

THE STATE ELECTRICITY OMBUDSMAN

Charangattu Bhavan, Building No.38/2829,
Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9539913269
Email: ombudsman.electricity@gmail.com

APPEAL PETITION No. P/046/2021**(Present: A.S. Dasappan)****Dated: 11th November, 2021**

Appellant : Sri. Mathew Anthraper,
G-313, Panampilly Nagar,
Kochi, Ernakulam Dist. 682036

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Chithirapuram, Idukki Dist.

ORDER**Background of the case:**

The appeal petition filed by the appellant pertains to the request for change of tariff from LT VIIA to LT IA for the Homestay functioning at Chithirapuram in Munnar, Idukki District. The service connection was effected from the Electrical Section, Chithirapuram with consumer number 2923 in the premises having connected load of 9500 watts under LT VIIA tariff. The registered consumer is Sri. George Augustine, Pappatt House, Chithirapuram. As per appellant, the premises is a "Home Stay" and as such eligible for LT-IA domestic tariff. But as per respondent, the premises is not functioning as a "Home Stay" and hence, not eligible for LT-IA tariff. The appellant approached Consumer Grievance Redressal Forum, Central Region vide OP No.64/2020-21 and the Forum in its order dated 17-04-2021, dismissed the petition due to lack of merit. Aggrieved by the decision of the Forum, the appellant filed this appeal petition before this Authority.

Arguments of the appellant:

Appellant is the absolute owner, title holder and in possession of Building No. VIII/450 at Chithirapuram Near Pallivasal in Idukki District. The said

building is having an electrical connection with consumer No. 1156159002923 with connected Load of 9500 watts under the Electrical Section of respondent. The said building is a HOME STAY and is approved by the Government of Kerala Tourism Department with proper certificate from the Director as a Home Stay and issued certificate to the said effect. Appellant is running from pillar to post to get the benefit of the Government order in respect of this Building for the last so many years to get the tariff changed from commercial Tariff under LT-VIIA to LT-1A domestic. Appellant had produced the Home Stay Classification Certificate issued by the Director, Tourism Department before the Respondents as well as the Consumer Grievance Redressal Forum for availing such benefit. But all the authorities blindly shut eyes against the request of the Appellant without any just cause or reason.

The respondents have no case that the classification of the building to which the Home Stay classification was issued is not in existence or obtained by fraud or misleading the authorities. The respondent never approached the statutory authorities to set aside the said certificate. The Respondents have no case that the Appellant is having another building with the said connection which disentitled the appellant from claiming the benefit of the Government order, which is strictly to be complied by the Respondent.

The only question to be decided by the Consumer Grievance Redressal Forum (CGRF), Central Region is whether the denial of the change of classification of the connection from commercial Tariff under LT-VII —A to LT-1 A domestic, to a consumer with certificate of Homestay from the competent authority, on the basis of the Government order is legal or illegal. The only answer to that question is as long as the certificate of the Director of Tourism department is in force, the denial is illegal. The CGRF, Central Region ought to have permitted to change the Commercial Tariff under LT-VIIA to LT-1A domestic on the basis of the Home Stay Classification certificate issued by the Director, Tourism Department. Hence, the impugned order dated 17-04-2021 is unsustainable and is liable to be set aside by allowing this appeal and by allowing the complaint submitted before the Ombudsman, for the ends of justice.

As per the Electricity Tariff order dated 09-09-2013, the LT-1A tariff shall be granted for Home-Stay units approved by the Department of Tourism. The finding of the Forum on the basis of a publication as BIOVALLEY Resort. Tourists prefer to stay in Homestay to have their self-contained stay and not as Paying Guest. If the nomenclature was Paying Guest, the presence of the owner of the house was essential. But the finding that the owner is not staying in the building and the supervisor only is staying in the building etc. are without bona fides and with ulterior motive to deny the benefits. The burden of the "Home Stay" provider is to provide a house to stay and to provide security to the inmates alone. Owner need not stay in a Home Stay as it is not a paying guest arrangement. Hence, the impugned order is liable to be set aside by allowing the petition.

