

THE STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamangalam-Anchumana Temple Road

Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024

www.keralaeo.org Ph: 0484 2346488, Mob: 91 9567414885 Email:ombudsman.electricity@gmail.com

Appeal Petition No. P/ 220/ 2011.

(Present T.P. Vivekanandan)

Appellant : Sri. E.A. Noby,
Managing Director, M/S.Liscon Solutions & Services (P) Ltd,
Anjikkath Arcade, Sea Port Airport Road,
Kalamasserry, KOCHI-682 021.

Respondent : The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Kalamasserry, Ernakulam (DT).

ORDER.

Background of the Case: -

The appellant Sri. E.A. Noby, is a consumer of electricity with No. 16755 under Electrical Section, Kalamasserry and is the MD of the firm M/s Liscon Solutions and Services (P) Ltd. The connection was said to be given under LT IV –industrial tariff based on the application and certificate produced by the applicant as a computer software development unit. While being so, an inspection was conducted in the consumer’s premises on 25.3.2010 by the APTS of KSEB. It was detected in the inspection that the consumer was engaged in the business of tele-calling services for M/s Vodafone Essar cellular Ltd and M/s Wall Mart and a Mahazar was also prepared noting down the anomalies found there. Since the tariff for a Call centre comes under LT VIIA-commercial, a short assessment bill for of Rs. 4,19,148/-, was prepared to recover the revenue loss occurred, due to the difference in the tariff rate between the LT VIIA-commercial and LT IV-industrial tariff and served on the consumer.

Being aggrieved by the short assessment bill and the change of tariff of his unit, the consumer filed a Writ Petition - WP (C) NO.11926 of 2010, before the Hon High Court of Kerala. The Hon: Court vide Order dated 6.4.2010 dismissed the petition but directed the consumer to approach the concerned KSEB Authorities for Redressal of his grievances. Accordingly the consumer submitted a petition to the Executive Engineer, Electrical Division, Aluva and after conducting the hearing, the Executive Engineer disposed of the petition confirming the provisional assessment bill issued by the AE. The appellant then filed a Petition before the CGRF, Ernakulum, and the same was also got dismissed vide Order No. CGRF-CR/ Comp. 45/ 2010-11 dated 17.3.2011. Aggrieved by this Order, the appellant has filed the Appeal Petition before this Authority.

Arguments of the Appellant: -

The appellant submits that though repeatedly requested by him, the respondents has not initiated any steps to issue a detailed bill showing the spilt calculation details of the short assessment demand

amounting to Rs.4, 19, 148/-. Unless and until the same is received, the appellant is not able to find out the discrepancies in the said bill.

Before starting the Call Centre, the appellant had consulted with the IT department of the Kerala Govt. and was informed that his firm have the eligibility of LT- IV industrial Tariff irrespective of whether the premises is inside any Government IT park or outside, due to the fact that this benefit is declared in IT policy 2007, for all the IT industries and implemented in 2007 itself, vide order no: G.O. (P) 10/2007 ITD. In fact, the benefits declared to the Industry led him to the decision of starting a Call centre. If this benefit is not applicable, it seems that the IT department cheated me by passing the wrong commitment.

The appellant's company is doing a Call Centre work for M/S. Vodafone Essar Ltd and every agent uses a computer and relevant software to provide the service, without which the service cannot be provided. Even the telephone calls are not made through normal telephones but routed through the computer itself. Hence the works from the premises is an IT enabled service without any doubt.

More than 120 people work as call centre executives in the office and as electricity is one of the major cost factors involved in the operation of this centre, a cost escalation from LT IV tariff to LT VII A- commercial rate, will jeopardize the operational viability of this centre and put many as jobless and investment in vain.

