

THE STATE ELECTRICITY OMBUDSMAN
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Appeal Petition No: P/183/2011.

(Present: -T.P.Vivekanandan)

Appellant : The General Manager.
 High Range Dairy Co-operative Society Ltd, K 10(D), Adimaly, Idukki (DT).

Respondent : The Assistant Executive Engineer
 Electrical Sub Division, KSEBoard, Adimali, Iddukki Dt.

ORDER.

Background of the Case:-

M/s High Range Dairy Co-operative Society Ltd, Adimaly, Idukki, is an industrial consumer having consumer no: 15765/VTL under Electrical Section, Adimaly, with a registered connected load of 106 KW. The service connection was effected on 01.01.1999 under LTIV-industrial tariff. The consumer is doing the business of Milk Pasteurization, chilling, packing and selling of milk and milk products. The consumer has been remitting the electricity charges under LT IV- industrial tariff till 5/2010 when an inspection was conducted on the Unit by the Assistant Engineer and on finding that the chilling/freezing load of the consumer exceeded 20% of the total connected load, the tariff of the consumer under LT IV-industrial was changed to LT VII A- commercial retrospectively from 01.12.2007, as per the existing rules. Further, a Demand bill to the tune of Rs.17, 55,067/- was issued to the consumer, being the arrear amount towards the electricity charges due to difference in the tariff rates (from LTIV to tariff LT- VII A) for the period from 12/2007 to 4/2010. Aggrieved by the change of tariff to a higher rate (commercial) with effect from 12/2007 and issue of a short assessment bill towards the arrears, the consumer filed petition before the Hon CGRF, Ernakulum which was dismissed vide order dated 02.12.2010. Hence the consumer preferred Appeal before this Authority, as he is still aggrieved by the above decision of CGRF, Ernakulum and is the basis of the case.

Argument of the Appellant:-

The Appellant has advanced the following arguments;

- (1) The milk pasteurization unit is categorized as industry by Govt: of India and the Dept: of Industry. Hence they are eligible for Industrial tariff.
- (2). The KSEB has misinterpreted the tariff order of 2007 and thereby the change of tariff was effected to some industries and majority of units engaged in pasteurization escaped from the additional charges.
- (3). The order dated 21.06.2010 on the Petition No TP/76 filed before the Commission, the KSERC (Kerala State Electricity Regulatory Commission) has clarified that the complete processing of pasteurization is an industry but without pasteurization, milk chilling, packing etc. will be considered as a commercial activity. After the issue of the said order, the Dairy Farms without pasteurization, milk chilling, packing etc. were converted to commercial tariff (LT VII A), even if the chilling, freezing, cold storage load is less than 20% of the total connected load. The Commission implemented this order with prospective effect because the

retrospective effect will damage the industries where load of the compressor for chilling is less than 20% of the total connected load. The Appellant argues that the consumers engaged in Pasteurization were eligible for industrial tariff from the date of inception. Denying this facility for a particular period, from 01.12.2007 to 21.06.2010, is a violation of the rights of the consumer which is against the natural justice.

(4). The Appellant adduced an argument that the criteria for identifying industries cannot be decided by KSEB or any other agency especially for a particular period. This was decided by various designated Govt: agencies years before and KSERC have only confirmed it. Therefore KSEB cannot collect commercial tariff for a short span of time.

(5). The Appellant has put forward another argument relating to the delay on the part of KSEB to raise the invoice in time. If the invoice had been raised by KSEB in time, implementing commercial tariff from 01.12.2007, the consumer would have opposed/challenged the same immediately and he would have obtained the relief immediately. Since there is no delay from the part of the consumer in filing petition with KSERC and obtain a favorable order, it will be a severe injustice to the consumer, if he is directed to pay commercial tariff from 01.12.2007 to 21.06.2010.

Argument of the Respondent:-

The Respondent has denied all the averments and allegations contained in the Petition filed by the consumer except to the extent specifically admitted in the statement of facts.

