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APPEAL PETITION No. P/007/2021

(Present: A.S. Dasappan)

Dated: 3rd August 2021

Appellant : Sri. G. Padmakumar,
Harichandanam
Clappana P.O.,
Karunagappally
Kollam Dist. - 690525

Respondent : Asst. Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Karunagappally, Kollam Dist.

ORDER

Background of the case:

The appellant is a consumer of Electrical Section, Karunagappally South with consumer No. 1145700031512. The three-phase Low Tension (LT) connection having connected load of 76469 watts was effected on 24-01-2014. The service connection had been given for running "Capital Colour Park", functioning as a unit for photo designing, digital printing under LT IVA tariff. As per tariff category revision dated 08-07-2019, the appellant's premises was reassigned LT VII A tariff with effect from 02-08-2019. The Assistant Executive Engineer inspected the premises after getting a complaint from the appellant on the tariff change and retained the tariff under category LT IVA by the respondent. Later on, 18-01-2020 the premises was inspected by APTS of KSEB Ltd. and again changed the tariff category from LT IVA to LT VIIA. Also, the respondent issued a short assessment bill for Rs.1,54,711/- from 08/2019 to 01/2020 towards the difference in tariff categories. Against the action of KSEB Ltd. the appellant filed a petition before Consumer Grievance Redressal Forum (CGRF), Southern Region, Kottarakkara vide OP No.44/2020 and the Forum in its order dated 03-11-2020, dismissed the petition allowing instalment facility. Aggrieved by the decision of the Forum, the appellant filed appeal petition before this Authority.

Arguments of the appellant:

The appellant has been running a computerized colour printing press as a SSI unit since 20-03-2013. The tariff allotted was LT IV A and paying electricity charge accordingly. While enjoying the benefit of LT IV A tariff as recommended by the District Industries Centre, Kollam under the scheme “Udyog Aadhar Memorandum” of Central Government, the appellant was reassigned the tariff from LT IVA to LT VIIA as per the tariff revision dated 08-07-2019 without any notice and issued electricity bill accordingly. The appellant lodged a complaint on tariff change to the Assistant Executive Engineer, Karunagappally and retained the tariff under LT IV after the inspection of the Officer. But again, the APTS wing of KSEB Ltd. inspected the premises on 18-01-2020 and changed the tariff from LT IVA to LT VIIA tariff with an exorbitant short assessed amount. The petition filed before the Consumer Grievance Redressal Forum, Kottarakkara was not properly discussed and decided by the Forum and rejected the request for retaining the tariff under LT IVA and for cancelling the short assessment bill.

The recommendation of the “Kollam District Industries Single Window Clearance Board” that the appellant is eligible for LT IV A tariff was not properly assessed by the CGRF. The Forum was silent on the above recommendation of the Committee consisting of KSEB Ltd. and Kerala State Electrical Inspectorate officials.

The grievance of the appellant was redressed by the respondent soon after the re-fixation of tariff from LT IV A to LT VII A by retaining the tariff under LT IVA. The same premises was again inspected by the officer in the same rank of the APTS unit and changed the tariff from LT IV A to LT VII A without furnishing the reasons of the change in the Site Mahazar. The CGRF had no remarks on the above action in the order issued by the Forum. The Forum had not properly discussed and assessed the observation of APTS made in the Site Mahazar that they detected sale of Album in the premises. No reason is furnished in the site mahazar for including the photo studio, colour lab under LT VII A. The actual process being carried out in the premises is printing of colour photos and its lamination, preparing album in the order of events and returned to the studio

personnel. But these activities were not properly assessed by the Forum. The Album seen in the premises are not intended to sell the public, but to be returned to the customers of studio personnel. The above process has been continuing since 2013 and paying electricity bills under LT IVA tariff. This was considered by the Assistant Executive Engineer of Electrical Sub Division and retained the tariff under LT IVA, in the first-time of filing complaint.

The printing machine installed in the premises was purchased in 2013 by availing a loan from the State Bank of Travancore Branch, Clappana.

