

STATE ELECTRICITY OMBUDSMAN

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Representation No P/165/2010

(Present: T P Vivekanandan)

Appellant : The Secretary,
The Manjoor Ksheera Vyavasaya Sahakarana Sangam Ltd,
Kuruppanthara, Manjoor (P.O), KOTTAYAM.

Respondent : The Assistant Executive Engineer.
Electrical Subdivision, KSEB, Ettumanoor,
Kottayam Dt.

ORDER

Back ground of the Case:-

The consumer No: 3708 of Electrical Section, Kuruppanthara, is registered in the name of the Secretary, Ksheera Vyavasaya Sangam, Manjoor and is having a LT IV Industrial Tariff connection, given for its Milk Processing/Chilling plant. While so, on 31-10-2009 the APTS (Anti Power Theft Squad) of KSEB and the local section officials, conducted a surprise Inspection and found that the consumer is using an Electrical load (total rated capacity of equipments) of 32.451KW for chilling/ freezing activity and 12.074 KW for other activities. As per the tariff in force (approved by KSERC in 12/07), if the chilling or freezing load of Dairy farms, milk chilling plants is below 20% of the total installed capacity (load), it shall be charged under industrial tariff and if the same is more than 20% , the applicable tariff shall be LT VII A-commercial. Since in the present case, the Milk chilling/ freezing load is more than 20%, the tariff was changed to LT VII A commercial with retrospective effect i.e. from 12/2007, the date of Tariff notification. Subsequently, for the recovery of amount lost due to wrong tariff fixation, a short assessment bill for the period 12/2007 to 10/2009 amounting to Rs.7,75,722/- was served on the consumer on 18-11-2009. This bill and the change of tariff are contested by the Appellant and is the basis of this case.

Argument of the Appellant:

We have a registered connected load of 52 KW. We have received a short assessment bill for Rs.7,75,722/-, the assessment having been made under LT VII A Tariff and therefore filed Petition before the CGRF, Kottarakkara, as OP.No.487/2009 and received the order dated 7th August 2010. The Forum found that the assessment be made under LT IV, but they did not interfere with the bill and hence this Appeal Petition challenging the bill.

Ours is a milk marketing co-operative society registered under the Kerala Co-operative Societies Act 1969, started in the year 1993. The Society is doing the business of processing and sale of milk and milk products under the name and style 'Manjoor milk'. We are billed under LTIV industrial tariff since

its inception. On 11-11-2009 Board changed the tariff to LTVII A and issued the short assessment bill for the period, 12/2007 to 10/2009. Aggrieved by this bill, we approached the KSERC by filing Petition No.TP-81/2009, seeking to declare that Dairy farms do not come within the purview of note (e) under LT IV tariff category. While being so, the KSERC by its order dated 21-06-2010 in TP-76/2009 deleted the same note (e) under LTIV Tariff. However, the Commission made applicable the Tariff change back to LT IV Industrial, only with effect from 21-06-2010.

Meanwhile, we have filed petition before the CGRF, Kottarakara, and the Forum after Hearing, held that the Complainant will remain under LT VII A category from 01-12-2007 to 21-06-2010 and only after that LT IV tariff shall be reinstated. The CGRF noted the inordinate delay in issuing the arrear bill and therefore directed to issue fresh bill and gave 23 installments' free of interest for remittance. The KSERC did not examine the case 'TP 81/2009' filed by us, and while disposing it observed that since the case is under the consideration of CGRF/ Ombudsman, it is left open to them to decide. The Appellant's main points in the petition were as follows, namely;

(1) Conversion of category from LT IV to LT VII A took place only after 11-11-2009. When there is no conversion, KSEB cannot demand Charges under LT VIIA tariff.

(2) The clause of note (e) to LT IV Tariff was deleted by the Commission, and the situation reverts back to the original position. A mistake committed is to be rectified from its inception and not from a particular date.

(3)The complete processing of milk by pasteurization, storage, packing etc is to be considered as industry and LT IV shall be applicable. There is no justification for a short assessment bill as we remained under LT IV tariff, till the day of change of category.

(4)The respondent alleges that we use more than 20% load for chilling activity. It is only an assumption and bill cannot be raised for an assumption.