Actually, M/s Liscon, is not a Call centre but is a BPO. The Call centre refers to the Technical nature of a business operation, but when the business model is out sourcing, the classification changes from a Call centre to BPO. The BPO is an operational model of business, where a part of business operation of a company is outsourced to another company, whether it may be a call centre or other customer services like E-mail replying or even taking care of Backend MIS systems. So a business Firm operating Call centre facility for self use can be termed as a call centre, but when the same facility is outsourced to another company, the classification of the business entity changes from a Call centre to a BPO, Business Process Outsourcing. Hence actually M/s Liscon Solutions is a BPO and not a Call centre.

The IT industry broadly includes Telecommunication and other IT Hardware and Software industry. M/s Liscon provide the services to Telecom companies like Vodafone Essar Ltd using IT equipments, and it is clear that they fall under Software industry and hence KSEB cannot say that M/s Liscon has provided wrong information and has to be charged from the beginning of the Company. It is not true that M/s Wall Mart is our customer and so far M/s Liscon has not done any work for them.

The Call Centre operations are classified under the Information and Communication Technology (ICT) and information Technology Enabled Service Industry (ITES) from 2007, by the IT Department of Kerala Govt. The same has been clarified vide letter ETPK: RTI: 2011: 4/41 by the Public Information Officer, Department of Information Technology, Govt. of Kerala. It has also been clarified vide this document that the 'Call Centre' falls under the scope of the IT policy, 2007. The IT Policy 2007 and the 'Manual for Fiscal Incentives for IT Units' has been published by the Kerala Govt. and implemented it vide order no: GO (P) 10/2007 ITD as well as GO (Ms) no: 31/07/ITD. The second para of the 'Manual For Fiscal Incentives for IT units' states that, 'Fiscal Incentives are applicable to all eligible companies operating in Kerala, other than those located with in an SEZ'. The low Power tariff rate is one of the

benefits declared by the Kerala State Govt. in its policy and as there is no discrimination mentioned in the manual, for companies operating from within Govt. IT parks and companies operating outside the Govt. IT parks, except for companies operating within an SE Zone. Hence the scope covers all power selling companies in Kerala including KSEB which was not considered by the CGRF in the Impugned order.

The Manual clearly mentions the List of Activities to qualify for Fiscal Benefits. According to this document point No: 6, it says that 'ITES Excluding IT Training Institutes that provide training to the public at large' are eligible for the benefits outlined in IT policy 2007. Hence Call Centers are eligible for the benefits declared under IT policy 2007. These points were also not considered by the CGRF. The IT policy 2007 which is the base document for the policy for IT industries in Kerala, point 13.2.1 states that, "IT Industry, Government IT Parks, Certified IT Parks and Akshaya E-centers are entitled to power Tariff Benefit under HT1 and LT IV Industry depending on the supply of and connected load to the industry". The point 13.2.1 reaffirms which has already been mentioned in the second paragraph of "Manual for Fiscal Incentives for IT Units, 2007" that the scope of this document and the benefits detailed in this document is for the IT Industry in the entire Kerala.

The point 13.2.1 of the IT policy 2007 mentions the benefit of Power Tariff to all IT Companies operating in Kerala at HT1 or LT IV tariff. As Call Centre is considered as an IT unit, as per the letter ETPK: RTI: 2011:441 of IT Department, the proclaimed benefit for IT Industries applies to Call Centers.

The ordinary government IT Parks in Kerala (Not SEZ) is already facilitating electricity tariff benefit at LT IV to the call centers operating from within the park. The same has been clarified vide letter info park/RTI/13/2011 dated 5th January 2011 received by Right to Information Act from the info park Kochi. Even though the IT policy 2007 has declared the benefit for all IT Industries of Kerala, the call centers in Govt. IT Parks are enjoying this benefit while the appellant was denied of this benefit which points to a discrimination. Govt. IT parks are not in SEZ and are only in an area developed by Govt. for facilitating better infrastructure for the people to do various IT services. The fact that tariff benefit can be enjoyed by all the Call centers at Infopark, Kakkanad, and not by the appellant is a case of discrimination by the Govt. As the power tariff benefit is declared at large for the IT Industry, and hence my call centre is also claiming for power tariff benefit.

