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APPEAL PETITION No. P/025/2020
(Present: A.S. Dasappan)
Dated: 29th September 2020

Appellant : Secretary,
Thanneerpanthal Ksheerolpadaka -
Sahakarana Sangam Ltd.,
P-108(D), APCOS, Vandithavalam (PO),
Palakkad 678 534

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, KSEBL,
Koduvayur, Palakkad

ORDER

Background of the case:

The appellant, Thanneerpanthal Milk Producers Co-operative Society is a primary Ksheera Co-operative Sangam working at Thanneerpanthal in Palakkad District and is a consumer of the KSEB Ltd with Consumer No. 1165044023918 under LT VII-A tariff. The tariff of the consumer was changed to LT V-B from original Tariff of LT VII-A, on 04-09-2018. Later the tariff was changed to LT VII-A on 01/06/2019. Since in the present case of the appellant, the milk chilling/freezing load is more than 10%, the tariff was changed to LT VII A. Subsequently, for the recovery of amount lost due to wrong tariff fixation, a short assessment bill for the period from 10/2018 to 06/2019 amounting to Rs. 131354/- was served on the appellant on 26-06-2019.

This bill and the change of tariff are challenged by the appellant before the CGRF, Kozhikode which is disposed of with a direction to the appellant to approach the Hon. Kerala State Electricity Regulatory Commission for final orders vide OP No. 135/2019-20 dated 30-06-2020 and this is the basis of this appeal petition. Against the decision of the CGRF, the appellant has submitted this appeal petition before this Authority on 10-08-2020.

Arguments of the appellant:

The appellant has put forward the following arguments in the appeal petition.

The respondent had issued a bill for Rs.1,31,354/- to the appellant on 02-06-2019 along with an intimation that their tariff had been changed from V B to VII A. The appellant filed a complaint before Consumer Grievance Redressal Forum vide OP No.135/19-20 with a request to cancel the bill, but the Forum issued an order with a direction to approach before the Regulatory Commission for clarification of tariff.

Thanneerpanthal Milk Producers Co-operative Society is a primary Ksheera Co-operative Sangam working at Thanneerpanthal in Palakkad District. The society is formed by the poor dairy farmers in the area and milk is collected from them, sale in the area and the balance milk is transferred to the Palakkad dairy.

In the past, the usual practice was to send the balance milk to the Dairy or Chilling Plant at the same temperature of milk, but which led to unuseful and creates heavy loss to the poor farmers. As a remedy to the above and ensuing welfare of the farmers, Govt. of India issued "Bulk Milk Cooler" under the scheme "Rashtriya Krishi Vikas Yojana" for cooling the balance milk in the society itself. The milk can be safely transferred to the Dairy by cooling it below 10 Degree Centigrade. The rate fixed by Milma for the milk at any temperature is same. Milma has the facility to pasteurize and standardize the milk.

The cooling machine allocated to the appellant is having a capacity to lower the temperature up to 4°C considering availability of milk, duration and the efficiency of the machines, but which cannot be done within the period of collection and transportation of milk. The chilling machines used in the dairy all over the state is having a capacity of cooling 5000 litres to 20000 litres of milk to 4°C or below within a short duration. The argument of the respondent that minimizing temperature up to 4°C is chilling and above 4°C is cooling has no base and not logic. The energy consumption was increased with the installation of coolers and thereby energy charge which is not affordable to the appellant. The appellant approached Govt. of Kerala, KSEBL and Regulatory Commission for the redressal of the grievances mentioned above and finally the tariff of the milk processing in the society was fixed to VB by KSEBL vide order dated 13-07-2017. The appellant had been remitting the energy charge under VB tariff till the inspection conducted by the KSEBL officers of Thathamangalam Section Office month before. They changed the tariff from VB to VII A and issued an arrear bill for Rs.1,31,354/-.

The appellant had not changed any equipment or machinery within the period from reassigning tariff VB to till date.

The society is functioning as per the provision 3 iii(b) contained in the circular dated 13-07-2017 of KSEBL. Milk is collected from the Dairy farmers and the balance milk after the local sale is sent to the Dairy. The appellant has

no facility to process the milk and store in the society. Dairies have the only facility to cool the milk to 4°C or below and store it. As per the Circular dated 17-07-2017 of KSEBL, three categories are eligible for VB, in which the primary milk society is included under section 3iii(b). As such the appellant is eligible for V B tariff.

Though an order of the Ombudsman allowing VB tariff in Appeal Petition No. P-051/2019 related to Mananthavady Milk Producers Co-operative Society was produced before the Consumer Grievance Redressal Forum, the Forum ordered to approach Regulatory Commission for clarification, which is irresponsible and denial of justice.

