

THE STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No.163/2010.

(Present .Sri.T.P.Vivekanandan)

Appellant	: Sri. TOM JOSE. Kurichiel House Chemperi KANNUR (DT).
Respondent	: The Assistant Executive Engineer Electrical Sub Division, KSEBoard, Sreekantapuram, KANNUR.

ORDER.

Background of the Case.

The appellant is a consumer of Electrical Section, Chemperi, and residing at chelianparambu, near Vimal Joythi Engineering College, Chemperi, and is having eight single phase Electric service connections, registered in his name for different building numbers situated in a compound, and availed at different periods. All these connections were obtained for different purposes and are being levied under different tariffs. It is alleged that he has rented out the first floor of his residence and the adjoining building of his residence to the students of Vimal Jyothi Engineering College and for other employees on monthly rent. He had submitted a request to the Assistant Engineer, KSEB, Chemperi, to change the tariff under LT VIB to domestic rates on the basis of the orders issued by the Hon: Ombudsman in representation No.P.86/2009. It is alleged that the Assistant Engineer did not take any action on his above request. Further, after an inspection conducted by the AE on the consumer's premises, the tariffs of connections were changed to LT VII A –commercial, under misuse of tariff. Aggrieved by the action of KSEB to change tariff and issue of penal bill thereof, the consumer approached the Hon: CGRF, Kozhikode for redressal of his grievances. His petition before the CGRF was dismissed and hence the Appeal filed before this Forum.

Argument of the Appellant.

(1). The first floor of the appellant's house was rented out to two families earlier. Separate consumer numbers have been obtained for these apartments. On vacating these apartments by the families, this was rented out to some college girls of Vimal Joythi Engineering college at Rs 400/= per month. Some of these inmates have prepared food with the help of a servant in the hostel and others took food from the college canteen. The Assistant Engineer and Sub Engineer inspected the place and directed to change the tariff to LT VI B. Two years later, the appellant had constructed another building with a purpose to let the rooms to the college students. Service connection was given to this building with consumer No.7751 under LT VII A-commercial tariff. The next year, he had constructed two more floors in this building and a separate connection with No 8337, was obtained for the same under LTVI B tariff.

(2). Based on a judgment of Ombudsman, the appellant had submitted an application before Assistant Engineer, Chemperi, on 7.11.2009, for allowing domestic tariff to the connections of the buildings used for lodging students. The copy of the said order was also submitted. Since no reply has been received he submitted a petition before the CGRF, Kozhikode. Meanwhile the Assistant Engineer and Sub Engineer inspected the premises and prepared a site mahazer of their findings. No notice or information was given to him before the inspection and the site mahazer prepared was a vague one. On the basis of the inspection, the tariff of some connections were changed to LT VII A and a demand notice for Rs.80, 432/ was served on the night of the day before of the hearing scheduled by the CGRF on his Petition. This according to the appellant is the vengeance of the Assistant Engineer for filing Petition before the CGRF.

(3).The appellant's complaint is that CGRF has not taken his arguments in its full credibility and not given any consideration. It is also alleged that because of the inspection conducted by the KSEB, two students vacated the room which caused irreparable loss and defame caused to him.

(4).Another argument of the appellant is that the tariff fixation was done by the Assistant Engineer after his inspection and further changing of tariff is not justifiable because this was due to ignorance of the KSEB officials. The AE has changed the tariff of consumer Nos; 7421(Pump set), 7197 and 7198 to LT VIB after inspection. He has stated that being a consumer he is not responsible for such irresponsible actions of the KSEB officials.

(5). The CGRF did not clarify the applicable tariff and has ordered to collect loss, if any, occurred to KSEB is not justifiable. Only students of nearby college are residing in the premises of connection Nos; 7197, 7198 and 8337.

(6) He further submitted that only students of Vimal Jyothi Engineering College is staying in his buildings as paying guests and requested to sanction domestic tariff or if it is not possible to allow the VI B tariff which was sanctioned earlier.

