

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/031/2018
(Present: A.S. Dasappan)
Dated: 26th July 2018

Appellant : Sri. A. Gopakumaran Nair
Vijaya Vilas, Koliyoor,
Muttacaud P.O.
Thiruvananthapuram

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd., Fort,
Thiruvananthapuram District

ORDER

Background of the case

The appellant is a consumer under Electrical Section, Thiruvallam and is having two numbers of electric connections with consumer Nos.7509 and 15688 under LTI (A) domestic tariff. The electric connection No. 7509 was originally given during 04/1997 and the electric connection No. 15688 was effected during 2011. The Sub Engineer of Thiruvallam inspected the site and found that the supply with electric connection No. 7509 was used for pumping water for construction purpose and the tariff was changed to LT VII A from 25/10/2017, as there are no domestic activities done by using this supply. The appellant has requested to change the tariff of consumer No. 15688 from domestic to commercial tariff under VII A Tariff and to shift the connection with consumer No. 7509 to the residential building from the masonry wall under deposit work. Since no steps were taken, the consumer filed a complaint before the CGRF, Kottarakkara which was disposed of, holding that the petitioner's electric connection in consumer number 7509 shall be under LT VI F for construction purpose. Aggrieved by this order of the CGRF, the Appellant has submitted this appeal before this Forum.

Arguments of the appellant:

The gist of the arguments of the appellant is as follows:

1. The appellant approached the CGRF to change the tariff of cons. No. 15688 out of two electric connections with cons. Nos. 7509 and 15688 under domestic tariff connected during 4/1997 and 2011 respectively. The 1st electricity connection with cons. No. 7509 was effected during 4/1997 at a room near a pond for lighting and pumping of water for domestic purpose other than drinking. The 2nd connection was effected with cons. No. 15688 during 2011 at the residential building. Both connections are under domestic tariff.

2. In the monsoon season during 5/2017 the metering equipment room near the pond was flooded with rain water and shifted at an elevated place in a permanent masonry wall with root under Deposit Work Scheme on 26 5 2017. On 25/11/2017 one Sub Engineer of Electrical Section Thiruvallam reached the Premises and informed the appellant that two connections under same tariff at the same place are not possible and the connection of consumer No. 7509 would be changed to construction tariff verbally. The Appellant has requested to change the tariff of consumer No. 15688 effected subsequently during 2011 to commercial tariff under VII A Tariff and the connection with consumer no. 7509 may be shifted to the residential building from the permanent masonry wall under deposit work and also requested to inform the amount to be remitted for the shifting verbally. This request was repeated through a regd. letter dated 29/11/17 addressed to the respondent. No decision to this letter was taken by the respondent till date, and the tariff of Cons. No. 7509 was changed to construction tariff with effect from 25/10/17 arbitrarily with out taking any decision on the request of appellant through the regd. letter dated 29/11/17.

3. One sub Engineer named as R. Rajesh who is holding additional charge of the Assistant Engineer frequently and also residing at the adjacent property of the premises has some grudge against the appellant, on two incidents happened earlier, as follows.

(1) The 1st incident is that the request of the appellant to shift the 1st span of an overhead service line crossing his property on deposit work to a nearby road was objected by him on the ground that the shifting will cross adjacent property. The shifting was strictly according to rules and effected on the intervention of higher officers.

(2) The 2nd incident is in connection with the removal of an additional stay provided to block the approach way from the main road to the property of appellant. The property is having only 30ft frontage along the main road of which 15ft was blocked by a stay provided of the Post standing on the main road earlier. An approach road to enter the property through the balance portion of 15 ft was blocked by providing an additional stay during 11/2017 while holding addl. charge as Assist Engineer and this was removed on the direction of Executive Engineer

on petition to him. This is the immediate reason to change the tariff to construction without any base.