The milk chilling plant, freezing plant and cold storages were categorized under LTIV-Industrial Tariff till 12/2007. But in the new tariff order effective from 01.12.2007, they were categorized under LT VII (A) - commercial tariff. But Dairy farms/milk chilling plants with or without chilling/freezing/cold storage activity shall be charged under industrial category provided the chilling/freezing/cold storage load is limited to 20% of the total connected load of the Plant. If it exceeds 20%, LTVII (A)-commercial tariff shall be applicable. The Hon: Commission has the right to determine the tariff of consumers in accordance with the provisions of the Electricity Act, 2003.

Secondly, the Respondent has stated that as per the instruction of the Audit party of the Accountant General, Kerala, the Assistant Engineer, Electrical Section, Adimaly, inspected the Unit of the consumer and a site mahazar was prepared detailing the load of all equipment connected to the system. It was found that the total chilling load of the equipment in the unit was 53.5 kW and will be 31.25 kW without considering the load of the stand by equipment. In both cases, the chilling load exceeded 20% of the total connected load of the plant. The tariff order issued in 11/2007 is very clear and there is no room for mis-interpretation, as alleged by the consumer. According to the schedule of tariff and Terms and Conditions for retail supply of energy by KSEB w.e.f 01.12.2007, LT- VII A tariff shall be applicable when the chilling/ freezing/ cold storage load of any Dairy farm/milk chilling plant exceeds 20% of its total load.

Another argument of the Respondent is that the processing of milk by pasteurization, storage and packing is to be considered as industry and had to be charged under industrial (LT- IV) tariff only from 21.06.2010, as per the order issued by Hon: KSERC. Hence the prospective implementation of tariff is done as per the orders of Regulatory Commission only.

It is argued by the Respondent that the tariff classification of electricity is not based on any documents issued by Govt or any of its agency, but only in the perspective of Electricity Act, 2003, and associated Regulations and Rules where in such documents does not find a place.

Finally, it is submitted by the Respondent that the effect of change of tariff category was very well discussed during three Public hearings done by the Commission in the State. But individually appraising

each and every consumer with respect to his tariff category is not practical. So the averment of the Petitioner is not genuine and hence not sustainable.

Analysis and Findings:-

Both parties were heard on 03.06.2011, in my chamber at Ernakulum. The Appellant was represented by Sri Sajith K.S, General Manager, High Range Dairy Co-operative Society and Sri Shaji Sebastian, Vice-President, KSSIA, Ernakulum, and the opposite side by Smt Dahlia Sreedhar, Assistant Executive Engineer, Adimali, and have presented their case on the lines stated above. On perusal of the Appeal petition filed by the consumer, the counter furnished by the Respondent, the arguments made during the hearing, the documents and argument notes filed and after a detailed analysis of the above and considering all the facts and circumstances of the case, I come to the following conclusions and decision thereof.

The dispute is regarding the change of tariff of the consumer, who runs a milk processing plant, from industrial to commercial tariff on account of exceeding the Chilling/Freezing load beyond the 20% limit of the Plant's total load, with retrospective effect from 01.12.2007 (date of new tariff revision) and issue of a short assessment bill towards the arrears, due to the difference in the tariff rates. As per the new tariff order notified by the Hon: Commission on 27.11.2007, some changes in the norm for tariff classification were introduced and one among them was the change of tariff of Milk Processing units from Industrial to commercial tariff, in case the consumer utilizes the electrical load for chilling/freezing purpose in excess of 20% of the total connected load of the plant. In this case under dispute, the consumer was found using more than 20% load for chilling/freezing purpose and hence the Respondent changed the tariff of the Appellant to commercial rate from industrial. But the consumer insists that his unit is still an industrial one and hence the same old industrial tariff shall be made applicable to him.

On the basis of the argument put in by the Appellant and the Respondent, this Forum has found the following issues to be answered.

