

STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No: P/190/2011

(Present T P Vivekanandan)

Appellant : Sri.M.N.Babu,  
Managing Partner, M/S.Bright Studio, 33/1689 A, Bright Lane,  
Vennala, Kochi-682 028.

Respondent : The Assistant Executive Engineer  
Electrical Sub Division, KSEBoard, Palarivattom, Kochi.

ORDER.

BACKGROUND OF THE CASE: -

The appellant is the Managing partner of a partnership firm, a digital film studio named "Bright Studio". The studio commenced its business activities in August 2001, with electrical connection No: 17904, obtained in the name of Smt. Vijayalakshmi (Partner), under LTVIIA commercial tariff and the service continued till 23.11.2007, when it was dismantled on request. A new electric connection was provided under LT IV-industrial tariff with consumer No 24234, to Sri. M.N. Babu, Managing partner, Bright Studio, on the same day of dismantling the old service connection. While being so, a surprise inspection was conducted by the APTS, KSEB, on 4.2.2010, and noticed that the electricity was being used for a dubbing studio and also for a computer animation institute. Since the tariff for a dubbing studio comes under LT VIIA-commercial, a short assessment bill was served for realizing the revenue lost due to difference in rate of tariff between LT VIIA and LT IV-industrial.

Being aggrieved against the Bill of short assessment of Rs. 214226/-, the consumer submitted a petition to the Asst. Engineer, Electrical section, Palarivattom. After conducting a hearing, the Asst. Engineer disposed of the petition confirming the provisional assessment bill. Then the consumer filed a Writ Appeal - WP (C) NO.25035 of 2010 (D)) before the Hon. High Court of Kerala. The Hon: Court vide Order dated 13.8.2010 dismissed the petition but directed the consumer to approach the CGRF. The appellant then filed a Petition before the CGRF, Ernakulam, and the same was also got dismissed vide Order No.CGRF -CR/Comp.7/ 2010-11 dated 30.11.2010. Aggrieved by this Order, the appellant has filed the Appeal Petition before this Authority.

ARGUMENTS OF THE APPELLANT: -

The complainant is the Managing Partner of a partnership-firm, who runs a Digital film Studio named "M/S. Bright Studio", and it commenced its operation in August, 2001. The work activities of the Firm are noted as 'Digital Video Film Editing and Digital Video Film Recording'. At the time of commencement, the unit was not officially given registration as a small scale industry, so the studio commenced with electricity connection under LT-VIIA-commercial tariff with consumer No17904. The energy bills were paid regularly with out any default. While so, the application of the firm to be registered as SSI unit was allowed by the State Industries Department and was registered as SSI unit on 25.01.2008. The complainant on getting the registration as a SSI unit, applied for a fresh electric connection under LT-IV-industrial tariff and the same was granted by the KSEB with consumer No 24234, as per rules. The old connection No: 17904, under LT-VIIA tariff was surrendered. There after the complainant has not committed any default in payment of the monthly bills till date.

On 04.02.2010, an inspection was conducted by the APTS and found that the meter and all other installations are working perfectly. But it was observed that the power connection is given under LT-IV-industrial tariff and the tariff has to be changed to LT VIIA-commercial with effect from 12/2007. Subsequently, the Assistant Engineer of the KSEB issued a provisional assessment bill dated 08.03.2010, stating that the APTS detected that the consumer is using the electricity for a dubbing studio and Computer Institute and also that as per the latest tariff order dated 27.11.2007, the applicable tariff for the electric connection to a 'dubbing studio' is LT-VIIA -Commercial and directed to pay the short assessment bill of Rs.2,14,226/-. The complainant filed an appeal before the Assistant Engineer, KSEB after remitting Rs.1,07,133/-. The appeal was heard and rejected by order No.DB2-INS-AE-PV TM- 10/11 dated 16.07.2010. The appellant alleges that the Assistant Engineer failed to appreciate the contentions of the complainant in its proper perspective and so dismissed the appeal mechanically. The complainant filed a writ petition before the Hon'ble High Court of Kerala and the same was relegated to the CGRF.

Thereafter, the complainant approached the CGRF. The Consumer Grievance Redressal Forum rejected the appeal by order No. CGRF-CR/Comp.7/2010-11 dated 30.11.2010. A copy of the above order was served on the complainant on 21.12.2010.

NATURE OF THE RELIEFS SOUGHT:-

- 1). To declare that the provisional assessment and consequential demand made by the licensee, the KSEB is illegal and unauthorized. The reassessment will not come with in the legally permissible grounds of (a) the consumer neglects to pay any charge or any sum due to the licensee, and (b) unauthorized use of energy. The demand notice is issued under section 56 of the Electricity Act, 2003. There is no negligence on the part of the complainant to pay any charge for electricity or any other charge to the licensee. The licensee had not proved negligence on the part of the consumer.
- 2). Direct the licensee to refund the amount with interest double the prevailing rate of interest, as provided under regulation 24 (6) of the Kerala Electricity Supply Code, 2005.

