

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/ 293/ 2012.

(Present: T.P. Vivekanandan)

Appellant : The Deputy Chief Mechanical Engineer (Electrical),
M/S.Cochin Port Trust,
Willingdon Island, Kochi-682 003.

Respondent : The Special Officer (Revenue),
VydyuthiBhavanam,
KSEBoard, Pattom, Thiruvananthapuram-4.

ORDER.

Background of the Case: -

M/s Cochin Port Trust (CoPT) is availing power supply from KSEB, to its North and South Tanker berths from the year 1993 onwards with contract demand of 300 KVA under tariff HT-II category. The major activity done at Tanker berth is loading and unloading of oil cargo from tanker vessels using its (ship's own) power and KSEB's electricity is being used mainly for pumping water to the ships for cleaning, drinking purpose, lighting the office and walkways, for working of loading arms etc.

While so, KSEB has reclassified the tariff of CoPT as under HT- IV commercial on the basis of an audit observation of the Accountant General of Kerala, which has pointed out that the activities of the appellant are commercial in nature and as such the connection ought to have been billed under HT IV commercial tariff. Accordingly the respondent revised the monthly bills of the consumer from 5/1999 (treating as his eligible tariff under commercial rate from that date) and demanded Rs. 20,24,845/- to recover the revenue loss, due to the difference in the tariff rates, caused to KSEB.

The appellant requested the respondent to retain the said installation under HT II tariff and also requested to revoke the demand notice dated 22.9.2010 issued by KSEB forthwith. As the respondent did not accede the request, the appellant approached the CGRF and filed a petition on 21.4.2012 seeking revision of the electricity tariff from HT-IV to HT-II or HT-I and the same was disposed of, by ordering; "Petitioner to be categorized under HT IV tariff w.e.f. the tariff notification date 27.11.2007. The issued short assessment bill to be revised accordingly". Aggrieved by the said order, vide No.CGRF-CR/Comp.12/12-13 dated 206/2012 of CGRF, the Appellant has filed the Appeal Petition, before this Authority.

Arguments of the Appellant: -

- (1). M/s Cochin Port Trust is receiving HT power supply from KSEB, for feeding power supply to North & South tanker Berths and Kochi Oil Terminal. The contract demand is 300 KVA. Since the present recorded maximum demand is less than 100 KVA for the past several months, action has already been taken by CoPT for reducing the contract demand to 150 KVA.
- (2). The major activity at the Oil Tanker berths is loading and unloading cargo from tanker vessels. The equipment attached to the electrical installation at the berth is the fire pumps and fresh water pumps used for pumping water to ships/fire fighting equipment in the tanker jetties for general use and drinking purposes and a few other pumps used for activities like foam filling, fuel filling, unloading arm, mooring hooks etc. These equipment are not used for any commercial activities. The power supply is also used for lighting of the office buildings, walkways and berth.
- (3). The tariff category of HT-II was fixed by the KSEB, as per the load details submitted by Cochin Port Trust and after inspecting the installation at the time of energisation. The Board was collecting the tariff charges from CoPT under the HT-II (Non Industrial) category until September, 2010 at the rate of Rs.300/- KVA/month as demand charge and @300 paise per unit was the energy charge. The said HT-II category of KSEBoard tariff is applicable to non-industrial/non-commercial consumers such as public offices run by Central /State Govt, local bodies, technical and educational institutions etc. Port is a non-industrial non-commercial consumer, hence it was considered under this category.
- (4). During 9/2010, the KSEB issued a letter dated 22.09.2010 informing their decision to re-classify the installation of CoPT at STB & TB under HT-IV Commercial tariff with prior effect from 15.05.1999, in line with the Audit Observation of the Accountant General, Kochi, who opined that CoPT being commercial should be billed under HT-IV Commercial category.
- (5). In HT-IV Commercial tariff demand charge is fixed at Rs.350/KVA/month and energy charge @ Rs.3.70 per unit. In order to realize the short demanded amount towards current charges for a period of 11 years w.e.f.15.05.1999, the KSEB has also issued a demand notice to CoPT for paying an amount of Rs.20, 24, 845/-.
- (6). Correspondence were made requesting to retain the said installation under HT-II, Non-industrial non-commercial tariff and to revoke the demand notice issued by KSEBoard. But KSEBoard has taken a firm stand that the said installation must be categorized under HT-IV (commercial) and that CoPT shall remit the charges demanded by them including interest.
- (7). The decision of Board to group M/s CoPT installation in HT-IV category along with commercial consumers does not seem to be correct. The schedule of Tariff and Terms & Conditions with effect from 2007 notified by the KSERC have defined the High Tension HT-IV Tariff as applicable to airports, Hotel/Restaurants, Lodges, Commercial Cold Storages etc. The Hotels/ restaurants, cold storage, cinema theatre, freezing units, film studio etc. under HT-IV category are purely commercial Firms. The CoPT cannot be put into that category.
- (8). The object of pumping water to ships is to supplement the maritime industry and to accomplish safety standard in the jetties and berth as stipulated by the safety authorities. The