The appellant is eligible for VB tariff as per the circular dated 13-07-2017 of KSEBL and based on the order of Ombudsman in Appeal Petition P-051/2019. The Consumer Grievance Redressal Forum issued order in accordance with the decision of Adalat conducted by the Licensee in Palakkad on 15-02-2020 without considering the order of Ombudsman appointed as per Section 42(6), 42(7) of Electricity Act 2003, in a similar case which is ignorance or denial of laws.

Licensee is bound to implement the order of Ombudsman as per Regulation 27(4) of Kerala State Electricity Regulatory Commission (CGRF & EO) Regulation 2005.

The Licensee had changed the tariff of Mananthavady Milk Society to VB as per the order of Ombudsman in Appeal Petition No.P-051/2019 and energy charge is being remitted accordingly.

The requests of the appellant are,

- (i) to set aside the order of Consumer Grievance Redressal Forum, Kozhikode in OP No. 135/19-20;
- (ii) to allow the eligible tariff VB;
- (iii) to quash the bill of Rs.1,31,354/-

Arguments of the respondent:

1. The Appellant is a consumer of the KSEB Ltd with Consumer No. 1165044023918 under LT VII-A tariff indulged in the business of freezing of milk till consequent sale to processing units in bulk.
2. Based on an application of the consumer and as per the circular of Secretary (Administration) KSEB(L) dated 13/07/2017, the tariff of the consumer was changed to LT V-B from original Tariff of LT VII-A on 04-09-2018. Later the tariff was changed to LT VII-A on 01/06/2019 as per the clarification obtained vide order No. KSEB /TRAC/Tariff riv./18-

19/68 dt.2/05/2019 of Deputy Chief Engineer Commercial & Planning and Lr.No.GB II/Compls/19-20/504/dt.22/5/2019.

3. The consumer approached CGRF,Kozhikode and vide order dated 30/06/2020 on OP. NO. 135/2019-20, The Forum turned down the request of the consumer mentioning that

“It is true that activities taking place in the unit are collection and storing of milk till it is transported to processing unit. Though storing of milk is permitted the process of chilling is not specified in the above category. The determination of tariff is entrusted with regulatory commission and KSEBL has to act in accordance with the decision of the commission. This is clearly depicted in section 62 of Electricity Act 2003.

In the above situation and circumstances the Forum is inclined to believe that the decision of Janakeeya Vaidyuthi Adalat held at Palakkad on 16/02//2020 is applicable here also since there exists lack of clarity in categorisation of the petitioner. Hence the only possibility available with the consumer is to approach the Hon’ble Kerala State Regulatory Commission for a final order”

4. The consumer is basically using electricity for chilling/ freezing of milk stored in large tank. As per Kerala Gazette No. 2292 dated 30/09/2019 (Tariff order from 8/7/2019 to 31/3/2020), the applicable tariff for milk chilling plants is LT-7 A.
5. A site inspection was conducted and the following loads are identified in the premises of the consumer.

A) Freezer	-	8000w
B) Other loads	-	2566w
Total load	-	10566w

7. The major load in the premises is that of the Freezer which comes to 8000w which is used for chilling, the purpose of which comes under LT VII-A Tariff as per the Tariff gazette 782 dt.21/4/2017. The said tariff notification states that freezing plants, cold storages, milk chilling plants comes under LT VII A.
8. The consumer does not come under any of the clauses of LT V-B of tariff order of gazette 782 dt.21/4/2017 or the corrigenda of the gazette 1466 dated 14/07/2017 or the latest KERALA GAZETTE NO. 2292 dated 30/09/2019.
9. Normally tariff is fixed based on the process /activity in the premises, here the activity of the consumer is neither agricultural nor commercial but is aiding an industrial activity.

10. The consumer is selling the chilled milk to the processing plants of the Milma where the milk is stored and further stored, pasteurized, processed, packed and sold in retailed pouches, which is also not agricultural activity hence not billed under LT V-B tariff. The chilling of milk at milk societies is aiding the storing and processing of milk at Milma plant there by reducing the power consumption of the processing plants (milma). Hence the argument is that, processing of milk starts from the milk societies where milk is being chilled. Hence the milk societies where milk is collected, stored, chilled and sold to processing unit in bulk are not eligible for LT V -B tariff.
11. As per the latest gazette dated 30/9/2019 w.e.f. 8/7/2019 to 31/7/2020, explicitly states that LT V-B tariff is applicable only to primary milk producer's co-operative societies, the primary function of which is the collection of milk from the farmers and to sell the same to the processing units in bulk. There is nothing mentioned about chilling of milk what so ever. But in the same gazette in page no.17, LT VII -A tariff is defined as (iv)” freezing plants, cold storages, milk chilling plants;”
- Hence the tariff applicable to the petitioner consumer Secretary, Taneerpanthal Ksheerothpadaka Sahakarana Sangham Ltd, Vandithavalam, Palakkad with consumer No.1165044023918 of Ele. Section Tattamangalam is LT VII-A only.
12. On 15/02/2020 vide letter no. KSEB/TRAC/G/Tariff Revision/2019-20/661, the Deputy Chief Engineer (TRAC) who is entrusted with the matters relating to Tariff clarified that tariff applicable to milk society is LT- 7 A.
13. On 16/02/2020 during Janakeeeya Adalat conducted at Palakkad same complaint was raised by the Secretary, Nanniode Ksheeralpadaka Sahkarana Sangham and the Chairman of KSEBL directed to inform the applicant to approach KSERC as the issue is related to tariff.
14. The contention raised in the complaint is baseless. The appellant may be directed to remit the amount of the bill issued legally which he is bound to remit.

