

STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No. P/168/2010.

(Present: TP Vivekanandan)

Appellant : M/S Chemmannur Academy of Advanced Studies,
IKM Complex, Opp: Microwave Station, Tana, Irinjalakuda-680 121.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, KSEBoard, Kattoor, Thrissur District.

ORDER

Background of the Case.

The consumer obtained an Electric Service connection originally for a Software Development unit under LT IV- industrial tariff and upon an inspection conducted by the KSEB Officials in 2/2004, the tariff was changed to LT VI B as the consumer was found running a Computer Institute, and an Educational Institution (conducting various courses of M G University etc) along with the software unit and hence there arose an allegation of misuse of tariff. The consumer's Petition filed before the Deputy Chief Engineer, APTS, against the tariff change was dismissed and upheld the decision of KSEB to change the tariff to LT VI B, and the consumer was continuing in that tariff after that date. Meanwhile in the Tariff Order issued in 12/2007 by the Hon: KSERC, the tariff of **Self Financing Educational Institutions (SFEI)** was listed under LT VIIA category and the KSEB after an Inspection changed the tariff to LT VIIA commercial retrospectively and issued a short assessment bill, for the difference in tariff rate for the delayed period. The Consumer disputes the tariff change effected to his establishment and the arrear bill issued thereof and is the gist of the case before this Forum.

Argument of the Appellant:-

- 1).The appellant is a Computer Training Institute and is having a power connection with consumer No.11396, under Electrical Section-I, Irinjalakuda and paying tariff under LT VI B for the last 3 years as it is a computer Institute. As per the schedule of Tariff rules in force and the Deputy Chief Engineer's order dated 12.06.2007, it has been evident that the tariff of the consumer is falling under LT VI B only. This order of Dy CE was issued after considering all the aspects including the few off Campus Courses of MG University conducting by us.
- 2). As per the orders of the Secretary, KSEBoard dtd.05.01.2010, Self financial Educational Institutions falling under LT VI A tariff has been directed to be changed to LT VII A tariff. But ours is a Computer training Institute and falls under LT VI B tariff. Our firm is not a Self Financing Educational Institution and hence not come under LT VII A category.

3). In the light of the above arguments, the bill dated 19.04.2010 for Rs.1,92,480/= issued by the respondent and asking us to pay the charges retrospectively under LT VII A tariff is grossly unjust, unfair and arbitrary. The subsequent monthly bills were also issued under LT VII A tariff. We have requested AEE to take corrective steps and to rectify the mistakes and revert the tariff to LT VI B. But no action was seen taken by the Respondent so far.

4). We have filed complaints before the CGRF which was dismissed after hearing, but without considering the legal or factual aspects.

5). The CGRF has erred in stating that the Tariff LT VI B was assigned as it is an educational institution. Actually it was assigned being a Computer Institute and the tariff applicable to educational institution is LT VI A. The Deputy Chief Engineer has upheld this tariff assignment of LT VI B. Now there is a higher tariff of LT VII A and KSEBoard wants us to include in it.

6). Self Financing Educational Institutions are separate from the educational institutions. Only those in LT VIA tariff can be converted to LT VIIA i.e. LT VIA tariff is a prerequisite for conversion to LT VII A tariff. But the appellant was never assigned the LT VI A tariff. This means we were a Computer Institute rather than an Educational Institute. Therefore, the categorization under Self Financing Educational Institution is not applicable to us. The CGRF failed to consider this point.

7). The CGRF has observed that we are conducting various courses other than Computer Training. But all the courses are connected with Computer and Internet. The CGRF's finding that only 'Akshaya Kendra' fall under the category of Computer Institute is not correct.

Nature of Relief sought:-

- 1). Reversion of Tariff from LT VIIA to LT VIB.
- 2). Cancellation of bill no 210304 issued by the Assistant Engineer, Electrical section No 1, Irinjalakuda dated 19.4.2010.
- 3). Revision of the bill for the period April- May 2010 dated 3.5.2010.

Argument of the Respondent:-

1). The appellant with Consumer No. 11396/IJK under Electrical Section No. I, Irinjalakuda and has a load of 37 KW. It is an Advanced Educational Institution and is conducting various Degree and PG level courses by collecting huge fees from the students. It is actually a Self Financing Educational Institution and not a Computer Institute since various academic courses like BBA, MBA & MCA in affiliation with M.G. University as well as Computer Courses are conducted there. It is working as a Distant Education Centre of M.G.University.

2). The original tariff assigned was LT IV(industrial) for running a Soft ware unit, while taking the service connection. On 21.02.2004, the APTS (Anti Power Theft Squad) of KSEB inspected the premises and found that there is misuse of energy by way of using the energy for conducting various academic courses like MBA, BBA & MCA rather than computer training. The above inspection team proposed LT VI B tariff for such Institutions. In the petition filed before the Appellate Authority i.e. Deputy Chief Engineer, against the APTS inspection and the tariff change, the appellant's main argument was that it is an Educational Institute affiliated to M.G.University and were conducting a number of Degree and PG level courses and hence requested to change the assigned tariff LT VIB to LT VIA, as it is an educational institution.

