

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/017/2016

(Present: V.V. Sathyarajan)

Dated: 13th June 2016

Appellant : Sri. Reghupathy,
Ethayam Company,
Narikkal, Karavalloor.

Respondent : The Assistant Executive Engineer,
KSE Board Limited,
Electrical Sub Division,
Punalur, Kollam.

ORDER**Background of the case:**

The appellant, Sri Reghupathy is a consumer having consumer No: 1145937018753 under the jurisdiction of Electrical Section, Punalur. This service connection was effected exclusively for industrial purpose (with LT IV tariff) with a connected load of 44544 Watts and Contract Demand of 25 kVA. On 16-10-2015, APTS Kottayam conducted an inspection in the premises of the appellant and found that the supply was being used for filtering and packing and other associated activities using oil brought from outside.

Based on the above findings the Assistant Engineer, Electrical Section, Punalur issued a short assessment bill for an amount of Rs.78,884.00, as per Regulation 152 of Kerala Electricity Supply Code, 2014 towards the undercharged amount i.e. the difference in amount between the commercial and industrial tariff. Aggrieved against this, the appellant submitted a complaint before the Honourable CGRF, Kottarakkara and the Forum quashed the bill and directed to revise the assessment for 12 months prior to the date of inspection vide order in OP No. 1628/2015 dated 08-02-2016. Accordingly a revised bill for Rs. 23,870.00 was prepared and issued to the appellant. Still aggrieved against the decision of the CGRF, the appellant submitted this appeal petition on 23-03-2016 before this Authority.

Arguments of the appellant:

The appellant is an industrial consumer (LT IV A) with consumer Number 18753 under Electrical Section, Punalur and has been remitting the regular bills issued by the KSEB, without any default. While so, the APTS official of the KSEB inspected the premise on 16-10-2015 and prepared a mahazar. In the mahazar no irregularity or unauthorized use of electricity or any misuse of electricity by the complainant is stated. There is also no allegation of use of unauthorized additional load by the appellant. Thereafter, the Assistant Engineer issued an order dated 29-10-2015 along with a bill for Rs. 78,884.00 directing payment of the amount without fine before 28-11-2015, with the same date as the last date of disconnection.

It is alleged that the supply is being used for carrying out the filtering, packing and other associated activities using extracted oil brought from outside and therefore the tariff applicable to the premises is LT VII A as per the tariff notification and therefore the appellant is liable to pay the arrears of charges due under LT VII A tariff. Arrears of Rs. 78,884.00 is demanded by way of separate bill along with the above order. The said demand was challenged before the CGRF (South) Kottarakara by filing O.P No. 1628/2015.

The CGRF (South) Kottarakara quashed the impugned bill for Rs. 78,884.00 dated 29-10-2015 vide its order dated 08-02-2016 in O.P No. 1628/2015 and directed the respondent to issue revised bill limiting the period of assessment for one year, under LT VII A tariff prior to the date of inspection in the premises. The appellant's contention is that the demand of the electricity charges under LT VII A commercial tariff is per-se illegal and unsustainable and liable to be quashed on the following grounds as detailed below:

- ❖ The impugned order is against the law and facts involved in the case. The appellant has used the energy supplied by the licensee only for the purpose for which it was availed. There has been no suppression of material facts. The respondent has no case that the appellant has used energy in excess of the connected load. All the bills have been remitted in time and there is no default at all.
- ❖ There is no justification for altering the tariff category and tariff rate. If at all there was any need of tariff revision (not admitted) it shall be prospective only, and not retrospective.
- ❖ There is no provision under law for retrospective revision of tariff and consequent reassessment, unless there is theft of electricity, or use of energy in excess of the connected load. That is not the case here.
- ❖ For these and other reasons to be urged at the time of hearing. It is humbly submitted that the order of the CGRF dated 08-02-2016 is not

sustainable under law and fact of the case. The said order was received through post on 19-02-2016.

- ❖ At the time when the appellant availed of electricity supplied from the respondent, the tariff category then existing was LT IV.