- (1) Whether the Appellant's firm falls under industrial or commercial category during the disputed period from 01.12.2007 to 21.06.2010?*
- (2). Whether the short assessment bill raised against the Appellant by KSEB is valid and correct?*

The Appellant has submitted that their unit is a Milk marketing society engaged in the collection of milk, processing it and after pasteurization sells to consumers, the milk and the milk products. The milk processing involves receiving raw milk, preheating, filtration, standardization, pasteurization, homogenization, cooling, packing and storage. The milk chilling plant /freezing plant/cold storages were categorized under LT- IV industrial tariff till 11/2007 by the Commission. But as per the new tariff order notified by the Commission in the Govt Gazette on 27.11.2007, they were categorized under LTVIIA-commercial tariff. Further, it was clarified that the Dairy farms/milk chilling plants with or without chilling/freezing/cold storage activity shall be treated under industrial category provided the chilling/freezing or the cold storage load is limited to 20% of the total connected load. On the other hand if the said load exceeds 20%, LT VII (A)- commercial tariff shall be applicable.

Aggrieved by this new norm of 20% load limit for getting industrial tariff for Milk processing units, a Petition was filed by Sri. Shaji Sebastian, vice-president, KSSIA (Kerala Small Scale Industries Association), before the KSERC (Commission). In the Petition No.TP- 76/2009 filed by Sri. Shaji Sebastian, he challenged the new criteria for the tariff applicable to LT- Milk processing unit/Milk chilling plants and requested to retain industrial tariff as before. The Hon: Commission after conducting hearings, ordered to delete the

note (e) under LTIV- industrial tariff category i.e. deleted the norm of 20% limit of Freezing/ Chilling load for getting the industrial tariff. But it was specifically clarified in the said order that this change of norm shall be applicable from 21.06.2010 only. In short, the complete processing of pasteurization of milk, its storage and packing is considered as industry and LT IV-industrial tariff made applicable to them from that date of 21.6 2010 only. But, for the interim period of 1.12.2007 to 21.6.2010 the norm (criteria) of 20% limit of chilling/ freezing load for getting industrial tariff shall prevail. Further, it was made clear that Units doing the activities of cold storage, chilling, freezing and or packing alone, shall continue to be treated as commercial and LT VII (A) tariff shall apply to them.

As per the site mahazar prepared by the Assistant Engineer, Adimaly, after inspection of consumer's Unit on 29.4.2010, it is found that the total chilling/ freezing load of the Appellant's Firm comes to 53.5 KW out of the total load of 106 kW which is more than 20% limit and hence invokes the commercial tariff. Even without considering the load of standby equipment, the chilling load is reported as 31.25 kW which is also well above the 20% limit. In either case, the chilling load exceeded 20% of the total connected load of the Plant. Hence as per the tariff rules revised with effect from 12/2007, the eligible tariff of the consumer is found as LTVIIA- commercial from 12/2007 onwards. But the consumer was continuing under LT IV-industrial tariff till 5/2010, when KSEB detected the wrong tariff fixation, and subsequently changed the tariff with retrospective effect from 12/2007. The decision of KSEB to change the tariff of the consumer to commercial tariff is found justifiable in the light of new tariff order issued in 11/2007. Hence the consumer is liable to pay at the appropriate tariff categorized by the Statutory Body (Hon: KSERC), constituted by Law. It is also to be noted that the Tariff classification was notified in the official Gazette after the due process of Public hearings conducted on the new Tariff Proposals.

Under section 61 of the Electricity Act 2003, the State Commission shall specify the terms and conditions for the determination tariff and shall be guided by the principles and methodologies specified by the Central Commission and others. There is an inbuilt mechanism in the Electricity Act and the new tariff proposals have to be made available to the Public to lodge their objections, so that on the basis of their objections, tariff could be fixed by the Commission under section 64 of the Act. In this case also, the KSERC has published the proposal of "draft schedule of tariff for retail supply of energy", submitted by KSEB to the Commission on 01.06.2007, inviting public opinion and to file objections, if any. Thereafter, the Hon: Commission has issued the tariff order dated 26.11.2007 after conducting extensive public hearings up on the subject and after considering the views of all interested stake holders of the state, through the objections submitted by the consumers and others in the public hearings. As per the existing Law, the state Regulatory Commission is conferred with the powers to revise the tariff rates as per section 61 to 66 of the Act. In the present case also, the Hon: Commission have adhered to the provisions of the Act before implementing the revised tariff fixation in 11/2007. Hence identifying the category of the consumers and fixing the eligible tariff for a particular category by the Commission is well within Law and cannot be disputed.

