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REPRESENTATION No: P 38/09

Appellant : The Secretary , Janatha Charitable Society,
Vellur (Po) , Payyannur

Respondent: Kerala State Electricity Board

Represented by
The Assistant Executive Engineer
Electrical Sub Division
VELLUR, (Po) KANDOTH 670307

ORDER

The Secretary , Janatha Charitable Society, Vellur , Payyannur submitted a representation on 05.01.2009 seeking the following relief :

1. *Declare that the order dated 11.11.2008 of CGRF Kozhikode is arbitrary and illegal and quash it.*
2. *Declare that the petitioner is not liable to pay the amount demanded by KSEB as per order dated 17.7.2008 and set it aside.*
3. *Declare that the action of Respondent in changing the tariff retrospectively is arbitrary and illegal*

Counter statements of the Respondent was obtained and hearing of the parties conducted on 25.3.2009 at Kannur .The Appellant submitted an argument note on 1.4.2009. M/s Janatha Charitable Society has a 3 phase LT connection with Connected Load 41.96 KW and Consumer Number 7393. The consumer was being billed under LT IV Tariff . On 15.7.2008 the officials of the Respondent conducted an inspection in the premises of the consumer and found that the consumer is using 2 numbers of 15 HP motors and 2 numbers of AC units(26.5KW) for chilling purposes. Since the chilling load was more than 20% of the Total Connected load the Tariff was changed to LT VII A as per the provisions of the tariff order dated 26.11.2007 wef 1.12.2007 , the date on which the Tariff order came into force. An arrear bill for Rs 3,74,863/- was issued and forwarded with necessary details to the Consumer vide letter dated 17.7.2008 of AE KSEB Vellur. The consumer approached CGRF Kozhikode but the CGRF upheld the action of the Respondent vide their order dated 11.11.2008.

The representation with the pleas noted above is submitted to the under signed in the above back ground.

The contentions/arguments/points raised by the Appellant in the representation,during the hearing and in the argument note are summarized below:

1. There is no basis for the assessment to the effect that the Petitioner is using 26% of the allotted load for chilling .This assessment was done without considering the fact that one Compressor and one AC unit are Stand-bye.
2. The Appellant had submitted an application for enhancement of power to 94 KVA on 4.12.2007.If this was sanctioned and executed in time the Load for chilling plant would be less than 20%.This is not the fault of the Consumer.
3. The tariff order dated 1.12.2007 of the KSERC is highly arbitrary and unreasonable so far as the provisions on chilling plants are concerned.
4. If there are change in Norms and Conditions of tariff it should be properly communicated to the consumer. This has not happened and hence the tariff cannot be retrospectively made applicable.
5. The actual usage patterns of the chilling plants are not considered while computing arrears
6. The CGRF has not gone to the merits of the case and the order of CGRF is arbitrary, illegal and bad in law.

The contentions/arguments/points raised by the Respondent in the counterstatement and during the hearing are summarized below:

1. The change of Tariff was done in accordance with the Tariff Notification dated 27.11.2007.The provisions under the Notification is applicable to all consumers of KSEB wef 1.12.2007.
2. All the loads connected to the system have to be reckoned for taking connected load and there is no provision for Stand-bye connected load as claimed by the Appellant.
3. The load of chilling plant will be more than 20% even if the enhanced load requested is also considered. Hence change of tariff would not be avoided even if the additional loads were connected up earlier as contended by the Appellant.

Discussion and Findings:

The Notification No TP23/2006 and TP 30/2007 dated 26.11.2007 was issued by KSERC after the due processes of providing media publicity, inviting public comments and conducting Public Hearings on the various provisions involved . The consumer had every opportunity to air his views while the Notification was being finalized by the Commission. The Notifications were published in Government Gazette No 52/2148/dated 27.11.2007 .. The schedule of tariff and the terms and conditions are applicable to all

consumers of KSEB. Hence the contention of the Appellant that the order is 'highly arbitrary and unreasonable' can not be accepted.

Note (e) under LT IV tariff of the Notification reads as follows:

e. The dairy farms/milk chilling plant with or without chilling/freezing/cold storage activity shall be charged under industrial category provided the chilling/freezing/cold storage load is limited to 20% of the total connected load. If it exceeds 20%, LT VII (A) tariff shall be applicable.

As per this provision of the Tariff order the respondent is empowered to change the tariff applicable to *the dairy farms / milk chilling plants* to LT VII (A) if the load of chilling /freezing/cold storage load *exceeds 20% of the total connected load.*

The contention that the Respondent could have given proper communication to the consumer on the changes in norms and conditions of tariff and in the absence of such communication the change of Tariff cannot have back effect is also without merit. The publication of a Notification in Government Gazette is sufficient for all statutory purposes. That the Respondent failed to change the Tariff in time do not confer any right upon the consumer to escape from the payment of charges at appropriate rates. The Respondent has not claimed any interest or penal charges for the delay. A glance of the copy of the Invoice produced shows that the difference between the appropriate tariff rates and the actual payments have only been claimed. The right of the Licensees to recover electricity charges at correct tariff even if on arrears has been upheld by the Hon : High Court in several cases.

The contention that one compressor and one AC unit are stand-bye has also to be examined. If the contention is accepted for argument sake the load for chilling purposes get reduced to 13.2 KW. The percentage of the remaining chilling load itself shall be around 31% , which is above the allowable limits.

The existing rules and regulations do not permit to categorize loads connected to the system as stand-bye. Hence for all purposes the connected load of the chilling plant has to be taken as 26.5 KW.

The Appellant has argued that if the additional load applied on 4.12.2007 was sanctioned and connected without delay the change of tariff could have been avoided. As per the documents submitted by the Appellant the total connected load would be 94 KVA (78.37 KW) .The percentage of chilling load (26.5KW) at that instance would be 33% which would not change the situation.

In view of the facts and analysis given above the action of the Respondent in changing the tariff of the Appellant to LT VII A with effect from 1.12.2007 has to be upheld.

The only option left for the Appellant is to do re-engineering of his plant so that the connected load of the chilling plant comes down to less than 20% of the total connected load.

Orders:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. *The Representation submitted by the The Secretary , Janatha Charitable Society, Vellur on 05.01.2009 is devoid of any merits and is dismissed.*
2. *The Respondent shall be free to take action to recover the demand raised as per Letter dated 17.7.2008of KSEB*
3. *No order on costs.*

Dated this the 3rd day of April 2009,

P.PARAMESWARAN
Electricity Ombudsman

No P38/09 / 209 / dated 17.4.2009

Forwarded to: 1. The Secretary , Janatha Charitable Society,
VELLUR (Po) , Payyannur

2. The Assistant Executive Engineer
Electrical Sub Division
VELLUR, (Po) KANDOTH 670307 Kannur District

Copy to :

The Secretary,
Kerala State Electricity Regulatory Commission
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram 695010

The Secretary ,KSE Board,
VaidyuthiBhavanam ,Thiruvananthapuram 695004

The Chairman
Consumer Grievance Redressal Forum
KSE Board, VaidyuthiBhavanam
Gandhi Road Kozhikode 673032

