

THE STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamangalam-Anchumana Temple Road

Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024

www.kerala.org Ph: 0484 2346488, Mob: 91 9567414885 Email: ombudsman.electricity@gmail.com

Appeal Petition No.P/182/2011.

(Present:Sri.T.P.Vivekanandan.)

Appellant : The Secretary,
M/S People Dairy Development Project Central Society,
Marottichodu, Kalady, ErnakulamDt,Pin: 683574.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, KSEBoard, Kalady, Ernakulum.

ORDER.

Background of the Case.

The appellants has an Industrial Unit named M/S People Dairy Development Project Central Society, Marottichodu, Kalady, Ernakulum, and is engaged in the Pasteurization, packing and selling of milk and milk products with consumer No.11311 under Electrical Section, Kalady. While effecting the service connection to the consumer in 31.05.2005, the milk chilling plants and its cold storage were categorized under LT IV industrial tariff and so the consumer was assigned LT IV and billing was done accordingly. In the schedule of tariff published by KSERC on 27.11.2007, the tariff of the Dairy farm/milk chilling plants with or without chilling/freezing and cold storage activities were continued under industrial tariff provided the chilling/ freezing/cold storage load is limited to 20% of the total connected load. If it exceeds 20%, LT VII A tariff shall be applicable. On the basis of this order, since the chilling load was more than 20% the Respondent had changed the tariff of the consumer from LT IV to LT VII A with retrospective effect from 1.12.2007 and issued a short assessment bill for Rs.50,60,322/= and is the cause and basis of this dispute.

Argument of the Appellant

The appellants has put forward the following averments in his complaint dated 03.01.2011, in the subsequent Hearings and in the argument notes submitted after hearing.

The appellants's firm is an industry engaged in milk processing, pasteurization and packing of milk products which is covered under industrial tariff (LT IV). On 04.02.2010, the Assistant Engineer, Kalady has given them a short assessment bill for Rs.50,60,322/= by revising the tariff of the industrial unit from LT IV to LT VII A. The KSERC as per order dated 21.06.2010 in petition No.TP 76, reconfirmed 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.

The appellants argues that, till 01.12.2007 i.e. the date on which the schedule of tariff and terms and conditions for supply of energy by KSEB was published by KSERC, the milk chilling/ Freezing/Cold storage were considered as an industrial activity. The Consumer was billed under LTIV-industrial tariff since its inception. The KSEB has been arbitrarily claiming LT VII tariff violating the original agreement executed by the consumer. On 04.02.2010, the KSEB changed the tariff to LT VII and issued a short assessment bill for the period from 12/2007 to 10/2009. The President, KSSIA, Ernakulum Dt, filed

petition before KSERC by TP 76, seeking to declare that Dairy Farms do not come within the purview of note (e) under LT IV tariff. The KSERC by its order dated 21.06.2010 in TP 76/2010 deleted the same note (e) under LT IV tariff. However, the Commission made the tariff change back to LT IV – industrial applicable only with effect from 21.06.2010. The appellant has argued that all industries having pasteurization were enjoying industrial tariff and being sold their product for which the price was fixed calculating the input cost of electricity as per industrial tariff, they are not in a position to collect additional money from the consumers on the ground that the consumer has to pay higher rate of tariff for the electricity consumed earlier.

The appellant claims that his unit can be termed as a Milk Pasteurization factory and not as a storage unit. He uses a small portion of chilling load for preserving the milk after pasteurization and for this short span of time the chilling load will never exceed 20% of the connected load. In the pasteurization process, milk is suddenly cooled to 4°Celsius (from 80°C) and is a part of the process and it cannot be termed as chilling because (1) the chilling is a commercial activity with which milk and other edible products are preserved below 4°C for a long period by continuously using electric power and (2) there is no transformation of the content which is being kept in the refrigerator. In short, in the pasteurization process only cooling is taking place and it is not a chilling activity. The 25 HP Ammonia Compressor is exclusively used for cooling of milk from 80°C to 4°Celsius and will not fall under the chilling category. In our unit there is separate chilling and cold storage and their load is less than 20% of the connected load.

Further it is argued that the processing of milk by pasteurization is an industrial activity as per Central Government and KSERC norms, and was eligible for industrial tariff from the date of inception. Hence denying the facility for a particular period i.e. from 01.12.2007 to 21.06.2010 is clearly violation of rights of the consumer and will be against the natural justice. Hence, the following reliefs are sought;

- (1). to declare the claim in LT VII tariff for Rs.50, 60,322/= as void and null,
- (2). to declare the additional charge claimed in all invoice from December 2009 to 21st June 2010, as void and null.
- (3). to revert the decision of KSEB to convert their tariff from LT IV to LT VII and declare their industry as an industry in LT IV tariff.
- (4). the interim stay granted may be extended till the disposal of the case.