(5). Our Society is not affiliated to 'Milma' and is a traditional one. We offer service and not profit oriented. If the bill is insisted it will cripple the society and have to be closed down.

Hence, request to declare the claim of Rs.7, 75,722/- against us as null and void. Also request to declare the charges claimed from November, 2009 to June 2010 as null and void.

Argument of the Respondent:-

(1) The appellant (Consumer No: 3708) is a Co-operative society, and was operating a milk chilling plant under LT IV tariff. The consumer filed petition before CGRF/Kottarakkara, vide: OP/487/2009 and got the verdict issued on 07-08-2010. The CGRF did not interfere in the short assessment bill of Rs775722/- issued to the consumer. The consumer then filed appeal against the order of the Forum before the State Electricity Ombudsman.

(2) The APTS of KSEB conducted a surprise inspection in the premises on 31-10-2009 and a site mahazar was prepared by the Section officials regarding the Energy meter and the electrical equipments connected to the system. As per the report, the consumer was using 32.45 kW load for chilling/freezing activity and the balance 12.07 kW load for other activities. It is evident that the load for chilling, freezing & storage activity exceeded 20% of the total load of the consumer. Hence as per the Tariff Order 2007, the applicable tariff shall be LT VIIA. There fore the Assessing officer, the Assistant Engineer issued a short assessment bill under LT VII A tariff for the period from 12/2007 to 10/2009, amounting to Rs.7,75,722/- and served on the consumer on 18-11-2009.

(3) To differentiate between industry and commercial activity, the criteria of connected load for each activity is taken as the basis. In the present case, out of the total connected load of 44.525 KW, the consumer is using 32.451 KW, that is, 72.9% of the total load for chilling/ freezing activity. Hence the activity of consumer is to be considered as a commercial activity and is to be billed under LT VII A tariff.

(4) The KSERC's order dated 21-06-2010 in TP 76/2009, deleted the note (e) given under LTIV tariff classification, but the effect to the same was given from 21-06-2010 only. The inspection of the premises was done prior to that date and the assessment done as per the rules existed at that time. Moreover, the CGRF Kottarakkara found the bill in order and confirmed it. The CGRF have noted that the consumer will remain under LT VIIA tariff for the period. 01-12-2007 to 20-06-2010 and may be upheld. The CGRF's finding that timely action was not taken by the respondent is not correct. Inspection of the premises was done on 31.10.2009 and based on this the Tariff was corrected. The bill issued on the consumer is only a short assessment bill and not a penal bill.

(5) Section 62 of Electricity Act 2003, empowers KSERC to determine the tariff of the consumers from time to time. Hence the decision of Commission is final as regard to tariff fixation and we have acted only as per the tariff order. The CGRF order issuing 23 installments itself is to be challenged. No lapses have occurred on the part of KSEB. The tariff order of KSERC is binding on the consumer also.

Hence the bill issued is as per rule only. The petitioner is trying to avoid from payment of bills. None of the reliefs sought by the appellant are allowable. Hence the Appeal petition may be dismissed.

Analysis and Findings:-

The Appeal Petition was heard on 18.2.2011 at Govt: Rest house, Kottarakkara and both sides presented their case on the lines stated above. On perusal of the Petition, statement of facts of the respondent, the arguments made during the hearing and the argument notes submitted by both parties and on a detailed analysis of all documents before me, I come to the following conclusions and decisions there of. The dispute is regarding the change of tariff of a Milk Chilling/ Processing unit with retrospective effect and issue of a short assessment bill there of. The applicable tariff of the consumer, whether he falls under industry or commercial category, during the disputed period of 01-12-2007 to 21-06-2010, is to be decided and if so whether a short assessment bill raised is valid, is also to be ascertained.

The petitioner argues that he neither belongs to a Dairy farm nor runs a milk chilling plant, as alleged by the respondent, but is a milk marketing co-operative society engaged in collection of milk, processing it and after pasteurization sells to consumers, the milk and the milk products under the name and style 'Manjoor Milk'. The Milk processing involves receiving of milk, preheating, filtration, standardization, pasteurization, homogenization, cooling, packing and storage. Therefore the note (e) given under LT tariff classification Order, 2007, cannot be made applicable to milk processing units, argues the appellant. Merely because of the fact that, more than 20% of load is used for freezing and cold storage activity, does not warrant the Milk Processing units to be placed under commercial category, points out the consumer.

