

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/228/2011.

(Present: T.P. VIVEKANANDAN)

APPELLANT : Smt. Kamili Tharakan
Shibhumi, 814, Beach Road,
Fort Kochi, Kochi 1.
RESPONDENT : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board, Thoppumpady

ORDER.

Background of the case:

Smt. Kamili Tharakan is residing in 'Shibhumi' at Beach Road, Fort Kochi, under Electrical Section, Fort Kochi. She is having an electric connection with consumer No.523 under LTI (A) domestic tariff. The appellant's husband purchased the said building and property from M/s Lipton and Co. in the year 1987. The Electric connection was originally given in the name of Lipton and Co. and later the ownership was transferred in the name of the appellant on 29-9-2006. All these years up to 2006, the electricity connection was in the name of Lipton and Co under LTIA tariff. The sanctioned electrical load of the consumer was 3850 watts. For the month of October 2006 the bill was issued in the appellant's name under LT I A tariff. From November 2006 up to October 2008 the appellant was billed under commercial tariff-LTVIIA. According to the appellant the change in tariff was not noticed and bills were paid as usual. The appellant came to know about this anomaly in October 2008 and immediately she filed a complaint dated 14-10-2008 to the Asst. Engineer, Electrical Section, Fort Kochi to rectify the mistake and to refund the amount collected excessively under LTVII A tariff. Thereafter the Asst. Engineer, Fort Kochi and the Asst. Executive Engineer, Thoppumpady inspected the premises and having fully satisfied that the premises is a residential building and is used only for domestic purpose converted the billing tariff into LT I A from 11/2008 onwards. But no action was taken to refund the excess amount collected under LT VIIA tariff for the period 11/2006 to 10/2008. The appellant is stated to have made complaints many times for the same before the Asst Engineer and the Exe. Engineer. The appellant was given a reply on 1-7-2010 stating that an office has been functioning in the appellant's building from 11/06 to 10/08 and so the tariff was automatically changed to LT VIIA with effect from 11/06 and on receipt of an application from the appellant it was transferred back to LT IA with effect from 11/08 and hence she is not eligible for the refund of any amount. The appellant had replied to this letter stating that the residence or any part thereof has never been used for official

or commercial purpose and the automatic change of tariff from residential LT IA to LT VIIA commercial in the same consumer's name without serving notice on the consumer is wrong procedure. The Executive Engineer, Mattancherry, in his letter dated 3-8-10 has stated that an office was running in the appellant's house on rent and that is the reason why she paid the electricity bills under LT VIIA tariff without any protest from 11/06 to 10/08. It was also mentioned that when the tenant vacated in 10/08, she applied for tariff change and it was restored to LTIA- domestic tariff. The appellant, in her letter dated 10-12-10, again pleaded to refund/ adjust the excess amount collected under LT VIIA for the said period along with interest twice the bank rate as provided under regulation 24 of the Kerala Electricity Supply Code 2005. Since no steps were taken to refund the excess amount collected, the consumer filed a complaint before the CGRF which was dismissed, holding that the petitioner's electric connection in LT VIIA tariff from 11/06 to 10/08 is correct vide order No. CGRF-CR/Comp.75/2010-11 dated 25-5-2011. Aggrieved by this order of the CGRF, the Appellant has submitted this appeal before this Forum.

Arguments of the Appellant: -

The arguments of the appellant are based on the brief facts and circumstances which are narrated above. The main contentions of the Appellant in the Petition are the following.

The appellant argues that the argument of the respondent that an office was functioning in the appellant's house on rent and that was the reason why she remitted the electricity bill under VIIA –tariff, without any protest from 11/06 to 10/08 is purely a concocted story of the issue, intended to shore up defense in order to cover up the mistake. It is stated that the petitioner has never given the house on rent to anybody right from 1987. She is residing with her family in the above building continuously and is using the same as their residential house all these years and never any office functioned there. The KSEB had obviously made a mistake by billing the petitioner under VII A from 11/2006 onwards. It was never brought to the notice of the consumer that the tariff was changed. As soon as the petitioner noticed the mistake, she brought it to the notice of the Asst Engineer and the Board immediately on conducting an inspection and verification, changed the tariff back to LT IA-domestic, but no action was taken to refund the excess amount collected.