Argument of the Respondent.

The appellant was given an electric connection No 11311 under LT IV- industrial tariff for a Milk processing plant on 31.5.2005. The respondent has adduced the following points for consideration;

As per the schedule of tariff published by KSERC on 27.11.2007, the tariff of the Dairy farm/Milk chilling plant with or without chilling/freezing/cold storage activities shall be charged under industrial category provided the chilling/freezing/cold storage load is limited to 20% of the total connected load, and if it exceed 20%, LT VII A tariff shall be applicable. The Audit team during their office inspection pointed out that the tariff categorization of the consumer was wrong in the light of the above tariff order. Hence the Assistant Engineer, Electrical Section, Kalady, inspected the premises of the consumer on 03.11.2009, to assess the connected load and also to confirm the activities going on there. On the basis of these findings, the tariff was changed and a re-assessment bill was issued under LT VII A tariff retrospectively from 01.12.2007 as the effect of the tariff order was from that date. There is no dispute on the activities going on in the consumer's premises or the load connected for the various activities of

milk processing. The total load in the premises is found to be 96.2 KW out of which 37.86 KW is used for chilling/Freezing Plant. The reassessment bill for Rs 50,60,322/- was issued with due date as 04.03.2010. Aggrieved against the Short assessment bill and the Tariff change effected, the appellant filed a petition before CGRF, Ernakulum and the Forum disposed of the petition by ordering that the petitioner is liable to pay the short assessment bill issued for Rs.50,60,322/- and can avail installment facility according to the rules prevailing in KSEB.

Meanwhile, aggrieved by the KSERC's order against the new norm for getting industrial tariff for Milk Processing units, a Petition was filed before the Commission by the KSSIA, Ernakulum Dt. The KSERC heard the appeal and delivered an order dated 21.06.2010 after considering all the facts. The order confirms that the complete process of milk by pasteurization, storage, packing etc. is to be considered as industry itself and LT IV tariff shall be applicable, but these changes shall be effective only from the date of KSERC's order i.e. from 21.06.2010. Based on the said order, KSEB issued a circular to the same effect. Hence it is requested to dismiss the Appeal with direction to the appellant to remit the bill issued.

Analysis and Findings.

Both parties were heard on 15.3.2011 and on 06.09.2011 in my chamber at Edappally, Ernakulum. The appellant was represented by Mr Shaji Sebastian, President, KSSIA, Ernakulum Dt and Fr.Paul Madan and the opposite side by Sri M Y George, AEE, Kalady and have presented their case on the lines stated above. On perusal of the Appeal Petition filed by the consumer, the counter statement furnished by the respondent, the arguments made during the hearing and the argument notes filed and after a detailed analysis of the above and considering all the facts and circumstances of the case I come to the following conclusions and decisions thereof.

The dispute is regarding the change of tariff of the consumer who is running a Milk Processing unit, from industrial tariff to commercial tariff with retrospective effect from 1.12.2007 and issue of a short assessment bill towards the arrears due to the difference in the tariff rates. As per the new tariff order notified by the Commission in the Gazette on 27.11.2007, some changes in the norm for tariff fixation were brought in and one among them was the change of tariff of Milk Processing units from industrial to commercial, in case the consumer utilizes the electrical load for Chilling/Freezing purpose in excess of 20% of the total connected load of the Plant. The Assistant Engineer, Kalady, inspected the premises of the consumer on 3.11.2009 and found that the Chilling/ Freezing load of the consumer is in excess of 20% of total load and hence decided to change the tariff to commercial and issued a bill towards the arrears for the period starting from 12/2007. The question to be decided is;

- 1) Whether the consumer falls under industrial or commercial tariff during the disputed period from 01.12.2007 to 21.06.2010 and
- 2) Whether the short assessment bill issued thereof is correct?

It is a well known fact that milk chilling is an integral part of the Process related to Milk processing, Pasteurization and storage of milk. Upon inspecting the premises of the consumer, the KSEB officials found that the milk chilling/freezing load comes to more than 20% of the total connected load. The Hon: KSERC vide the gazette notification dated 27.11.2007 had categorized Dairy farms under LT IV-industrial and milk chilling plants under LT VII A- commercial category. However, the note (e) under LTIV-industrial category reads as "the dairy farms/milk chilling plant with or without chilling/ freezing/ cold storage activity shall be charged under industrial category provided the chilling, freezing or cold storage load is limited to 20% of the total connected load. If it exceeds 20%, LT VII A tariff shall be applicable". In this

case, it is found by the AE that the total load of consumer is 96.2 kW, out of which 31.86 kW (more than 20%) is used for chilling/freezing purpose by the consumer. But the consumer has objected the basis of selecting various equipment loads totaling to 31.86 KW as chilling and non-chilling by KSEB.