It is clear from the Notification No.1305 dated 28-11-2012 issued by the KSEERC, the Home Stay units approved by the Department of Tourism shall be billed under LT-1 A domestic Tariff from 17-01-2012. Hence the appellant ought to have given such benefits from the date of the certificate from Tourism department i.e. w.e.f 19-06-2015 and the entire excess amount collected by the Electricity Board must be adjusted towards the future Bills to be issued, for the ends of Justice. The adverse finding of the Forum against the Government order is illegal, unsustainable and is to be set aside for the ends of Justice and equity and for upholding the law of the land.

The wording "SHALL BE" in the Government order No. 1305 left no room for any option to the Board to deny the privilege granted by the Government of Kerala. The present order amounts to the denial of the benefit of the order issued by the Government of Kerala as well as the KSEB to the appellant, for the vested interest of the KSEB and hence is liable to be set aside for the ends of Justice.

The conclusion on the basis of the fact that the appellant is staying at Kochi is to be considered that most of Tourists are distributed to various parts of the state from Kochi and the stay at Kochi is to canvass tourists to the Homestay of the appellant at Pallivasal. Moreover, the arrangement is not a paying guest.

The conclusion of the Forum, simply on the basis of a publication in a website, as against the conclusive certificate of the department of Tourism is amounts to shutting of eye against a clear established fact with a shadow of doubt. The said conclusion is against the established fact and certificate and hence is liable to be set aside.

Arguments of the respondent:

The service connection with Consumer No:1156159002923 is effected in favour of Sri. George Augustine Pappatt (H), Chithirapuram with connected load 9500 watts under Electrical Section, Chithirapuram with LT VILA tariff for the purpose of commercial. There is no formal application registered by the appellant for tariff change from LT VIIA tariff to LT IA tariff.

The appellant on various occasions used to submit before various authorities of KSEBL making the claim that the above consumer number is eligible for application of LT-IA Domestic Tariff.

The document produced by the appellant is a classification certificate issued in favour of M/s. Bio Valley Home Stay of Sri. Mathew Anthraper, Chithirapuram P.O., Munnar, Idukki by the Director, Department of Tourism, Government of Kerala. There is no building number or purpose for which the above certificate is issued is conspicuously absent in the above certificate.

However, KSEB Limited has taken bona fide actions for examining the legality of the claim made by the appellant with respect to the application of LT-IA domestic tariff to the above appellant and submits following pertinent points for the consideration of this Authority.

As per Gazette Notification No: 1305 dated 28.11.2012 issued by Hon'ble KSERC, the "Home Stay" units approved by Department of Tourism shall be billed under LT IA domestic tariff from 01-12-2012 onwards. The original tariff order dated 25-07-2012 No:23 of 2012 issued in the matter of proposal for revision of tariff by Hon'ble KSERC already clearly stated that "The concept of Home Stay" is primarily for providing tourists an opportunity to experience the life style in the state by living along with local families".

It is reliably observed by KSEBL that neither the appellant nor any other family member is residing in the premises of Consumer No: 1156159002923. Therefore, the purpose as envisaged by the Hon'ble Regulatory Commission for the application of LT-IA tariff is comprehensively missing in the case. The appellant as rightly pointed out in the petition is residing at G-313, Panampally Nagar, Cochin.

The Consumer No: 1156159002923 is utilized for accommodating tourists and managed by employees and service provided are not that of "Home Stay" as envisaged in the tariff order. The very purpose of the tariff order for the application of LT-IA tariff as envisaged by the Hon'ble Regulatory Commission will be defeated in case the tariff change from LT-VIIA commercial tariff to LT-IA domestic is applied as demanded by the appellant.

The KSEB Limited as a responsible Licensee cannot go against the guidelines and orders issued by the Hon'ble Regulatory Commission regarding the application of tariff. The certificate provided by the appellant is issued by the Government of Kerala. Tourism Department cannot be taken as a sole-criteria for the application of LT-IA tariff. The tariff concession intended to provide incentives to small and marginal households for people participatory tourism will be defeated in case the subsidized tariff under LT-IA is applied to medium and large players.

This defendant is neither aware of the writ petition filed by the appellant claiming application of LT 1 A tariff nor any assurance provided for withholding any such petition. The claim made by the appellant in this regard is against facts, hence denied.