As directed by Hon'ble High Court of Kerala, Hon'ble Kerala State Electricity Regulatory Commission has issued an order in a similar case pertains to one "Ajantha Colour Lab", Malappuram that the "colour photo printing" comes under the category of LT IVA. In the case of Ajantha Colour Lab, it was ordered to segregate the "Sales Counter" and avail a new connection under LT VIIA tariff since they were exhibiting photos of different companies. But in the case of appellant, there is no exhibition or sale of photos of different companies.

The request of the appellant is to retain the tariff under LT IVA and quash the exorbitant short assessment bill issued under LT VIIA. Also, the appellant wants compensation for the miseries by way of wrong fixation of tariff and the short assessment made by the respondent.

Arguments of the respondent:

As per the new Schedule of Tariff and terms and conditions for retail supply of electricity vide Order No.560/DD(T)/2018/KSERC dated 08-07-2019 of Kerala State Electricity Regulatory commission, the tariff of the appellant was changed from LT IVA to LT VIIA with effect from 02-08-2019. Subsequently, the appellant submitted a complaint regarding tariff change on 17.10.2019. On receiving the complaint, the respondent inspected the premises of the appellant and found that the main activities of the unit includes Computerized Photo designing, printing and production of Photo Albums. On inspecting the machines installed in the unit, it was explained by the appellant that "HP Indigo 5600 Digital press" is the main machine used for Photo printing. Having examined the available details

about the functioning of above said machine, considering the recognized activities of the unit, based on the judgment which was reasonable in the given circumstances and on producing the SSI certificate of the unit, the tariff of the consumer was changed back to LT IV A on 31-10-2019.

On 18-01-2020 the APTS Kollam led by the Assistant Executive Engineer conducted an inspection in the premises of the appellant along with the Sub Engineer of Electrical section, Karunagappally South and found that the activities of the unit include Computerized Photo Designing, Digital printing, Lamination and Sales. This unit is functioning in different blocks of a three storeyed building and the sales counter is functioning in the ground floor. Moreover, APTS, Kollam detected that the main machine used for Digital photo printing “HP Indigo 5600 Digital press” is a multipurpose machine and the process of this machine is equivalent to the process in colour lab and as a result reported in the site mahazar regarding the incorrect application of tariff to the appellant’s premises.

Subsequently, as per the report of APTS Kollam, the tariff of the appellant was changed in 02/2020 from LT IVA to LT VIIA and as per regulation 134(1) of Kerala Electricity Supply Code 2014, a short assessment bill of Rs.1,54,711/- for the period from 08/2019 to 01/2020 was issued to the appellant.

As per regulation 152 (1) of Kerala Electricity Supply Code 2014, 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 section 135 of the Act.

As per regulation 152 (2), in such cases the amount of electricity charges short collected by the licensee, if any, shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted.

The short assessment bill issued to the appellant is in connection with the correction of wrong tariff applied to the appellant’s premises. The short assessment bill issued to the appellant, as per the regulation 152 & 134 (1) of

Kerala Electricity Supply Code 2014 is in order and the appellant is liable to pay the amount.

As per the tariff notification in force, while effecting the service connection, LT IVA (Industrial) tariff was applicable for SSI unit engaged in computerised colour photo printing, audio, video cassette/CD manufacturing unit etc. hence this IVA tariff was made applicable for the appellant's premises. But in the tariff order dated 08.07.2019, LT IVA industrial tariff is applicable for screen printing of glassware or ceramic, SSI units engaged in computerized colour printing excluding photo studio/colour labs. Based on the new tariff order, the respondent issued short assessment bill, so the appellant is liable to pay the disputed bill amount and it is also pointed out that the appellant is entitled to segregate the industrial load and commercial load and apply for separate service connection for commercial purpose which was intimated to the appellant.

The appellant is running another unit of same industry under the jurisdiction of the Electrical Section, Pallimukku, Kollam in the name and style of "Capital Colour Park", which was effected with the tariff LT IV (A) industrial, with consumer no. 26718. The APTS Team inspected this unit on 18.01.2020 and found the same issue that commercial activities are being carried out there and the tariff applied is incorrect as per the tariff order dated 08.07.2019. Accordingly, a short assessment bill amounting to Rs. 1,95,393/- was issued to the appellant.