- 3). Direct the licensee to give separate connection retrospectively for the studio and the Educational Institution in different tariff categories and to give a revised statement. The licensee had allowed the complainant's application for separate electricity connection for the studio and the educational institution, now.
- 4). Grant a stay of recovery based on short assessment bill, during the pendency of this petition. The Assistant Engineer, Electrical Section, KSEB, Palarivattom as per letter dated 14.01.2011 has served a demand notice for the remaining 50% of the amount due under the above short assessment bill.

**ARGUMENTS OF THE RESPONDENT: -**

The respondent has furnished the statement of facts against the averments raised on the Appeal petition. The main contentions of the respondent are the following.

- 1). The Electric connection to consumer No.17904 was provided in the name of Smt. Vijayalakshmi, Partner, under LT-VIIA –commercial tariff and was dismantled on 23.11.2007, as per request. The service connection to consumer No.24234 was provided under LT IV-industrial tariff, to Sri. Babu M.N, proprietor, Bright Studio and was effected on 23.11.2007, for the same purpose.
- 2). On 04.02.2010, a surprise inspection was conducted by the APTS Regional unit along with section officials of Electrical Section, Palarivattom, in the premises of Consumer No.24234. The inspection wing noticed that the electricity is being used for a dubbing studio and also for computer animation institute. As per tariff order w.e.f. 01.12.2007, the dubbing studios need to be charged under LT-VII A-commercial tariff, but the appellant's connection was given under LT IV- industrial tariff. Hence a short assessment bill was served, for realizing the difference in amount between LT-VII A and LT- IV tariff rates with effect from 1.12.2007. No penalty was imposed on the consumer.
- 3). A hearing was conducted by the Assistant Engineer, Electrical Section, Palarivattom, on the appeal filed by the consumer against the provisional assessment bill. The Assistant Engineer, vide proceeding dated 16.07.2010, disposed of the petition confirming the provisional assessment bill. The AE while inspecting the premises of the consumer during the first week of July 2010 has noted that the electrical equipment load is not segregated between the 'studio' and 'Computer institute'.
- 4). The consumer has filed a Writ Appeal in the Hon High Court of Kerala. The Hon Court vide Order dated 13.08.2010, disposed of the petition directing the consumer to approach the CGRF. The Hon: CGRF dismissed the petition stating that the consumer is bound to pay the short assessment bill.
- 5). The section 56 of Electricity Act provides the licensee to cut of supply, if consumer fails to pay the eligible sum claimed by it and hence the first paragraph of reliefs sought (A) is only to mislead the facts. The Department of Industries, Govt: of Kerala has issued an acknowledgement to Bright Studio for Digital Video Film Editing and Digital Video film recording. This SSI certificate issued by the Industries Department misled the respondent in the fixation of tariff as industrial instead of the eligible commercial tariff. Hence on finding the wrong fixation of tariff and the corresponding loss in revenue, the consumer was served with a short assessment bill consisting of the difference in rate between the two tariffs, for the period starting from 1.12.2007 to till date. The reason is that the

tariff need to be fixed based on the purpose for which the energy is being used for each category notified vide tariff orders prevailing from time to time.

ANALYSIS AND FINDINGS: -

The Hearing of the Case was conducted on 27.7.2011 and 3.1.2012, in my Chamber at Edappally, Kochi. The appellant's side was represented by the Petitioner, Sri M N Babu and his Counsel Sri. M P Prakash, and the opposite side by the AEE/AE of Electrical Section, Palarivattom. They have argued the Case on the lines as stated above. On examining the Appeal Petition, the statement of facts of the Respondent, the arguments of the Learnt counsel of the Petitioner and the other side, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the decisions thereof.

The appellant is engaged in the business activity of "digital video film editing and digital video film recording" from the very beginning of starting his business. From the day of its inception in the year 2001, the consumer was assigned with LT VIIA-commercial tariff. The Appellant, the Managing Partner, Sri. M N Babu, then obtained the SSI Registration Certificate from the Industries Dept and applied for a fresh electric connection in the year 2007. The Respondent then issued a new electric connection on 23.11.2007 under Industrial tariff, on the strength of the SSI Certificate produced by the appellant. The APTS inspection revealed that the applicable tariff of the consumer, considering his activities and purpose of energy usage, comes under commercial and not under the industrial tariff. The respondent, based on the Inspection report (site mahazar), had changed the Tariff and charged the consumer under LT VIIA-commercial tariff with effect from 1.12.2007, and is the cause of the dispute.

There was lapse on the part of the KSEB, in not clearly assessing the tariff of the consumer, on getting an application from the consumer for a fresh connection for a unit having the SSI Certificate. The responsibility of fixing the correct tariff initially rests with the Respondent only. The appellant has not raised any objection regarding the activities going on in his premises. It is revealed from the activities carried out in the appellant's premises that the work of 'Digital Video Film Editing and Digital Video Film Recording' comes under the commercial tariff only. It is not disputed by the appellant, the fact that he is engaged in the business of running a dubbing studio, a computer animation institute, its editing etc. Hence the question to be answered is whether it comes under industrial or commercial tariff and even if it is commercial, from which date it is applicable as the consumer was provided with a lower tariff by the Licensee itself for the said activity.

