

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/093/2015

(Present: V.V. Sathyarajan)

Dated: 28th July 2015

Appellant : Sri Shelly Jose
Kaimalath House.
South Malippuram
Vypin,
Ernakulam.

Respondent : The Assistant Executive Engineer,
KSE Board Ltd,
Electrical Sub Division
Vypin,
Ernakulam.

ORDER

Background of the Case

The appellant is a commercial consumer with consumer No. 12469 under LT-VII (B) tariff having a connected load of 360 watts. A surprise inspection was conducted by the Electrical Sub Division Squad, Vypin on 30-04-2014 in the above premises. During the inspection it was detected that the premises was being used as a rest room for the staff of an HT consumer, M/s Cochin Sea Port Hotel. A mahazar was prepared based on the findings of the inspection conducted and the respondent changed the tariff from LT VII B to LT VII A and also issued a short assessment bill amounting to Rs. 17,191/-. The appellant filed a complaint before the CGRF, Ernakulam which was disposed with a finding that "*the respondent's decision to allot LT VII A tariff to the above consumer is in order*". Aggrieved against the above order, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant

The appellant submitted that an inspection was conducted in his premises on 30th April 2014, following with a short assessment bill dated: 5-5-2014 for Rs. 17,191/- was issued. The appellant had given a room for providing rest room / accommodation facility on rental basis to a hotel named, M/s Cochin Sea Port Hotel. The consumption in the appellant's premises is very low and below 300 units. The appellant's contention is that the rest room is an area for workers' stay, the assigned tariff can only be domestic. There are several orders issued by the Hon'ble High Court allowing the tariff as domestic even in the case of the staffs working in textile showrooms. The KSEB employees working in various Sub Stations and Offices are staying as bachelors in hired

building coming under domestic tariff. There is no tariff like tariff for employees of five star hotel, tariff for employees of workshops, or 'C' class hotels. The alleged five star hotels and the place where the staff are staying are entirely different.

The CGRF failed to consider the facts that the appellant gave the room on rental basis to the hotel only for providing accommodation to the employees of that hotel. The purpose for which the rented room used was not for any commercial purpose. This was clearly accepted by the respondent that the premises was used for rest room for the staffs of the hotel i.e. accommodation for the employees of the hotel and this can only come under domestic tariff as per the Judgment of Hon'ble High Court in WP(C) No. 15966 of 2012(U) which reads as: **'Even in case the tenant is an establishment, who is utilizing the rented premises for providing accommodation to their employees, such occupancy cannot be treated as a Hostel, Lodge, Guest House or Rest House'**. Since the appellant has used the service connection for providing accommodation for employees of a hotel on rental basis it could never be treated as misuse of tariff. If tariff has to be changed, it could only be changed to LT-I domestic as per Hon'ble High court Judgment in WP(C) No. 15966 of 2012 (U).

In the Schedule of Tariff 2014-15 for LT-VII (B) it is mentioned that, 'If monthly consumption of LT-VII (B) customers having connected load of and below, 1000 watts, exceeds 300 units, the energy charges shall be realized at the rate of energy charges applicable to LT-VII (A) consumers. 'From this it is clear that tariff from LT-VII (B) to LT-VII (A) can only be changed if the consumers connected load exceeds 1000 W or if the consumption exceeds 300 units. But in this case the consumers connected load and consumption are within the limits of LT-VII (B) and hence change of tariff to LT-VII (A) by the respondent is not fair and just.

As per Supply Code 2014 Reg. 97, there is provision for suo-moto reclassification of consumer category by the licensee. The appellant contended that as per the above Regulation, **'the consumer shall be informed of the proposed reclassification through a notice with a notice period of thirty days to file objections, if any.'** But here no such notice was given to the appellant by the respondent, instead was served with a provisional invoice of Rs. 17,191/-.

In the above circumstances the appellant requested the following relief from this Authority:

1. To cancel the provisional invoice.
2. Direct KSEBL to reinstall the LT-VII (B) tariff.

Arguments of the respondent

A single phase service connection with Consumer No. 1155656012489 is registered in the name of Sri. Shelly Jose, Kaimalath (H). Thekken Malippuram with an authorised connected load of 360 Watts. A surprise inspection was conducted by Sub Division Squad, Vypin in the above premises on 30-04-14 and it was detected that the service connection was being used as a rest room for the staff of M/s Cochin Sea Port Hotel. The connected load in the appellant's premises is 733 Watts. As this was a case of tariff misuse, a provisional bill was issued for Rs. 17,191/- to recover the loss

incurred by the respondent, on 03-05-2014. As no objection was filed by the appellant, a final bill issued on 26-05-14 for the same amount.

The appellant had wrongly approached the Deputy Chief Engineer, Electrical Circle, Perumbavoor with an appeal after the payment of half of the assessed amount of Rs. 8,596/- at Section Office on 05-06-14 vide Rt. No. 5565040605101214 as per the direction of the Deputy Chief Engineer, Perumbavoor Circle. Later, the Deputy Chief Engineer, Electrical Circle, Perumbavoor directed the appellant to file a petition before the Assistant Engineer. Accordingly the appellant has submitted an appeal on 09-06-14 requesting to revise the tariff to be fixed as VII B instead of VII A and appeal was disposed on 08-07-14.

The respondent's contention is that VII B tariff can be given only for small shops, bunks, hotels, restaurants, telephone booth, internet, e-mail, fax/photocopy shops with a connected load below 1000W. A rest room for employees of a hotel does not come under this tariff and hence requested to dismiss the appeal.