Another argument is that, if the respondent's version is true, the consumer should have given an application to change the tariff from LT-IA to VIIA, consequent to giving her house on rent for office purpose to another party. Alternatively, if her application is not there, the KSEB would have made an inspection of her house and if found that an office is functioning there, the KSEB would have changed the tariff from IA to VIIA as per the proceedings of the office. In that case, the KSEB should have certainly given a notice to this effect intimating the petitioner regarding the change of tariff. The KSEB would be definitely having some documents available at the office to substantiate this. In this case also, the KSEB would have made an inspection for changing the tariff. The KSEB would have certainly got a report from the person who made the inspection recommending the tariff change from LTIA to LTVII-A. Further there would be processing of a file. Further, it would be necessary to execute a supplemental schedule to the original service connection agreement showing the change in

tariff and the change over back to the original tariff LT IA has also to be got executed by the consumer. These documents should be available at the KSEB office. Therefore on receiving the evasive and concocted reply, the appellant made an application under the RTI Act, to which she got a reply stating that neither there is any application nor any proceedings in the KSEB office in 2006 for the change of tariff from LT IA to LT VIIA. This clearly shows that with out any proceedings the consumer was wrongly billed under LT VII A tariff. Therefore all the reasons and actions taken by the KSEB are arbitrary, malafide and unreasonable to cover up their own latches.

Another argument raised by the appellant is that the petitioner's husband Abraham J Tharakan is a known business man in Kochi owning a large business conglomerate with his corporate office, Amalgam House in Willington Island. Hence, there is no need for them to have another office housed in the residence or let it out to any other tenant. Further there are other ample proof and evidence to show that they are residing in the above residential building and property from 1987 onwards. The building tax receipts, telephone connection, property tax, postal address proof etc will conclusively prove that the petitioner along with her family is residing there from 1987 onwards.

Further it is argued that the petitioner applied for the enhancement of the connected load from 3850 watts to 32440 watts and that during the inspection it was noticed an office was functioning in this premise is prima facie false, baseless and contradictory. It is relevant at this juncture to take note that from November 2006, the petitioner is billed under LT VII A commercial tariff. Therefore the very root of the argument of the KSEB is cut at the thresh hold. Further the averments that the petitioner applied load enhancement to regularize the change is false and denied. None of the proceedings would go to show that an office was functioning in the premises nor there were any proceedings or an inspection report stating that an office was functioning in the premises.

Another contention of the appellant is that the CGRF has lost sight of the fundamental facts in the case as well as in Annex-4 document. Even the KSEB did not have a case that the petitioner's husband was doing some business in the premises in the name, "Amalgam Convenience Stores (India), (Pvt) Ltd". The reading of Annex-4 would show that it is a letter from Registrar of Companies, on an application filed by her husband seeking the availability of name for a proposed company 'Amalgam Convenience Stores (India), Pvt Ltd. It is clearly stated in the letter that the applicant cannot start business or enter into any agreement, contract etc in the name of the proposed company until and unless the certificate of registration is issued by the Registrar of Companies as per the provision of the Companies Act. It would show that the company was not registered or functioning and it was only an application for approval of the name for the new company which the petitioner's husband intended to start. It does not in any way mean that the petitioner's husband has started an office or was functioning in this office in the above address. In fact the said proposal never materialized and such a company 'Amalgam Convenience Stores (India), Pvt Ltd' was neither registered nor functioned in the above address. The CGRF was highly biased as well as over enthusiastic to protect the illegal acts committed by the officers of the KSEB especially in

view of the fact that one member of the CGRF was the Executive Engineer in the office when the illegalities were committed. The CGRF miserably failed in properly appreciating the facts and evidence and circumstances of the case and passed an adverse order which is highly perverse, illegal and un-sustainable.