- (3) The Assistant Engineer, who was influenced by the above said sub Engineer, Mr. R. Rajesh, has changed the tariff to construction on arbitrarily without any truth and also without taking a decision on the request of the appellant till date. These incidents were not denied by the Assist. Engineer because these were proved recordically.
- (4) There is no construction site or construction work in the premises. A basement with granite for a 350 sq. ft building was constructed years back during a monsoon season using water from a nearby well which is being flooded to the ground level due to the peculiar nature of the rocky place, during monsoon season. The use of the energy to the construction purpose is a cooked story at the influence of the above said Sub Engineer, Mr. R. Rajesh. The CGRF on a wrong appreciation of a facts and law have decided by the impugned order dated 16/04/18 thereby the change of domestic tariff to construction tariff effected by the respondents is legal and right.

In the premises there is no construction site or work and change of tariff to construction does not arise. No particular incidents of misuse of electrical energy to construction purpose was pointed out and prepared site mahazar which can be done easily since the Sub Engineer of the Section resides nearby. No decision has been taken by the Assistant Engineer, the respondent to whom the appellant has requested through regd. letter dated 29/11/2017 to change the tariff to commercial and shift the metering equipment to the residential building, under deposit work. The appellant is eligible to get the metering equipment shifted to his residential building and tariff changed to commercial from domestic on his request dated 29/11/2017, as per the existing rules.

The appellant prayed that the order dated 16/4/2018 in O.P. No. 01/18 on the file of the Consumer Grievance Redressal Forum, Kottarakkara be set aside and this appeal allowed with costs and also order to conduct a departmental enquiry about the allegations raised against the Sub Engineer Mr. R. Rajesh, who is misusing his official position to harass the consumer.

Arguments of the respondent:

The CGRF passed orders on 16/4/2018 for reassigning tariff of Consumer No. 7509 to LT V1 F considering all facts and circumstances. The metering equipments of Consumer No. 7509 is now fitted on a temporary wall near to a construction site. The supply is used for pumping water from a nearby pond. The consumer is residing to a nearby house bearing Consumer No. 15688 which is in domestic tariff. The complaint of the consumer is to shift the existing metering equipments of Consumer No. 7509 to his residence

building and to change the tariff to domestic purpose. The CGRF had directed to change the tariff from commercial purpose to construction purpose as there is no commercial activities performed by using this electric connection and because the meter is fitted on a temporary wall.

As per the information received from meter reader, the sub engineer of Thiruvallam office inspected the site and found that there is no domestic activities done using this supply (cons no 7509), only pumping of water was done. Also a granite basement of building was under construction adjacent to this meter. Since the supply was used for pumping water and used for construction purpose the tariff was changed to LT 7A from 25/10/2017, as there is no domestic activities done by using this supply. As per order of the case on OP No 01/2018 of the CGRF the tariff was reassigned to LT VI F from April 2018. The entire allegation against the staff of Electrical Section, Thiruvallam is fully denied. The story is a fabricated one, cooked up on his own imagination without any base. If consumer had complaint on any one of the KSEB staff, he can directly make it to the higher authorities timely and he itself admitted the intervention of higher authorities on one case timely. The consumer had neither pointed out any one of this allegation on the first complaint, that he had been lodged before the CGRF.

The action of staff of that office is maintainable under law, that two electric connections under the same tariff in the same premises are not possible and hence the cons no 7509 was changed to non domestic tariff.

Analysis and Findings

The hearing of the case was conducted on 10-07-2018, in the office of the State Electricity Ombudsman, Edappally, Kochi. Sri. A. Gopakumaran Nair represented the appellant's side and Sri. S. Ajayakumar, Assistant Executive Engineer, Electrical Sub Division, Fort, represented the respondent's side. On perusing the Appeal Petition, the counter of the respondent, the documents submitted, arguments during the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

The appellant's electric connection vide consumer number 7509 was changed to tariff under LT VI F. Then the appellant verbally requested to assign the tariff under commercial tariff and also requested the same by addressing the respondent through a registered letter dated 29-11-2017. The CGRF has confirmed the tariff assigned under LT VI F to consumer number 7509.