The works relating to dubbing studios, Digital video Film editing and recording are commercial activities and do not come under the purview of industrial tariff, as per the existing Tariff provisions. If the consumer uses energy supplied for a specific purpose under a particular tariff for a different purpose not contemplated in the Agreement executed and for which higher tariff is applicable, without KSEB's knowledge and approval, surely there is a case of unauthorized use of energy. But in this case the Appellant cannot be blamed for the wrong tariff as the responsibility of fixing the correct tariff initially rests with the Respondent only. The averment of the KSEB that they gave connection

in good faith assuming the purpose or activity of the consumer, invoked an industrial tariff is also found not maintainable, because the SSI Certificate ensures priority in getting electric connections and is not the criterion for assigning an industrial tariff. It is alleged by the respondent that the wrong assignment of industrial tariff was done merely because the appellant held a SSI Certificate from the Industries Dept, with the activities of business shown as such. The categorization of tariff to different business activities, purpose of energy usage etc. is determined by the Hon: KSERC (Commission) after conducting Public Hearings on the draft proposals of tariff and considering the 'National Tariff Policy' announced by the Govt etc. and is not linked with the Directives or Policies of the Industries Dept.

The inspection conducted by APTS, revealed the details of actual business activities going on in the premises of the consumer and is found as related to commercial category and does not fall under industrial tariff.

#### DECISION: -

Even though, there was no fault from the consumer's side, either by misrepresentation or suppression of facts in the fixation of wrong tariff, i.e. in assigning lower industrial tariff instead of higher rate commercial tariff and there by caused revenue loss to KSEB, the consumer is bound to pay the correct electricity charges for the energy he has consumed. This condition is evident as per clause 24(5) of the Supply Code, 2005, which reads;

*'If the Licensee establishes that it has undercharged the consumer either by review or otherwise, the Licensee may recover the amount undercharged 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.'*

The eligible tariff for the Unit named 'Bright Studio', run by the appellant, is the commercial tariff and not the industrial tariff, as its business activities comprises of Video Film Editing and video film Recording, Studio works etc. Prior to 23.11.2007 also, the consumer was paying the electricity bills under LTVIIA-commercial tariff only, for the same purpose (Bright Studio) for the last six year period of 2001-07. The issue of SSI Registration certificate by the Industries department paved the way for the fixation of Industrial tariff, by the respondent, for the same activity or purpose of the consumer. The consumer has not misled the Licensee, the KSEB, but the respondent has fixed the tariff of the consumer wrongly as LT IV- industrial by themselves, may be misled by the SSI Certificate. The APTS inspection done on 4.2.2010 detected the anomaly in the Tariff fixed to the consumer.

If the electrical energy was used for a purpose other than for which the usage was authorized, it will come under the purview of 'misuse of energy' as per Clause 50 (1) of the KSEB Terms and Conditions of Supply, 2005. Here in this case, technically speaking, it is a case of misuse of energy, since the energy was used under industrial tariff instead of the 'applicable' commercial tariff, as per existing rules. Therefore it is certain that the KSEB can raise a bill and rectify the mistake occurred by way of omission or oversight.

There was no deliberate or otherwise attempt from the appellant's side to misuse energy but it occurred unknowingly or by mistake done from the respondent's side in fixing the correct tariff.

Hence I feel that the period of reassessment for recovery of the undercharged amount from the consumer, shall be limited to a period of 12 months immediately preceding the date of inspection and detection of the anomaly, as per Clause 50(5) of the Terms and Conditions of Supply, 2005. Therefore it is ordered that the consumer shall be reassessed for the previous 12 months prior to the APTS inspection conducted on 04. 02. 2010, at the applicable tariff of LT VII A -commercial, instead of from 01.12 .2007, the date reckoned by the respondent for reassessment.

The revised bill, raised on the lines as ordered above, shall be issued with 30 days time period, for making the balance payment, if any. If there is excess amount for refund, it shall be adjusted in his future bills and the same will carry interest at the rate of 12% per annum for the period of, the date of remittance to the day of adjustment.

It is noted that, the appellant has got separate Electric connections for his Studio as well as to his Computer Training Institute, operating in the same building. Hence it is felt that no further relief is pending for consideration by this Authority.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by Sri.M N Babu, is allowed to the extent ordered as above and stands disposed of as stated.

No order on costs. Dated the 16<sup>th</sup> of May 2012.

Electricity Ombudsman.

Ref No. P/ 190/ 2011/1236 Dated 16.05.2012.

Forwarded to: -

- 1). Sri. M. N. Babu, Managing Partner,  
M/S. Bright Studio, 33/1689 A, Bright Lane, Vennala, Kochi-682 028.
- 2). The Assistant Executive Engineer,  
Electrical Sub Division, KSEB, Palarivattom, Kochi- 682025.

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, KESB,  
Power House Building, Ernakulam- 682018.