

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/298/2012.

(Present: T.P. Vivekanandan)

Appellant : The Secretary,
(Represented by) Sri. K. Bhaskaran,
Sheethal Apartments Owners Association,
Round North, Thrissur- Pin: 680 020.

Respondent : The Assistant Secretary.
Vydyuthi Section, Thrissur Municipal Corporation,
Thrissur-680 001.

ORDER.

Background of the Case: -

The appellant is the Secretary of Sheetal Apartment Owners Residents Association, Thrissur, under the jurisdiction of the Electrical Distribution Licensee, Thrissur Municipal Corporation. The electric service connections to various apartments and a common electric connection to the said multi storied building were given under domestic tariff. Also six Nos. of commercial establishments were working in the 1st floor of the same building which was given under LTVIIA-commercial tariff. All the flats and commercial establishments are provided with their own separate electric meters. The common electric connection with Con. No. 10565-B was provided under LT IC tariff-domestic from the beginning, which was used for corridor lighting, lift operation and water pump operation. While being so, in September 2009, the respondent has changed the tariff of the common electric connection (Con. No. 10565-B) from LT I-C to LT VII A, without issuing any notice to the appellant. Aggrieved by this, the appellant filed a Petition before the CGRF, Thrissur Municipal Corporation. The appellant had also approached the Consumer dispute Court, Thrissur through Petition No.CC/798/2009 and obtained a stay order against disconnection of the service. Later, the appellant filed an application for withdrawal of the Case from the Consumer Court on 19.07.2012. The CGRF has disposed of the petition vide its order No. CGRF/TCED -11/2009 dated 13/1/2012. The actions taken subsequent to the CGRF order were questioned in the CGRF, vide CGRF order in CGRF/TCED-41/2012 and 42/2012 dated 22.09.2012, but were all rejected as the party paid the amount. Dissatisfied by this, the appellant has preferred the Appeal Petition before this Authority.

Arguments of the Appellant: -

The main arguments raised by the appellant are the following;

(1). All the flats and the common electric connection to the building were given electric connection under residential scheme (LT1-C tariff) and other commercial rooms were given commercial tariff of LT-VII A. The building consists of basement, ground floor, first floor and five additional floors. From second floor to sixth floor, there are 20 residential apartments and in the ground floor and first floor, there are 6 commercial establishments and further in the basement floor there is car parking for the apartment owners. All the flat owners are provided with separate electrical meters, with respective consumer Nos. under LT 1-C tariff. Similarly the Commercial rooms are provided with their electrical meters with separate consumer Nos. under LT VII A tariff.

(2). The common Electric connection which is exclusively used by the residents of the building with Con. No. 10565-B, was provided with LT 1-C tariff from the beginning, which was used for Corridor lighting, lift operation and water pump operation. It is submitted that all the amenities such as lift operation, corridor lighting, water pumps etc are exclusively used by the residents of the building and the payment there on, were met by the Association.

(3) While being so in 9/2009, the Electrical section changed the category of the common electric connection to the building, Con. No. 10565-B to LT VIIA tariff, without giving notice to consumer Association and issued an arrear bill and threatened to discount the connection, if it is not paid. Against this, the petitioner's Association filed a petition before the CGRF of the Corporation, praying for Redressal of the grievance and got numbered as, CGRF/TCED-11/2009. Even after filing the said application in CGRF, the Corporation continued to issue further electrical bills along with disconnection notice. In apprehension of disconnection of electricity, the petitioner approached District Consumer Court, with petition, CC/798-2009 and received a stay order on 09.12.2010.

(4) The Hon CGRF in its order dated 13.01.2012, directed the Corporation's electrical department to issue fresh notice to the petitioner Association, for changing the tariff classification from LT-1 C to LT-7 A, if required, and ordered to cancel bill number dated 15.10.2009 & 17.11.2009, and issue fresh bills to the Association and further directed the Department not to charge interest on the amount dues, during the dispute period. Hon CGRF also directed the petitioner to withdraw the Petition filed before the District consumer court. The petitioner has filed an application for withdrawal of the case from the consumer court on 19.07.2012.