Therefore it is humbly prayed that the order dated 08-02-2016 of the CGRF (South) Kottarakkara be set aside, directing the respondent to make a reassessment of the tariff category of the appellant and if there is change of tariff category, it shall be only prospective from the date of reassessment, holding that the appellant is liable to pay tariff under LT IV till date of such reassessment, allowing him to clear the arrears within one month from the date of final disposal of this appeal.

Arguments of the respondent:

On 16-10-2015 the APTS, Kottayam unit along with the Section Officials conducted a joint inspection in the above premises. They found that the electric supply was being used for carrying out filtering and packing and other associated activities using extracted oil brought from outside. As such the tariff applicable is LT VII A. The oil brought from outside was packed in the ETHAYAM & Company under the trade names ESWARI and THULASI.

Thus a site mahazar and joint inspection report were prepared. Sri. Reghupathy acknowledged the site mahazar. In the site mahazar it was clearly noted that the palm oil brought from outside in tanker lorries is packed in the company. As per the tariff order the admissible tariff of the "units carrying out filtering and packing and other associated activities using extracted oil from outside" is LT VII A. In the joint inspection report it is remarked that the consumer may be reassessed under optional demand based tariff under VII A category.

On these grounds the appellant was reassessed against short assessment of energy on account of assigning wrong tariff as per Regulation 152 of the Kerala Electricity Supply Code, 2014. A detailed proceeding along with short assessment bill supported with calculation statement was issued to the appellant on 29-10-2015 with last date 28-11-2015 having given 30 days to clear the dues.

The appellant's service connection with consumer No. 1145937018753 was being billed in LT IV A category up to the reading of September 2015 (bill up to October 2015). In the site mahazar it was specifically noted that palm oil brought from outside in tanker lorries is pumped to the tank in the factory with the help of motor and packed in plastic packets and metal tins in the trade names ESWARI and THULASI. The work being carried out in the firm is commercial in nature. Also it was mentioned in the site mahazar that the tariff

as per the existing tariff order for units carrying out filtering and packing and other associated activities using extracted oil brought from outside is LT VII A tariff.

As per Regulation 152 of the Kerala Electricity Supply Code, 2014 under the caption "Anomalies attributable to the licensee which are detected at the premises of the consumer" sub regulation (1) reads as Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or of Section 135 of the Act.

Sub regulation (2) reads as "the licensee, if any, shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted"

Sub regulation (3) empowers the licensee that while assessing the period of such short collection the factors as specified in sub regulation (8) of Regulation 155 shall be considered provided also that the realization of electricity charges short collected shall be limited for a maximum period of 24 months even if the period during which such anomaly persisted is found to be more than 24 months. Hence amount of short collection for 24 months to the tune of Rs 78,884.00 was demanded from the appellant.

The appellant was doing filtering and packing and other associated activities using extracted oil. It is mandatory that the short assessment of energy, on account of assigning wrong tariff is to be levied from the respective consumer. Moreover the APTS Kottayam in their joint inspection report clearly stated that there was short assessment of energy. The appellant may be reassessed under optional demand based tariff under VII A with a contract demand of 25 kVA to compensate the unrecorded portion of energy retrospectively. Regulation 134(l) of Kerala Electricity Supply Code, 2014 permits the licensee to realize the energy charges undercharged by issuing a separate bill with a 30 days period of remittance. As per Regulation 152 of the Kerala Electricity Supply Code, 2014 it is stated that the amount of electricity charges short collected for the entire period during which such anomalies persisted may be realized by the licensee provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twenty four months.

In this context the appellant was issued with a detailed proceeding along with short assessment bill for Rs 78,884.00 supported with calculation statement on 29-10-2015 with last date 28-11-2015 having given 30 days to

clear the dues. Later the bill was revised to Rs 23,870.00 and period of assessment reduced to 12 months.

The short assessment bill issued is as per the prevailing rules and tariff order as envisaged in the Electricity Act, 2003 and Kerala Supply Code, 2014. The appellant was not extracting oil in his company. Hence he is not entitled to get the LT IV A tariff since the units carrying out filtering and packing and other associated activities using extracted oil brought from outside.

Analysis and findings

The hearing of the case was conducted on 08-06-2016 in my Chamber at Edappally and the appellant's side was represented by his authorized agent Sri A.B. Mohana Kumar, and the respondent's side by Smt. Metilda, Assistant Engineer, Electrical Section, Punalur and they have argued the case, mainly on the lines as stated above. On examining the petition filed by the appellant, the statement of facts of the respondent, perusing the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings, leading to the decisions thereof.

