

THE STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No. P/283/2012.

(Present T.P. Vivekanandan)

Appellant : Smt. Suprabha D.  
D/o Dharan, 'Gulnar', Parippally P.O.  
KOLLAM Dt.

Respondent : The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
Chathannur, KOLLAM.

Background of the Case: -

The electric connection with Consumer No.3788, under Electric Section, Parippally, stands registered in the name of the appellant's sister, Smt. Mumtaz Dharan, Gulnar, Parippally. Previously the building was used for running a hospital and during 2007-08, it was converted into an old age home, under LT VI-D tariff. While so, the premise was inspected by the KSEB officials on 24.11.2011 and found misuse of tariff there. The building was seen rented out to M/s L&T Company, for providing accommodation to their staff and workers, engaged in the Construction of a near by Medical College Hospital Building complex. Also it was found that the consumer has put to use some extra connected load, without the sanction of KSEB i.e. availed unauthorized additional load (UAL). For the charge of misuse of tariff and UAL, provisional assessment was made amounting to Rs.96,378/- under LT VIIA-commercial purpose tariff, as per section 126 of Indian Electricity Act, 2003, and was issued to the consumer on 29/11/11. The consumer did not accept the bill by hand and so the bill was sent through registered post. But on 15.12.2011, the registered notice with the bill was returned to the respondent with the Postal remark 'unclaimed'. Aggrieved by the action of the AE, to change tariff and issue a bill for the recovery of loss due to wrong tariff, the appellant filed Petition before the Deputy Chief Engineer, Kollam, who after inspecting the premise, confirmed that the premise was being used for lodging purposes and the applicable tariff is LT VII A-commercial. Not satisfied with the decision of the Deputy Chief Engineer, the petitioner filed a complaint before the CGRF on 27/2/2012. The CGRF also dismissed the Petition as it is found devoid of any merits and finding the bill issued by the respondent as in order. Aggrieved by the decision of CGRF, the party has submitted the Appeal petition before this Forum on 4.05.2012.

Arguments of the Appellant.

The arguments advanced by the appellant in her petition are the following.

1).The said building was a hospital and since the appellant's younger sister Dr.Mumthaz died in 1996 she turned it to an old age home and registered it and get the tariff changed to the one applicable for old age home. When she stopped the old age home in the year 2008, she placed a request to the Junior Engineer, Paripally, to change the tariff to residence.

2). From 2009 onwards, M/s L&T Company has taken the building for their residential purpose. Rent is paid in the bank in appellant's account. It is not a lodge or a hostel. There are 9 rooms in ground floor and 3 rooms in the first floor. There are 2 ladies and 2 men working there as cooks and the appellant want it as a residence and not otherwise.

3). It is the Executive Engineer of Chathanoor, Mr.Rajan, who is doing all this for his brother-in-law, Advocate Sugathan Paravoor.

The appellant, after going through the counter statement submitted by the opposite party, has adduced the following arguments also.

4).The real owner of the building, Smt. Mumthaz Dharan, is her younger sister and she died in 1996. The building was rented out to Engineers of M/s L&T, for their residential purpose only and it is mentioned in the agreement clearly. Though request was given to the Junior Engineer, KSEB office, Paripally, for tariff change, it was not done and the appellant was not aware of it. After giving the request, the appellant has changed the whole building into 3 sections, that is 2 bedrooms, a kitchen and a hall cum dining, all separate.

5). It can be seen clearly that there are 3 sections, 9 rooms in ground floor and 3 rooms in first floor. So total only 12 rooms and not 14 rooms as written by those who did the inspection. From 2009 to till 2011, the Electricity office, Parippally, did not know or made out any mistake. It is not the consumer who is responsible for it. The appellant is prepared to pay the balance payment i.e., from the date they have noted from old age home tariff to residential tariff i.e., balance due each month.