It is noted that the milk chilling is an integral part of all the process, related to manufacturing, Pasteurization or Storage purpose of milk. The KSEB officials inspected the premises, and prepared a site mahazar with the details of the equipments connected to Electric supply lines and found that the milk chilling/freezing load is more than 20% of the total connected load (total rated capacity of all equipments taken together). The Mahazar is not disputed by the appellant. The appellant's only

argument is that the anomaly, if any, has to be proved by the respondent before effecting any tariff change. But the respondent argues that they have conducted site inspection and prepared a site mahazar detailing the load particulars of the consumer's equipments. This inspection has found that more than 20% of the connected load is used for Chilling/ Freezing activity of the unit. This fact is not disputed by the consumer. Hence as per the tariff rules in force at that time, the consumer belongs to commercial category as his freezing/ chilling load is found more than 20% of the total connected load and therefore the applicable tariff is LT VII A.

The appellant has filed Petition (TP 81/2009) before KSERC seeking to declare that "the Dairy farms do not come with in the purview of note (e) under LT IV Tariff category" classification. The Hon: Commission, after hearing both parties, issued the order dated August 12, 2010, and observed as follows in the same;

'The petitioner's society as stated by them is a milk processing unit/dairy plant involved in a manufacturing process. As pointed out by the petitioner, it is using the freezing/ cooling activity as an integral part of their manufacturing process.'

The APTS inspection does not have a finding that the manufacturing activity was not taking place at the premises. Instead it has found that the Electrical load used for chilling/freezing purpose is more than 20% of the total connected load, and therefore the tariff applicable to the consumer is LT VII A and not LT IV. The consumer does not have a case that their chilling/freezing load is below 20%. They argue that till 12/07, the Milk processing activity was under LTIV category and after 21-06-2010 also, the Hon: KSERC has agreed to assign the milk processing units, the industrial tariff and hence it is irrational to have a different tariff in between 12/2007 to 6/2010. In the petition No.TP-76/2009 filed by Sri.Shaji Sebastian, on the matter of tariff applicable to LT milk processing unit/milk chilling plants, the Commission has ordered to delete the note (e) under LT IV category with effect from 21.6.2010. That is to say, irrespective of the rated load or capacity of the "electrical equipment" used for chilling/freezing purpose, a Dairy farm or a milk processing plant will continue to remain under industrial tariff -LT IV category, after 21.6.2010. On the other hand, the units used for cold storage, chilling, freezing or packing purpose alone, shall be treated as commercial and LT VII (A) shall continue to apply.

The Hon: Commission has observed among other things, in the Order dated August 12, 2010 on the Petition No: TP/81/2009 filed by the Appellant, as follows- "Hence LT IV Industrial Tariff shall be applicable for the petitioner. The petitioner accepts the Order in Petition no: TP 76 dated 21-06-20010 and LT IV Tariff is applicable only from that date. Hence the Petitioner has to remit Rs.7,75,722/-, the arrear for the period from 12/2007 to 10/2009 as LT VII A tariff was applicable during that period. But there is a lapse on the part of KSEB also since they have not changed the tariff from LT IV to LT VIIA from 12/2007, as per Rules. This would have enabled the petitioner to realize the impact."It has also observed that the CGRF or the Ombudsman shall decide on this issue without being influenced by the decision or observation contained in the said Order.

Decision:-

Based on the analysis, findings and the reasons stated above, I come to the following conclusions and decisions there of. The Hon: Commission has categorically laid the principle in the Tariff Order 2007, that all milk processing plants, irrespective of whether a manufacturing process is taking place or not, if the load used for milk chilling/freezing is more than 20% of the total load, it will fall under commercial

LT VII A category. The APTS Inspection conducted on 31.10.2009 and the site mahazar prepared there of has established that the milk chilling/freezing load of the Appellant is more than 20% of the connected load. The appellant does not dispute this finding of APTS seriously. Hence the step taken by the opposite party to change the tariff, from industrial to commercial on the above findings is found to be in order.