Now the appellant has put forward the following requests in his appeal petition. Firstly, to change the tariff of consumer number 15688 assigned to the residential building to commercial tariff so as to function as an advocates office in one room of his house. The other request of the appellant is to shift the

meter of the consumer number 7509 to the residential building and to reassign the tariff under domestic. Thirdly, to conduct a departmental enquiry about the allegations raised against the Sub Engineer in the Electrical Section, Thiruvallam.

As per rules, this Authority is not competent to take any disciplinary action against the officers of the licensee for the misdeeds, negligence etc, if any, done by them. Hence the request of the appellant to take disciplinary action is not allowable and thereby rejected. The appellant can approach the higher officials of the licensee for resolving any complaints against the licensee's officials.

The rules allow a consumer to change the consumer category, shifting of meter or service line by submitting an application in the form stipulated under Annexure 10 of Regulation 90 of the Supply Code 2014 and by remitting the required fees. The appellant has not followed this procedure for shifting the meter or change of tariff. The procedures for shifting of meter and reclassification of consumer category on the request of the consumer have been laid down in the Regulations 90, 94 and 98 of the Supply Code, 2014.

The above regulations read as under:

90. Procedure for modification or change in existing connections.-

(1) *The applicant shall apply for modification or change in the existing connection in the forms as stipulated hereunder:-*

<i>Sl. No.</i>	<i>Purpose</i>	<i>Application form</i>
<i>i</i>	<i>application for the change in name of the registered consumer due to change in the ownership or occupancy</i>	<i>Annexure - 8</i>
<i>ii</i>	<i>application for transfer of ownership to the legal heir</i>	<i>Annexure - 9</i>
<i>iii</i>	<i>application for conversion of services / change of consumer category / shifting of meter or service line</i>	<i>Annexure - 10</i>
<i>iv</i>	<i>application for enhancement or reduction of load</i>	<i>Annexure - 11</i>

(2) *All application forms for modification or change in the existing connection shall be accompanied with an identity proof of the applicant in accordance with regulation 44 of the Code, if the connection is registered in the name of the applicant himself or with a no objection certificate (NOC) from the person in whose name the connection is registered.*

(3) *The processing of the application shall be done as specified in regulation 76 of the Code mutatis mutandis.*

94. Procedure for shifting of meter or service line within the premises of the consumer.-

(1) The consumer shall apply for shifting the meter within the existing premises or for deviation of existing service lines within his property, in the format specified in Annexure - 10 to the Code.

(2) The licensee shall process the application in accordance with the provisions of the Code.

(3) For site inspection as well as issuance and payment of demand note for the estimated expenditure for works, both the licensee and applicant shall follow *mutatis mutandis*, the procedure and timelines as laid down in regulations 77 to 83 of the Code.

(4) The following time schedule shall be observed for completing the works from the date of payment of expenditure:-

Sl. No.	Purpose	Time Schedule
i.	shifting of meter or weather proof service line or both	seven days
ii.	shifting of LT service line	thirty days
iii.	shifting of HT service line	forty five days
iv.	shifting of transformer	thirty days.

(5) Excess payment if any, made by the consumer shall be adjusted by refund and deficit payment if any, shall be realised by way of an additional demand note.

98. Reclassification of consumer category on the request of the consumer.-

(1) If a consumer wishes to change his consumer category, he shall submit an application to the licensee in the format given in Annexure - 10 to the Code and the licensee shall process the application as per the relevant provisions of the Code.

(2) The licensee shall conduct site inspection within seven days from the receipt of application and record the meter reading at the time of inspection.

(3) If on inspection, the request of the consumer for reclassification is found genuine, change of category shall be made effective from the date of inspection and a written communication shall be sent to the consumer to this effect within fifteen days of inspection.