#### Arguments of the Respondent.

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

a). The petitioner is the present owner of consumer No.3788 of Electrical Section Parippally, under LT VI-D tariff, with a registered load of 3000 watts. The registered owner of the premises as per office records is Smt. Mumtaz Dharan, Parippally.

b).The site was inspected by the KSEB section squad on 24.11.2011 and unauthorised additional load (UAL) and misuse of tariff, was detected from the premise named 'DN Sweet Home'. In the inspection it is revealed that the building is rented out to M/s L&T Company for providing accommodation to the staff/workers of L&T, who are engaged in the construction work of ESI Medical College, Parippally. There are 14 rooms in the building to provide bachelor accommodation. Earlier the premise was used as an old age home.

c).The section squad prepared a site Mahazar and subsequently a provisional assessment amounting to Rs.96378/-, under LT VII A- commercial tariff, as per Sec.126 of IE Act, 2003, was issued to the consumer on 29.11.2011, since the energy has been used for lodging purpose. But the consumer did

not accept the bill and hence the bill was sent through registered post to the addressee. But on, 15.12.2011, the registered notice with the bill was returned to the office with the remark 'unclaimed'.

d). Smt. Suprabha, the appellant, lodged a complaint to the Assistant Engineer on 02.12.2011 and the Assistant Engineer fixed the date for the personal hearing and a hearing on the complaint was done on 12.12.2011 in the chamber of the AE. Later, the Order of the hearing, conducted by the Assistant Engineer, was sent to the petitioner on 18.1.2012. Again the Order was returned to the office with the remark 'Refused'. Thus the provisional bill of Rs.96378/-has been confirmed since the bill was issued as per Sec. 126 of the Act.

e). Meanwhile, Smt. Suprabha, lodged complaint to the Deputy Chief Engineer, Electrical Circle, Kollam. Based on the complaint the Deputy Chief engineer inspected the premises on 4.2.2012 and arrived at the conclusion that the premises has been using for lodging purpose only and hence the allowable tariff is LT VIIA, as per Gazette notification (extra ordinary) dated 2010 June 28. And the matter was conveyed to Smt. Suprabha, as per letter No.GB/PPLY/378/2011-12/227 on 24.02.2012 by the Deputy Chief Engineer.

f). The consumer has connected an additional Load of 2676 watts with the sanctioned load of 3000 watts (total load comes to 5676 watts) and is using for a purpose other than for which the connection is given(functioning as lodge/guest house). The above alteration and change in purpose has been made in the premises without the knowledge and permission of KSEBoard.

h). Computerized bills were issued to the consumer from 2/2008 onwards with details of CD amount, connected load, tariff, Name of consumer etc were available in it. It is not true that the consumer has applied for change of tariff. The petitioner did not submit any application against the tariff, connected load etc till the date of inspection.

i). 14 Nos. of male employees and 4 servants are staying in the premises on a rental agreement between L&T officials and Smt.Suprabha, Gulnar, Parippally.

j). Earlier, the consumer had submitted an application for changing the tariff from LT VI B (Hospital) to LT VID (old age home) and the same has been effected vide order No.DB 3/08-09/3/dated 04.04.2008 of the Executive Engineer, ED, Chathannoor, with retrospective effect from 28.02.2008. But the consumer failed to produce any documentary evidence of application regarding the tariff change request from LT VID to LT IA (domestic) as contended by her.

j). The consumer refused to accept the provisional bill with notice.

k). The consumer did not submit any application for regularizing the excess connected load till date.

The notice served to the consumer by the Assistant Engineer, Electrical section, Parippally, for regularizing the excess load has been returned since the consumer refused to accept it.

#### Analysis and Findings: -

On examining the Petition and argument notes filed by the Appellant, the statement of facts of the Respondent, perusing all the documents and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The hearing of the Case scheduled for 26.7.2012, was adjourned as per the request of the appellant. The next Hearing was conducted on 26.09.2012, in my chamber at Edappally, and Smt. Suprabha, the

appellant and Sri. D. Sivakumar, Assistant Exe. Engineer, Electrical Sub Division, Chathannur, the Respondent, represented for either side respectively.