Meanwhile, the KSSIA (Kerala State Small Industries Association), Ernakulum, has filed petition (TP 76/2010) before KSERC seeking to declare the Tariff for milk chilling /milk processing units as coming under LT IV- industrial tariff itself. The Hon: Commission after hearing them and KSEB issued the order on 21.06.2010, deciding that the complete processing of milk by pasteurization, storage, packing etc has to be considered as industry and as such LT IV tariff shall be applicable to them. Moreover, it was also decided that the units engaged in cold storage, chilling, freezing and packing activities, shall be treated as commercial. But it is specifically mentioned in the same order that the note (e) under LT IV-industrial (which introduced the new norm of 20% limit for getting industrial tariff) shall be deleted and the order amended accordingly and the changes (now ordered) shall be effective only from the date of the order i.e. 21.06.2010. This stricture implies that the norm of 20% restriction on the Milk chilling load for getting industrial tariff shall remain in force till 21/6/10. Accordingly, KSEB issued a circular dated 26.07.2010, directing its Officials to assign LT IV tariff for milk processing/chilling units and the changes to be implemented from 21.06.2010 onwards.

Aggrieved by the decision of KSEB to effect the change of Tariff of the consumer and issue of a bill, the appellant filed Petition before the CGRF, Ernakulum on 02.9.2010 and the CGRF after hearing both sides dismissed the petition, vide order no: CGRF/CR/Comp.93/2010-11 dated 01.12.2010. There after the Appellant preferred Appeal before this Authority.

KSERC has published the draft schedule of tariff proposals meant for the retail supply of electricity by KSEB in June 2007. The Commission has issued the tariff order on 27.11.2007 after conducting extensive Public hearings on the 'draft new Tariff proposals' and considering the views of all interested stake holders in the state either through written submission or in the public hearings. Even though the Tariff was revised vide the KSERC's notification dated 27.11.2007 and the new tariff came into force from 01.12.2007, the affected consumers including the appellant did not challenge the new norm fixed for Milk processing units. The Assistant Engineer, inspected the consumer's premises on 3.11.2009, and after being convinced of the quantum of chilling load connected there, he changed the tariff and back assessed the consumer from 01.12.2007 under LT VII A tariff, on the ground that the load for chilling/freezing/cold storage activity had exceeded 20% of the total connected load. He also issued a short assessment bill dated 04.02.2010 for Rs.50,60,322/- for the period 12/07 to 10/09, which is challenged in the Appeal with a prayer to set aside the same and also to declare that the appellant's society is liable to pay only under industrial tariff- LT IV, during the said period. Even though the offending clause (20% limit for getting LT IV- industrial Tariff) has been deleted by the Hon: Commission, this change is made effective only from the date of the Order i.e. 21.06.2010.

The appellant is of the view that, even after the new Tariff revision, KSEB continued billing under LT IV Industrial tariff and had they changed the tariff in time they could have approached KSERC then for review of its order. It is a fact that wide publicity was given by the KSERC on the new tariff proposals for Public awareness and invited the opinions of interested parties and others in the Public Hearings arranged across the state. Moreover, in this particular case the KSSIA has represented against the issue of commercial tariff for milk processing units strongly before the Commission and the KSERC after hearing both sides issued the order confirming that the tariff shall be LT VIIA (commercial) for the period

1.12.2007 to 21.6.2010 provided their chilling/freezing load is more than 20% of the total load. Hence the argument of the consumer is not correct.

During the hearing conducted on 6.9.2011, the appellant argued that the 25 HP Ammonia Compressor is used exclusively for quick cooling of milk from 80°C to 4°C as part of the process of Pasteurization and should not be treated as a chilling load. Also they stated that their Plant has separate chilling and cold storage facilities and its connected load is less than 20% of the total load. Further it is pointed out that the load for chilling is used for 24 hours for preserving the milk while the 25 HP Ammonia Compressor load will be in service during pasteurization process only.

There is no doubt that the 25 HP Ammonia Compressor load is utilized for quick cooling. This cooling process is a part of preservation technique just as a Chilling or Freezing activity being done for the same purpose. Once the desired cooling level is reached using the Ammonia Compressor it is maintained at that level continuously by other cold storage equipment. The equipment Ammonia Compressor is used for quick cooling and the other equipment of chilling/ cold storage is used for keeping that level of cooling continuously steady and so both activities serve the same purpose in effect. Hence the argument of the consumer is not sustainable.

The Appellant claims that his Plant is not a Dairy farm or a chilling plant, but a Dairy (Pasteurization) Plant and both are different. He further points out that the activities in a milk chilling plant are mainly collection of milk, chilling of the milk to 3 to 4°C and then transporting it to the main Dairy for further processing and manufacture of milk and milk products there, whereas in a Dairy plant the activity includes a process of Pasteurization, Homogenization, and standardization of milk.