The main contention raised by the appellant is that the tariff revision shall be prospective only, and not retrospective. Further, no irregularity or unauthorised use of electricity or any misuse of electricity by the appellant. Also there is no allegation of use of unauthorised additional load. So the appellant argued that there is no justification for revising the existing tariff unless there is theft of electricity or use of energy in excess of the connected load.

According to the respondent palm oil brought from outside in tanker lorries and is pumped into the tank in the factory with the help of motor and packed in plastic packets and metal tins in the trade names, Easwari and Thulasi. The work in the premises being carried out is purely commercial in nature. As per the existing tariff order for "units carrying out filtering and packing and other associated activities using extracted oil from outside" is under LT VII A.

As per Regulation 152 (2) and (3) of Kerala Electricity Supply Code, 2014 the amount of electricity short collected by the licensee, if any, can be realized from the appellant under normal tariff applicable to the period during which such anomalies persisted without any interest. Accordingly the appellant was issued with a short assessment bill for an amount of Rs. 78,884.00 and subsequently revised to Rs. 23,870.00, as per the direction of CGRF, Kottarakkara. The respondent argued that as the short assessment bill issued is as per the prevailing rules and tariff order as envisaged in the Electricity Act and Supply Code, 2014, the appellant is liable to remit the short assessment.

The point for consideration in this case is as to whether the appellant is eligible for LT IV A tariff or not.

On going through the contention of both parties it can be seen that the power is used neither for manufacturing nor for any production in the appellant's premises. Here in this case, palm oil brought from outside in tanker lorries which is pumped into the tank in the appellant's premises with the help of motors and doing filtering and packing activities alone. As per Schedule of Tariff and Terms & Conditions for Retail Supply of Electricity by the KSEB Limited and all other licensees with effect from 16-08-2014 issued by the Commission vide order dated 14-08-2014 in OP No. 9/2014, units carrying out filtering and packing and other associated activities using extracted oil brought from outside are classified under Low Tension VII commercial A (LT VII A). Hence the appellant's unit is not eligible for industrial tariff LT IV A.

The purpose or the activity for which the electrical energy is being used is considered primarily for determining the tariff. As per Section 61 of the Electricity Act, 2003, *the Appropriate Commission shall subject to the provisions of the Act specify the terms and conditions for the determination of tariff by safeguarding of consumers' interest and at the same time recovery of the cost of electricity in a reasonable manner.* In order to cater the genuine need of different types of consumers and also to rectify the anomalies in the prevailing tariff, the Hon'ble Commission introduced new tariff depending upon the purpose for which supply is used. Accordingly Commission included the units carrying out filtering and packing and other associated activities using extracted oil brought from outside are in Low Tension VII Commercial (LT VII A) category.

As per Regulation 97 (1) of Kerala Electricity Supply Code, 2014 if it is found that a consumer has been wrongly classified in a particular category or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category as per the tariff order of the Commission or the category has changed consequent to a revision of tariff order, the licensee may suo moto reclassify the consumer under appropriate category. In that case 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 152 (3) of Kerala Electricity Supply Code, 2014 the amount of electricity short collected by the licensee, if any, can be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted, without any interest, provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months. In this case, the CGRF directed to

revise the short assessment by limiting the period to 12 months and accordingly respondent issued revised assessment for Rs. 23,870.00. In the above circumstances I don't find any reason to interfere with the decisions of CGRF.

Decision

In view of the factual position I don't find any reason to interfere with the findings and decision taken by the CGRF in this case. The respondent is directed to issue revised assessment under LT VII A tariff, for a period for twelve months prior to the date of inspection in the premises. The appeal is found devoid of any merits and hence dismissed. The order of CGRF in OP No. 1628/2015 dated 08-02-2016 is upheld. No order as to costs.

ELECTRICITY OMBUDSMAN

P/017/2016/ _____ Dated: _____

Delivered to:

1. Sri. Reghupathy, Ethayam Company, Narikkal, Karavalloor.
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Punalur, Kollam.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.