The application for Electricity connection submitted by me has mentioned 'software and hardware development' as the nature of work. As per the definition mentioned in IT Policy 2001, the call centre comes under services defined under the software industry. The electric connection with the eligible Tariff was allotted to me by the electricity department after knowing this fact.

Arguments of the Respondent: -

The respondent has submitted a statement of facts opposing the contentions raised by the appellant. The main contentions of the respondent are;

M/s Liscon is a consumer (No. 16755) under Kalamasserry Electrical Section. The connection was given under LT IV industrial tariff based on the Certificate produced by the consumer while taking the service. The APTS inspected the premises on 25.3.2010 and prepared a site mahazar and detected the anomaly in the applicable tariff. It is convinced that the consumer was working as a Call centre after

getting the supply and produces the copy of the purchase order of M/s Vodafone as document, to prove the same.

A Detailed split up calculations was submitted as per the direction of Hon CGRF and a copy of the same has been given to the complainant. As per the Schedule of Tariff and Terms & Conditions for Supply by the KSEB, published in Gazette by the Hon KSERC (Commission) in 11/2007, the eligible tariff for the purpose of business activity of a Call Centre is categorized as LTVII A-commercial. The respondent has pleaded that the averments of the consumer are baseless and hence request to dismiss the petition.

Analysis and Findings: -

It was scheduled to conduct the hearing of the case on 9/11/2011 and later on 21/12/2011 and notices were issued to the concerned. The appellant has requested to postpone the hearing due to inconveniences. The Hearing of the Case was conducted on 27.6.2012, in my Chamber at Edappally, Kochi. The appellant's side was represented by the Petitioner, Sri Noby E.A. and Sri. R.P. Narayanan, G.M, M/s Liscon, and the other side by Sr. Issac C.P, the AEE and Sri. Mani K.G, S S, of Electrical Sub Division, Kalamasserry. The appellant then requested time to present the Govt. orders as documents. Both sides 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 either side, perusing the documents filed and considering all the facts and circumstances of the case, this Forum comes to the following conclusions and findings leading to the decisions thereof.

The appellant is said to be engaged in various Computer based activities and IT enabled services including software development, tele-calling services out sourced by M/s Vodafone Essar Cellular Ltd etc. The Electricity connection was provided to the appellant during 12/2008, under LT IV tariff, based on the recommendation of the District Industries Centre (DIC) Kochi, that the applicant is a SSI-small entrepreneur. Later, during 3/2010, the APTS of KSEB conducted an inspection of the consumer's site on 25.3.2010 and detected that the applicable tariff, considering his activities and purpose of energy usage, comes under commercial tariff and not under the industrial tariff. The respondent, based on the Inspection report (site mahazar) changed the Tariff and also issued a short assessment bill to the consumer, for realizing the difference in the tariff rate (between commercial and industrial rate) with effect from 12/2008, the date of electric connection, to 02/2010, the previous month to inspection. The consumer is aggrieved by the change of Tariff of his Firm, from industrial rate to commercial, as well as the Bill dated 26.3.2010 for Rs. 4,19, 148/-, raised towards the difference in the two tariff rates, for the back period of 12/2008 to 2/2010 (both inclusive), and is the cause of the dispute.

The questions to be answered are;

- 1) Whether the consumer falls under industrial or commercial tariff during the disputed period from December 2008 onwards or a different period and
- 2) Whether the short assessment bill issued thereof is correct and in order?

M/s Liscon had applied for the electricity connection defining it to be coming under the Software Industry. The same has also been certified by the District Industries Centre dated 24.1.2008. The KSEB contents that, industrial tariff (LT IV), was assigned to the new Electric connection applied, based on

the certificate issued by DIC/Ernakulum and the appellant has deviated its operations to a Call Centre. The appellant denies this allegation and for him, it is a part of the IT enabled service, that attracts an industrial tariff. According to him, the Call Centre is a generic term used colloquially for addressing IT companies other than Software Companies. M/s Liscon depends on IT infrastructure and hence is referred to as a Call Centre colloquially even though not technically correct, he argues.

