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APPEAL PETITION No. P/085/2019

(Present: A.S. Dasappan)

Dated: 24th January 2020

 Appellant : Dr. Jameela C

 Riverview Hospital,

 Padannakkad, Neeleswaram,

 Kasaragod

 Respondent : The Assistant Executive Engineer,

 Electrical Sub Division,

 KSE Board Ltd, Kanhangad,

Kasaragod

**ORDER**

**Background of the case:**

The appellant is the owner and registered HT consumer of the premises with consumer No. LCN 32/6061 of Electrical Section, KSEB, Padannakkad. Even though the building was constructed for the purpose of running a hospital, the same could not be started functioning at any point of time. The premises were let out to the Central University of Kerala for functioning their educational institution. It is an educational institution under the Central Government. The university has been remitting the entire bills issued by the KSEB without any default, for the appellant. The tariff assigned to the appellant was HT II B categorised for hospital and the University had been remitting the current charge bills under this tariff regularly. This mistake has not been corrected by the KSEB, in spite of repeated requests. Aggrieved by this, the appellant filed a petition before the CGRF, Kozhikode in petition no. OP 71/2019-20. The CGRF disposed of the petition vide order dated 24-10-2019 that “the petitioners claim for arrear amount due to retrospective implementation of revised tariff is not sustainable as per existing rules. It is observed that the Central University who is said to have occupied the premises, vacated during 10/2018. At the time of applying for tariff change by the petitioner, i.e., from HT II B applicable to hospital to HT II A applicable to educational institution, the premises was not occupied by any one, so the purpose of supply could not be categorised under any of the two. Hence the decision of the licensee to continue the tariff initially assigned during the disconnected period from 11/2018 to 04/2018 is found in order.” Against the decision of the Forum, the appellant has filed the Appeal petition before this Authority on 13-11-2019.

**Arguments of the appellant:**

The appellant’s building was constructed for the purpose of running a hospital, the same could not be started functioning at any point of time. So, the building was let out to the Central University of Kerala and they have been functioning in the premises from the very beginning of the supply. The hospital never functioned in the premises. The KSEB is well aware of this fact and they themselves have admitted this fact. The letter dated 27/2/2019 of the Assistant Engineer of the Electrical Section, Padannakkad, proves that the supply was used for functioning the Central University of Kerala which comes under HT II A tariff as per the tariff notification of the KSERC.

 The KSEB has been issuing the bills under HT II B tariff instead of HT II A tariff which is applicable to government educational institutions, by mistake. This mistake has not been corrected by the KSEB, in spite of repeated requests. The letter dated 1/6/2018 of the University sent to the Assistant Executive Engineer, Electrical Sub-Division Kanhangad requested to revise the bills under educational tariff. Thus, in spite of repeated requests, the anomaly in the billing was not rectified, and the KSEB used to bill under the wrong tariff.

 In the meantime, some officials of the KSEB visited the premises on 8/2/2018 and made a report regarding the use of unauthorised additional load. Actually, the additional load was used at that time was duly regularised and there was no use of unauthorised additional toad to invite any proceedings under Section 126 of the Act. However, the Assessing Officer initiated proceedings and made penal assessment, which was challenged before the Appellate Authority. The KSEB disconnected the supply on 5/10/2018 finding delay in remitting the penal assessment.

 The Kerala Electricity Appellate Authority disposed the appeal by order dated 29/8/2019 in Appeal No. 81/2019, setting aside the penal bill and directing refund of the 50 of the penal charges realized.

 The Kerala State Electricity Appellate Authority in the above order found that the tariff applicable to the premises was HT II A for educational institutions. The Appellate authority observed as follows: -

"It is observed that the connection has been given under HT II Tariff, applicable for private hospitals, whereas the premises have been used for functioning of Government Educational institution. Both parties have admitted that even though the building was constructed for the purpose of running a hospital, the same was used to run the educational Institution of Central University of Kerala. From the statements and records, furnished by the respondents it shall be inferred that that even though the tariff has not been changed to the applicable one for educational institutions (HT II A) the respondent had consented the change in purpose, as in the billing address also the educational institution was included...."