Analysis and findings:

An online hearing of the case was conducted on 07-09-2020, at 11 AM as per prior information to both the appellant and respondent and with willingness of them. Sri. Ramachandran, Advocate, for the appellant attended in the hearing and Smt. A.V. Biya, Assistant Executive Engineer, Electrical Sub Division, Koduvayoor 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 dispute is regarding the change of tariff of the appellant's society from agricultural (tariff LT V B) to commercial tariff (LT VII A) on account of exceeding the chilling/freezing load beyond the 10% limit of the plant's total load with retrospective effect and issue of a short assessment bill towards the arrears due to the difference in tariff rates. The appellant is engaged in the collection of milk from the members of the Society, selling it locally and sending the balance milk to "Palakkad Dairy" of Milma. The appellant collects milk from small units at normal temperature and have facility to lower the temperature up to 4° C. The approximate quantity of milk collected is 3600 litres per day. The milk is stored in containers having 3000 litres capacity. The cooled milk is conveyed to Milma through the tanker type containers on the date of collection or in the next day.

On the basis of the argument put in by the appellant and respondent, this Authority has found the following issues to be answered.

Whether the appellant's Society falls under Agricultural tariff LT V (B) or Commercial Tariff LT VII (A) as per the norms fixed by the Hon: Commission?

The appellant has submitted that their unit is a Milk Producers Co-operative Society run by the dairy farmers residing around Thaneerpandal and the activity of the Society is collecting milk from the members of the Society, selling it locally and sending the balance milk to "Palakkad Dairy". Usually the milk processing involves receiving raw milk, preheating, filtration, standardization, homogenization, cooling, packing and storage. The milk chilling/freezing plant/ cold storages were categorized under LT IV industrial tariff till 11/2007 by the Hon: Regulatory Commission. But as per the tariff order dated 27-11-2007, they were categorized under LT VII A commercial tariff. Further, it was clarified that the dairy farms/milk chilling plants with or without chilling/freezing/cold storage activity shall be treated under industrial category provided the chilling/freezing/cold storage load is limited to 20% of the total connected load. On the other hand, if the said load exceeds 20%, LT VII A commercial tariff shall be applicable. Later, in disposing a petition No. TP/76/2009, the Hon: Commission had deleted the norm of 20% limit of freezing/chilling load with effect from 21-06-2010. In short, the complete processing of pasteurization of milk, its storage and packing is considered as industry and LT IV industrial tariff made applicable to them from 21-06-2010 only.

As per the corrigenda notified by the Hon: Kerala State Electricity Regulatory Commission on 28-06-2017, some changes in the norm of tariff classification were introduced and one among them was LT V B Agriculture

tariff applicable to dairy farms in case the consumer utilizes the electrical load for chilling/ freezing purpose not in excess of 10% of the total connected load of the plant. In this case under dispute, according to the respondent, the appellant was found using more than 10% load for chilling/freezing purpose and hence the respondent changed the tariff of the appellant to Commercial rate from the Agriculture. But the appellant insists that his unit is still an agriculture one and the agriculture tariff shall be made applicable to him.

As per tariff notification order dated 17-04-2017, dairy, processing of milk by pasteurization and its storage and packing comes under LT IV industry category. It means that irrespective of the rated load or capacity of the electrical equipment used for chilling/freezing purpose, a dairy processing of milk by pasteurization and its storage and packing comes under LT IV industry category. At the same time, LT V (B) Agriculture tariff is applicable to facilities for processing of milk including pasteurization and its storage and packaging or for retail sale outlets, if the connected load for such facilities or sales outlets does not exceed 10% of the total connected load.

