

THE STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No. P/015/2023
(Present A. Chandrakumaran Nair)
Dated: May-25-2023

Appellant : James T. Abraham
Thazhathekkuttu,
Kumbanad P.O.,
Tiruvalla
Pathanamthitta (Dist.)

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSEB Limited,
Tiruvalla.

ORDER

Background of the case

The appellant Shri. James T Abraham is the owner of the studio and Colour lab named as Central Colour lab and is a consumer under electrical section Kumbanad having consumer no. 1146196005597 with connected load 9.086kw. The connection was effected on 15/06/1992 and was under LT 4A tariff. The Kerala State Electricity Regulatory Commission while determining the tariff, the studio and Colour lab was included in the commercial tariff LT 7A. Though the Tariff has been published in the gazette, it is the responsibility of the licensee to intimate the tariff change to the consumer and raise the electricity bills accordingly. This was not complied by the licensee. On 4/7/2022, APTS Tiruvalla unit has conducted an inspection and found that the consumer was billed on wrong tariff. Accordingly, a short assessment bill was raised by the licensee for Rs. 53,320/-. The appellant approached the CGRF and CGRF issued order stating that the appellant is liable to pay the short assessment bill. Aggrieved by the decision of CGRF, the appellant filed this appeal petition to the authority.

Arguments of the Appellant

1. Kumbanad Electrical Section Consumer No. 5597 has 3 phase connection taken on 5-06-1992 in LT IVA is being used only for Central Color Lab. This establishment is functioning on the ground floor of the building. Upstairs Central Studio is working on Single Tariff in Consumer No. 10153 LT VII A.
2. On 04-07-2022 inspection conducted by Tiruvalla APTS found that the billing was on wrong tariff. The initial charge indicated at site Mahazar, using C/N-5597, LT-IVA, 3phase to C/N - 10153, LT-VIIA, 1 phase is completely wrong. Since the connection was given till date, I have not tried to break the rules of KSEB or of the institution. Till date neither the people who take meter readings nor the authorities have informed me that the establishment running in LT IVA has decided whether it is for industrial purpose or not.

A look at the previous readings and usage in the LT-IVA shows that there has been no tariff abuse. The allegation that Central Studio was associated with the industrial connection given in LT-IVA is not entirely true. Central Color Lab's activities include photo printing, video/photo editing and lamination on an industrial basis.

Therefore, I humbly request you to kindly withdraw and cancel the interim order passed on me.

Arguments of the Respondent

1. The 3 phase service connection bearing Consumer No 1146196005597, effected from Electrical Section, Kumbanad on 15.06.1992, under LT-4A tariff, having a sanctioned connected load to the tune of 9086 watts availed exclusively for the purpose of functioning of a Color Lab currently categorized under LT 7A tariff , going by the name of Central Color Lab at Kumbanad junction, Thiruvalla, is registered to the name of the Petitioner, james j Abraham, Thazhathekkuttu, Kumbanadu P.O, Thiruvalla.
The petitioner had also availed another service connection, bearing Consumer No.1146198010153, having a sanctioned connected load to the tune of 4540 watts under LT-7A tariff, on the first floor of the same building from Electrical Section, Kumbanad on 22.03.2007.
2. The KSEB tariffs are governed ' by the regulations of the Hon'ble Kerala State Electricity Regulatory Commission as per Section 62 of The

Electricity Act, 2003. The tariff regulations of the Hon'ble KSERC are binding. At the time of effecting the Service Connection of consumer no. 1146196005597, the tariff of the connection was specified under LT 4A as stipulated by the prevailing Tariff Regulations of the Hon'ble Kerala State Electricity Regulatory Commission.

The tariff applicable to Color lab and Studio was excluded from LT 4A Tariff and reclassified under LT 7A tariff vide tariff revision order no 560/DD(T)/2018/KSERC dated Thiruvananthapuram 8th July 2019. The Tariff revision order reads: *LT- IV (A) - Industry LT-W (A) Industrial tariff is applicable for the general purpose industrial loads (single or three phase) which include, - (ix) screen printing of glassware or ceramic, SSI units engaged in computerized colour printing excluding photo studios/colour labs;*