 In the meantime, the Dy. Chief Engineer issued a letter to the petitioner dated 7/06/2019 directing to remit Rs.98,818/- towards the minimum demand current charge arrears from 10/2018 to 4/2019 and interest. The letter of the Deputy CE does not contain the split-up details of the amount. Hence the correctness of the amount is not known to the petitioner, it is understood that in the above letter the minimum demand was calculated under HT 11 B tariff instead of HT II A tariff, applicable to Government Educational Institutions. Further the claim for interest is also not sustainable. Hence the petitioner sent a complaint dated 7/8/2019 to the Special Officer, Revenue requesting to revise the entire bills as well as the arrear demand made by the Dy. CE under the correct tariff, i.e., HT II A tariff applicable to educational institution for which supply was used.

No proper reasoning is given by the CGRF in the impugned order for dismissing the complaint. The Electricity Appellate Authority categorically found that the tariff applicable to the premises was HT II A applicable to educational Institutions. Even though the appellant produced a copy of the order of the Appellate Authority during hearing, the CGRF did not appreciate the same. The same was also not even mentioned in the impugned order by the CGRF. Though the CGRF rightly found that the premises was used only for functioning the education al Institution and the tariff applicable was HT II A, it refused to issue a proper order to revise the bills under HT II A tariff. The reason stated by the CGRF for not revising the bill is that the university vacated the premises. That is not a valid reason to dismiss the complaint. Even if the premises is lying vacant, the bills issued under a wrong tariff is to be revised under the correct tariff, by the KSEB.

The KSEB ought to have corrected the mistake of billing under the wrong tariff, even without an application of the consumer. In this case the KSEB realized charges under a wrong higher tariff and thus got undue gain, which is to be corrected. The reason for vacation of the premises or winding up of the educational institution is not a ground to correct the billing mistake.

The CGRF also failed to appreciate the findings of the Kerala State Electricity Appellate Authority who observed that the tariff applicable was HT II A but, billed under a higher tariff HT II B.

RELIEFS

1. Pass an order setting aside the order of the CGRF and directing to revise the bills issued under the wrong tariff HT II B, to the correct tariff of HT II A and refund the excess amount realized and also to revise the arrears of minimum charges during the disconnection period from 10/2018 to 4/2019 demanded by the Dy. Chief Engineer, Kasaragod by his letter dated 7/6/2019, under the correct tariff HT II A.
2. Pass such other orders that this Ombudsman may think just and proper in the interest of justice.

**Arguments of the respondent:**

At the time of effecting the service connection, the purpose is for running a private Hospital, M/s River View Hospital, Padannakkad. On 07/03/2014 Central University of Kerala submitted an application for enhancing connected load and changing tariff to Educational purpose.

After submitting the required documents. The Deputy Chief Engineer, Electrical Circle, Kasaragod on 21/10/2015 requested the registered owner Dr. Jameela to attend his Office after replacing CT/PT unit, for signing the supplementary agreement. But the registered owner was not willing to sign the

agreement.

The registered owner contacted the KSEBL for tariff change only on 16/02/2019. Moreover, they wrote a letter to Deputy Chief Engineer, Electrical Circle, Kasaragod dt.31/07/2018 stated that, "I have no necessity or requirements of additional load and hence I am not prepared to make any application for regularization of connected load. The occupation of the premises by the Central University itself is an illegality against which legal proceedings have been initiated by me". Hence the registered consumer Dr. Jameela had not applied for tariff change or for additional load till 16/02/2019. After receiving the application on 16/2/2019, the Deputy Chief Engineer, Electrical Circle, Kasaragod directed Assistant Engineer, Electrical Section, Padannakkad to report the purpose of the premises of M/s. River View Hospital for revising the tariff, but the connection is disconnected from 10/2018 onwards and the premises is closed after that.

On 08/02/2018, the inspection team of Electrical Section, Padannakkad along with APTS team of KSEB Inspected the premises of M/s Riverview Hospital and found UAL of 247 kW. Accordingly, a final order had been issued under Section 126 of Electricity Act 2003. It is informed that, the Central University of Kerala, vacated the rented building with effect from 10/2018. From 10/2018 onwards the current charges which is only the minimum demand charge was not paid by the consumer.