The main dispute in this case, relates to the tariff assigned to the appellant's building, named 'DN Sweet Home'. The tariff of a consumer is fixed based on the nature of activity or the purpose for which the electrical energy was utilized by the party. The KSEB is supposed to assign the tariff of a consumer based on the notifications and guide lines issued from time to time, by the Hon KSERC, which is the empowered body to classify the appropriate tariff of a particular class of consumers.

However, there is no dispute to the fact that the building, having the tariff for an 'old age home', was rented out, to the construction staff or Engineers of M/s L&T Company, for their accommodation purpose. The appellant has the claim that, since the building is rented out for residential purpose, the domestic tariff is applicable. From this it is clear that, the appellant has the knowledge that, the tariff of the disputed building, given on rent is different, from the existing tariff. The appellant has claimed that, she had applied for tariff change from LT VI-D (old age home) to LT IA (domestic), when building was rented out to M/s L&T company, for providing accommodation to the staff of the Company. It is stated that she has requested in person to the Junior Engineer of the Electricity office, Parippally, for the same. But she failed to produce any documentary evidence to prove this claim. The respondent also denies any such request being made by the consumer.

The main argument of the consumer is that she had given the building for residential purpose only and she has entered into agreement with the Engineers of M/s L&T Company to that effect. The party has not produced the Rent Agreement before this Forum. Even if so, that agreement is not binding on a third party like KSEB. The KSEB fixes the applicable tariff of a consumer according to the use, nature of activity or the purpose, for which electrical energy is being used at the consumer premise and as classified by the Hon KSERC in the Tariff rules and has nothing to do with an agreement entered into, between the consumer with outside parties. The consumer cannot fix or decide his/her own tariff arbitrarily and in doubt, should have enquired with KSEB, for guidance.

The respondent argues that, there were 14 male employees and 4 servants staying in the building on a rental agreement between L&T officials and the appellant. The appellant states that there are 12 rooms converted into 3 sections and L & T Engineers are staying there for residential purpose. She also says that 2 men and 2 ladies work as cook there. Hence the point to be settled is whether the building is functioning as a lodge which attracts the tariff of VII A-commercial or a domestic premise that attract a lower tariff of LT-1(A)-domestic?

According to the Mahazar dated 24.11.2011, prepared after site inspection by the KSEB official, it is seen recorded that '19 employees are staying there as told by the appellant' and the appellant has signed the mahazar as witness. The fact of, stay of a certain number of employees of a construction company in a building, can only be considered as a private hostel or as a lodging facility and cannot be treated as a domestic use activity. As per the Tariff notification, the LT 1(A) - tariff is meant for 'domestic use' which normally refers to the use of a 'family'. But a group of employees of a Company, occupying a building for accommodation purpose, will not come under the 'domestic use' purview. Their occupancy can only be treated as a lodging or hostel facility, which will attract a higher tariff,

than the domestic one. There is no evidence to suggest that families of employees or Engineers, are staying in the building. The mahazar clearly states that the employees of M/s L & T Company, and not families, are staying in the building and the appellant has witnessed the same statement. Moreover the fact of 12 rooms and a Kitchen provided with two men and women for cooking and cleaning for the whole premise suggest the point that, it is a place for accommodation of a group of employees and not as, one or more families residing on 'domestic use'.

Another allegation against the consumer is that she has connected additional load of 2676 watts, without the knowledge and permission of KSEB. The consumer has not disputed the fact of existence of unauthorized additional load (UAL) in her premises. Further, it is stated by KSEB that the regular bimonthly bills, prepared under LT VII A tariff after inspection, were not paid by the consumer so far.