consumers who utilize electricity to provide luxury entertainments and thereby generating profits fall in a totally different class of consumers, from the organizations like CoPT, who is utilizing the electricity to promote the shipping industry of the country.

(9). HT Industrial Tariff (HT-I) as per above schedule is applicable to printing press, dairy farm, software development units, all non-agricultural pumping, drinking water pumping for public by KWA etc. The supply of electricity is required by CoPT, for consumer no: HTB-8/815, is for the pumping of water to ships/tanker jetties, which can be categorized as “non-agricultural pumping” for which tariff earmarked is HT-I Industrial. Hence KSEB ought to have reclassified the said installation under HT-I category only.

(10) Port Trust approached the Hon CGRF KSEBoard, Ernakulum and a grievance petition was filed for making favourable decision. The CGRF has issued an order in this regard, which does not satisfactorily solve the grievances. Hence this appeal Petition filed.

Reliefs sought by the appellant are: -

(i). Set aside the CGRF order dated 20.6.2012.

(ii). Direct KSEB to withdraw the demand notice issued on 20.10.2011.

(iii). Direct KSEB to re-categorise the tariff of the appellant as HT-I industrial from 1985 onwards and to reimburse the excess amount collected accordingly.

Arguments of the Respondent:

(1). The appellant is HT Con. No: HTB 8/815 under Electrical Section, College, Ernakulum. The consumer availed service connection on 11.12.1970 with a contract demand of 300 KVA at 11 KV. The service connection was availed for operating and lighting the consumer's oil tanker jetty at Foreshore, Ernakulum. Vide Tariff revision order dated 30.7.1998, HT-V category was amalgamated with HT-III category w.e.f 03.8.1988 and hence the appellant was billed under HT-III tariff. It is submitted that HT-III tariff was applicable to non-industrial, non-commercial consumers along with colonies of HT consumers. (Copy of the tariff order dated 03.12.1984 and Tariff order dated 30.07.1988 are submitted as Exhibit-1 and Exhibit-2 respectively). In both the orders, HT-II tariff was applicable to non-industrial but commercial consumers.

(2). The above tariff categorization continued till Tariff revision order dated 29.01.1997 made w.e.f. 01.02.1997. Wherein HT-I tariff was applicable to Industrial and Commercial consumers, HT-II tariff was made applicable to non-industrial/Non-commercial consumers and HT-III tariff for agricultural consumers. The appellant was continued to be billed under HT-II tariff applicable to non-industrial, non-commercial consumers. In this order, commercial Firms were brought under HT-I tariff. Copy of the tariff order dated 29.01.1997 is filed as Exhibit-3.

(3). Vide Tariff order dated 14.05.1999, a new category, HT-IV commercial was introduced for commercial establishments. However, the consumer appellant was continued to be billed under HT-II tariff applicable to non-industrial/non-commercial consumers. Copy of the tariff order dated 14.05.1999 is enclosed as exhibit-4 and this tariff categorization continued.

(4). Meanwhile, the audit wing of the Principal A G, while auditing the accounts of KSEBoard for the period 2007-08, observed that the appellant- M/S.Cochin Port Trust (CoPT) is a commercial establishment and hence to be billed under HT-IV (commercial). The audit further directed the Board to furnish the period from which Cochin Port Trust was billed under HT-II

tariff. Accordingly, for the period from 15.05.1999, the date of introduction of new category viz. HT-IV (commercial), till July 2010, short remittance assessment bill due to difference in tariff from HT-II to HT-IV, amounting to Rs.2024845/- was issued to Port Trust vide letter dated 22.09.2010, (exhibit-5) detailing the reason for tariff re-classification. CoPT vide letter dated 11.10.2010 (exhibit-6), stated that arrear notice is not valid and may be revoked since;

(a). Consumer is not responsible for errors made by Licensee in fixing tariff and issuing bills
(b). Recovery of arrears shall be limited to two years as per Electricity Supply Code, 2005.