The appellant filed a complaint before the CGRF, South Region, which is pending for disposal and simultaneously filed a petition before the Single Window Clearance Board. When the issue came up before the Single Window Clearance Board, the Chief Secretary, State of Kerala directed to the licensee to review the case relating to tariff applied for the electric connection to the premises of the appellant. Accordingly, a three members committee was constituted to conduct joint inspection and to furnish report. The Chief Engineer (Distribution South), KSEB Ltd. as Chairman and the two other Members, General Manager, District Industries Centre, Kollam and Deputy Electrical Inspector, Kollam jointly submitted a report.

The report submitted by the committee stated that the definition of colour lab is the key factor in this case distinguishing the industrial tariff and commercial tariff. The industrial tariff (IVA) which was earlier applicable for computerized colour photo printing was limited to the category of computerized colour printing excluding photo studios/colour lab. Earlier when film was used for taking photographs, the washing and processing of the films was carried out in a colour lab. Now in the era of digital photography, the process in a colour lab is not easy to be defined explicitly. Hence the usage of colour lab is a grey area where more explicit definition from Kerala State Electricity Regulatory Commission (KSERC) is required. In the light of above view the committee suggested that the matter may be taken up with the KSERC, the statutory authority vested with the power to change existing tariff structure, for clarification regarding the definition of colour lab and the activities therein, so as to categorize such consumer as industrial or commercial.

On the above circumstances, it is prayed that the Authority may be pleased to dismiss the appeal petition.

Analysis and findings:

An online hearing of the case was conducted on 11 AM on 03-04-2021 with prior intimation to both the appellant and the respondent. Sri. Prasannakumar for the appellant and Sri. P.S. Pradeep, Assistant Executive Engineer, Electrical Subdivision, Karunagappally from the respondent's side attended the hearing. 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 decision thereof.

The appellant argued that the institution is a SSI unit and functioning as a computerised colour printing press. The tariff category allotted by the respondent was LT IVA – Industry till the revision of schedule of tariff and terms and conditions for retail supply of electricity by the Hon'ble Kerala State Electricity Regulatory Commission (KSERC) on 08-07-2019. As per the revision, the tariff category was changed to LT VIIA–Commercial and further retained under LT IVA category after inspecting the premises by the Assistant Executive

Engineer, Electrical Sub Division, Karunagappally following a petition filed by the appellant. Again, the tariff category was changed to LT VIIA, in the inspection conducted by the APTS of KSEB Ltd. The Consumer Grievance Redressal Forum also did not change the tariff category to LT IVA, even on presenting all the facts and figures before the Forum. Since the activities being done in the “printing press” is within the purpose specified in the schedule of tariff category in LT IVA-Industry, the appellant wants to retain the tariff category under LT IVA. In the hearing, the appellant revealed that there is no sales counter in the premises.

The argument of the respondent is that the activities in the premises include computerised photo designing, digital printing, lamination and sales. The main machine used for digital photo printing “HP Indigo 5600 digital press” is a multipurpose machine and the process of the machine is equivalent to the process in colour lab and hence, the unit shall be included under LT VIIA category.

On perusing the site mahazar prepared by the APTS of KSEB Ltd. on 18-01-2020, the activities recorded are photo digital printing, lamination, photo designing and sales. Among the various electrical equipments in the premises having a total connected load of 92 kW, the main machine HP Indigo 5600 (Digital press machine) is with a capacity of 49 kW. In the statement of facts furnished by the respondent on the appeal petition, it is stated “Moreover APTS, Kollam detected that the main machine used for digital photo printing “HP Indigo 5600 Digital Press” is a multipurpose machine and the process of this machine is equivalent to the process in colour lab and as a result reported in the site mahazar regarding the incorrect application of tariff to the complainant’s premises”. But in the site mahazar, the above observation is not seen. Moreover, in the site mahazar, photo digital printing, lamination, photo designing and sale are the activities seen recorded. Anyhow, the main machine used in the premises is a processing unit of photographs through various routes of activities in a digital platform.