As per Sec. 56 (1) of Indian Electricity Act, 2003, the consumer is bound to pay the electricity bill within the due date specified, even if he/she has any genuine complaints on the correctness of the bill or on the fixation of tariff etc. pending disposal of the same, in case of dispute between the KSEB and the consumer. Clause 37 of the KSEB Terms and Conditions of Supply 2005, reads; 'The correction or revision of the demand shall be made only after ascertaining the bonafide of the complaint. However the bill should be paid on or before the due date originally fixed and adjustment will be made only in the subsequent bills. The amount so paid will be regarded as advance to the credit of the consumer's account, until such time, as the invoices in dispute are fully settled'. The consumer can also continue to pay the monthly bills at the previous average rate till the dispute is settled, but in no case he is allowed to consume electricity, without paying any sum and remain idle. This type of steps or attitude resorted to, by the consumer, is not correct. Also in this case the consumer is seen to have refused to accept the Notices, Bills or Orders of KSEB, served in hand or sent by registered post in her address and has shown total neglect or reluctance to the legal procedure adopted by the respondent.

#### DECISION: -

From the analysis done above and the findings and conclusions arrived at, I decide the Appeal Petition as follows.

The Hon KSERC, the empowered body as per Law, has formulated the different tariffs for electric consumers considering various parameters including the social aspects and also according to the field where or the purpose for which, the electricity is used ultimately. Hence the electricity tariff of Hostel may differ from that of a Home (domestic use), though, both are used for stay. The Lodge or Hostel is normally a place where someone stays temporarily and do not come under the purview of domestic use and therefore attracts a higher tariff. In this Case, from the analysis and the Findings done above, I am of the view that the eligible tariff of the building, given on rent to the employees of M/s L&T Company for their accommodation purpose, will attract the commercial tariff-LT VII A, as it is similar to Hostels/ Lodges, as per the Tariff classification of the Hon KSERC.

I am also of the opinion that there is no deliberate attempt from the side of the consumer to misuse the tariff assigned to her building and hence does not warrant any penal charges to be imposed thereof. It can be considered as the detection of wrong tariff assigned to her building and therefore the respondent may levy the applicable tariff-LT VII A, on the consumer No. 3788, from

11/2010 onwards (starting date of penalization in the disputed bill) and accordingly revise the bi-monthly bills from that date under LT VII A and claim the difference. The consumer may be given 30 days for making payment of the revised bill as per this order. It is made clear that the consumer will continue to remain under LT VII A tariff and is bound to pay the energy charges for the electricity she has consumed under this tariff, till tariff is changed, as per rules.

In brief, the disputed bill dated 29.11.2011 for Rs. 96378/- is set aside and the appellant is bound to pay the electricity charges for Con.No.3788 under LT VIIA tariff from 11/2010 onwards. The consumer shall be allowed 10 installments for clearing the whole arrears, if requested for. As per clause 36(7) of KSEB T & C of Supply 2005, the installments of the arrear bill shall carry the applicable interest for the delay. Since the consumer did not pay the bimonthly bills from 11/2011 onwards, the respondent is eligible to levy interest/surcharge, for the period of original due date to the actual date of payment. It is clarified that, the number of days of appeal pending period before this Forum, shall be excluded for charging interest, for the belated payments.

The appellant is also given 45 days, from the receipt of this order, to regularize the unauthorized additional load connected by her in the same building, failing which the respondent may pursue action, as per rules.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the consumer stand disposed of with the directions ordered as state above. No order on costs.

Dated the 2<sup>nd</sup> of January, 2013.

Electricity Ombudsman.

Ref. No. P/ 291/ 2012/1517/Dated 04.01.2013.

Forwarded to : 1). Smt. Suprabha D.  
D/o Dharan,  
'Gulnar', Parippally P.O.  
KOLLAM Dt.

2). The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
Chathannur, KOLLAM Dt.

Copy to: - (1). The Secretary, Kerala State Electricity Regulatory Commission,  
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.  
(2). The Secretary, KSEBoard, Vidyuthibhavanam,  
Pattom, Thiruvananthapura-4  
(3). The Chairperson, Consumer Grievance Redressal Forum,  
KSEBoard, Vidyuthibhavanam, Kottarakkara.