(5). In the judgment dated 05.08.1987, in OP.No.5390 of 1985, the HonHigh Court of Kerala has pronounced that “the petitioner has consumed the electricity with liability for payment of such charges as are due in law. If there is a mistake in the categorization or there is an under billing, it is always open to the respondents to rectify their mistake and to demand the proper charges due from the consumer. Therefore the demand under challenge is as per law and is sustainable”. (Copy of the judgment is marked as Exhibit-7). As such, when the mistake was identified by the respondent licensee, the respondent immediately took corrective action by issuing a Notice to the petitioner vide letter dated 22.09.2010. (Exhibit-5). It may also be noted that as stated by the petitioner, from such date of notice, the arrear became first due and the petitioner-consumer is liable to pay the same, as per Electricity Supply Code.2005.

(6). For the month of 9/2010, the respondent raised the bill under HT-IV but the appellant paid the bill under HT-II stating that they fall under HT-II and continued the above practice. Then KSEB, vide letter dated 20.1.2011 issued disconnection notice to the party and in response the appellant vide letter dated 11.02.2011 (Exhibit-8), responded that “the major activity at the tanker Berths is loading and unloading of various cargoes from tanker vessels. In connection with the above activities, the Port is pumping fresh water into the premise of tanker jetties for general use and drinking purposes. Water being an essential requirement for daily living needs, pumping of water has not been categorized as a commercial activity in the KSERC's tariff order dated 01.12.2007. The power supply availed by the Port is used for lighting of various office buildings, walkway of berths and operating the water pumps as mentioned above and not for any commercial purpose”.

(7). It may be noted that KSERC order referred above, i.e. tariff order w.e.f 01.12.2007 assigns HT-IV (commercial) tariff for Airports where similar activities such as lighting of various office buildings, walkway of berths and operating the water pumps as done in the case of the petitioner, are carried out. However, it is not specified the case of similar activities, if done in sea ports. It may be noted that the activities are one and the same in both the cases.

(8). The petitioner is providing such services to the ship on commercial principles and the party has not so far denied the fact they are operating on commercial principles. However, the petitioner is trying to establish that since the Hon Commission has not categorized “pumping of water” as a commercial activity, the petitioner's act of pumping water for ships should not be treated as commercial activity. It is submitted that above move of the petitioner created injustice towards Airports, where in such activities are treated as commercial activity and categorized accordingly.

(9). The petitioner is drawing attention of the Hon Ombudsman that the Hon Commission has categorized "Non-agricultural pumping" under HT-I (Industry) category and hence the party is liable to be billed under HT-I tariff. There are various types of activities of pumping water for non-agricultural activities, which are carried out as social obligation. Activity such as pumping water for Fire Stations, Hospitals, Offices etc. only come under "Non-agricultural pumping" and pumping of water on commercial principles does not cover in "Non-agricultural pumping". Therefore, the argument of the petitioner is not sustaining.

(10). It is felt that the decision of CGRF categorizing the petitioner under Commercial category only from 1.12.2007 onwards, does not satisfactorily solve the grievance, since the Hon CGRF has undoubtedly found that the activity is to be treated as commercial, then the applicability of proper tariff need to be fixed from the date of applicable tariff available, as per records. The Tariff order dated 14.05.1999 (exhibit- 4) made w.e.f. 15.05.1999 wherein HT-II tariff was applicable to non-industrial but commercial consumers.

(11). It is prayed that based on the above submissions, the petition filed by M/S. Cochin Port Trust may be disposed allowing the respondent, KSEBoard, to bill the petitioner under HT Commercial tariff and realize the difference in tariff from 15.05.1999 onwards, i.e. from the date of tariff order categorizing commercial consumers vide Gazette Notification, since the fact that the activity carried out by the petitioner is purely commercial in nature.

Analysis and Findings: -

The Hearing of the case was done on 15.3.2013 and 27.3.2013 in my Chamber at Edapally, Kochi and both sides were represented. S/s C Rajasekharan and M M Abdul Rahim appeared for the appellant's side and S/s S Prasad, B Sreedevi and Christy K Abraham represented the opposite side. On perusing the Appeal Petition, the statement of facts of the Respondent and the documents attached, the argument notes filed from either side and considering the facts and circumstances of the case, this Forum comes to the following findings leading to the decisions thereof.

