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**Appeal Petition No. P/044/2024
(Present A. Chandrakumaran Nair)
Dated: 29-08-2024**

- Appellant : The Secretary
Skyline Oasis Villa Owner's Association
Peroor Road, Thellakom P.O,
Sankranthi, Kottayam Dist.,
- Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
Kerala State Electricity Board Ltd.,
Gandhi Nagar, Kottayam Dist.,

ORDER

Background of the case

The appellant is the Secretary of the Skyline Oasis Villa Owners Association. The builder named 'Skyline Builders' have constructed 30 villas and associated common facilities at Erumpanampady, Thellakam, Kottayam. The builder have availed a temporary connection for the construction purpose under the tariff. LT 7 A. The builder have applied for a connection for powering the common facilities of the villa complex on 02/03/ 2016, under tariff LT 1 A. and the connection was energized on 15/03/2016 under the tariff LT 7A. The builder was regularly paid the power charge and the ownership of the connection was transferred on 10/12/2021 in favour of president skyline oasis villa owners association. The consumer has noted the wrong tariff and requested for tariff change LT 1A on 15/1/2022 and the Licensee has changed the tariff accordingly. The demand of the appellant is to consider the tariff change from the date of connection and refund the excess amount collected from the consumer. The appellant had filed the petition to the CGRF and CGRF issued order dated 04/06/2024 on completing the procedure. Aggrieved by the decision of the CGRF this appeal petition is filed to this Authority.

Arguments of the Appellant

This request is for refund of over-charged bill amounts to Consumer no. 1146287017681 of Electrical Section; Gandhinagar due to wrong allocation of commercial tariff instead of eligible domestic tariff. Necessary Form B in this regard is attached as Annexure. The following are brought to your kind attention:

This request is from Skyline Oasis Villa Owners' Association looking after and maintaining the common facilities of Skyline Oasis Villas, built by M/s Skyline Builders with 30 Villas and associated common facilities at Erumpanampady on Samkranthy-Peroor road, Thellakom P.O, Kottayam - 686630.

M/s Skyline had taken a temporary connection with Consumer no. 16290 from Electrical Section, Gandhinagar on 04/03/2013 for construction activities in the villa complex and the same was dismantled on 02/02/2021 when all the construction activities on the site were fully completed. M/s Skyline requested for connection to the common facilities, under domestic tariff, during March 2016, when owners started to occupy the villas. A connection was given with consumer no. 1146287017681 on 15/03/2016. But Electrical Section, Gandhinagar KSEB allotted commercial tariff and the billing is done from the date of connection till 05/11/2022 accordingly, whereas we were eligible to be allocated domestic tariff (The SLD of the connection, show that connected load is exclusively for domestic, is attached). This allocation of changed tariff from requested tariff was not aware to the consumer since no intimation in this regard was given to M/s Skyline Builders. The eligibility for us to be allocated domestic tariff is clearly mentioned in the tariff revision order of KSEB, issued during August 2014, revising the tariff from 16/08/2014 to 31/03/2015. Even though construction activities were still going on in the villa complex, the power for the same was taken from the temporary connection mentioned in item 2 above. Connection under item 3 above was exclusively used for the common facilities of the villas, which is eligible to be charged under domestic tariff.

When bill for October 2022 for consumer no.1146287017681 was received. it was casually seen by a person, who is aware of tariff rules of KSEB and he pointed out that this Consumer is eligible to be charged under domestic tariff. Accordingly, an application for tariff change was submitted to Electrical Section, Gandhinagar on 05/11/2022 and after inspection by personnel from Electrical Section, Gandhinagar, the tariff of Consumer No. 1146287017681 was changed from commercial tariff to domestic tariff and bills from 06 November 2022 is charged under domestic tariff. As per latest Kerala Electricity Supply Code 2014, KSEBL is obliged to refund overcharged amount if it is established that KSEBL has overcharged the consumer (Refer Section 134 (2) & 134(3). Accordingly, as established, through items 1 to 5 mentioned above that KSEBL has overcharged

Consumer No. 1146287017681 of from 15/03/2016 to 05/11/2022. Based on the above facts, a request was submitted to Assistant Engineer, Electrical Section, Gandhinagar on 09/01/2023 to review the situation and arrange for refund of over-charged amount, as detailed above. The request, was rejected vide letter no. BB/GNR/Con No 17681/23-24/69 dated 25/01/2024 citing flimsy reasons.