Relief sought: - 1) Residing students are eligible for LT 1(A) Domestic tariff, if not to continue on the existing LT VIB tariff. Further on the Hearing date the Appellant summarized his demands as follows;

- 1). Consumer No 2436-LT 1 (A) - Allow to continue under the existing domestic tariff.
- 2). Consumer No 7197-LT VI (B) - Allow to continue under the existing tariff.
- 3). Consumer No 7198- LT VI (B) - Allow to continue under the existing tariff.
- 4). Consumer No 7751- LT VII (A) - Allow to continue under the existing tariff.
- 5). Consumer No 8337 - LT VI (B) - Allow to continue under the existing tariff.
- 6). Consumer No 7421- LT VI (B) - Allow to continue under the existing tariff.
- 7). Consumer No 5337- LT 1(A) - Allow to continue under the existing domestic tariff, since used for pumping water including irrigation.
- 8). Consumer No 1801- LT VII (A) - Allow to continue under the existing tariff.

Argument of the Respondent.

The Respondent has denied the contention of the appellant stated in the Petition and has adduced the following arguments.

According to the respondent, the inmates of the hostel run by the Appellant, in different floors of his house and adjacent buildings newly constructed, are the students of Engineering College mostly, but also include one Village officer of Eruvasserry village and some women employees of the Vimal Jyothi Engineering College. The respondent had informed the consumer that the judgment of Ombudsman regarding the domestic tariff to students hostel is not applicable to the institutions of the appellant since

there was seen others staying along with the students. The Inspection was conducted in the premises with a purpose to prepare the details of the connected load of each premise, for submitting the same before the CGRF. The inspection was conducted in the presence of Sri.Tom Jose, his wife and son and they have fully cooperated with the inspection. A site mahazer was prepared with the connected load details of each connection only and this matter has been explained during the hearing of CGRF. It was found in the inspection conducted on 03.12.2009 that the connected load of consumer's house, vide No.2436 has increased to 9605 watts and for getting the correct energy recording, the existing meter was replaced with an electronic one on 05.12.2009. The respondent denies the contention of the appellant that a vague site mahazer was given. The site mahazar was accepted by the appellant directly and also got it signed by the consumer.

Based on the inspection, a provisional assessment notice was given and the consumer was asked to file objection, if any, within 7 days. But without utilizing the opportunity, he filed a petition before the CGRF, Kozhikode. There was clear misuse of tariff and unauthorized use of electricity on the part of the consumer and hence the provisional demand notices were given. This was done in good faith with an intention to safeguard the interest of KSEB and not for any vengeance as alleged by the appellant. After getting the order of CGRF, the consumer submitted applications to regularize the unauthorized load connected to his premises. It is evident from this act of consumer that there was unauthorized load and use of electricity in the premises of the consumer.

The respondent has pointed out the difficulties to take meter reading of consumer Nos.7197, 7198 due to the locking of the premises with grills, which obstructs the duties of KSEB officials. It is also stated that the appellant is in the habit of insulting the Meter readers who go there to take the meter readings. There was no case of indecent behavior from the side of the KSEB officials and they are not responsible for the drop out of the inmates from the hostel. The appellant is also conducting a 'cable TV' business in the hostel buildings. The purpose of the use of above connections comes under VII A tariff.

The respondent has advanced another argument that a total 80 people are staying in the hostel and hostel fee charged is Rs.2100/= per person per month. The inmates of the buildings, with consumer Nos.7197, 7198, 8337, and 7751, were served with food, prepared in a common dining room belonging to the Appellant's house. It is clear that an illegal private hostel is functioning under the ownership of the appellant with commercial activities and purpose.

The connected load of the house connection No.2436, where the consumer, his wife and son was staying has increased from 1850 watts to 9605 watts. This increase in the connected load was done for the unauthorized use of electricity by providing two Nos of 240 W washing machines and one No 1200 watts Iron, for the use of the inmates.

Lastly the Respondent claims that the difference in the connected load of the various connections shows the misuse of electricity. Hence it is requested to allow to fix the tariff of the connection in the premises under LT VII A- commercial tariff and to allow assessment of the loss to Board by demanding back arrears of one year as per rules.