The cause of the dispute is the change of tariff from industrial rate to commercial rate, in the case of the HT service connection provided to the North and South Tanker Jetty berths, belonging to M/s Cochin Port Trust and issue of a short assessment bill with retrospective effect from the year 1999, accordingly at the higher rate of tariff to recover the revenue loss occurred to KSEB. This tariff reclassification has been done based on an audit observation of Accountant General of Kerala alleging that since the, M/s Cochin Port Trust is a commercial establishment, it has to be billed under HT (IV) commercial tariff. This observation of AG is made without an inspection of site and is based only on assumptions which are not a correct procedure to put into effect the tariff change of a consumer.

The observation of AG will mean that, the commercial Firms are barred from doing other activities under eligible tariff, say doing agriculture in his compound or run an industrial unit or a charitable institution outside the consumer premises, that bears a lower tariff. As per the prevailing rules, any lawful body can start a Firm or an establishment and the tariff will be assigned according to the purpose or activity for which the electrical energy is used and in accordance with the tariff orders issued by the KSERC from time to time. For the mere fact

that the M/s CoPT is a Commercial Firm does not entail the Licensee to fix the Commercial tariff, for any other electric service connection availed by it for a different purpose or activity. The tariff has to be fixed according to the purpose for which electricity is being utilized and in consistence with the tariff rules laid by the Hon Regulatory Commission.

The appellant contented that the power supply at Tanker Berths and Cochin Oil Terminal owned solely by them and is used for lighting the office buildings, walkways, berth and for operating fresh water pumps for pumping water for Port's vessels alone for the usage of employees for general use and drinking purpose. It is also stated that earlier they were using fire pumps and other small pumps for activities like foam filling, fuel filling, etc. and now all these activities were switched over to hydraulic systems.

The appellant argues that M/s Cochin Port Trust is a quasi-government institution and a service organization and its activities are not for any commercial purpose. The appellant points out that the Port comes under the non-industrial/non-commercial category consumer's group and as such according to KSERC's tariff plan, has to be treated in par with, public offices run by Central/ State Govts. Since no specific tariff was assigned exclusively for Sea port either in any of the tariff category list of KSERC, the only available tariff is HT-II, which is applicable to public offices run by Central/State Govt.

But in this case, I notice that no tariff was assigned exclusively for seaports in the tariff rules as in the case of airports. The utilization of electricity in an airport cannot be compared with the electricity utilized at the CoPT Berths.

The respondent has taken a decision to assign HT-IV tariff on the basis of audit observation of Accountant General. The KSEB relies on the decision in OP 5930 of 1985 of Hon. High Court of Kerala dated 5.8.1987, wherein it was held that the party has consumed the electricity with liability for payment of such charges as are due in law and if there is a mistake in the categorization or there is an under billing, it is always open to the KSEB to rectify the mistake and to demand the proper charges due from the consumer. But in the instant case the main dispute relates to the reclassification of tariff and consequent short assessment bill issued. The point that arises for consideration is "whether the activities of the seaport come under the tariff class of non-industrial non-commercial or under commercial tariff and if so from which date it can be charged?"

According to the appellant, Cochin Port is a service organization and its activities are not for any commercial purposes. The tanker vessels berthed at the NTB/STB are run by BPCL-KR which is transferring crude petroleum from the vessel to its refinery at a distant place through the intake terminal and loading back the finished products to the vessel using its own power. The appellant does not use his electricity for transfer of oil to and fro. The CoPT is supporting the 'Oil pumping activity' by providing facilities like water for washing, drinking etc and also provides proper lighting at the berth and yard. Thus the activity of the consumer can not be considered as part of the industrial activity or commercial. It is seen that the Deputy Chief Engineer, Electrical Circle, Ernakulum had furnished a report dated 23.3.2013, after arranging an inspection in the premises of the appellant and. It reveals that *"there are two 20 HP motors for pumping fresh water to the ship. In addition to this there are about 30 Nos. of 1HP motors for*

operating the valves of crude oil pipes used to pump crude oil from ship to Refinery. The yard and street lighting is of approximately 30 KW sodium vapour lamps of various wattages. There are few offices functioning there which are also electrified from this HT connection. No commercial activity apart from crude oil pumping and allied activities can be found there. On enquiry, it is understood that previously there were firefighting pumps which were connected to the HT connection, but now they are dismantled.”