Based on the rejection, petition was filed before CGRF, Kottarakkara on 03 March 2024. Based on that hearing was conducted by CGRF, registering the complaint as O.P No. 15/2024, on 24 April 2024 and Order No. CGRF/KTR/O P No. 15/2024/170 was issued on 04 June 2024 disposing the case not accepting our requests. The reasons mentioned in the Order and the reply from our side are given as follows: a. Order 1: The Petitioners request of refund of overcharged amount for the period from 15/03/2016 to 05/11/2022 is illegal and not sustainable Response: As per latest Kerala Electricity Supply Code 2014, KSEBL is obliged to refund overcharged amount if it is established that KSEBL has overcharged the consumer (Refer Section 134 (2) & 134(3)). The initial wrong allocation, unaware to the consumer, is one sided and arbitrary as per details given above in this letter. b. Order 2: The Licensee shall have the right to assign suitable tariff after observing procedures and as per prevailing rules and Site Conditions Response: The connection was taken on 15/03/2016 when people started to live in the Villas. Further construction activities in the premises were done using the temporary connection mentioned 2 above. Even though it is the right of Licensee to allocate appropriate tariff, consumer has the right to know why that applied tariff was not allocated citing the reasons. If such an intimation was given before allocating the Tariff, we would definitely have clarified giving reasons to establish that the connection is exclusively for domestic purposes as per tariff revision order of KSERC, issued during August 2014, revising the tariff from 16/08/2014 to 31/03/2015. Based on the above we humbly request the Honourable Ombudsman to please review the case and issue necessary orders for refund of overcharged amount for Consumer No. 1146287017681 of Electrical Section, Gandhinagar for the period from 15/03/2016 to 05/11/2022.

Arguments of the Respondent

A service connection application with Application Fee dated 02/03/2016 was submitted at the Electrical Section in Gandhinagar for obtaining a connection in favor of Sri. K.V. Abdul Azeez of Elko Properties Pvt. Ltd., Cochin, for the purpose of a domestic common connection. The connection bearing No. 1146287017681 was issued on 15/03/2016 after site inspection by Sri. Joby Joseph, Sub Engineer. A copy of the written statement by Sri. Joby Joseph, Sub Engineer, is submitted herewith. The ownership of the connection was subsequently changed on 10/12/2021 in favor of Sri. Biju Kuriakose, President of the Skyline Villa Owners Association. On 05/11/2022, the consumer submitted an application for a

tariff change to LT IA domestic. Following necessary verification, the tariff was changed to LT IA.

Para-wise Report with Regard to the Grounds of Appeal

1. The appeal petition regarding service connection bearing No. 1146287017681 pertains to premises functioning as a separate entity unlike Villas. This connection was initially granted for commercial purposes and was effected on 15/03/2016, following a site inspection that confirmed LT 7A related activities were being conducted at that time.. The appeal petitioner applied for a tariff change only after ceasing all non-domestic activities, at which point the tariff was changed to a domestic tariff after due site inspection.
2. As part of the Luxury Villa Construction, a service connection bearing No. 1146282016290 was availed by one Adbdul Azeez, Elko Properties and Developers, Rajaji Road, Cochin -35 for construction purpose. Thereafter service connection being No. 1146287017681 was availed for Common Facilities of the Villa Complex including the sale of villas and other non-domestic activities.
3. It is submitted that for the M/s. Skyline Oasis project, an application for a connection to common facilities under a domestic tariff was submitted in March 2016. During this period, the service connection with No. 1146282016290 for construction purposes was still active (dismantled only on 02/02/2021), indicating ongoing villa construction. The common facility of the Villa Complex was functioned for sale of villa and other non-domestic activities as detailed in Exhibit R1. The details of service connections for villa owners, extracted from the ORUMANET software, are submitted and marked as Exhibit R2. It may kindly be noted that no villa was provided with domestic service connection at the time of submitting the application for a common connection under the domestic tariff. The domestic service connections for the villas were activated from 10/05/2016 to 16/10/2020, as per Exhibit R2, clearly indicating ongoing construction and sales of villas during March 2016. Hence, a domestic tariff could not be assigned.
4. The premises with service connection number 1146287017681 primarily dealt with the sale of villas, with no exclusive domestic activities conducted. The appeal petitioner was aware of this and submitted an application for a tariff change only after the cessation of non-domestic activities.
5. The application for a tariff change for service connection number 1146287017681 was received on 05/11/2022 and was changed to domestic on 06/11/2022 after verification by the Sub Engineer of the Electrical Section, Gandhinagar. It is falsely stated that the appeal petitioner was unaware of the facts, as the regular current bills issued to the service connection specifically stated that the 7A tariff was assigned for commercial activities. Despite knowing all these facts, the consumer did not apply for a tariff change, being fully aware of the non-domestic activities ongoing at these premises. After the cessation of non-domestic