The registered consumer Dr. Jameela requested the tariff change only on 16/02/2019 which is after the disconnection of electric supply and the premises is under closed condition now. Since the connection is disconnected from 10/2018 and the Central University is not functioning at the premises, now the connections can be only treated in its original tariff, HT II B. Hence the bills from 11/2018 to 04/2019 was raised in HT II B tariff which is liable to pay by the consumer.

Aggrieved by the order of the Kerala State Electricity Appellate Authority, the Board accord sanction to file Writ petition before Hon'ble High Court of Kerala and the related files in this regard already handed over to Legal Liaison officer for further action.

Since the University vacated the premises now the premises is in the original tariff HT II B and there should not be any dispute regarding the minimum demand charges raised by the Board.

The details of bill is attached herewith.

Contract demand 50 kVA. 75% of 50 kVA = 38 KVA

Hence fixed charge is 38 X 400 = 15200 / month

11/2018 = 17872

12/2018 = 15200

01/2019 = 15200

02/2019 = 15200

03/2019 = 15200

04/2019 = 15200

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 Rs.93872 SC4926 =Rs. 98818/-

In the order of the CGRF stated that "Thus the Forum feels that the petitioner's claim for arrear amount due to retrospective Implementation of revised tariff is not sustainable as per the existing rules."

It is observed that the Central University who is said to have occupied the premises, vacated during 10/2018. At the time of applying for tariff change by the petitioner i.e., from HT II B applicable to Hospital to HTII A applicable for Educational institution, the premises was not occupied by any one so the purpose of supply could not be categorized under any of the two.

**Analysis and Findings**

The hearing of the case was conducted on 12-12-2019 in the chamber of Electricity Ombudsman at Edappally, Kochi. Sri Edward Martin. A, represented the appellant and Sri. Manoj Kumar, Assistant Executive Engineer, Electrical Sub Division, Kanhangad and Sri. Vinod Kumar K.K., Nodal Officer, Litigation, Electrical Circle, Kasaragod have appeared for the respondent’s side. On examining the petition, the counter statement of the respondent, the documents attached and the arguments made during the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The following facts are revealed in this case.

The date of agreement executed for the service connection to the premises was on 19-03-2012 and the purpose of tariff requested was under hospital tariff. The premises was never functioned as hospital but functioned as an educational institution. As per the statement of the respondent, on 07/03/2014 Central University of Kerala submitted an application for enhancing connected load and changing tariff to Educational purpose. The energy charge in the premises was remitted by the University for the bills issued under HT II B tariff (hospital tariff). The respondent had never changed the tariff to the assigned tariff of University. The request of the appellant is to assign the tariff for the University i.e., HT II A and issue revised bill accordingly for the disputed period and also to refund the excess amount paid so far. The bills from 11/2018 to 04/2019 for Rs. 98818/- was raised in HT II B tariff which is not remitted by the appellant.

The points to be decided are

1. Whether tariff change can be accorded to the service as requested by the consumer?
2. Whether the request of the consumer to refund the excess energy charges paid to KSEB from the date of connection is admissible?

 The respondent has stated that tariff change applications received from the appellant on 16-02-2019 only, but at the same time the consumer, the University had requested for tariff change on 07-03-2014.

Further, Regulation 98 of Supply Code, 2014 clearly indicated the procedures to be followed in the case of tariff change application which reads as follows: ***As per Regulation 98 of Supply Code, 2014 (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 Supply Code and the licensee shall process the application as per the relevant provisions of the Code.***

***(2) The licensee shall conduct site inspection within 7 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 15 days of inspection.***

***(4) Arrear or excess charge, 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 12 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 the reason for the same, within 7 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.***

***Regulation 97 of Kerala Electricity Supply Code, 2014 which reads as***

1. ***“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 motu reclassify the consumer under appropriate category.***
2. ***The consumers shall be informed of the proposed reclassification through a notice with a notice period of thirty 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 classification and the account of the consumer shall be suitably adjusted.***
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.”***

