

STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamngalam-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

APPEAL PETITION NO. P/355/2013

(Present: T.P. Vivekanandan)

APPELLANT : Sri. Mohammedali Kozhikkal,
Managing Director, Britco Research Institute of
Digital Communication Organizing Pvt. Ltd.,
Kottakkal P O, Malappuram Dt.

RESPONDENT : The Assistant Executive Engineer,
Electrical Sub Division, KSE Board,
Kottakkal P O, Malappuram Dt.

ORDER.

Background of the Case:-

The Consumer No.18129, of the appellant is an industrial Electric connection, with LT IV-Tariff having a connected load 14880 watts under Electrical Section, Kottakkal. The appellant is running an industrial unit manufacturing mobile phone repairing instruments, mobile automatic service system, GPS tracker etc. In addition, the company also runs a training institute for giving training on mobile phone repairing and others. In the beginning the tariff assigned to the Unit was LT VII-A (commercial) and later at the request of the appellant the tariff was changed to LT IV.

The dispute is that the respondent has changed the tariff of the industry (Cons. No. 18129) to LT VI B and issued a short assessment bill for Rs. 182133/- being the difference between the LT IV tariff and LT VI B tariff for the period from 12/05 to 9/11. According to the respondent, the firm is running a phone repairing institute and hence the applicable tariff of LT VI B was assigned. The consumer filed a complaint dated 7/12/2011 before the CGRF, Kozhikode which was disposed, holding that the petitioner's electric connection does not come under the purview of LT VI B tariff and set aside the short assessment bill and directed the Executive Engineer to assign appropriate tariff, keeping with the existing tariff order, vide order no. OP No. 54/2011-12 dated 14/2/2012. Then the KSEB reassigned the consumer's tariff under LT VII A and issued a short assessment bill

for Rs. 5, 29, 862/- for the period from 12/2005 to 9/2012. Aggrieved by this, the appellant has submitted petition before the CGRF, Kozhikode and the Forum dismissed the petition vide Order OP No. 51/2012-13 dated 31/12/2012. Aggrieved by this order of the CGRF, the Appellant has submitted this appeal before this Forum.

Arguments of the Appellant:-

- (1). M/s Britico Research Institute of communication Organizing Pvt.Ltd has been engaged in manufacturing electronic items like, Mobile phone repairing instruments, mobile Auto mobile servicing systems, GPS tracker etc. with registration as a small scale industrial unit with District Industries centre, Malappuram, functioning since 10.05.1999. Side by side, it is also conducting a training course on manufacturing mobile phone repairing instruments, computer service system etc.
- (2). The electricity connection given to the company (Cons. No.18129) originally was under LT VII-A tariff. Later, considering the manufacturing activity and also its registration as a SSI unit, the consumer made a request to the Asst. Exe. Engineer, Kottakkal, by letter dated 23.8.2000 objecting to the LTVII-A tariff and requested to fix the eligible tariff. Pursuant to the request, an inspection was conducted and found the consumption in excess of the connected load and issued a bill for Rs. 27802/- for the same. The bill was paid. The Board changed the tariff of the consumer from LT VII A to LT IV with effect from 24.06.2001. The consumer has been remitting the energy charges on the basis of bill raised under LT IV ever since on this revised tariff, till October 2011.
- (3). Without any notice, the Board changed the Tariff from LT-IV to LT-VI B with effect from 10/2011. This was done on the basis of an audit report that the firm is not a manufacturing unit but a mobile phone repairing training institute and the tariff applicable is LT VI B. The consumer was not given any notice or copy of the audit report of the regional audit party. Without any notice the tariff was changed from LT IV to LT VI B and the consumer not noticing the change of tariff remitted the amount as per the invoice of 10/2011. Then the consumer lodged complaint to the Asst. Engineer (AE), KSEB, Kottakkal requesting to investigate the matter and rectify the change of Tariff and refund the excess amount paid by adjusting against the future bills.
- (4). The AE informed the consumer by letter dated 25.11.2011, that the activity at the premises is found as running a mobile repairing institute and therefore the applicable tariff is LT VI B and that a short assessment bill of Rs.182133/- is raised for the same and directed to make the payment. A true copy of the letter along with the bill and calculation statement of bill is marked as A1.
- (5). The consumer had filed a complaint dated 07.12.2011 before the CGRF, Kozhikode interalia stating that the applicable tariff to the unit was fixed by the Board after conducting an inspection at the request of the company in year 2000. Also, essentially the company is running a manufacturing unit with registration from District Industries Center, Malappuram as SSI unit and the company is also conducting a training course in manufacturing mobile and computer repairing unit. Tthis fact

was made clear in the letter addressed to the Board and they at no point of time has objected to the conduct of training course side by side its manufacturing activity and that it did not even suggest to go for a separate connection. Had the KSEB objected the two activity taking place in the premises under the same consumer number, we would have taken separate electricity connections. Even now the company is prepared to do so if the Board ultimately decides that the both activities cannot go under one connection.