(5) Having implemented the CGRF order dated 13.01.2012 by the petitioner, the electrical dept. of Corporation has not implemented the part of reworking of the electricity bills under LT 1-C, till the issue of new notice dated 30.1.2012. But the petitioner is not liable to pay interest on the disputed bill till the date of new notice issued by the dept. No electrical charge can be levied retrospectively when the notice date is 30.01.2012. The Dept. can only reclassify the tariff with effect from 30.01.2012. The petitioner humbly submit that, the electrical department may be directed to do all the necessary actions as prayed above as per the order of CGRF dated 13.01.2012.

(6). The Electrical Dept vide its letter dated 11.07.2012 from the Assistant Secretary, has directed the petitioner to pay the pending dues against Con. No. 10565-B immediately, failing which action will be taken against the petitioner. The petitioner fails to understand the statement of arrears, before the issue of notice date 30.01.2012, as per the direction of Hon CGRF order. The letter dated 11.7.2012 of the respondent is illegal and untenable because the petitioner cannot be asked to pay previous arrears from 9/2009 to 02/2012 under the new tariff of LT VII-A, as the notice by the Dept was only issued on 30.01.2012. The petitioner is ready to pay pending bills from February 2012 till date under LT 7-A, subject to disposal of the petition by the Forum.

(7). Meanwhile, the petitioner has applied on 16.05.2012, for reducing connected load from 91 KW to 22.65 KW along with the sanction letter of the District Electrical Inspectorate vide order no: B1-2019/2012/ EIR dated 09.05.2012. This application was filed for getting substantial reduction in the electrical bill of common connection, Con. No. 10565-B. But the Dept. is insisting the payment of the illegally calculated dues from 9/2009 to 7/2012, for which no new reworked bills have been issued by them, as directed by the CGRF order dated 13.01.2012. And additionally they are asking for a penal interest of 18% on the dues accumulated by the illegal actions of Thrissur Corporation and no action has been taken in this application by them till date.

(8). The petitioner has submitted to the department vide its letter dated 21.6.2012 and 12.07.2012 that the connected load is to be reduced to 22.650 KW from 91 KW thereby, reduction in electric bills and also intimated the petitioner's willingness to pay the pending electricity bills up to 2/2012 on old tariff and from 2/2012 to date, on new tariff pending disposal of the case. However, no reply has been received from the Dept.

(9) The Hon CGRF in its order, CGRF/TCED-11/2009 dated 13.01.2012 has directed the petitioner to approach this forum for any further grievance in this regard. Accordingly, the petitioner has applied again to the CGRF vide our application dated 21.07.2012 for review of the order of CGRF dated 13.01.2012.

(10).The petitioner firmly believes that, we may not get justice from the department and Thrissur Corporation unless the Hon Ombudsman intervenes in the matter. The KSERC order no: TP-60 dated 0.12.2009, in respect of the interpretation of PART –B, General condition-9 read with note-1, there under allow us to be under domestic tariff. It appears that, Corporation is charging a Penal interest of 18% on dues pending because of the dispute with the petitioner. In order to save from the penal interest charged, we have paid the total amount of Rs.5,64,812/- pending final decision. Therefore, the petitioner prays for the following relief from this Hon'ble Ombudsman;

(i) To declare KSERC order no:TP-60 dated 02.12.2009, read with TP-33/2007 dated 31.12.2007, in respect of, interpretation of PART-B, General condition-9 ,read with note- 1, related to residential building and tariff thereto applicable to petitioner building's common electric connection, Con. No. 10565-B,under tariff classification LT 1-C.

(ii). Directing the Thrissur Corporation to issue new electrical connection bills to petitioner's Con. No. 10565-B under tariff classification LT 1-C.

(iii). Directing the Thrissur Corporation electrical section to exempt interest on disputed bills from September 2009 to January 2012.

(iv). Directing the Thrissur Corporation to reduce connected load from 91 KW to 22.650 KW, as requested by the petitioner on priority basis to reduce the petitioner's liability.

(v). To issue any other direction to the Electrical Department, Thrissur Corporation deemed fit to the issues related herein.