Referring the Text books/Networks it is gathered as follows. A Call Centre is a centralized office used for the purpose of receiving and transmitting a large volume of requests by telephone. A Call centre is operated by a Company to administer incoming Product support or information enquiries from the Consumers. Call centers are also operated for outgoing calls for telemarketing, solicitation of charitable or political donation Client's product services and debt collection. A Call Centre is often operated through an extensive open workspace by Call centre agents, with work stations that include a computer for each agent, a telephone set/headset connected to a telephone switch, and one or more supervisor stations. It can be independently operated or networked with additional centres, often linked to a corporate computer network, including mainframes, microcomputers and LANs. Increasingly, the voice and data pathways into the centre are linked through a set of new technologies called computer telephony integration (CTI). From the above, I do not find any difference in the 'Call centre' activity done by a Party either for his own business or undertaken as an outsourced one. Actually, the purpose or the activity for which the electrical energy is being used, is considered primarily for determining the applicable tariff of the consumer.

The appellant has submitted a detailed argument notes in which he has put forward the argument that his firm is not a Call Centre, but is a BPO. The Call Centre refers to a business operation, whether it is done by a party for himself or on behalf of others (outsourced) for Firms like Telecom or other consumer related works. But an IT Firm engaged in a Call centre activity, whether it is outsourced or not, can be treated as a Call centre only and there exists specific tariff for a 'Call centre' as LT VIIA-commercial under the Tariff rules issued by the Hon KSERC in 11/2007. The argument of the party, that the activity under taken by him changes from Call Centre to BPO essentially, does not alter the status of a Call centre in the fixation of a different tariff other than LT VIIA specified by the Hon: Commission. That is to say, even if the Call centre is termed as a BPO, the tariff applicable will be LT VII A-commercial, as there is a specific tariff assigned to a "Call Centre".

The appellant has produced a letter dated 23/4/2011 obtained from the State Public Information Officer, IT Dept, Tvpm, in which it has been stated that the electricity tariff applicable to companies offering international call centre services at Infopark is LT IV tariff. The companies involved in the business of ITES or ICT are eligible for the concessions and subsidies as specified in the IT Policy and Subsidy Manual issued vide G.O.(MS) No.31/07/ITD dated 4/12/2007, on line with State IT Policy. These documents have no relevance in the decision pertaining to fixing the tariff applicable to the appellant. The provisions in Section 61 to 65 of the IE Act, 2003, read as;

61. Tariff regulations: - The Appropriate Commission shall subject to the provisions of the Act specify the terms and conditions for the determination of tariff and in doing so shall be guided by the

following, namely: -.....(d) safeguarding of consumers interest and at the same time recovery of the cost of electricity in a reasonable manner.....

62. Determination of tariff.- The appropriate Commission shall determine the tariff in accordance with the provisions of this Act.

65. Provision of subsidy by State Govt.: - If the State Govt. requires the grant of any subsidy to any consumer or class of consumers in the tariff determined by the State Commission under Section 62 , the State Govt. shall , notwithstanding any direction which may be given under section 108, pay, in advance and in such manner as may be specified, the amount to compensate the person affected by the grant of subsidy in the manner State Commission may direct as a condition for the licensee or any other person concerned to implement the subsidy provided by the State Govt.

Provided that no such direction of the State gov. shall be operative if the payment is not made in accordance with the provisions contained in this Section and the tariff fixed by State Commission shall be applicable from the date of issue of orders by the Commission in this regard.