(6). As per rules, the change of tariff from LT IV to LT VI B without notice is not justifiable and that the short assessment is illegal, that the company has not done any illegal activity in its premises nor have suppressed or misrepresented any fact. In fact, the training institute was conducted by the company in full knowledge of the Board officials and the tariff was changed from LT VII A to LT IV in 2000 at the request of the company, it was having both activities side by side, manufacturing and training and so the Board changing tariff from LT IV to LT VI B is highly arbitrary and illegal.

(7). During the audit, it was detected that the petitioner's firm was not a manufacturing unit, but a mobile phone repairing training institute and hence the applicable tariff was LT VI B. Subsequently the tariff was changed from LT IV to VI B and short assessment bill was issued for the period from 12/2005 to 9/2011. It is further stated that the company was conducting training course in mobile manufacturing /computer repairing units. The audit report that the firm is not a manufacturing unit is false and therefore the change of tariff to LT VI B as suggested by the audit party is arbitrary.

(8). The CGRF, Kozhikode conducted a site inspection on 17.01.2012 and found that, 'they are manufacturing electronic equipments. But at the same time they are conducting various training programs in the same premises regularly'. The forum also observed that, 'the major portion of the electricity consumption is shared by their class rooms and hence LT IV industrial tariff cannot be applied to the premises and that if they want LT IV tariff for the manufacturing unit, they have to segregate this load from that of the class rooms.

(9). The Forum by order dated 14.02.2012 held that "KSEBoard wrongly fixed the tariff of the petitioner under LT IV on 24.6.2001 and changed and fixed it wrongly again in 10/2011 under LT VI B tariff, after a long time, with retrospective effect. A short assessment bill was also issued. Since the petitioner does not come under the purview of LT VI B tariff, the short assessment bill issued under LT VI B tariff for Rs.182133/- is not sustainable under the prevailing rules and regulations. The CGRF set aside the bill dated 28.11.2011 and directed the Executive Engineer to assign tariff to the petitioner keeping with the existing tariff order.

(10). The Asst. Engineer, Electrical Section, Kottakkal by order dated 17.09.2012 assigned tariff plan LT VII A and a short assessment bill calculated under LT 7A tariff for Rs.529862/-, for the period from 12/2005 to 7/2012. A true copy of this order along with the short assessment bill is marked as A4. The consumer challenged this order before CGRF, Kozhikode stating that while the

Board changed the tariff from LT VII A to LT IV in 2001, in pursuance to the objection raised by it, the company was having both manufacturing and training activities side by side in the same premises using energy under consumer number 18129-4 and that categorizing the connection under VII A with effect from 12/2005 and raising short assessment bill amounting to Rs.529862/- is without any justification and arbitrary. The company has not indulged in any illegal activity nor misrepresentation of fact. A true copy of the complaint submitted before the CGRF, Kozhikode challenging the bill dated 17.09.2012 is marked as A5.

(11). The petitioner has shifted the training institution to another building by the end of November 2012 and the manufacturing/production activity retained in the original site under Cons. No. 18129-4. A copy of the communication sent to the AE is marked as A-6.

(12). The petitioner claims that LT IV tariff is applicable as per the prevailing rules for SSI units. Similarly, the tariff applicable to institutions affiliated to Universities or under the control of Director of Technical/Medical Education/Public Instruction is LT VI B. As per the Board order dated 7.11.2009, the self financing educational institutions has to be billed in LT VI-A tariff until new notification. Considering the institute as a self financing Technical educational institution recognized by the Director of Technical education, the tariff has to be either LT-VI A or LT-VI B.

(13). It is submitted that without looking into the relevant materials and appreciating the facts, the CGRF by order dated 31.12.2012 held that the action of the Board in fixing the tariff under LT 7 A is in order and consequently the short assessment bill dated 17.09.2012 is also in order. However, it was held that surcharge should not be imposed on the arrear bill and that sufficient installment facility should be granted. It is further held that the petitioner is eligible for getting a separate connection for manufacturing division under LT IV tariff.

(14).The order dated 31.12.2012 in OP No.51/2012-13 is arbitrary, unjust and is to be set aside.

Reliefs sought for: -

(i). To call for the records leading to the communication dated 17.09.2012 of the Assistant Engineer, Electrical Section, Kottakkal, changing the Tariff to LT 7A w.e.f. 12/2005 and the bill dated 17.09.2012 demanding Rs.529862/- and set aside them.