As per the corrigenda notified by the Hon: Kerala State Electricity Regulatory Commission on 28-06-2017, the following notes is inserted, under the heading LT-V- Agriculture (B) [LT-V (B)]

“Note-2. LT-V (B) Agriculture tariff is applicable to the dairy farms, which have facilities for collection and storing of milk, till it is sent to the processing units, and also applicable to the primary milk producer’s co-operative societies, the primary function of which is the collection of milk from the farmers and to sell the same to the processing units in bulk. The tariff will be applicable to the facilities for processing of milk including pasteurization and its storage and packaging or for retail sales outlets if the connected load for such facilities or sales outlets does not exceed 10% of the total connected load.”

According to the respondent, it is found that the total chilling/freezing load of the appellant’s society comes to 8000 watts out of the total connected load of 10566 watts which is more than 10% limit and hence invokes the commercial tariff. But a site mahazar is not seen prepared by the respondent and the provisions under regulation 97 of the Supply Code, 2014 is not followed by him before issuing the short assessment bill. On the basis of the clarification and Corrigenda notification issued by the KSERC, the KSEBL had issued a circular of directives for implementation. Accordingly, the eligibility for tariff categorization under LT V B is fixed for the following three categories.

“LT V (B) Agriculture:

- a) LT V (B) Agriculture tariff is applicable to the Dairy farms which have facilities for collection and storing of milk, till it is sent to the processing units.

- b) LT V (B) Agriculture tariff is also applicable to primary milk producer's co-operative societies, the primary function of which is the collection of milk from the farmers and to sell the same to processing units in bulk.
- c) LT (B) Agriculture tariff is also applicable to facilities for processing of milk including pasteurization and its storage and packaging or for retail sale outlets, if the connected load for such facilities or sales outlets does not exceed 10% of the total connected load."

On the basis of the above classification, there is no need to inter connect these three categories. The appellant's society is a primary milk producer's co-operative society, the primary function of which is the collection of milk from the farmers and to sell the same to the processing unit in bulk. The respondent has not raised argument that the appellant's society has the facility for processing of milk including pasteurization and its storage and packing. The Hon: Commission, in its order in petition No. TP/76/2009, has observed that the complete processing of Milk by pasteurization storage, packing etc is to be considered as industry and LT IV Tariff shall be applicable to them. Units having cold storage chilling, freezing and or packing alone, shall be treated as Commercial and LT VII (A) Tariff shall apply. The Clause "But dairy farms/ milk chilling plant with or without chilling / freezing /cold storage activity shall be charged under industrial category provided the chilling / freezing /cold storage load is limited to 20% of total connected load. If it exceeds 20% LT VII A Tariff shall be applicable" shall be deleted and the order amended accordingly."

Pasteurization is the process of heating milk up and then quickly cooling it down to eliminate certain bacteria. For effective pasteurization, milk can be heated up to 145 degrees Fahrenheit for 30 minutes. It is pertinent to note that, the appellant's society is using only the bulk milk coolers to cooling the milk so as to prevent the damage of the milk.

The tariff under LT VII A category is applicable to commercial and trading establishments such as freezing plants, cold storages and milk chilling plants. The units used exclusively for cold storage, chilling/freezing or packing purpose alone shall be treated as commercial and LT VII A tariff shall be applicable to such units. If the consumer has the facilities for processing of milk including pasteurization and its storage and packaging, the applicable tariff shall be LT IV A industry.

The Society is not a chilling plant, but an intermediate point where collecting milk from dairy farmers and sending to the milk processing units. The Society is neither a commercial premise nor a trading point as chilling plant. The respondent assigned tariff LT VII A on the ground of chilling the milk up to a temperature of 4° C and not for the activities. The dairy like Milma having the facilities of pasteurization and its storage and packaging or for retail sale outlets is availing the tariff under industry only.

This Authority had dealt with a case of similar nature in Appeal Petition No. 051/2019 filed by Mannathavady Milk Co-operative Society and disposed

the issue in favour of the said appellant, after analyzing the subject in detail as above. It is found that the licensee has implemented the order dated 18-09-2019 pronounced in Appeal petition No.051/2019.

Since there is a specific classification under tariff order for primary milk producer's co-operative society and the appellant's society comes under the purview of this classification, the application of LT VII A tariff is not justifiable and not sustainable.

Decision: -

From the conclusions arrived at as detailed above, I hereby quash the short assessment bill for the period from 10/2018 to 06/2019 amounting to Rs. 131354/- issued to the appellant. The respondent shall retain the appellant under LT V (B) tariff category.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the consumer is allowed as ordered and stands disposed of as such. The orders of CGRF, Kozhikode in OP No. 135/2019-20 dated 30-06-2020 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/025/2020/ dated _____.

Delivered to:

1. Thanneerpanthal Ksheerolpadaka Sahakarana Sangam Ltd., P-108(D), APCOS, Vandithavalam (PO), Palakkad 678 534
2. The Assistant Executive Engineer, Electrical Sub Division, KSEBL, Koduvayur, Palakkad

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