(3). While considering the above stated Petition of the appellant, the Deputy Chief Engineer (APTS) found that, there exists mainly 3 major activities, which are being done in this institutions i.e.

- (a). Educational Institutions which comes under LT VI A tariff,
- (b). Computer Education (Institute) which comes under LT VI B tariff and
- (c). Software development institution which comes under LT IV tariff.

The Deputy Chief Engineer after hearing ordered to change the tariff to LT VI B, the highest tariff among the three categories listed above at that time. The order was issued on 12.06.2007. At that time there was no classification of Self Financing Education Institution in the Tariff Rules in free. If it was there, the Deputy Chief Engineer would have assigned the LT VII A tariff only.

(4). As per Tariff order dated 01.12.2007, it is clearly stated that the tariff applicable to Computer Institution is LT VI B, whereas for Government/Aided Educational Institutions, the applicable tariff is LT VI A and for Self Financing Educational Institutions it is LT VII A. Nowhere it is seen mentioned that the change of tariff to LT VII A is allowed only from LT VI A and not from other tariff, as contested by the petitioner.

(5). The applicable tariff of the appellant is LT VII A w.e.from 12/2007 and this tariff change was affected on 4/2010 only. A bill for Rs.1, 92,486/= was issued to the consumer towards the under charged amount as per clause 24 (5) of Kerala Electricity Supply Code 2005. The respondent has the right to recover this amount from the petitioner and he is liable to pay the amount.

The action taken by the respondent is legal and is as per the Act 2003 & Supply Code 2005.

Analysis of the case and the Findings:-

The Hearing was conducted on 15.3.2011 and 29.6.2011. On a perusal of the Appeal Petition and the Counter statements filed by the Respondent and the arguments raised in the Hearings, and the documents submitted by both parties, I record the following analysis of the case, its findings and conclusions arrived at, leading to the decision.

It is true that the appellant obtained the Electric connection under LT IV- Industrial tariff initially for the establishment, since it was working as a software development unit at that time. Later, during 2/2004 it was found on inspection by the APTS of KSEB, that he was running an Educational Institution which conducts Degree/PG Level academic courses of MG University and various other courses along with a Computer Institute. Hence, KSEB alleging misuse of energy for a different purpose than assigned, changed his tariff to LT VIB and the consumer filed complaint with Authorities, which was heard and got verdicts passed confirming the tariff as LTVIB. The appellant was remitting the regular monthly bills on that tariff for the last few years. In the case under dispute, his main argument is to retain the same tariff of LT VIB as it is a Computer Institute and not an Educational Institution. Now the first point to be decided is whether the Appellant is running a Computer Institute or a Self Financing Educational Institution.

The documents submitted by the Respondent, shows that the Assistant Engineer has inspected the premises on 19.11.2009, and has prepared a site mahazar on the findings of Inspection detailing the activities being done at the institution. The mahazar shows that various courses like MBA, BBA, MCA etc are being conducted at the ground floor, that functions as a College and the top floor of the building is used as a computer academy. Since the appellant does not dispute these facts, it implies that the Appellant is running an Educational Institution along with a computer institute in the said building.

The Appellant does not dispute the fact of conducting various Academic courses of Degree and PG level, in affiliation with MG University at his institution. He has admitted that his institution is operating as a Distant Education Center of M G University. In a brochure of Chemmannur Academy it is shown as conducting various courses like, IELTS & CGFNS coaching, Medical Transcription Training, Computer education, Degree/ PG Level courses of M G University, Call centre Training etc. In a letter dated 26th March 2004, to Deputy Chief Engineer, APTS, KSEB, the petitioner states that "Now the institution is doing software development, MG University's under graduate and Post graduate courses and computer courses". These facts show that it functions as a college, offering various courses, and

even affiliated to a University. Further, it is a private establishment and there is no Government aid and the fund for running the Institution is raised by the appellant himself. From the above it is clear that the Appellant is running a Self Financing Educational Institution (**SFEI**) along with a computer Institute.

The new tariff order notified in the Gazette on 27th November, 2007, by the Hon: Commission introduced the new category of "Self Financing Educational Institution" and assigned the tariff of LTVIIA, for the same purpose. The respondent argues that as per this new classification, the appellant's tariff should have been changed to LTVIIA from LT VIB, as it was a SFEI, but due to omission it remained under LTVIB tariff till the inspection of Assistant Engineer on 19.11.2009. After inspection the tariff was changed to LT VIIA with retrospective effect from 12/2007, and a bill amounting to Rs 192486/-, being the arrears of the difference in tariff rates for the above period, was issued to the consumer. The 2nd question to be answered is whether the applicable tariff of Appellant is LTVIIA or LTVIB and if so whether the short assessment bill issued is in order?