Arguments of the Respondent: -

The Respondent has opposed the contentions of the Appellant in the Petition and raises the following arguments among other things included in the replies submitted and stated during the Hearings.

According to the respondent, on 02.12.2006, the petitioner applied for the enhancement of the connected load from 3850 watts to 31440 watts. During the inspection, it was noticed an office was functioning in this premises. Actually the consumer has applied for the load enhancement to regularize this tariff change. Due to this reason, the load enhancement was done in commercial tariff only. The petitioner then remitted Rs.5000/= towards the Caution Deposit (CD), and a new CT meter was installed in the premise. All these facts were known to the petitioner. Thereafter, the bills were issued under commercial tariff till 10/2008 and the petitioner remitted these entire bills without any protest. On 17.10.2008, the said office was vacated from the House premise of the consumer and there after only the party had applied for change of tariff and the request was allowed with effect from 17.10.2008 and thereafter the bills were issued in domestic tariff. Then the petitioner filed a complaint before the Assistant Engineer, Fort Kochi, regarding the refund of excess amount paid in commercial tariff from 11/2006 to 10/2008. The Executive Engineer, Electrical Division, Mattancherry had given reply to the petitioner stating that, since an office was functioning in the said building during the period from 11/2006 to 10/2008, the tariff assigned was correct and therefore the request is rejected.

It is also contented that no proceedings were issued at the time of changing tariff from domestic to commercial on 11/2006. But the petitioner was fully aware of the fact that the load enhancement was done in commercial tariff only. From 12/2006 onwards monthly bills were issued to the petitioner in commercial tariff and LT VII A tariff was clearly mentioned in the bills. An amount of Rs.3200/= was charged in each bill towards the fixed charge portion for the connected load of 32 KW and the same was clearly mentioned as a separate item. When the office was vacated from the house, the petitioner applied for change of tariff into domestic category and the same was allowed with effect from 17.10.2008 onwards. The petitioner is deliberately hiding all these facts to mislead the Hon: Forum. The petitioner is not eligible for the refund of the amount remitted in commercial tariff during the period from 11/2006 to 10/2008.

It is true that a separate connection with consumer no.1274 was existing in the car shed of the said premise and the same was dismantled on 21.05.2009 as per request of the petitioner and an amount of Rs 3475/- plus surcharge, is still pending against this consumer number. The Respondent requests to dismiss the appeal petition as the order of the Forum under challenge is perfectly legal and valid.

Analysis and Findings: -

The Hearing of the case was conducted on 22.12.2011, in my chamber at Edappally, and Mr. Blaze K. Jose, Advocate, represented the appellant's side and Sri. C.S. Sunil, Assistant Executive Engineer, Electrical Sub Division, Thoppumpady, represented the Respondent's side. On perusing the Petition, the counter of the Respondent, the documents submitted and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

Firstly, it is to be established whether any commercial office was working in the residential building of the consumer during the period from 11/2006 to 10/2008. The appellant vehemently denied the contention of the respondent in this regard. According to the respondent, the consumer applied for the enhancement of the connected load from 3850 to 31404 watts in 10/2006 and it was noticed during the inspection done, as a part of regularization of the additional load, that an Office was functioning in the premise of the consumer, necessitating a commercial tariff. The respondent argues that the consumer had actually applied for the load enhancement to regularize this change of business in her premise. For the above reasons the load enhancement was done in commercial tariff. The consumer remitted Rs. 5000/- as Additional Cash Deposit and a new CT meter was installed in the premise. Thereafter, the bills were issued under commercial tariff up to 10/2008 and she remitted all these amounts without any protest, which suggest she is convinced of it.