Analysis and Findings.

The Hearing was done on 30.03.2011, at the Inspection Bunglow, KSEB, Kozhikode. Both sides were represented and they argued the case on the lines detailed above. On going through the Appeal Petition, statements of facts, documents furnished by both parties, and considering the facts and

circumstances of the case, and on a detailed analysis done of the same as shown below, I come to the following conclusions and decisions thereof. The points to be answered are the following.

- (1). whether the disputed consumer Nos: 7197, 7198, 8337, 7421 and 2436, against which tariff change to LT VIIA was ordered by KSEB, is correct?.
- (2). whether the appellant is liable to remit the bills issued thereof, for arrears, of one year?.

The Appellant is a consumer having eight single phase service connections registered in his name at different building numbers for different purposes availed at different periods and remitting the charges under various tariffs. They are;

- (1). Consumers No.2436 under LT I A tariff.This is the residence of the appellant.
- (2).Consumer No.7197 under LT VI B tariff in building No.EP/111/992 B. Rented out to others.
- (3).Consumer No.7198 under LT VI B tariff in building NO.EP 111/992 C. Rented out to others.
- (4). Consumer No.8337 under LT VI B tariff in building No.EP VIII 1317/C. Rented out to others.
- (5). Consumers No.7421 under LT VI B tariff for pumping water from the bore well and from twowells.
- (6). Consumer No.7751 under LT VII A tariff. Rooms were rented out. No dispute on this connection.
- (7). Consumer No.5337 under LT IA tariff- to the old house and no dispute on this connection.
- (8).Consumer No.1801 under LT VII A tariff in buildings No.EP 111/991 B. This service connection is given to a cable TV Network run by the appellant. No dispute remains on this connection.

The building having consumer No.2436, is the house in which the appellant and family is residing. The registered connected load of the building was 1805 watts. But it was found on inspection that the present connected load has increased to 9605 watts. The appellant had submitted application before Assistant Engineer to regularize the connected load as 7160 watts and the same was regularized after inspection on 3.9.2010. Even if the load of domestic service increases, it will not come under misuse of tariff unless it is established that it is used for a higher tariff purpose like used for lodging or for paying guest purpose etc. Here only a general statement from the Respondent's side alleging that misuse of tariff is being done by the appellant, in 5 Nos of his Electric connections including the residence. It is stated that these consumers were being used for lodging and paying guest purposes. No evidence other than the increase in connected load is produced to substantiate the charge, for the house connection. Any documentary evidence to prove that outsiders were staying or lodging in the house or to establish that misuse of tariff has taken place at the consumer's residence is lacking and hence the charge is not maintainable.

There exists 4 Nos of other connections in the same compound or building where the consumer can allow the paying guests to stay, namely consumer Nos: 8337, 7197 and 7198, which are given under LT VI B tariff and 7751 under LT VIIA. The service connection applied for consumer no.7751 was under LT VII A tariff. This shows that the appellant is running a private hostel and he knows the tariff admissible for a private hostel. The service connection No: 8337, was given under LTVI B tariff, after inspection by the AE and paying guests were found staying, which means the tariff assigned is in order. The appellant has built two more floors in the same building later and applied for service connection and got service vide consumer Nos 7197 and 7198, all under LT VI B tariff, which is also found to be correct, since it is occupied by the Paying guests. There is no need to change tariff since misuse of tariff was not proved.

The mahazar was seen signed by the appellant. There is nothing to disbelief in the mahazar prepared by the inspection team since it was not disputed by the consumer and also considering the buildings constructed and the amenities provided there. It is clearly proved that the connected load registered for

all the consumers, stated above has exceeded and the consumer himself has requested to regularize the excess connected load. Clause 51 (4) of KSEBoard Terms and Conditions of Supply 2005 reads “ In case of low Tension consumers whose connected load does not exceed 100 KVA but who have exceeded the contracted load by 10% by adding unauthorized additional load, the procedure mentioned in clause 51 (1) shall be applicable. The unauthorized load shall be got regularized by the consumer with in a period of three months on application to the Assistant Executive Engineer and after payment of additional security deposit and other charges as per rules. The regularization shall be given effect from the date of collection of additional security deposit and other charges, if any, as per rules. The Assistant Executive Engineer shall issue proceedings to this effect. Penal charges as mentioned in clause 50 (1) shall be paid till the date of payment of additional security deposit “.