The appellant claims that the applicable tariff of him is LTVI B, which was ordered by the Deputy Chief Engineer, APTS, after taking into consideration their activities of conducting a few Off campus Courses of MG University i.e. running an Educational Institution other than a computer Institute and a Software development unit by him. But it is seen that, at that time of the order of Deputy CE i.e. during 6/2007, the categorization of SFEI was not introduced by the Commission. On a perusal of the Tariff order of 10/2002, which was in force from 10/2002 to 11/2007, it is noted that LTVI B was the highest tariff among the applicable tariffs, when the consumer used energy for multiple activities from the same Electric connection, like computer institute under LTVIB, Software development unit under LT IV, and as an Educational Institution under LT VI A.

Also in the tariff order of 10/2002, there was only one category of "Govt or **Private** Educational institutions" under LTVI A tariff and there was no case of a Self Financing Educational Institution (SFEI) at that time. But in the tariff order of 12/2007, a new category of SFEI was brought in, under LTVIIA tariff, after retaining "Govt and **Aided** private Educational Institutions" under LTVIA tariff itself. Hence during 6/2007, for a combination of activities having different tariffs, the highest tariff (out of the multiple tariffs) shall be made applicable and so the Tariff LTVIB was assigned on that principle to the consumer by the Deputy CE. Hence the allocation of LTVI B (the highest) to the appellant who has a mixed usage of energy was found to be correct. The tariff of LT VIIA specifically for SFEI was introduced in the "Tariff order issued in 11/2007", only hence the Deputy Chief Engineer (APTS), who heard the case could not assign the LT VIIA tariff earlier, way back in 6/2007. So the claim of the appellant that LT VIB was issued by the Deputy Chief Engineer, APTS, considering all aspects is found to be correct during that time. But when the Rules and Regulations are changed as per Law established it has to be abided. In this particular case, the new tariff classification was introduced by Hon: KSERC, with effect from 12/2007 which has to be implemented by KSEB. When energy is used for multiple purposes, from a single electric connection, the applicable tariff for the whole unit shall be the highest of the individual tariff, till it is segregated and independent connection is taken for each unit. Here, as per the Tariff Order issued in 11/2007, the applicable tariff for a computer Institute is LT VIB, for a Software Development unit it is LTIV- industrial and that for SFEI, it is LTVIIA-commercial. Since it is established that the Appellant is a SFEI, the applicable tariff shall be LTVIIA- commercial, which is the highest out of the three tariffs mentioned above, with effect from 12/2007.

It is not correct, the argument of the appellant that only consumers belonging to LT VIA group should be changed to LT VIIA tariff. There is no such prerequisite for a tariff change. The tariff is assigned according to the purpose or activity being done on the premises of the consumer in relation to the Tariff order issued from time to time by the Competent Authority. Similarly, the argument that the various study courses they are conducting, are connected with computer and internet and hence eligible for the tariff of a Computer Institute (LT VIB) is not maintainable, as in general practice all the academic and

other courses can be augmented and supported by the Computer and Internet and offers immense help. The mere fact that Computer and Internet facility are utilized for teaching of various academic and other courses does not confer it to be labeled as a Computer Institute.

Decision:-

From the foregoing discussion, analysis and findings arrived at, it is reasonably concluded that the Appellant is running a SFEI (Self Financing Educational Institution) in affiliation with MG University. A new and specific tariff was introduced by the Commission for SFEI with effect from 1.12.2007 and therefore the decision by the respondent to assign the LTVIIA tariff to the Institution with effect from 12/2007, is found to be in order. It is also noted that the tariff change was made consequent to the site inspection of the appellant's premises by the Assistant Engineer on 19.11.2009.

Also as per Clause 24(5) of "The Kerala Electricity Supply Code, 2005", it reads;

" If the Licensee establishes that it has under charged the consumer either by review or otherwise, the Licensee may recover the amount undercharged from the consumer by issuing a bill and in such cases at least 30 days shall be given for the consumer to make payment against the bill". Thus the Respondent's action to issue a short assessment bill consequent to tariff change with effect from 12/2007 for the arrears due to difference in tariff rates is also found justifiable.

Having concluded and decided as above, the Appeal Petition No P/ 168 / 201 0 filed by the appellant stands dismissed accordingly and therefore the reliefs sought by the appellant are declined. The consumer has to remit the full amount or the 1st installment amount with in 30 days from the date of this order with out any interest or surcharge, after which interest at the ruling rate of KSEB shall be payable for the belated payments. The appellant is eligible to get installments equaling to the number of month's arrear bill is preferred. The installments will carry interest from the 31st day of this order to the day of payment. No order on costs. Dated the 26th of September, 2011,

ELECTRICITY OMBUDSMAN.

NO.P/168/2010/_____ Dated.

Forwarded to

- (1). M/S Chemmannur Academy of Advanced Studies
IKM Complex, OPP: Microwave Station, Tana, Irnijalakkuda-680 121.
- (2). The Assistant Executive Engineer,
Electrical Sub Division, KSEBoard, Kattoor, Thrissur Dt.

Copy to:

- (1).The Secretary,
Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam,
Thiruvananthapuram-10.
- (2). The Secretary, KSEBoard, Vydyuthibhavanam, Thiruvananthapuram-4.
- (3). The Chairperson, Consumer Grievance Redressal Forum, Power House, Ernakulam-18.