(ii). To direct the Assistant Engineer, to fix tariff of Cons.No.181294, as LT-IV considering its status as a manufacturing unit and allot tariff LT-VIB to the training institute, recognized by the Director of Technical education and shifted to another premise from January 2013.

As a part of settlement of the dispute, the appellant has offered the following proposal during the Hearing done on 24.09.2013.

“We are ready to pay the original bill for Rs. 1, 82, 133/- dated 28.11.2011 with installments for final settlement. Thereafter the tariff assigned shall be LT VI-B”.

Arguments of the Respondent: -

(1). The petition is upon the CGRF order in 54/2011-12/14.02.2012/ Kozhikode. This order is more than one year old and so barred by limitation. As such, it is requested that the representation may kindly be dismissed. If the representation is based on the CGRF order in 51/2012-13/ dated 31.12.12, the following points may be considered.

(i). In the original petition in OP-51/2012-13/31.12.12/Kozhikode, the party has requested for the following two reliefs. To sanction tariff LT IV for their manufacturing division. They were ready to separate that section from their training area and to sanction tariff VI B as a Govt: recognized Institute for their training division.

In the order in OP 51/2012-13/31.12.12/Kozhikode, the CGRF have stated thus.

(a). The petitioner is eligible for getting a separate connection to the manufacturing Unit under LT IV industrial tariff, if they segregate the industrial load.

(b).The petitioner's training institute can only be considered as an industrial training center which comes under the category of LT VII A commercial as per the KSERC tariff order.

Thus the complaints of the petitioner in OP 51/2012-13/31.12.2012, were seen properly addressed by the CGRF, Kozhikode. The petitioner is conducting a training institute which comes under LT VII A tariff as per the KSERC tariff order, which the CGRF has endorsed.

In the present representation the petitioner has sought for reliefs for something else which the CGRF has not considered. Thus it is a new case which the CGRF has not considered so far and it is requested to dismiss the case as such. Because considering fresh cases by the Ombudsman will create wrong precedence and will give wrong message.

Analysis and Findings: -

The Hearing of the case was conducted on 24.09.2013, in my chamber at Edappally and Mr. Prakash P. Nair and Learned Advocate Sri. Shibi A.A. represented the appellant's side and Mr. Raveendranadhan, Assistant Executive Engineer, Electrical Sub Division, Kottakkal, represented for the respondent's side. On perusing the Appeal Petition, the counter of the Respondent, the documents filed, the arguments made during hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

1.0. The appellant has submitted the petition against the order of CGRF dated 31/12/2012 in OP-51/2012. Hence the challenge under bar of limitation raised by the respondent has no validity. In the order dated 31.12.12, the CGRF held that the action of the respondent in fixing the tariff of the appellant as LTVII-A commercial, changing from LT-IV category, is in order and hence the CGRF upheld the short assessment bill dated 17.9.2012.

1.1. The party has the right to raise any additional reliefs and arguments before the Forum relating to the dispute under its consideration. The present dispute is regarding the short assessment bill issued to the consumer, upon revising his tariff with retrospective effect. The plea of the party is to allot with LT-VI A or at least, LT-VI B tariff to the training institute run by him in the premises and which has been said to be shifted to another premise in January 2013. Further, he wants to fix LT-IV industrial tariff to his SSI unit (Cons. No. 18129-4), considering it as a manufacturing unit. The appellant is also aggrieved by the raising of the short assessment bill with retrospective effect.

1.2. Initially, the consumer was assigned LT VII A (commercial tariff), which was subsequently changed at the request of the party, to LT IV after conducting an inspection by the Board officials. It is undisputed that the appellant is running an industrial Unit and along with it also conducts an Technical Institution, imparting training on various courses like, Mobile phone repairing course, computer Institute and some other courses recognized by the Director of Technical Education.

1.3. The eligible Tariff for an industry engaged in the production activity of Electronic devices and equipments is LT IV. But the consumer cannot utilize the electricity given for industrial purpose for running the business of imparting various Training courses like, Radio & Television Engg., A/C & Refrigeration courses, Mobile Repairing courses or other Computer training institutes, exclusively for the purpose of outside people, when there is specific tariff earmarked for such purposes. The Industry can use its electrical energy for training their own employees but cannot run an Institute for conducting courses for out side people or students with the electricity supplied for an industrial premise, in which case it tantamount to misuse of energy under 'unauthorized use of electricity' invoking Section 126 of the Electricity Act, 2003. The Company has to take a separate Electric connection for such purposes and can run the same under appropriate tariff.

DECISION: -

From the analysis done and the findings and conclusions arrived at, which are detailed above, I take the following decision.