- activities, he applied for a domestic connection. The claims in this paragraph are fabricated to cover up the true facts.
6. The service connection for Con. No. 1146287017681 was initially granted under LT-7A after confirming that non-domestic activities were being conducted at that time, and no objections were raised by the consumer. When the consumer applied for a change to a domestic tariff, it was granted after completing all formalities. KSEBL has not overcharged in this regard.
 7. The consumer is not eligible for a refund as he has not demonstrated that any domestic activities were conducted. Furthermore, non-domestic activities were previously conducted at the premises of service connection 1146287017681, which were duly acknowledged during the site inspection for the service connection under which tariff was granted in LT VII-A.
 8. Since the consumer did not object to a service connection obtained in March 2016 for purposes related to LT VII-A, it indicates that non-domestic activities were conducted on the premises. After ceasing domestic activities, the appeal petitioner applied for a domestic connection, which was granted after site inspection. Further requests for a refund are made solely to gain undue advantage.
 9. The Hon'ble CGRF in OP No. 15/2024 thoroughly considered all material facts and circumstances of the case and rejected the petition vide order dated 04/06/2024. The tariff assignment to Con. No. 1146287017681 under LT-7A was initially done in accordance with the rules and regulations to be followed by the Licensee. Therefore, it is respectfully requested to issue the necessary orders dismissing the appeal petition.

Counter Arguments of the Appellant

With reference to that office letter referred above, we are submitting below the response to the Statement of Facts (attachment to the referred letter from that office) submitted by The Assistant Executive Engineer, Electrical Sub Division, Gandhinagar. The response is given para-wise as indicated in the Statement of Facts: The connection bearing Consumer No. 1146287017681 is for the common facilities which is spread over the entire community feeding the common facilities of the Villas and connected through cables from the indoor LT switchgear as indicated in the Single Line Diagram attached with the application (copy was submitted in the original petition and a copy is attached with this for quick reference). Also, the construction activities were still ongoing and the power supply to that was taken from the temporary connection for which temporary sub switchboards were installed at four locations inside the community. The application was for allocating domestic tariff to this connection and Respondent gave the connection arbitrarily under Commercial Tariff and this was not appraised to the Consumer. The Respondent's statement, that Tariff change application was given by us only after all non-domestic activities are completed, is contrary to facts since the connection was not used for non-

domestic activities. This statement is to cover the Respondent's fault in allocating a different Tariff other than the one applied for since we were not aware that wrong Tariff was allocated to us and when a person who saw the bill pointed out that the wrong Tariff is allocated, application for change in Tariff was given.

The Statement, of the Sub Engineer who had inspected the premises for giving connection, is with fabricated facts currently when this was questioned. The contradictions in his statement are given below: 1.1. He is admitting that there was a connection taken as temporary connection for construction activities. His statement, that construction of 31 villas (which is not correct, there are only 30 Villas) and domestic connection for one Villa was given on 10/05/2016, is correct. The statement, that common lightings; club house; Project Office, were functioning is fabricated. He has inspected during day time only and it is not understandable how he saw the common lightings are base functioning since common lighting is connected through underground cables and connected to an outlet from the switchboard of common area connection, which was not yet effected. The club house also is fed from an outlet from the switchboard of common area connection. There was no Project Office functioning at site and the same was functioning in Skyline, Kottayam office and the personnel, except site Engineer, were visiting the site periodically only. The Site Engineer was coming to site daily and there was no designated office for him. He was resting in one of the partially completed villas (not specific villa since he may change the location based on the construction activity ongoing) and only light and fan were used taking the supply from the temporary switchboard nearby. Also, Villa 2 was fully completed and furnished to be shown as sample Villa and the power supply to that Villa was taken from the Temporary Connection taken for construction activities.