Analysis and findings

Hearing was conducted on 02/06/2015 in my chamber at Edappally, Kochi. The appellant was represented by advocate Sri. Joe Joseph. Sri Siby Thomas, Assistant Executive Engineer, Electrical Sub Division, Vypin, Ernakulam represented the respondent and they have argued the case, on the lines stated above. Considering the arguments made by the parties and perusing the appeal petition, statement of facts and other documents produced by both parties, this Authority comes to the following conclusions leading to the decisions thereof.

The dispute in this case relates to changing of tariff of the appellant's to LT VII A alleging that the premises is used as rest room for the employees of a nearby hotel. The tariff of the appellant was under LT VII B and pursuant to an inspection conducted in the appellant's premises on 30-04-2014, tariff was changed to LT VII A based on the findings that the premises was being used as rest room for the employees of the hotel. But the appellant's contention is that the employees of the hotel are accommodated in a portion of the building and since no commercial activities or business were carried out in the said building, the appellant is eligible for domestic tariff. The appellant had only rented a room in the said building for providing rest room / accommodation facility for the employees of the hotel. The appellant's argument is that the CGRF failed to consider the above facts.

During the hearing, the appellant argued that as per the site mahazar the premises is being used for residential/occupancy of employees of nearby hotel. The connected load has not exceeded beyond 1000 Watts and average energy consumption per month is only 150 units. Going by the schedule of tariff issued by KSERC, in order to categorise a consumer under LT VII A tariff, two conditions are mandatory namely connected load should not exceed 1000 Watts and energy consumption should not exceed 300 units/month. Hence the appellant argued that the tariff change and demand notice issued are against provisions of the Act and guidelines issued by the KSERC. Another contention of the appellant is that the demand notice issued by the respondent has

violated Section 62 (3) of Electricity Act, 2003. There was no notice or an opportunity of personal hearing before changing the tariff of the appellant.

The Hon. High Court in WP (C) No. 15966 dated 06-11-2012, which deals with a similar issue, was produced by the appellant's counsel to substantiate the argument that the appellate is eligible for domestic tariff. In the above judgment, it is stated that even in case the tenant is an establishment who is utilizing the rented premises for providing accommodation to their employees, such occupancy cannot be treated as a hostel, lodge, guest house or rest house. Since the appellant has used the service connection for providing accommodation for employees of the hotel on rental basis it could never be treated as a commercial activity or misuse of tariff. If the tariff has to be changed, it could only be changed to LT I A domestic as per the above judgment.

The appellant also argued that there is provision for suo motu reclassification of consumer under appropriate category as per Regulation 97 of Supply Code, 2014, the consumer shall be informed of the proposed reclassification through a notice with a notice period of 30 days to file objections, if any, as per Regulation 97 (2) of Supply Code, 2014. No such notice was issued to the appellant instead of serving a provisional invoice for Rs. 17,191/-.

In the case at hand, the respondent has not given any notice to the appellant before effecting the change of tariff. The respondent has not examined as to what is the arrangement between the appellant and the tenant who occupied the building in question. If it is on the basis of a rental agreement, it cannot be held that the usage is in any manner non-domestic. The unilateral decision taken by the respondent without examining such aspects cannot be sustained.

Further, on going through the contentions of both parties, it can be seen that the contentions of the appellant are found in order. But the respondent has not given an opportunity of being heard as per Regulation 97 (2) of Supply Code, 2014 which shows some lapses on their part. The respondent's unilateral decision taken without examining the real facts of the case cannot be admitted. According to the tariff schedule, if the monthly consumption of consumers having connected load of and above 1000 Watts and exceeds consumption 300 units are included in LT VII A tariff. In this particular case the appellant's connected load is 733 Watts only and average consumption per month is only 150 units and hence cannot be included under LT VII A tariff.

The argument of the respondent that building tax collected as commercial which cannot be taken into account for reclassification of appellant's category to LT VII A. Further the respondent has not conducted detailed inspection and not furnished any valid reasons for not issuing notice to the appellant as per the Regulation 97 of the Supply Code, 2014. According to Schedule of Tariff, LT VII B tariff is applicable to commercial consumers such as shops, bunks, hotels, restaurants, telephone / fax, e-mail, photocopy booths and internet cafes having connected load of and below 1000 Watts. Here, the appellant had only rented a room for providing rest room / accommodation facility to the employees of a nearby hotel. Hon'ble High Court in WP (C) No, 15966 of 2012 has ordered that utilizing the rented premises for providing accommodation to their employees, such occupancy cannot be treated as a hostel, lodge,

guest house or rest house. Hence this Authority is of the view that the reason to uphold the change of tariff is not valid.

Decision

In view of the above discussions, the unilateral decision taken by the respondent without examining the real facts of the case cannot be admitted and hence the short assessment bill issued is hereby quashed. Amount, if any, remitted already by the appellant in this regard may be adjusted in the future bills. The respondent is directed to reclassify the appellant's category to LT VII B within a period of 30 days from the date of receipt of this order. The appeal petition is allowed to the extent as ordered above. No order as to costs.

ELECTRICITY OMBUDSMAN

P/093/2015/ _____ Dated: _____

Forwarded to:

1. Sri Shelly Jose, Kaimalath House, South Malippuram, Vypin, Ernakulam.
2. The Assistant Executive Engineer, KSE Board Ltd, Electrical Sub Division, Vypin, Ernakulam.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram.
3. The Chairperson, Consumer Grievance Redressal Forum, Power House, Power House Buildings, Cemeterymukku, Ernakulam-682 018.