The Secretary, Manjoor Ksheera Vyvasaya Sahakarana Sangam Ltd, Kuruppamthara, Kottayam District, (an identical Milk Society) has filed Petition vide No: TP 81/2009, before the Commission(KSERC) seeking to declare that "the Dairy farms do not come within the purview of note (e) under LT IV Tariff category" classification. The Hon: Commission, after hearing both sides, issued the order dated August 12, 2010, and observed as follows in the same;

“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 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) tariff shall continue to apply.

Again, Sri Shaji Sebastian, filed a Petition vide No DP-84/2010 before the Commission requesting as follows; “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 after conducting hearings ordered on 15.3.2011 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 from that date”. 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 of applicable tariff of a Milk Processing Plants for the period of 1.12.2007 to 21.6.2010, it has to be accepted, as the Commission is the Authority to fix the Tariff of consumers as per Section 61 to 66 of the Electricity Act,2003.

As per the instructions of the Audit party of AG’s office (Audit/Kerala), the Assistant Engineer inspected the consumer’s premises on 29.04.2010 and found that the total cooling/chilling load of the consumer exceeded 20% of the total connected load. Consequently, the applicable tariff of the consumer was confirmed as LT VIIA- commercial and hence changed the tariff of the consumer with retrospective effect from the new Tariff order effective date of 12/2007. A short assessment bill amounting to Rs.17, 55,067/= was also issued to the consumer being the difference in tariff rates in the matter of electricity charges from 12/2007 to 4/2010 i.e. arrears for 29 months. Hence the implementation of the tariff order, 2007, by KSEB in the case of the consumer and thereby the decision of the Respondent to change the tariff from industrial to commercial and the arrear bill issued is found to be in order.

Further section 64 (6) of the Electricity Act, 2003, provides “ A tariff order shall, unless amended or revoked, continue to be in force for such period as may be specified in the tariff order “.

Decision:-

From the analysis of the case as detailed above and the findings and conclusions arrived at, I come to the following decisions.

The Hon: Commission has categorically laid the principle in the Tariff Order 2007, that 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 Assistant Engineer’s Inspection and the site mahazar prepared thereof has established that the milk chilling/freezing load of the Appellant is more than 20% of the Plant’s total connected load. As per the tariff rules in force, the eligible tariff of the consumer is established as LT VIIA-commercial. Hence the action of the Respondent to change the tariff of the consumer from industrial to commercial, on the above findings, is found to be in order.

Moreover the new tariff order issued by the Commission was in force from 1/12/07. As per Regulation 24(5) of the Kerala Electricity Supply Code, 2005, if the Licensee establishes by review or otherwise that it

has undercharged the consumer, it is open to the Licensee to prefer its legitimate claims. Hence the issue of the short assessment bill occurred due to difference in the tariff rates (from industrial to commercial) with retrospective effect from 1/12/2007 is found to be maintainable and hence payable by the consumer. The consumer need not pay any interest/surcharge during the Appeal pending period and up to 30 days from the date of this order, if the whole amount is paid with in that date. The consumer is also eligible for 30 installments and the Respondent shall issue the same, if requested by the consumer, and the first installment shall also be payable within 30 days of this order failing which interest/ surcharge as per rules in KSEB shall be payable by the Appellant for late payments.

Having concluded and decided as above, the Appeal Petition filed by the Appellant stands dismissed accordingly as there is found no merit in the case. No order on costs. Dated the 14th of December, 2011,

ELECTRICITY OMBUDSMAN.

No. P/183/2011/ 1041 Dated 14.12.2011.

Forwarded to: -

- (1). The General Manager,
High Range Dairy Co-operative Society Ltd, K 10 (D), Adimaly, Idukki (DT).
- (2).The Assistant Executive Engineer, Electrical Sub Division, KSEBoard,
Adimaly, Idukki.

Copy to:-

- (1). The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam,
C V Raman PillaiRoad,Vellayambalam, Thiruvananthapuram.
- (2). The Secretary, KSEBoard, Vidyuthibhavanam, Pattom, Thiruvananthapuram.
- (3). The Chairperson, CGRF, KSEBoard, Power House, Ernakulam-18.