On going through the documents, it can be seen that the appellant had submitted applications for tariff change to HT II A on 16-02-2019 only. At the same time, there is provision for suo moto reclassification of consumer category by the licensee under Regulation 97 of the Kerala Electricity Supply Code, 2014 and the respondent has not taken any action. On a plain reading of the above contentions it is revealed that if the respondent has taken timely action to change the tariff, the whole issue could have been avoided. The Provision for ***suo-moto reclassification of consumer category by the licensee is introduced as per Regulation 97 of Kerala Electricity Supply Code, 2014 which came into effect from 01-04-2014.***

As per the tariff rules, the tariff applicable to Universities comes under tariff HT II A category. The grievance of the appellant is that the excess amount so far collected under wrong tariffhas not been refunded. In this case there is no dispute that in the appellant’s premises a university was functioning since availing the connection and the tariff applicable to such institution is HT II A tariff. Here, the wrong fixation of tariff for hospital has occurred since the appellant applied for tariff under hospital with an intention to start a hospital in the building. There are instances of short assessment bills made by KSEBL, in cases of detection of wrong tariff fixed to consumers for realising back arrears. The Clauses under 134 of the Supply Code 2014 permits the licensee to recover the amount undercharged from the consumer and hence refund of the overcharged amount to the consumer is also natural if it were found as a bonafide one. In Appeal No. P/305/2012 order dated 21-05-2013, this Authority held that the action of the respondent to raise the short assessment pertaining to the back period, towards the undercharged amount from the consumer owing to wrong fixation of tariff, as maintainable and payable by the consumer. Similarly the overcharged amount if any, can be refundable to the consumer, if it is found genuine.

As per Kerala Electricity Supply Code, 2014, the Licensee can suo moto reclassify tariff of a premises observing the purpose for which the premises is used. Hence the consumer Central University of Kerala had applied for tariff revision from HT IIB to HT IIA (applicable to educational institution) on 07/03/2014 which was also accepted by the respondent. As the Supply Code 2014 enacted on 01-04-2014, it is decided to change the tariff of the premises from 01-04-2014 till the date of disconnection on 10/2018. Considering facts of the case, as it was a university functioned in the premises and the request seem to me as genuine, I am of the view that the request of refund of excess amount collected from 04/2014 to 10/2018 is reasonable.

As per tariff order dated 17-04-2017 published by Kerala State Electricity Regulatory Commission, tariff applicable to all classes of consumers listed in LT VI C, LT VI F and LT VI G categories, availing supply of electricity at high tension are included in HT IIB category. It is specified in the tariff order dated 17-04-2017 that any other LT categories of consumers not included anywhere in the tariff order shall be assigned LT VI C category. Hence the action of the respondent to assign HT IIB to the premises of the appellant under disconnection period from 11/2018 to 04/2019 is proper on the above explained ground, since University vacated the premises in 10/2018.

**DECISION:**

From the analysis done above and the conclusions arrived at, this Authority takes the following decisions.

   Under the provisions of Regulations 97 and 134 of Kerala Electricity Supply Code, 2014, I am fully convinced that the request of the appellant is reasonable and justifiable. Hence this Authority decide that the order of the CGRF stands quashed. The excess amount collected from the appellant by way of hospital tariff HT II B for the period from 04/2014 to 10/2018, shall be refunded by the respondent by adjusting the same at tariff under educational purpose HT IIA. The refund shall be made within 30 days of receipt of this order with applicable interest. The amount of refund so calculated may also be communicated to the appellant with details.

The appellant shall remit the fixed charge amount of Rs.98818/- within a period of 15 days of this order.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having merits and is allowed to this extent. The order of CGRF, Kozhikode in Petition No. OP/71/2019-20 dated 24-10-2019 is set aside. No order on costs.

**ELECTRICITY OMBUDSMAN**

P/085/2019/ /Dated:

Delivered to:

1. Dr. Jameela C., Riverview Hospital, Padannakkad, Neeleswaram, Kasaragod
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kanhangad, Kasaragod

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Gandhi Road, Kozhikode