The Respondent has failed to produce a copy of the report of the inspection conducted in 2006 at consumer's premise. It is also admitted that no Office Proceedings for the change of tariff to LT VII A was issued by them nor any notice issued to the consumer in 2006, to the same effect. It is not known on what basis was the letter dated 3-8-10 of the Exe. Engineer was issued, stating that the tariff was changed from LT I A to LT VII A with effect from 11/2006 for the anomaly of an Office working at a residential house, without citing any report of inspection or Office Proceedings in this matter. Similarly at the time of changing the tariff from commercial to domestic in 2008, no supplemental schedule to the Agreement showing the new tariff with the date of change over was seen executed by the consumer. These facts adversely affect the argument of the respondent, that the consumer had applied for load enhancement to regularize the change in the connected load, due the usage of the building for Office (commercial) purpose. The only fact that goes against the consumer is that she had never raised any objection during the period of two years about the higher tariff levied on her. She remitted all the bills at higher rate regularly without any protest. Her version of ignorance in this matter for such a long period is not convincing.

A presumption in the order of CGRF is that the husband of the petitioner was using the premises for his business purpose which may be the reason why the tariff was changed from LT I A to LT VII A does not find merit, as seeing the 'Company Office Board' or some other proof in the premises, normally the Meter reader would have reported for misuse of tariff. In a case of misuse of tariff, the actual procedure to be followed is to conduct a proper inspection by the competent officers, prepare a mahazar, and issue notice and to take action to penalize the consumer including change of tariff. In this case no such action is

seen taken. The appellant has also produced a document from Registrar of Companies and according to that, no company by name "Amalgam Convenience Stores (India) Private LTD" is seen registered.

DECISION: -

From the analysis done above and the findings and conclusions arrived at, I feel that the Appellant has build up a strong case against the imposition of wrong tariff during the disputed period of 11/2006 to 10/2008. Further, I note that the Respondent has failed miserably to produce any documents or even circumstantial evidence to suggest that a commercial activity was going on in the consumer's premises during the disputed period, that warrant the change of tariff to commercial category. However it is strange to see that the appellant paid the bills, which carried a substantially higher tariff rate, without any objection for almost two years. Even then, the change of tariff of the consumer was effected (from the residential to commercial) in 11/2006, without observing the rules in force in the KSEB T&C of supply, 2005. No inspection mahazar report, notice to the consumer about the anomaly, assessment for unauthorized use of Electricity for the previous months and the execution of a supplemental schedule to the original service connection agreement in case of tariff change etc. are lacking and hence the action taken by the Respondent to change the tariff of consumer in 11/2006 is found to be not in order.

The consumer's bill raised during the disputed period of 11/2006 to 10/2008, under commercial LT VIIA tariff may be revised under LTIA –domestic tariff, and the excess amount may be refunded or adjusted in her future bills, with interest at double the bank rate (for the period from the date of remittance of Bill to the day of issue of refund amount), with in two months of this Order. The revised bill shall be issued to the consumer with details with in 45 days of this order for her information. Having concluded and decided as above, it is ordered accordingly. In view of what is stated above, the aforesaid Appeal Petition filed by Smt. Kamili Tharakan, Fort Kochi, stands disposed of.
No order on costs. Dated the 18th, April, 2012,

ELECTRICITY OMBUDSMAN.

P.228/2011/ 1204/ Dated 18.04.2012.

Forwarded to: - 1. Smt. Kamili Tharakan,

Shibhumi, 814, Beach Road, Fort Kochi, Kochi -1.

2. The Assist Executive Engineer,

Electrical Sub Division, KSE Board, Thoppumpady.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission,
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.

2. The Secretary, KSEB, Vydhyuthibhavanam, Pattom
Thiruvananthapuram-4.

3. The Chairperson, Consumer Grievance Redressal Forum, KSEB,
Power house Bldg, Cemetery mukku, Ernakulum-682 018.