The Govt. normally frames its Industrial Policy or similar other policies. The Hon KSERC which is the empowered statutory body, as per Indian Electricity Act, 2003, to frame the Power tariff rules and rates, do so after conducting Hearings of the general Public and the versions of interested stake holders in the field. No specific direction, under Section 108 of the IE Act, 2003, was seen issued by the State Govt. to the Hon Commission, before the notification of Power tariff categorization and rules in 11/2007, on the fixation of tariff applicable for IT related fields or for ITES (Call centre etc.)/ ICT services exclusively. The Govt. also has not issued any orders under section 65 of the IE Act so to provide the tariff subsidy to the consumers. In the absence of both, I am of the opinion that the industrial Policies of the Govt. are of general guidelines only as far as the power tariff is concerned. It appears that the Govt. had the intentions to give industrial power tariff in all IT fields, but the Tariff rules framed in 11/2007, opted the 'Call centre' out of it, after conducting the Public hearings.

Decision: -

From the analysis and the findings and conclusions arrived at, as detailed above, I take the following decisions.

The appellant has not produced any evidences to prove that he is doing only IT related software/ hardware development activities in his firm. Further, in his Appeal Petition itself, the appellant has conceded that he runs a Call centre, out sourced by M/s Vodaphone Essar Ltd, a Telecom Company, and nearly 120 people work as call centre executives in the office on the same. The site mahazar prepared after the APTS inspection and witnessed by the appellant also confirm that a Call centre is functioning in the Premises.

The tariff applicable to Call Centre is clearly specified in the Tariff rules (Schedule of Tariff and Terms and Conditions of Retail Supply by KSEB w.e.f. 1-12-2007 notified in Kerala Gazette dated 27.11.2007 by the Hon: KSERC) and is incorporated under the tariff, LTVIIA commercial category. The consumer argues that he runs a Call centre is only colloquially correct but actually it is a BPO. The Call centre is an IT enabled service, no doubt, but as long as there is a specific tariff classification in the Tariff rules for the energy used for the 'Call centre' activity, as LT VII A commercial, there is no need

for further verification of the matter to decide upon the applicable tariff of the consumer. The eligible tariff of the consumer is found as LT VII A commercial.

However, since the respondent has assigned the LT IV tariff after verification at the inception, I am of the opinion that the Change of tariff need not be made from the date of electric connection but shall be limited to the previous one year prior to the date of inspection i.e. for the period 4/2009 to 3/2010 and the consumer shall also be given 12 installments to pay the bill, if requested by him.

Point No 1 & 2 :-

It is decided that the appellant falls under LT VII A - commercial tariff from 4/2009 onwards and therefore the respondent shall revise the monthly bills of the consumer (No. 16755) from 4/2009 to 3/2010 under LT VIIA tariff instead of industrial tariff. The consumer shall be given 30 days time (due date) to make the payment of the revised bill and may be allowed up to 12 installments, if requested by him. The consumer is found liable to pay the revised bill in whole or the 1st installment with in the due date. The subsequent installments, if any, shall bear applicable interest as per rules.

The consumer was allowed to avail additional load or regularize the connected load under the existing tariff subject to the final verdict in the Appeal Petition, as per the request of the appellant, vide the Interim order dated 4.07. 2011, issued from this Forum. If the same has been done, it shall be got regularized under LT VIIA tariff.

The consumer may segregate the industrial and commercial load separately and opt for a second connection, to run his IT Software development and call centre work respectively, by placing fresh application with the respondents, if he so desires.

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

Dated the 4th of February, 2013,

Electricity Ombudsman.

Ref No. P/ 220/ 2011/1566/ Dated 04.02.2013.

Forwarded to : 1). Sri.E.A.Noby, Managing Director,
M/S.Liscon Solutions & Services (P) Ltd,
Anjikkath Arcade, Sea Port Airport Road,
Kalamasserry, KOCHI-682 021

: 2).The Assistant Executive Engineer.
Electrical Sub Division, KSEBoard,
Kalamasserry, ERNAKULAM (DT).

Copy to: : 1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.
: 2). The Secretary, KSEB,
Vydyuthibhavanam, Pattom, Thiruvananthapuram-4.
: 3). The Chairperson, Consumer Grievance Redressal Forum,
KSEB, Power house Bldg, Cemetery mukku, Ernakulum-682 018.