

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/038/2021**(Present: A.S. Dasappan)****Dated: 11th November 2021**

Appellant : The Chief Executive Officer,
Marunadan Malayali,
TC 17/3164 (11),
Pattom Palace P.O., Pattom,
Thiruvananthapuram Dist.

Respondent : Asst. Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Kesavadasapuram
Thiruvananthapuram Dist.

ORDER**Background of the case:**

The appellant's premises is situated in the Electrical Section area of Kesavadasapuram in Thiruvananthapuram District with consumer No. 16914. The appellant requested the respondent for the tariff change on 08-06-2018 and the tariff was changed to LT IV A after conducting inspection of the premises by the respondent. But in a routine inspection conducted by KSEB Ltd., the officials suspected that the tariff allotted to premises was not in accordance with the purpose for which electricity being used and hence, issued a notice to the appellant for intimating any objection in changing to appropriate tariff. The appellant replied that the institution is functioning as an "online publication". The officials of the Licensee inspected the premises on 20-10-2020 and found there was no printing works in the premises. As such the tariff was changed to LT VIF and a short-assessment bill amounting to Rs.2,46,648/- for a period of two years was issued to the appellant. The appellant filed a petition in CGRF, Southern Region vide OP No. 03/2021 and the Forum in its order dated 19-05-2021 issued the following: -

The respondent is directed to revise the short assessment bill amounting to Rs.2,46,648/- by limiting the period of assessment to twelve months and to allow suitable instalments for the payment of revised amount, if the petitioner desires so.

Not satisfied with the order of the Forum, the appellant filed this appeal petition before this Authority.

Arguments of the appellant:

The appellant approached the KSEB and requested for changing the Tariff to that applicable to online media and KSEB after verification and complying the legal formalities with tariff was fixed in LT 4A. On 03.08.2020 the KSEB issued a notice stating that the appellant has been wrongly classified which on 08.08.2020 a detailed reply was sent and ignoring the same on 23.10.2020 the KSEB has passed an order changing the tariff of the appellant from LT IVA to LT VI (General F). Against the said order the appellant on 06.11.2020 sent a detailed reply clearly stating that the new technology of publication is Digital Media instead of Print Media and Electronic Media. The appellant is not functioning as per the License for Electronic/Cable media and requested that the correct category to be changed is from LT IV A to LT-IV (B) IT and IT Enabled Services. Without considering the same the KSEB issued a notice and bill assessment dated 16.12.2020 directing the appellant to pay an amount of Rs.2,46,648/- on the basis of wrong assessment done by the KSEB. To the said Notice dated 16.12.2020 the appellant on 23.12.2020 sent a detailed reply and thereafter on 04.01.2021 the appellant submitted a petition to the Consumer Grievance Redressal Forum praying for an order exempting the appellant from paying the amount of Rs.2,46,648/- and also pass an order to change the tariff of the appellant from LT 4A to LT IV (B) IT Enabled Services. Since the appellant is not functioning under category LT VI (General F) the same is to be changed to LT IV (B) and IT Enabled Services.

The order of CGRF is highly erroneous, illegal, improper and un sustainable in the eye of law and the same is also silent with respect to the request made by the appellant to change the tariff of the appellant from LT IV A to LT IV (B) IT and IT Enabled Services. Further the said order directing the

respondent to revise the short assessment bill is also against the provisions of the Electricity Act 2003 and also in violation of the powers vested with the State Electricity Regulatory Commission. Hence, the said order is liable to be set aside. Further the appellant is not entitled to pay the amount of Rs.2,46,648/-.

Arguments of the respondent:

As per the Regulation 134 (1) of Kerala Electricity Supply Code 2014, the Licensee Board is empowered to realize the entire amount under charged by it. Based on the said Regulation, a short-assessed bill amounting to Rs.2,46,648/- was issued to the appellant, which is perfectly in order and legally sustainable.

The appellant approached the KSEB and requested for changing the tariff of consumer No. 16914 on 08.06.2018. Along with the application the appellant attached the necessary document to that applicable for Publishing News-paper and periodicals. The document 'Udyog Adhar' submitted by appellant showing, the firm comes under the category of Publishing News-paper and periodicals. The concerned officials of the KSEB visited the premises and after verifying documents, the tariff was changed to LT-IVA.

On routine inspection of KSEB, it was suspected that the appellant was billed in wrong tariff. Hence on 03.08.2020 KSEB issued a Suo moto notice under Regulation 97(4) of the Kerala Electricity Supply Code 2014 stating that the appellant has been wrongly billed in a category of Printing and Publishing of Newspapers, but no such activities in that premises. So that the tariff has to be changed into appropriate and if there is any objection in this regard it should be replied within 30 days, failing which the tariff will be changed without any further intimation.

The appellant on 08.08.2020 sent a reply that the premises is functioning only as an online publication of daily which comes under the classification of 'media' and also there is no printing /publication activities.

