bhavanam, KSE Board , Gandhi Road, Kozhikode- 673032