The KSEBL as a responsible licensee provided various liberal measures for remitting current charge dues in the backdrop of Covid pandemic. There is no provision to factor tariff change as a measure to provide incentives on account of Covid pandemic crisis.

The order passed by the CGRF, Eranakulam dated 17-04-2021 in O.P.64/2020-21 is sustainable in the eyes of the law and proper interpretation of the tariff order is in due adherence to the spirit and purport.

On the basis of the above, it is prayed, this Authority may dismiss the petition with costs to the respondent.

Analysis and findings:

An online hearing was conducted at 4 PM on 20-0-2021 with prior intimation to both the appellant and the respondent. Adv. Sri John Joseph attended the hearing for the appellant and Sri. Ajeesh. A.M., Assistant Engineer-in-Charge, Electrical Subdivision, Chithirapuram attended the hearing for the respondent. 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.

On going through the connected documents submitted by the appellant, it is revealed that the appellant filed a petition before CGRF, Central Region. But the Forum dismissed the petition due to lack of merits with a dissenting note by the third member of the Forum. The opinion of the third Member is that the tariff category applicable to “Home Stay” can be allotted to the appellant on the strength of the Certificate issued by Tourism Department of Government of Kerala.

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 this Act”.

The appellant argued that the premises is a “Home Stay” and is approved by the Govt. of Kerala Tourism Department with proper certificate from the Director as a “Home Stay” and issued certificate to the said effect. The respondent never approached the Statutory Authority to set aside the said certificate. The burden of the Home Stay provider is to provide a house to stay and to provide security to inmates alone.

The respondent argued that there is no building number or purpose for which the certificate issued by the Tourism Department is conspicuously absent

in the certificate. The premises is utilized for accommodating tourists and managed by employees and services provided are not that of “Home Stay” as envisaged in the tariff order.

As per the “Schedule of Tariff and Terms and Conditions” for retail supply of electricity by KSEB Ltd. and all other Licensees with effect from 18-04-2017, notified by Kerala State Electricity Regulatory Commission, “Home Stay” units approved as such by Department of Tourism shall be billed under LT-I domestic vide Note ‘3’. In the tariff order dated 08-07-2019 also, the “Home Stay” units approved as such by Department of Tourism shall be billed under LT-I domestic vide Note: ‘7’.

The appellant produced “Home Stay” classification certificate vide order No: M5-1903/2015 dated 05-06-2019 issued by Department of Tourism, Government of Kerala. The certificate reads: “The Department of Tourism, Government of Kerala after examination by the duly appointed ‘Home Stay Classification Committee’ confers the status of Gold House for M/s. B 60 – Valley Homestay of Mathew Anthraper, Chithirapuram P.O., Munnar, Idukki. The status is valid for a period of three years with effect from 05-06-2019”. A similar certificate had been issued for two years with effect from 19-06-2015.

In the version of the respondent, it is stated that KSEB Ltd. had taken bona fide action for examining the eligibility of the claim made by the appellant with respect to the application of LT IA domestic tariff to the premises. But the action taken by the respondent is not seen and the version of the respondent is not supported with any documentary evidence and hence, the respondent’s contention is not sustained, thereby not admitted. The certificate is issued for a specific period and for which period the appellant is eligible for LT-IA tariff.

In this case, the Tourism Department of Govt. of Kerala have not advised the respondent to assign domestic tariff to the “Home Stay”, but Hon’ble Kerala State Electricity Regulatory Commission, the empowered body, for the determination of tariff categorized such “Home Stays” under LT-IA, domestic tariff and issued orders accordingly.

Decision: -

From the findings and conclusions arrived at as detailed above, I decide as follows:

The appellant is eligible for LT-IA domestic tariff to the “Home Stay” premises and hence, the respondent shall assign the tariff LT-IA domestic to the “Home Stay” for the valid period of “Home Stay” certificate issued by the Department of Tourism, Govt. of Kerala within 15 days from the date of order. The request made by the appellant in Appeal Petition vide P-046/2021 is allowed. The order of CGRF, Central Region in OP No.64/2020-21 dated 17-04-2021 is set aside.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/046/2021/_____ dated _____.

Delivered to:

1. Sri. Mathew Anthraper, G-313, Panampilly Nagar, Kochi, Ernakulam Dist.-682036
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Chithirapuram, Idukki 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, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.