Decision.

The mahazar was seen signed by the consumer after being recorded as ‘read and found correct’. Out of the above 8 consumer numbers of the appellant, disputes exist only for 5 Nos of connections for which the tariff has been changed to LT VII A- commercial. They are Consumer nos, 2436, 7197, 7198, 7421 and 8337. The appellant is running a private hostel with the consumer numbers; 7197, 7198, 7421 and 8337, all under LT VIB tariff and 7751 under LT VIIA tariff. The argument of the appellant, that the college students are staying as paying guest seems to me true as there is an Engineering College nearby, which is a rural area and there are chances for Paying Guest students. The Respondent argues that they have seen one village officer and some women staff of the college as staying there. But no evidence is offered to prove this. Since there exists a Electric service connection with consumer No 7751 under LT-VIIA tariff for lodging purpose in the same premises, and since there is no specific case before me that the said employees were occupying with students in all the premises or with any particular consumer No having a lower tariff, the charges of misuse of tariff leveled against these connections is not proved and hence they will continue to remain in the original tariff as on 12/2009, prior to the inspection. That is the consumer Nos: 7197, 7198, 8337 and 7421, will remain under LT VI (B) tariff only. Further, the request of the consumer to allot domestic tariff for the said connections is found not eligible and hence not allowed, as the earlier decision of the Ombudsman cannot be made applicable here, since the facts and circumstances differ from case to case.

Since the misuse was not conclusively proved, the appellant may be allowed to continue under LT I A-domestic tariff for the house connection, consumer No.2436.

The second point to the answered is whether the back arrears are to be collected from the appellant for misuse of tariff. It is observed that the tariff under LT VI B, was allotted to consumer nos.7197, 7198 and 8337, after conducting inspection by the concerned Assistant Engineer. The Tariff change ordered by the AE for these connections to LT VIIA, after inspection in 12/2009, was found to be not correct for the reasons stated above. Hence the arrear bills issued for misuse of tariff for these consumers consequent to inspection has to be cancelled. However, the respondents are free to raise the bills for excess load (unauthorized load) availed under LT VI B tariff found during the inspection in 12/09 for these 3 Nos connections as per rules.

The consumer should invariably provide all facility for the Meter readers to take the meter readings without keeping the meters under lock and key or inside grills. The complaints of the Meter readers produced before me by the respondents show that some misunderstanding exists between them and is causing inconvenience to take the meter readings. I hope a better relation between the consumer and

the Supplier (KSEB) in future. The consumer shall initiate action to shift the meter outside to have free access to the Meters by the Meter readers, failing which the respondent may take steps as per clause 8 or other relevant clauses of KSEB T & C of Supply, 2005.

Having concluded and decided as above, the Appeal Petition filed by the Consumer, Sri Tom Jose, Chemperi, stands disposed of and orders are issued accordingly. No order on costs.

Dated the 27th February, 2012,

ELECTRICITY OMBUDSMAN.

No P/163/2010/ Dated 27.02.2012.

Forwarded to:

- (1). Sri. Tom Jose, Kurichiel House, Chemperi, KANNUR-670 632.
- (2). The Assistant Executive Engineer, Electrical Sub Division, KSEBoard, Sreekantapuram, KANNUR.

Copy to:

- (1). The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam,
Thiruvananthapuram-10.
- (2). The Secretary, KSEBoard, Vydyuthibhavanam, Pattom, Thiruvananthapuram.4
- (3). The Chairperson, Consumer Grievance Redressal Forum, KSEBoard, Vydyuthubhavanam, Gandhi
Road, Kozhikode.