The respondent with Assistant Engineer and Sub Engineer inspected the premises on 20/10/2020, to ascertain the activities performed at the premises.

It was confirmed that premises is functioning only as an online publication of daily and there is no printing /publication activities.

Hence, Assistant Engineer, Electrical Section, Kesavadasapuram passed an order dated 23.10.2020 vide DB/16914/20-21/6 in which the tariff of the appellant had been changed from LT IVA to LT VI (General F) with effect from 05/10/2020 according to the Regulation 97 of Kerala Electricity Supply Code 2014.

The short assessment invoice can be generated for two years with back effect from 04/10/2020 according to regulation 152 of Kerala Electricity Supply Code 2014. Hence difference between electricity charges of LT IVA to LT VI (General F) tariff without any interest was calculated in amount of Rs.2,46,648.00 for two years and an invoice issued to appellant. The appellant got clear 30 days to file any objections.

As the bills issued are in order, it is requested to dismiss the appeal petition. Besides, Regulation 152 of the Kerala Electricity Supply Code 2014 empowers the Licensee with a blanket provision to recover the undercharged amount.

The appellant's failure to remit the assessment bill actually consumed by them will have serious social and financial implications as well. Being a public utility, catering to the energy needs of all sections of the society, KSEB Ltd. have to observe prudent financial practice. Otherwise, it will lead to tariff hike, which in turn will unduly burden other consumers.

Analysis and findings:

An online hearing was conducted at 3 PM on 16-09-2021 with prior intimation to both the appellant and the respondent. Sri. Biju Thomas, CEO, Marunadan Malayali attended the hearing for the appellant and Sri. V. Pramod, Assistant Executive Engineer, Electrical Subdivision, Kesavadasapuram from the respondent's side attended for the hearing. On examining the petition, the counterstatement of the respondent, the documents attached and the arguments made during the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

On going through the documents, it is seen that the appellant was given a short-assessment bill for Rs.2,46,648/- for a period of 24 months from 05-10-2018 to 04-10-2020 towards the difference in energy charge between the tariff LT IVA and newly assigned higher tariff LT VIF as per Regulation 152 of Kerala Electricity Supply Code 2014.

The argument of the appellant is that the new technology of publication is Digital Media instead of Print Media and Electronic Media. The institution is not functioning as per the license for Electronic/Cable media and correct tariff category to be changed is from LT IVA to LT IVB. The appellant had already submitted the documents to the respondent along with "Udyog Aadhar", which shows that the commercial activities being carried out by the appellant is "Publishing of News" and not tried to mislead the respondent that the institution has "Printing of News". The institution is an online Malayalam news portal engaged in publishing news online only using the facilities of internet connections. The appellant does not have any transmitters for broadcasting or any broadcasting station like TV News Channels nor any broadcasting license, but completely depends upon the internet broadband connections provided by BSNL and Kerala Vision and for publishing news updates in the web portal or in the social media platform viz. YouTube, Facebook etc. The only publishing activity carried out in the office of the Marunadan Malayalee is simple computer operations by which the staff uploading news over social media or its web portal for viewers across the globe. For that purpose, the appellant needs computer network, its accessories and an internet connection only. The activities in the institution come under Desk Top Publishing Category or in the Information Technology enabled services category (LT IVB). Commercial printing and publishing (Hard copies of news-paper) is not being carried out, but publishing of news (online) is carried out in the premises. The request of the appellant is to retain the tariff under LT IVA or to assign LT IVB instead of LT VIF.

The argument of the respondent is that no activities of printing and publishing of news-papers are going on in the premises. The respondent ascertained after an inspection that the activities performed in the premises is the online publication of daily. As per respondent, the Licensee can issue a

short assessment bill for 2 years in accordance with Regulation 152 of Kerala Electricity Supply Code 2014. As such the respondent wants to change the tariff of the premises to LT VIF and to realize the short-assessment made for two years.

As per the schedule of tariff and terms and conditions for retail supply of electricity by Kerala State Electricity Board Limited and all other Licensees with effect from 18-04-2017 and revision of tariff for all categories with effect from 08-07-2019 of Kerala State Electricity Regulatory Commission, the purpose or activities relevant to the appeal petition come under LT IVA, LT IVB and LT VIF are furnished below: -

- LT IVA - Printing presses including pressers engaged in printing dailies.
- LT IVB - Tariff applicable to Information Technology (IT) and IT enabled services including Akshaya-e-services, Computer Consultancy Services units, Call centres, Software services, data processing activities, desktop publishing (DTP), Software development units and such other IT enabled services.
- LT VIF - Installations of cellular mobile communications, Satellite communications, offices and/or exchanges of Telecom companies, offices or institutions of All India Radio (AIR) Doordarshan and other television broadcasting companies, Cable TV networks, radio stations.

In this subject, the respondent argued that they confirmed the premises of the appellant is functioning only as an online publication of daily and there are no printing/publication activities and which is the reason to change the tariff from LT IVA to LT VIF.