The Statement that the connection was to be used for purposes other than domestic is not correct as detailed in item 1.3 above. Hence allocation of Commercial Tariff was arbitrary and one sided. 1.5. The statement, that consumer agreed for allocation of commercial tariff is not correct. If intimation was given that the Tariff allocated is not the one applied for M/s Skyline would have pointed out that this connection will be exclusively for Common area facilities of the Villas and if any doubt is there that would have been clarified. This is only a fact that is stated.

The statement that the common facility connection is used for sale of Villa and other non-domestic activities are not correct. This is detailed in Items 1.1 to 1.5 above. It is not understandable how the common area connections can be used for sale of villa. The other non-domestic activities (which was not there at all) are not detailed in this para. Also Skyline Builders started handing over the Villas from 01/07/2015. Three villas were handed over in 2015. At that time it was the obligation of the Builders to avail connection for Common facility to facilitate occupation of the handed over Villas. This

statement is not correct. The connection was used only for the common facility of Villas and this is eligible to be allocated under domestic Tariff. The statement in this para is contrary to facts. All the details pertaining to this is already given in Paras 1 & 3 above. No objection was raised after connection is given, since the consumer was not aware that the Tariff allocated is not the one applied for and no intimation was given by the Licensee that the Tariff allocated is Commercial against the application for connection under Domestic Tariff.

This Statement also is not correct. The Consumer is eligible for refund of overcharged amount as the Tariff applied for was not allocated and the reasons, for allocating different Tariff other than the one applied is baseless. The response for this Statement is the same as given in Para 6 above. The Appeal Petition is as indicated in the last paragraph of 'Decision' in the CGRF Order No. CGRF/KTR/O P No.15/2024/170 issued on 04 June 2024 Based on the above we humbly request the Honourable Ombudsman to please review the case and issue necessary orders for refund of overcharged amount for Consumer No. 1146287017681 of Electrical Section, Gandhinagar for the period from 15/03/2016 to 05/11/2022.

Analysis and findings

Hearing of this petition was conducted on 06/08/2024 at 12.00 pm at KSE Board IB, Bormma Kavala, Pallom Kottayam Dist. The hearing is attended by the Appellant Sri.Andrews, Secretary Skyline Villa Association and Shri. Alex.S. Zacharia, Treasurer Skyline Villa Association and the respondents The Assistant Executive Engineer, Electrical Sub Division, KSE Board Limited,Gandhi Nagar, Kottayam Dist., and Assistant Engineer, Electrical Circle, Gandhi Nagar, Kottayam Dist.,

Skyline Builders have executed a Villa Project in Erumpanampady, Thellakam, Kottayam consists of 30 villas and associated common facilities such a streets and street lights, swimming pool, recreation area, backup generator power supply etc. The builder started banding over the villas from 2015 onwards. The builder has availed temporary connection for construction purpose with consumer no 1146282016290 under the LT 7A tariff. The builder have applied for a connection under tariff LT 1 A for the common facilities of the Villa projection 02/08/2016 and the connection was given on 15/03/2016 with consumer number 1146287017681 under the tariff LT 7A. The licensee has sanctioned wrong tariff stating that the villa project was not completed and power for other purpose was also connected from the same source. Here the licensee has given two connections in one tariff for the same consumer in the same premises. This is violation of the regulation 52 of the Kerala State Electricity Supply Code 2014

“Supply of electricity to be given only at one point for same purpose at the same voltage level in a single premises:- Supply shall be given only at one point for same purpose at the same voltage level in a single premises.”

The sub engineer who inspected this site has not prepared any inspection report and not intimated the consumer regarding the charge of tariff. The statement of the sub engineer submitted by the respondent is prepared only on 23/04/2024. The appellant mentioned that the villas was handed over since 2015 onwards. The statement submitted by the licensee also shows that the individual domestic connection was given since 2016 onwards. The details are as below

Sl.No	Year	Tariff	No.of Connection	Remarks
1.	2016	LT 7A	1	Common facilities
2.	2016	LT 1A	10	Individual houses
3.	2017	LT 1A	5	„
4.	2018	LT 1A	4	„
5.	2019	LT 1 A	4	„
6.	2020	LT 1A	7	„
			31	