3. On 04.07.2022, APTS, Thiruvalla Unit conducted surprise inspection at the premises of consumer no. 1146196005597 and 1146198010153. At the time of inspection, three employees of the petitioner were present and working at the Color Lab. At the time of inspection, the connected load in use at the premises was 7827 watts in commercial tariff against a sanctioned load of 9086 watts in LT4A tariff in consumer no.1146196005597 and 5998 watts against a sanctioned load of 4540 watts in consumer no.1146198010153.
4. At the time of inspection, Studio related works such as Photo Printing, Lamination, Photo Editing and Video Editing were going on in full swing at the premises from the service connection of consumer no.1146196005597 provided in LT 4 A tariff for industrial purpose on the ground floor of the building. The inspection team recommended assessment of the usage of consumer number 1146196005597 for tariff misuse. The KSEB Ltd, subsequent to the inspection and the hearing conducted by this assessing officer, evinced that the consumer is being billed under LT 4A tariff instead of the revised tariff of LT 7A and the consumer was undercharged from 08/07/2019 to 04/07/2022 and that assessment under tariff misuse was not an appropriate. As such, a short collection notice and invoice for the amount of Rs 53,320/- (Rupees) was served upon the consumer from the office of the Assistant Engineer, Electrical Section, Kumbanad on 02/08/2022.
5. The impugned invoice for Rs. 53,320/- was served upon the consumer as per the enabling provisions of section 134 of the Electricity Act 2003. Regulation 134 (1) of the Kerala Electricity Supply Code provides for recovery of amounts actually undercharged. It reads:

134(1) If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill.

Hence the KSEB Ltd having established that it has undercharged the consumer due to wrong application of tariff, issued a bill aimed at recovering the amount Rs 53,320/-, the amount short collected for the period from 08/07/2019 to 04/07/2022, due to the continued billing of the consumer under LT 4A tariff even after 08/07/2019.

6. The Hon'ble Apex Court in Civil Appeal No.1672 of 2020 (Assistant Engineer, Ajmer Vidyut Vitran Nigam Limited & Anr. Vs Rahamatullah Khan alias Rahamjulla had unequivocally upheld that "*In the case of electricity, the charges are ascertained and recovered as per the tariff notified by the State Electricity Board, or under an electricity supply agreement between the parties read with the tariff under Section 62(1)(d), and the Electricity Supply Code framed under Section 50*" also "*The licensee company may take recourse to any remedy available in law for recovery of the additional demand*".

Also, the Hon'ble Apex Court in Civil Appeal No.7235 of 2009 M/s Prem Kotex Vs Uttar Haryana Bijli Vitaran Nigam Ltd. & Ors., perspicuously states that

"If a licensee discovers in the course of audit or otherwise that a consumer has been short billed, the licensee is certainly entitled to raise a demand. So long as the consumer does not dispute the correctness of the claim made by the licensee that there was short assessment, it is not open to the consumer to claim that there was any deficiency" and gives liberty to the licensee "*to take recourse to any remedy available in law for recovery of the additional demand*".

The mere fact that there was an oversight on the part of KSEB Ltd which led to short billing in the first instance and the rectification of the same after the mistake is detected, does not entitle the petitioner to avoid payment of the undercharged amount.

7. Consumption recorded in the energy meters of both consumer no. 1146196005597 and 1146198010153 clearly indicate that the Studio and Color Lab is working in full swing, from which it can be inferred that by the use of electricity for working of Studio and related works such as Photo Printing, Lamination, Photo Editing and Video Editing, from industrial connection of LT 4A tariff has caused considerable loss to the KSEB Ltd.

For the aforementioned facts and circumstances, assessment in question

amounting to Rs 53,320/- (Rupees Fifty-Three Thousand Three Hundred and Twenty Only) is accurate and legally sustainable. The petitioner is liable to remit the same. The petitioner filed petition before the Hon'ble CGRF vide O.P No. 58/2022. Considering the facts and Circumstances of the case, the Hon'ble Forum vide Order no. CGRF/KTRJOP58/2022/440 Dated 20/02/2023.

8. Decision of the Hon'ble CGRF (South)

1. The petitioner is liable to pay the short assessment bill amounting to Rs.53,320/-

2. The respondent is hereby directed to allow 12 monthly installments without interest for the remittance of the bill. Surcharge/ interest shall not be levied for the period in which the case was pending before this Forum.

3. No order as to cost.

9. The bill was served upon the consumer as provided by the enabling provisions of Regulation 134 of the Kerala Electricity Supply Code 2014, solely towards the recovery of the amount actually short collected over the period wherein the consumer was billed under the former tariff of LT 4A from 08/07/2019 to 04/07/2022 instead of the revised tariff of LT 7A. The contention that the consumer was ignorant of the tariff revision does not constrain the KSEB Ltd from raising a demand for the undercharged amount vide the enabling provisions of Regulation 134 of the Kerala Electricity Supply Code 2014, nor does it entitle the consumer to avoid payment of undercharged amount.

The assessment was not done for tariff misuse. Instead, demand was raised only for the undercharged amount due to wrong application of tariff.

Consumption recorded in the energy meters of both consumer no. 1146196005597 and 1146198010153 clearly indicate that the Studio and Color Lab were working in full swing, from which it can be inferred that by the use of electricity for working of Studio and related works such as Photo Printing, Lamination, Photo Editing and Video Editing, from industrial connection of LT 4A tariff has caused considerable loss to the KSEB Ltd. Therefore be the Consumer/Petitioner is legally bound to remit the bill for making good the loss incurred by the KSEB Ltd due to wrong application of Tariff.