As per the consumer's version Pasteurization is a process to kill all the pathogenic organisms and then cooling to 4°C for arresting further growth of micro organisms. The definition given in Text Books is;

"Pasteurization is a process of heating a food usually liquid to a specific temperature for a definite length of time and then cooling it immediately. This process slows microbial growth in food. It is a method of preservation of food and making it free of disease germs.

Pasteurization is a technique of partial sterilization applied to milk. The milk is heated to a temperature of 60°C for a period of 30 minutes and then chilled quickly. Chilling of milk and cold storage are methods of preservation. Microbes (bacteria and molds) do not grow and multiply at or below the freezing point of water".

From the above definitions, it is very clear that both activities, whether using the Ammonia Compressor or the Chilling Plant serve the same purpose of preservation of food by lowering the temperature to near freezing point so that the bacteria do not grow and multiply. Hence I don't find merit in the argument of the consumer to the contrary and conclude that both equipment falls under Chilling/ Freezing activity.

Decision: -

From the analysis done above and the findings and conclusions arrived at, I decide on the Appeal Petition as follows.

The consumer was engaged in the business of running a Milk Processing unit under LT IV-industrial tariff all these past years and with the notification of new tariff rules with effect from 12/2007, the norm for industrial tariff for Milk Processing units were changed. The KSEB did not intimate the consumer in time of the new norm nor did the consumer become aware of the change even though the Commission had finalized the tariff rules after giving wide publicity of the new Draft Tariff Proposals and inviting

public opinions and conducting Public Hearings. The Licensee detected the mistake in tariff assigned to the consumer lately, after a gap of 23 months (on 11/09), and changed the tariff and issued a short assessment bill thereof. Had the consumer was aware of this change of tariff in time he could have taken appropriate steps in his business seems to me as having some merit and would have been more justifiable also. But the fact that the tariff rules were issued after due process and are framed and made applicable to the consumers and the Licensees, by a Statutory Authority established by Law, has to be considered and once the rules were made applicable, it has to be followed strictly.

The document filed by the Respondent, i.e. the copy of the " Schematic Drawing "of the electrical installation and the Wiring done by a Licensed Wiring Contractor at the premises of the consumer and submitted to KSEB while availing the Electric service connection, shows the total Refrigeration load as 50.75 HP (37.85 KW). The drawing depicts the specific Refrigeration Plant as comprising of the Chilling or Freezing purpose equipment of Agitator (5HP), Condenser Pump (3 HP), Chilled Water Pump (3HP), Fan of Cooling Tower (1HP), and Ammonia Compressor (25 HP), including other loads. This electrical load of 37HP (27KW) is 28% of the total connected load of the plant which stands at 96 KW. Hence as per the rules in force at the time of inspection by the Assistant Engineer on 3.11.2009 the consumer belongs to commercial category -LT VII A and not under industrial tariff -LT IV as the freezing/ chilling load is found to be more than 20% of the total Plant load.

The new tariff rules, which introduced the commercial tariff for the Milk processing units having more than of 20% load used for chilling/freezing or cold storage purpose, came into force from 1.12.2007, and as per clause 24(5) of the Kerala Electricity supply code, 2005, if it is established by review or otherwise that the consumer was "under charged", it is open to the Licensee to prefer its legitimate claim. Here the consumer remained unnoticed under LT IV-tariff, till the inspection of AE on 3.11.2009, and the detection of wrong tariff of the consumer. Hence the decision of the respondent to rectify the mistake of wrong tariff of the consumer and to raise the short assessment bill to recover the sum due to the difference in the tariff, retrospectively from 1.12.2007 is found to be in order.

The consumer may remit the short assessment bill issued to him within 30 days of this order without any interest portion failing which he is liable to pay interest for late payments as per rules in KSEB. He is also eligible for thirty installments, if requested, for paying the bill and the 1st installment shall become due within 30 days of this order as stated above. Having concluded and decided as above, the Appeal Petition filed by the Consumer stands dismissed accordingly as there is no merit in the case. No order on costs. Delivered on the 3rd November 2011,

Electricity Ombudsman.

No./182/2011/ _____ Dated.

Forwarded to: (1). M/S People Dairy Development Project Central Society
Marottichodu, Kalady, Ernakulam-683 574.

(2). The Assistant Executive Engineer
Electrical Subdivision, KSEBoard, Kalady, Ernakulum (DT).

Copy to: (1). The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam,
Vellayambalam, Thiruvananthapuram.10

(2). The Secretary, KSEBoard, Vidyuthibhavanam, Pattom, Thiruvananthapuram.

(3). The Chairperson, Consumer Grievance Redressal Forum, KSEB, Power house Bldg, Ernakulam.