Arguments of the Respondent: -

The respondent has been directed to submit counter statement on the appeal.

1). The common service connection of the Apartment (Con No. 10565-B) has a connected load of more than 5% of the total connected load. That is to say, more than 5% of the total load was seen used as commercial load (excluding that load used for the domestic purpose) in the Multi storied building, Sheethal Apartments. This is as per the Tariff rules notified in Gazette dated 31.12.2007 under General Condition 9(1).

2). Earlier the Common connection was used for domestic purpose alone. When application was received by the Corporation for two new commercial electric connections, an inspection was done by the AE and Electrical Engineer and a report was made. They found the total connected load of the building as 385.377 KW and the load used other than domestic purpose as 108.6 KW. Hence changed the tariff of the consumer to LT VIIA.

3). As per the CGRF order dated 18.01.2012, the monthly bills dated 15.10.2009 and 17.11.2009 were cancelled and the amount of Rs. 37,520/- collected on this account has been adjusted in the monthly bills of 01 & 02 of 2012. The bills of 10/2009 and 11/2009 has been revised under LT VIIA tariff and reissued on 09.3.2012 under bill Nos. 35296 and 34622 with waiver of interest.

4). The consumer did not pay the regular monthly bills after filing petition before the CGRF and hence he is liable to pay the interest for the Bills raised for subsequent months. The CGRF has not stayed the payment of the monthly bills. Had the consumer paid the bills in time, it could have been adjusted as per the CGRF order, later. But the party did not pay the bills even after intimating the same. The party has paid Rs. 1,62,928 on 24.7.2012 and Rs. 4,01,884/- on 31.7.2012 and thus cleared all the arrears.

5). The action of reducing the connected load of the common service connection is under process.

The Assistant Engineer, Sri. Gangadharan, of Thrissur Corporation appeared for the hearing on 13.12.2012 and deposed his arguments and submitted orders of KSERC as documents. The main arguments adduced by the respondent during the hearing are;

(i). As per the rules, if the apartment owners are using more than 5% of the total connected load for other purposes, the tariff for the common connection will be classified under LT VII A tariff.

(ii) The CGRF has ordered only to adjust the interest for the bills for 10/2009 and 11/2009. Only the legally admissible interest was collected from the consumer for the remaining months bills in which the consumer has failed to remit the amount in time.

As per the orders issued by CGRF, regarding the disputed bills for 10/2009 and 11/2009, it has since been implemented and the request for reduction of the connected load has been accepted.

Analysis and Findings: -

The Hearing of the case was done on 13.12.2012 and 28.5.2013 in my Chamber at Edappally, Kochi and both sides were represented. Sri Bhaskaran and Sri Thomas appeared for the appellant's side and Sri Gangadharan represented for the opposite side. On perusing the Appeal Petition, the counter statement of the Respondent, 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 decisions thereof.

The cause of the dispute is the change of tariff from domestic to commercial category, in the case of the 'Common Electric service connection' (Con No. 10565-B), used for the operation of Lifts, water pumps, Corridor Lighting etc. in the multi storied building, M/s Sheethal Apartments and the issue of subsequent monthly bills accordingly at the higher tariff. It is stated by the party that till 9/2009, the tariff of the electric connection remained under LT 1(c)-domestic and in that month it was changed to LT VIIA- commercial category, without issuing any notice or hearing their views. As per Regulation 19(5) of the Terms and Conditions of Supply, 2005, it states that; *"When there are changes in the contract demand/connected load, tariffthe Board (Licensee) may require in writing inform the consumer to execute a fresh agreement in the form applicable within 30 days of such change and the consumer shall comply with the same"*.

In this case, the Licensee did not issue any notice to the consumer nor gave an opportunity to the consumer being heard of his objections, if any. As per rules, the respondent has to make a site inspection and record the anomalies noted in a mahazar (necessitating the tariff change) and issue notice to party and hear his version before taking the final decision. This fact has been discussed in detail in the CGRF (Thrissur Municipal Corporation) order dated 13.1.2012. In this case, though the respondent has visited the consumer premises and made a report to the Municipal council about the total 'connected load' of all the electric connections in the Multi -storied building, they failed to prepare a mahazar and issue a notice to the consumer. Hence there is found procedural lapse on the side of respondent in effecting the tariff change of the appellant.