10. The factual position of the case being such, the appellant has made baseless averments in this appeal. The allegations were raised in the petition as well. Considering the facts and circumstances stated above and other valid points to be argued during hearing, this Hon'ble State Electricity Ombudsman may please dismiss this appeal in limine.

There is no infirmity in the findings and orders of the Honourable Consumer Grievance Redressal Forum (South) in OP No: 58/2022.

11. The bill was served upon the consumer as provided by the enabling provisions of regulation Regulation 134 of the Kerala Electricity Supply Code 2014, solely towards the recovery of the amount actually short collected over the period wherein the consumer was billed under the former tariff of LT 4A from 08/07/2019 to 04/07/2022 instead of the revised tariff of LT 7A.
12. It is most humbly prayed before this Honourable Ombudsman to accept this version and to confirm the Orders of the Consumer Grievance Redressal Forum (South) in OP. 58/2022, and thereby to dismiss Appellant's plaint with cost to KSEBLtd.
All the facts stated above are true and correct to the best of my knowledge.

Analysis and findings

The hearing of this case was fixed on 16/05/2023 at 11:30 am in the office of the Kerala State Electricity Ombudsman and the intimation has been sent on 02/05/2023 by post and informed the parties to their contact number telephonically. The respondent AEE, Electrical Sub Division, Tiruvalla and Petitioner James T. Abraham attended the hearing.

The appellant availed a power connection for running his studio and colour Lab on 1992 from the Electrical Section, Kumbanad under the tariff LT 4A. The colour studio was established on 1947 and working since then. Subsequently he had availed another connection under tariff LT7A on 22/03/2007 in the same building with the connected load 4.54kw for running the commercial establishment. The KSERC while determining the tariff the studio and colour lab has been shifted from tariff LT4A to LT7A. The licensee has not been notified this to the consumer and billing was done as per tariff 4A till 4/7/2022. The APTS, Tiruvalla unit has been find out this irregularity during their surprise inspection on 4/7/2022.

The appellant argues that there is no mistake from his side and was making the payment regularly as per the bills raised by the licensee. If this would have been brought to his notice, he would have reduced the connected load and accordingly the consumption and would have paid as per the revised tariff. This charges would have been much lower than the short assessment.

Another argument of the appellant was that the APTS was brought by the section officials instead of settling by themselves and insulted the appellant in the public who has having a good reputation in that area. The responds version was that the APTS is conducting surprise inspection by themselves not based on the information from any other offices.

The section 152 of the Kerala Electricity Supply Code 2014 is dealt with the anomalies such as wrong MF and wrong tariff attributable to the licensee.

152(1) *“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.”*

152(2) *“In such cases the amount of electricity charges short collected by the licensee, if any, shall only be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted.”*

152(3) *“The amount of electricity charges short collected for the entire period during which such anomalies persisted, maybe realised by the licensee 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:

Provided further 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 realisation 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.”

The section 136 of the Supply Code 2014 describes about the recovery of arrears and its limitations.

136(1) *“The licensee shall be entitled to recover arrears of charges or any other amount due from the consumer along with interest at the rates applicable for belated payments from the date on which such payments became due”.*

136(2) *“The licensee may prefer a claim for such arrears by issuance of a demand notice and the consumer shall remit the arrear amount within the due date indicated in the demand notice”.*

136(3) *“No such sum due from any customer, on account of default in payment shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied”.*

These sections were clearly spelt about the recovery of short assessment and the period for which it could be levied. If it would have been notified to the

consumer earlier, there was an opportunity for the appellant to reduce his connected load and then consumption and would have saved much on the energy charges. This opportunity was lost for the consumer. There was a serious error/ mistake happened from the officials of the licensee who has not been taken action to effect the change in tariff in time and which would in turn reduced the revenue loss. The concerned officials are to be identified and action is to be initiated. The orders of hon'ble Supreme Court referred by the respondent is not relevant to this case.

Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. The appellant is liable to pay the short assessment for a period of 24 months.
2. The licensee has to revise the short assessment by raising the demand for 24 months.
3. The licensee shall grant 24 instalments to the appellant for remitting the amount.
4. The order of CGRF is modified accordingly
5. The licensee may initiate action against the officials who is responsible for this mistake and thus the revenue loss
6. No order on cost

ELECTRICITY OMBUDSMAN

No. P/015/2023/ 01156 dated : 25/05/2023

Delivered to:

1. James T. Abraham, Thazhathekkuttu, Kumbanad P.O., Tiruvalla
2. The Assistant Executive Engineer, Electrical Sub Division, KSEB Limited, Tiruvalla.

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.