This shows that the Villas were occupied and people started residing in the towers since 2016 onwards. It seems that service connections to 10 Villas were given during 2016 which is one third of total Villas. The common facilities such as yard lighting, water pumping system, sewage treatment system etc., would have been functioning since 2016 onwards. The single line diagram of the power distribution system for the common facilities was approved by the Kerala State Electrical Inspectorate on 30/01/2016. The energization certificate also have been issued by the inspectorate around March 2016. The application for the connection to the licensee would have been submitted along with the energization certificate of inspectorate. The power distribution system of the common facility panel didn't show any other load connected to this as per the version of the licensee/sub engineer. The inspecting officer would have inspected the system and check whether power distribution was connected as per the approved drawings. If not the same would have been communicated to the consumer in writing as per regulation 77 and 78 of the Kerala State Electricity Supply Code 2014-

77. Inspection of the premises of the applicant by the licensee:-

(1). *“The licensee shall, at the time of receipt of application from with the application fee, stipulate a date for inspection of the premises of the applicant in consultation with the applicant, under written acknowledgement.”*

(2). *“The date of inspection shall be scheduled within five working days from the date of receipt of application form”*

78. Rectification of defects found in the inspection:-

(1). *“If on inspection, the licensee finds any defect in the installation of the applicant, the licensee shall intimate, in the format given at Annexure- 6 of the Code, the defects to the applicant on the spot under proper acknowledgement.”*

(2) *“The applicant shall get all the defects rectified within ten days from the date of receipt of the intimation of defects as specified in sub regulation (1) above and inform the licensee in writing under acknowledgement.”*

(3) *“In case the applicant fails to rectify such defects or fails to inform the licensee about the rectification of defects, the application form shall be kept in abeyance and the applicant will lose his priority.”*

“Provided that the licensee may grant additional time to the applicant for completion of the works without any defects, in case the applicant submits a written request for the same, within ten days from the date of receipt of intimation regarding defects.”

Here the regulations were totally violated and sanctioned the tariff again violating the regulation. The supervising officer (AE of the section) has not cross verified the decision of the sub engineer and sanctioned the two connection in same tariff in the same premises for the same consumer. The Licensee would have either sanctioned the connection in LT 1A or would have delayed to rectify the defects noted during the inspection.

Here the power supply was availed by the builder and connection was sanctioned to Shri. K.V. Abdul Azeez who is the owner of the construction firm. The version of the respondent is that the consumer have not objected for the wrong tariff. The appellant's version is that the consumer would have been not aware or not noticed about the wrong tariff and accordingly he would have been paid the power charges as per the tariff LT 7 A. According to the tariff order issued by the Kerala State Electricity Regulatory Commission. *“Power supply for common facilities such as fire control, common lighting, lifts, water pumping, sewage treatment, water dis-pond etc., in residential apartment complex and individual houses shall be billed at domestic tariff.”*

The tariff order is very clearly state that the consumer facilities of a housing complex and apartment are also be billed on LT 1A. The tariff LT 1A would have been applicable since the date of connection. However the consumer of

this connection was Shri. Abdul Azeez and he has not been challenged the action of the licensee or not been requested for the change in tariff. As such the tariff change from the date of connection could not be considered. However the tariff of LT 1A would be applicable to the appellant since the date of transfer of the connection to the present consumer.

The regulation 134 of the Supply Code 2014 states that

134. Under charged bills and over charged bills:-

1. "If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill."

2. "If, after payment of any bill, it is established that the licensee has overcharged the consumer, the excess amount shall be refunded to the consumer with interest at bank rate as on the date of remittance of such excess amount."

3. "The licensee may refund such overcharged amount along with interest at bank rate as on the date of remittance of such overcharged amount, by way of adjustment in the three subsequent bills and if the adjustment is not possible in the next three bills, the licensee shall refund the balance amount in full by cheque."

As per the above regulation the licensee has to refund the excess charged to the consumer with effect from 10/12/2021, which is the date of transfer of the connection to the present consumer.

Decision

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 tariff LT 1A is applicable to this service connection that is the connection for the common facilities of the Skyline Oasis Villa Complex with effect from 10/12/2021.
2. The licensee has to refund the excess amount charged from the consumer with interest due to the wrong tariff applied to the consumer.
3. The licensee has to execute the decision within one month from the date of receipt of this order.
4. No other cost ordered.

ELECTRICITY OMBUDSMAN

No. P/044/2024/ _____ dated: _____

Delivered to:

1. The Secretary, Skyline Oasis Villa Owner's Association, Sankranthy, Kottayam Dist.,
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Limited, Gandhi Nagar, Kottayam Dist.,

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vaidyuthi Bhavanam, KSE Board Limited, Kottarakkara - 691506