In the hearing conducted by this Authority, the appellant revealed that there are no activities in the premises for attracting LT VIF tariff. Regulation 97 of Kerala Electricity Supply Code 2014 says about the Suo moto reclassification of consumer category by the Licensee; which is :-

Regulation 97 (1) “If it is found that a consumer has been wrongly classified in a particular category or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category as per the tariff order of the Commission or the category has changed consequent to a revision of tariff order, the licensee may Suo motu reclassify the consumer under appropriate category.”

Regulation 97 (5) “If the actual period of wrong classification cannot be ascertained reasonably, the period shall be limited to a period of twelve months or a period from the date of last inspection of the installation of the consumer by the licensee whichever is shorter:

Provided that in the case of reclassification consequent to change of the purpose of supply by the consumer without due authorisation, the licensee may examine each case and initiate proceedings under Section 126 of the Act if found necessary.”

Regulation 97 of Kerala Electricity Supply Code 2014 permits the Licensee for Suo moto reclassification of commercial category, but KSEB Ltd. has to ascertain whether the activities in a premises have the same nature of the activities explained in each category of tariff ordered by Kerala State Electricity Regulatory Commission.

As requested by the appellant on 08-06-2018, the KSEB Ltd. officials visited the premises and after verifying documents presented by the appellant, the tariff was changed to LT IVA. By this action, it is understood that the activities going on in the premises are same activities mentioned in the documents. Later, routine inspection was conducted by the officials of the Licensee and issued a Suo moto notice under Regulation 97 (4) of Kerala Electricity Supply Code 2014 on 03-08-2020. Another inspection was also conducted by the respondent himself in the premises along with the Assistant Engineer and Sub Engineer on 20-10-2020 and decided to change the tariff from LT IVA to LT VIF. It is pertinent to note that a site mahazar was not prepared in any of the inspection conducted by the Licensee.

The Section 62 of the Electricity Act 2003, enabling the provision for determination of tariff and is read as follows: -

“The appropriate Commission shall determine the tariff in accordance with the provisions of the Act.”

In this case, reclassification of tariff category is not done following a tariff category revision made by KSERC, the empowered body for the determination of tariff, but done after inspection and issuing notice to the appellant.

The crux of the case is that, whether the activities and purpose for which the appellant is using electricity will come under the classification of tariff category LT IVA or LT VIF or any other category. I observe that the reassignment of tariff category LT VIF is not proper and LT IVB is more appropriate since the appellant's institution is an IT enabled premises with publishing of news over internet.

I Inspected the premises on 02-11-2021. In the inspection, it is observed that almost all the works in the institution are carrying out with IT enabled system. Computers are the major components of the institution and operations are connected with the internet system. Any activity which attracts LT IVA tariff is not going on in the premises. At the same time, the purposes which contain in LT VIF tariff like Cellular Mobile Communication, Satellite Communication etc. could not be found by this Authority. I observe that the premises is being used as IT enabled service. As such, it is more appropriate tariff, which can be assigned to the premises is LT IVB in the existing tariff category order.

Following the inspection of the Licensee as requested by the appellant on 08-06-2018, the tariff was changed to LT IVA. As per the finding in a routine inspection of the Licensee in the premises, a Suo moto notice under Regulation 97 (4) of Kerala Electricity Supply Code 2014 was given to the appellant on 03-08-2020 for filing objection, if any, in changing the tariff. But the date on which the respondent conducted inspection in the premises is not furnished by the respondent. On 20-10-2020, another inspection was conducted by the respondent in the premises and decided to reassign the tariff under LT VIF category w.e.f. 05-10-2020 and to issue short-assessment bill for 2 years prior to 05-10-2020 as per regulation 152 of Kerala Electricity Supply Code 2014. As such, I find that it is more proper to reassign the tariff under LT IV(B) from 03-08-2020 onwards.

Decision: -

From the discussion and conclusions arrived at as detailed above, I decide to quash the short assessment bill for Rs.2,46,648/- issued to the appellant. The respondent is directed to reassign the tariff of the premises of the appellant under LT IV(B) category from 03-08-2020, the date on which the respondent sent notice to the appellant after the routine inspection. The respondent shall revise the short assessment bill under LT IV(B) tariff from 03-08-2020 and issue to the appellant within 30 days from the date of order. The excess amount remitted, if any, shall be adjusted in the future bills or arrears, if any, shall be realized from the appellant.

Having concluded and decided as above, it is ordered accordingly and the Appeal Petition filed by the appellant allowed to this extent. The order of CGRF, Southern Region in OP No: 03/2021 dated 19-05-2021 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/038/2021/ _____ dated _____.

Delivered to:

1. The Chief Executive Officer, Marunadan Malayali, TC 17/3164 (11), Pattom Palace P.O., Pattom, Thiruvananthapuram Dist.
2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Kesavadasapuram, Thiruvananthapuram 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, Kottarakkara - 691 506.