(4) Arrear or excess charges if any shall be determined based on the actual period of wrong classification and the account of the consumer shall be adjusted accordingly.

(5) If the actual period of wrong classification cannot be ascertained reasonably, the period shall be limited to a period of twelve months or a period from the date of last inspection of the installation of the consumer by the licensee whichever is shorter.

(6) If the licensee does not find the request for reclassification genuine, it shall inform the applicant in writing, giving reason for the same, within seven days from date of inspection.

(7) *For the period in which the application of the consumer for reclassification is pending with the licensee, the consumer shall not be liable for any action on the ground of unauthorized use of electricity.*

The appellant's request is to reassign the tariff of his residential building from domestic to commercial. As per the tariff order, domestic consumers shall be allowed to utilize electrical energy in a portion of their residence for their own use for purposes other than domestic if the connected load for purposes other than for domestic, in their premises does not exceed 20% of the total connected load or 1000 Watts whichever is less. When connected load other than for domestic use in such cases exceeds 20% of the total connected load or 10000 Watts whichever is less, such loads shall be segregated and separate service connection shall be obtained under appropriate tariff. When this is not done, the tariff applicable to the whole service connection shall be at the appropriate tariff applicable to the connected load used for purpose other than domestic, if such tariff is higher than the tariff for LT-I category. The relevant procedures in the regulations in the Code are also applicable.

As per Regulation 97 (1) of Supply Code, 2014 the suo motu reclassification of consumer category by the licensee is, *"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"*. (2) *The consumer shall be informed of the proposed reclassification through a notice with a notice period of 30 days to file objections, if any.* (3) *The licensee after due consideration of the reply of the consumer, if any, may reclassify the consumer appropriately.* (4) *Arrear or excess charges shall be determined based on the actual period of wrong reclassification and the account of the consumer shall be suitably adjusted.* (5) *If the actual period of classification cannot be ascertained reasonably, the period shall be limited to a period of twelve months or a period from the date of last inspection of the installation of the consumer by the licensee whoever is shorter"*. Here in this case, the respondent had not taken any action as per Regulation 97 of Supply Code 2014. The change of tariff of the consumer was effected (from the residential to commercial) in 10/2017, without observing the rules in force in the Kerala Electricity Supply Code 2014. No inspection mahazar report, notice to the consumer about the anomaly, assessment for unauthorized use of Electricity for the previous months and the execution of a supplemental schedule to the original service connection agreement in case of tariff change etc. are lacking and hence the action taken by the respondent to change the tariff of consumer in 10/2017 is found to be not in order. This Authority felt that the petition itself, is found having merit for reconsideration, of the tariff issue. Hence I am remanding the Petition to the Assistant Engineer, Electrical Section, Thiruvallam, the Assessing Officer, to review the case and decide afresh as per Law, within 30 days of the receipt of

any fresh application for tariff change from the appellant for consumer number 15688. The shifting of consumer number 7509 to the residential building need be considered on submitting proper documents and remitting required fees by the appellant.

Decision:

From the analysis done above and the conclusions arrived at, I take the following decisions.

From the conclusions arrived at as detailed above, and under the provisions of the Supply Code, 2014, I am fully convinced that the request of the appellant is not considered reasonably by directing the appellant to submit the required application and the fees and following the procedures. Hence, I decide that the order of the CGRF stands quashed. It is left open to the appellant to approach the authorities of licensee for tariff change and shifting of connection by submitting the applications in the prescribed annexure form along with documents and remitting fees, if he desires so. The respondent shall take proper action as per rules.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the Consumer is allowed to the extent as ordered and stands disposed of as such.

ELECTRICITY OMBUDSMAN

P/031/2018/_____ /Dated:_____

Delivered to:

1. Sri. A. Gopakumaran Nair, Vijaya Vilas, Koliyoor, Muttacaud P.O., Thiruvananthapuram
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Fort, Thiruvananthapuram District

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.