(i). The appellant has admitted in his Petition that he is engaged in multiple activities like running an industrial unit, a computer institute, conducts various courses to others under its auspice, himself considering as a Self financing Technical Education Institution etc. in the said industrial premises, using the electricity supplied for running the industry. The appellant's Firm is a SSI Unit, given under Industrial Tariff, which is comparatively a lower tariff compared to most of the commercial or Non-domestic tariffs.

(ii). In this case, if the party conducts a Computer Institute he is eligible for LT VI-B tariff. And if he runs a Self Financing Educational Institution, even if it is approved by the Director of Technical Education, the applicable tariff is LT VII-A (now renamed as LT VIII from 1.5.2013) and not LT VI-A. It is noted that only the State /Central Govts. Institutions or aided private Institutions are

eligible for LT VI-A tariff. And according to the tariff rules ordered in 01.1.2010, only the Hostels of Educational institutions affiliated to universities or under the control of Director of Technical/ Medical Education /Public instruction will fall under LT VI B tariff category. Hence it is clear that, the appellant is not eligible for LT VI-A tariff.

(ii). The KSEB has detected the omission in the Consumer's allotted tariff in 9/2011 and hence was reassessed under LT VI-B tariff , since consumer was found running a Computer Institute, along with his Industry. This is because, LT VI-B tariff is higher than LT V-industrial tariff and hence it is allotted to the consumer for the anomaly of doing multiple activities. At that time, the respondent has not an allegation of a Self Financing Educational Institution, and hence the argument for raising a bill under LT VII-A tariff will not hold good. The consumer is to be reassessed under LT VI-B tariff only, for the omission occurred.

(iii). For the above said reason, the action of the respondent in raising the short assessment bill to recover the revenue loss occurred due to wrong application of tariff in computing the monthly bills from 12/2005 to 9/2011, under LT VI-B, tariff and accordingly the Bill for Rs. 1, 82, 133/- dated 28.11.2011 is found to be in order. The consumer is eligible for up to twenty (20) installments, if he applies for the required number of installments and the respondent shall allow the same. The Party shall pay either the whole amount or 1st installment within 30 days of this order. The installments will bear interest as per clause 22(8) of the Electricity Supply Code, 2005, at a rate as applicable in KSEB, for the period from the 30th day of this order to the date of actual payment of instalment. No interest or surcharge is payable by the consumer for the Appeal pending period before this Forum and up to 30th day of this order.

(iv). The CGRF vide its order dated 14.2.2012 directed the KSEB to assign the proper tariff to the consumer and accordingly, the Asst. Engineer, Electrical Section, Kottakkal revised the tariff again by order dated 17.9.2012. As the respondent has already reassessed the consumer up to 09/2011, by bill dated 28.11.2011, no further reassessment during this period is required. The next step by the AE, to change the tariff was ordered on 17.9.2012. Hence, for the period of 10/2011 to 08/2012, the consumer shall continue to remain under LT VI-B tariff and from 09/2012 onwards the consumer shall be reassessed under LT VII-A commercial tariff, since the consumer was found running a Self financing Education Institution (SFEI) by this time. The tariff applicable to SFEI will continue for the appellant, till he discontinues activities in his industrial premises and report to the Respondent for inspection. Otherwise, the appellant can apply for separate Electric connections for each activity undertaken by him, after segregating his other activities like Computer Institute and Self Financing Educational Institution etc. from the industry premises. In either case, i.e. if the consumer stops or de-links other activities from the industrial premises, the respondent may take

steps to assign the industrial tariff to his SSI Unit, provided the KSEB is convinced of the Facts and found eligible for the tariff.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the consumer is disposed of, with the said decisions taken under (iii) and (iv) above and ordered to be implemented. The related CGRF order vide, OP No. 54/2011-12 dated 14.02. 2012 and Order OP No. 51/2012-13 dated 31/12/2012 of the CGRF, Kozhikode, are set aside. No order on costs. Dated the 04th of December, 2013.

Electricity Ombudsman.

Ref. No. P / 355 / 2013/ 2088 / Dated 04.12.2013.

Forwarded to (1). Sri. Mohammedali, Kozhikkal
Managing Director,
Britco Research Institute of Digital Communication
Organizing Pvt. Ltd.,
Kottakkal,, Malappuram.

(2). The Assistant Executive Engineer,
Electrical Sub Division, KSE Board,
Kottakkal,, Malappuram.

Copy to:

- (1). The Secretary, Kerala state Electricity Regulatory Commission,
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
- (2). The Secretary, KSEBoard,
Vydyuthi bhavanam, Pattom, Thiruvananthapuram-4
- (3). The Chairperson, Consumer Grievance Redressal Forum,
KSEBoard, Vudyuthibhavanam, Gandhi Road, Kozhikode.