(A) In a similar case, i.e. in the O P No 5930 of 1985 filed before the Hon: High Court of Kerala, the Petitioner challenged the demand (arrear bill) for electric charges for the period 10/1980 to 10/1984. The cause of the case was the bill, which arose consequent on classifying the consumer's connection as having a different tariff than the originally assigned one. The petitioner contested that KSEB has no jurisdiction to demand electric charges by the reclassification for an anterior period. The Hon: Court has observed as follows;

“.....I am not persuaded to accept the Petitioner's contention that a bill could not be issued for the past after rectifying a mistake. The demand for electric charges is not like an assessment to tax which requires a specific provision for reopening assessments. Here the petitioner has consumed the electricity with liability for payment of such charges as are due in law. If there is a mistake in the categorization or there is an under billing, it is always open to the respondents to rectify their mistakes and to demand the proper charges due from the consumer.....”

(B). Similarly in the case, filed by M/s Baby Marine Products, Calicut, a small scale industrial unit engaged in the business of exporting marine food products, before the Hon: KSERC in 03/2006 (vide DP No22 of 2006), as per the direction contained in the Hon: High Court Order in WP © No 27351/05. The Petition was against the action of KSEB on the issue of 'order to effect the Tariff change with retrospective effect and consequent arrear bill' due to the delay in effecting the new tariff applicable to the consumer, which was left out due to omission by KSEB.

The Hon: KSERC disposed the above petition with the following observations;

- a). KSEB has only classified the consumer under the appropriate tariff as per the Tariff order ruling from time to time.
- b).The Board was only enforcing the Tariff order in force and it is in order.
- c). As per the Supply Code 2005, vide clause 24(5), if the Licensee establishes that it has under charged the consumer, either by review or otherwise, the Licensee may recover the amount under charged from the consumer by issuing a bill and in such cases at least 30 days shall be given for the consumer to make payment against the bill.

(C)In another order of the Commission dated 15.3.2011 on the Petition No DP-84/2010 filed by Sri Shaji Sebastian Vs KSEB, the request of the petitioner was to issue “a clarification/ declaration may be given as 'Pasteurization' is a process which is classified as industry and industrial tariff shall be applicable for the same from the date of inception or starting of the industry”. The Commission ordered that “Retrospective effect shall not be allowed to the order on TP-76 dated 21.6.2010 of the commission which states that the complete processing of milk by pasteurization, storage, packing etc is to be considered as industry and LTIV Tariff shall be applicable to them”. That is to say industrial tariff shall be applicable to milk pasteurization only prospectively from the Order date of 21.6.2010. Hence I feel since the Hon: KSERC has itself clarified the issue, there is nothing more to be decided on this issue.

From the three cases mentioned above, it is clearly arrived at from the learned Judgments that the consumer is liable to pay at the appropriate tariff categorized by the Authorities appointed by Law and the same Tariff classification is notified through Official Gazette. Here the Licensee has established that it has under charged the consumer by review and therefore as per clause 24(5) of the Kerala Electricity Supply Code, 2005, the consumer is liable to pay the dues as demanded. Hence I come to the conclusion that there is no merit in the Appeal Petition filed by the consumer and as such the same stands dismissed.

The argument of the consumer that, had he known the tariff change earlier i.e. from the date of its effect, he could have planned his business accordingly is a genuine statement for consideration. Hence I am inclined to set aside any interest for the belated payment of the bill under dispute up to 30 days from the date of this order, if he remits the amount in full. He is also eligible for 24 installments and the same will attract interest for belated payments at the ruling rate of KSEB for the period from the 31st day of this order to the day of remittance of installment amount.

Having concluded and decided as above on 29th day of July 2011, the Appeal petition stands disposed of accordingly. No order on Costs.

ELECTRICITY OMBUDSMAN

No:P-165/2010/ 937 /Dated 29.07.2011.

Forwarded to: 1. The Secretary,
Manjoor Ksheera Vyavasaya Sahakarana Sangam Ltd.
Kuruppumthara, Manjoor P O, KOTTAYAM Dt.
2. The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard, Ettumanoor, Kottayam Dt.

Copy to:

1. The Secretary.
Kerala State Electricity Regulatory Commission,
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-695 010.
2. The Secretary.
KSEBoard, Vidyuthibhavanam, Thiruvananthapuram.695 004.
3. The Chairman, Consumer Grievance Redressal Forum, KSEBoard, Kottarakkara.