Earlier the CGRF of Thrissur Municipal Corporation (Electric Distribution Licensee), after hearing both sides in the Petition filed by the appellant on 12.11.2009, has delivered its Order in Case No. CGRF/TCED-11/2009 on 13.01.2012. The Forum has discussed the issues in detail and has found that the actions taken by the Licensee against the consumer is without following the rules and has declared it as unjustifiable and accordingly set aside all the bills and steps taken to change tariff from the existing LT 1(c)-domestic to LT VIIA (Commercial) category. The Forum has in its Order elaborately discussed the rules and procedures to be followed in case the Licensee wishes to take action against the consumer for the anomalies committed, if any. The Forum has also ordered that, if the Licensee wants to take any action including change of tariff against the consumer, it should be done, observing the Rules, Regulations and provisions of the Act only.

As per the tariff order (published in Kerala Gazette dated 27.11.2007), under 'Low Tension-1(LT-1) Note:1 reads; "Power supplies to common facilities such as water supply, common lighting, lifts etc., in multi-storied buildings mainly for domestic occupation shall be under the domestic tariff if the connected load other than domestic is less than 5% of the total load.

Here the first question to be answered is whether the 5% load mentioned above, relates to the of total load of the building or the load of the 'common service connection' only? Referring the Order, it is stated as; "in multi-storied buildings mainly for domestic occupation" and in such a case, I am of the view that the *remaining other loads should not exceed 5%*, refers to that of total connected load of the building only.

The Licensee issued a notice dated 30.1.2012 to the appellant, as per CGRF order dated 13.01.2012, stating that the total load of the building is 373.587 KW and connected load of the Common service connection is 96.813 KW and hence the tariff has to be changed over to commercial rate, as per KSERC order in TP-33/2007 dated 31.12.2007. In the notice it is mentioned that, only if the connected load of Con.No.1056-B (the Common service connection) comes below 5% of the total load, he will be eligible to continue in the existing domestic tariff and asked to file objections, if any. The notice is found to be in order though it lacked the support of a mahazar.

Again, the Licensee is seen to have issued a notice dated 11.7.2012 to the appellant, stating that even after getting orders from the CDRF and CGRF, the appellant is defaulting payment of amount and in case the same is not remitted, it will be treated as disrespect to Courts and action will be taken to disconnect the electric supply to Con. No.10565-B as per IE Act, 2003. But the fact is that no Courts have issued any favourable orders to the respondent allowing it to collect the arrear amount mentioned there in and as such the notice was erroneous and misleading.

The main point to be decided is whether the 'common electric connection, Con. No.10565-B' is exclusively used for domestic purpose of the Apartment or also used by the other Commercial establishments working in the first floor and the ground floor?

The consumer filed objections against the tariff change made, mainly stressing on the point that the 'common electric connection' is enjoyed by the domestic flat owners only. The consumer in his petition before the CGRF and in many letters addressed to the Licensee has reiterated that the Lift of the Building will not stop in the first floor as the entry to lift is closed permanently there, as well as the controls in the "Lift Control Panel" for the 1st floor is also in the removed condition and in effect the lift is not suitable for commercial firms of the building. Similarly, the 'common lighting' is used only for the corridors of Flats and the water pump is used for supplying water to the tank meant for the residential flats. But the respondent failed to verify the same so far and hence not prepared a report on that matter. This Forum asked the Asst. Engineer during hearing, to visit the site and report back after verifying the said contentions and accordingly stated that at present the Lifts do not open to the commercial area and the contention on the matter of common lightings may also be true. But the AE pointed out that, it is possible to use the water supply of the building, by others.