As per Regulation 19(5) of the Terms and Conditions of Supply, 2005, “When there are changes in the contract demand/connected load, tariff ...the Board (Licensee) may require in writing inform the consumer to execute a fresh agreement in the form applicable within 30 days of such change and the consumer shall comply with the same”.

DECISION: -

The respondent has changed the tariff of the consumer based on an Audit observation that, since the parent Unit, M/s Cochin Port Trust (CoPT) is commercial oriented organisation, the tariff of its sub unit namely the Tanker jetty berths ought to be under commercial tariff. This is not a correct procedure to effect the tariff change of a consumer, since normally the eligible tariff depends only on the purpose or activity for which the electricity is being used and in line with the tariff rules issued by the Hon KSERC from time to time. If the Audit party has made a note or observation on the existing tariff of a consumer, the KSEB has to inspect the premises and confirm whether the audit observation is correct or not, and ascertain whether the energy being used for any other purpose necessitating a tariff change and then proceed against the consumer. The KSEB has also to issue a notice to the party intimating why the tariff could not be changed for the cited reasons. An inspection was arranged by the Dy. Chief Engineer, Ekm and a notice dated 22.9.2010 was also issued to the consumer by KSEB.

The notice dated 22.9.2010 of Special Officer (Revenue) addressed to the appellant states that; “During AG’s inspection for the period from 2007-08 it is observed that M/s Cochin Port trust (HTB 8/815) being commercial establishment should be billed under HT_IV commercial.....The Deputy Chief Engineer Electrical Circle, Ernakulum also reported that the purpose of consumption of energy is mainly for water pumping (motor loads) in the premises of tanker jetty and to ship”. If we go by the statement of Dy. CE as given above, it is certain that the consumer cannot be brought under commercial tariff for using electricity for water pumping purposes,

The major activities in the Tanker jetties reported by the appellant are;

(i) connecting loading arms to the vessels for pumping petroleum products from and to the ships, (ii) draining of oil line and collecting in a sump and re-pumping the same to oil line of BPCL, (iii) fresh water pumping to ships use, (iv) for walkway lights and yard lights. The Deputy Chief Engineer in his letter dated 23.3.2013 to SOR, KSEB has reported as follows; “any other commercial activity apart from crude oil pumping and allied activities cannot be found”. But the pumping activities of crude and final oil products are done with motors of the ships and not using M/s CoPT’s electric power. The allied activities correspond to lighting

arrangements in jetties, fresh water supply to inmates of ship, for cleaning purposes etc. and for operation of valves of pipes and connecting and disconnecting of loading arms to ships.

In this case, it is found that the electrical energy is used mainly for pumping water to the ships anchored in the tanker jetty. The tariff of the said activity will not call for a commercial tariff and the tariff for pumping water for non agricultural purpose is given as HT-I industrial. But here, the party has other activities along with pumping water to ships and in such case of mix of various activities of electric power usage, higher of the individual tariff is assigned for the combination, till it is segregated. In this case, the other activities consists of, connecting and disconnecting of loading arms to ships, which is a facility arrangement to pump oil (by ship's motors using its own power) and the lighting provided to office and jetty walkways. The said activities or purpose for which electricity is used does not correspond to any commercial nature. The claim of the appellant that they are providing essential services required for the operation of oil jetties seems to be correct and hence I am of the view that the consumer belongs to the category of HT-II (non industrial/non commercial) only.

Hence the CGRF order dated 20.6.2012 is set aside. The respondent is directed to withdraw the demand notice issued on 20.10.2011, issued to the appellant.

Having concluded and decided as above, it is ordered accordingly. The appeal petition filed by the appellant stands allowed to the extent it is ordered and is disposed of. No order on costs. Dated the 28th of June, 2013.

Electricity Ombudsman.

Ref. No.P/293/2012/ 1824 /Dated 28.06.2013.

- Forwarded to:
- 1). The Deputy Chief Mechanical Engineer (Electrical)
M/S.Cochin Port Trust, Willingdon Island,
KOCHI-682 003.
 - 2). The Special Officer (Revenue)
Vydyuthibhavanam, KSEBoard, Pattom,
Thiruvananthapuram. Pin 695004.

- Copy to: -
- 1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.
 - 2). The Secretary, KSEB,
Vydyuthibhavanam, Pattom, Thiruvananthapuram 4.
 - 3). The Chairperson, CGRF,
KSEB, Power House Buildings, Ernakulam, Cochin -18.