As per the schedule of tariff and terms and conditions for retail supply of electricity by KSEB Ltd. and all other Licenses with effect from 18-04-2017, SSI units engaged in computerised colour photo printing was under LT IVA-Industry tariff and the appellant was billed under that tariff category. But in the revision

of tariff schedule dated 08-07-2019, one more consumer category “Photo Studio / Colour Lab” was included in LT VIIA – Commercial Category and hence the appellant’s tariff category was revised to LT VIIA-Commercial. In brief, “Photo Studio/Colour Lab” are in LT VIIA-Commercial Category and “SSI units engaged in computerised colour photo printing” is in LT IVA-Industry Category from 08-07-2019 onwards. As such it is to be decided whether the appellant’s unit can be retained under LT IVA-Industry Category from 08-07-2019 onwards.

The tariff of a consumer is fixed based on the nature of activity or the purpose for which the electrical energy was used by them. The Licensee, here KSEB Ltd., is supposed to assign the tariff category of a consumer based on the directions, guidelines and notifications issued from time to time by the Hon’ble Kerala State Electricity Regulatory Commission (KSERC), which is the empowered body to classify the appropriate tariff category of a particular class of consumers.

The purpose or the activity for which the electrical energy 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 specifying the terms and conditions for the determination of tariff by safeguarding the consumer’s 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 type of consumers and also to rectify the anomalies in the prevailing tariff, the Hon’ble Commission included new tariff depending upon the purpose for which supply is used.

If any consumer has a complaint that the tariff category is wrongly fixed, it is the duty of the officials entrusted by the Licensee to visit the site, verify the same and set it right if the complaint is genuine. In this case, Assistant Executive Engineer himself had inspected the premises of the appellant, verified the activities going on and determined the purpose of which electrical energy is being used retained the tariff category under LT IVA-Industry. But in another inspection by the official at the same rank was conducted in the appellant’s premises and changed the tariff to LT VIIA-Commercial. Moreover, a high-level committee inspected the premises and suggested to take up the subject matter before the Hon’ble Kerala State Electricity Regulatory Commission, the empowered body to change the existing tariff structure.

The premises of “Capital Colour Park” was inspected by this Authority on 23-07-2021 in presence of the appellant and the Assistant Engineer, Electrical Section, Karunagappally. In the inspection, it is observed that the unit is intended to accept digital copy of the photographs from individuals or other institutions involved in photography field and return to them in the form of photo albums. In between the acceptance of the digital copy and returning of photo albums, a lot of activities are going on, for which arrangements are made by the appellant. The “reception counter” in the premises accepted the orders from the customers and selected the model of the photo albums to be prepared and for which certain models without photographs are displayed in the counter. The digital copy of the photo is processed through the “HP Indigo Digital Press” in a computerized system. The output of the digital press is photo sheets and which are laminated and shaped in another room. The photo album is made with these photo sheets and returned to the respective individuals or institutions. The process of this unit is just like a “digital printing press”. This Authority could not see any “sales counter” in the premises and the Assistant Engineer of KSEB Ltd. is also not aware of it. There is no photo studio functioning in the premises and hence, no further processing unit like labs. The body of the photo albums are also prepared in the premises. As such I am of the view that the “Capital Colour Park” is a unit engaged in computerised colour photo printing and making albums for specific customers.

It is understood from the appellant and Officers of the Licensee, KSEB Ltd. that the subject matter is presented before the Hon’ble Kerala State Electricity Regulatory Commission, the empowered body to determine the category of tariff based on the purpose for which electricity being used. The Chairman and Managing Director of KSEB Ltd. issued orders to take up the matter with Hon’ble Kerala State Electricity Regulatory Commission vide No. D(D&IT)/D-1/SWC/2020-21/001/ 1611 dated 23-02-2021.

Decision: -

From the analysis and conclusions arrived at as detailed above, I decide as follows: -

Since the subject of tariff category classification is presented before the Hon'ble Kerala State Electricity Regulatory Commission, the empowered body for the determination of tariff rate and tariff category, the revision is subjected to the decision of the Hon'ble Commission.

Having concluded and decided as above, it is ordered accordingly and the order of CGRF, Southern Region in OP No. 44/2020 dated 03-11-2020 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/007/2021/ _____ dated _____.

Delivered to:

1. Sri. G. Padmakumar, Harichandanam, Clappana P.O., Karunagappally, Kollam Dist. - 690525
2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Karunagappally, Kollam Dist.

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, Kottarakkara - 691 506.