If the 'common electric connection' was utilized by others like the commercial Firms working in the 1st floor or ground floor, then it has to be verified by a site visit by the respondent and has to prepare a mahazar, noting down the anomalies detected. The tariff can be changed accordingly, after issuing notice to the consumer and hearing his version. But no such action was taken by the respondent in this case. In the absence of the same, the contentions of the consumer that he is using the said Con. No. 10565-B, exclusively for the domestic flat consumers purpose, have to be accepted and as such, this Forum come to the conclusion that the 'common service connection' was utilized by the residential apartments only.

It is also pointed out the Licensees billing procedure, incorporating the collection of 'Late Fee' in addition to interest for belated payment of bill, is illegal and hence has to be dispensed with.

Decision: -

From the analysis done and the conclusions arrived at which are detailed above, I take the following decisions.

The Hon KSERC vide letter dated 08.07.2010 addressed to 'Secretary General, Confederation of Real Estate Developers Association of India', has stated that, if a commercial consumer does not use common facilities in a multi storied building and if the common facilities are used exclusively by domestic consumers only, domestic tariff shall be applicable for common facilities, irrespective of the percentage of the connected load of consumers other than domestic. This is a clarification issued by the Hon Commission to its Order on, KSERC/111/TP-33/2007 dated 31.12.2007, allowing LT VIIA tariff to common facilities connection, if the connected load exceeds 5% of the total load.

Moreover, the Hon KSERC vide its letter No.1311/Com. Ex./KSERC/2012 dated 1.10.2012, (document produced by the appellant), addressed to the Secretary, Sheethal Apartment Owners Association, Thrissur (the appellant), on filing a Petition before it, has clarified as follows; "It is further clarified that if the Common facilities are used exclusively for domestic purpose, then the domestic tariff is applicable".

From the analysis done above, it is reasonably concluded that the 'common service connection' Con. No. 10565-B was utilized by the residential apartments of the multi-storied building (M/s Sheethal Apartments) exclusively for their domestic purpose. Hence the eligible tariff for the said electric connection is decided as LT -1 domestic tariff only and not required to be changed over to LT VII A-commercial tariff, when the Hon Commission has clarified the issue. As such, it is decided that the consumer is eligible for domestic tariff from the date of Tariff order effective date, i.e. 1.1.2008 onwards. Hence the action taken by the respondent to issue the arrear bill and then the monthly bills under LT VII A-commercial tariff from 9/2009 onwards, in respect of Con. No.10565-B, are found as not maintainable and it has to be revised under LT I-C domestic tariff.

The demand of Thrissur Municipal Corporation under the heading "Bills Due For Payment dated 31.07.2012" for Rs. 401884/- is quashed. The respondent may revise all the bills issued from Sept. 2009 onwards under domestic tariff and the excess amount collected from the consumer on this account shall be calculated with applicable interest and the same shall be refunded or got adjusted in the future bills of the consumer. The respondent has to prepare a calculation statement, of the

excess amount so collected from the consumer and implement the decision taken, with in 60 days of this order and shall also issue a copy of the same to the appellant for his information.

Accordingly, the CGRF order in CGRF/TCED-41/2012 dated 22.09.2012, is set aside.

It is noted that the connected load of the disputed connection has been reduced, as requested by the consumer and the grievance remain settled. Similarly the interest collected for the arrears from the consumer has been refunded by the respondent, as per the CGRF order dated 13.1.2012.

The Appeal Petition filed by the consumer is found having merits and is allowed to the extent it is ordered. Having concluded and decided as above it is ordered accordingly. No order on costs.

Dated the 5th of June, 2013,

Electricity Ombudsman.

Ref. No. P/ 298/ 2012/ 1772/ Dated 05.06.2013.

Forwarded to

1).The Secretary,
Represented by Sri. K. Bhaskaran,
Sheethal Apartments Owners Association,
Round North, Thrissur- Pin: 680 020.

2).The Assistant Secretary.
Vydyuthi Section, Thrissur Municipal Corporation,
Thrissur-680 001.

Copy to

1. The Secretary, Kerala State Electricity Regulatory Commission,
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSEB,
Vydyuthibhavanam, Pattom, Thiruvananthapuram-4
3. The Chairperson, Consumer Grievance Redressal Forum,
Power House, Cemetery mukku, Ernakulam-682018.