

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/227/2011.

(Present: T.P. VIVEKANANDAN)

APPELLANT : C.D. Salim Kumar,
 Sivaganga, 48/1978 A, Ramakodam Lane,
 Elamakkara, Kochi.

RESPONDENT : The Assistant Executive Engineer,
 Electrical Sub Division,
 KSE Board, Palarivattom.

ORDER.

Background of the case:

The Appellant is a consumer of electric connection number 24562, under Electrical section, Palarivattom,. The main activity in the premises at the time of availing the electric service is stated to be Desk Top Publishing (DTP) and hence LT IV- industrial tariff was assigned to the unit. While being so, the Appellant applied to change the tariff to LT VIB-Non domestic, on 1.3.2010, as he intended to change the activity of business in the premises to that of an Editing Institute from DTP. Based on the said application, an inspection was conducted by the officials on 31-3-2010 in the premises to verify the Electric load and a site mahazar was also prepared. Consequently, a provisional bill for Rs. 2, 52,491/- dated 3.4.2010, along with a notice and bill calculation statement was issued to the Appellant. It is revealed in the inspection that the consumer was using energy for commercial activities given for industrial purpose and hence changed the tariff from LT IV to Lt VII A – commercial, with retrospective effect from 2/2008, the date of connection. Aggrieved by this action and the invoice, the consumer had submitted an objection on 7-4-2010. The Respondent inspected the premises again on 29-9-2010. A site mahazar was prepared in that respect stating that the activities done in the premises as editing of TV program and also working as an Editing Institute. The Respondent issued an order on the objection filed by the consumer on 22-10-2010, upholding the short assessment bill dated 3-4-2010. Challenging the aforesaid order, the consumer filed a complaint before the CGRF which was rejected vide order no. CGRF-CR/Comp.69/2010-11 dated 16-5-2011. Aggrieved by this order of the CGRF, the Appellant has submitted this appeal before this Forum.

Arguments of the Appellant:

The arguments of the Appellant are based on the brief facts and circumstances which are narrated above. Further the Appellant has adduced the following arguments. The Appellant argues that the order of the CGRF is against the facts of the case and therefore liable to be set aside. The consumer was conducting the DTP Centre in the premises until February 2010 and the Forum had not given any consideration to this contention. His argument is that the change

of tariff with effect from 1-3-2010 had been requested by the Appellant himself before the KSEB, based on which the entire proceedings impugned in this case was done. Therefore it is evident that the Appellant is a law abiding consumer who is paying price for being bonafide.

Another argument is that, in any of the materials produced or in the statements filed by the Respondent, there is no proof for the allegation that prior to 1-3-2010, the consumer was doing any activity which attracts a LT VII A tariff. He says that the only provision which enables the Licensee to issue a short assessment bill is Regulation 24 (5) of the supply Code, 2005, which specifically provides that in order to issue a bill the Licensee has to establish that the consumer was undercharged for the period. Here the Licensee has not established the under-charging and the change of tariff were ordered merely on assumptions which are not correct.

Another point raised is that, despite the fact that the burden to prove the short assessment is on the Respondent, the CGRF proceeded on the assumption that the consumer was using energy for commercial purpose. It appears that the reason for arriving at such an assumption was the entries made in the memorandum submitted before the District Industries Centre. The entries therein cannot have any relevance especially when the officers of the Board themselves have provided Supply to the consumer under LT IV tariff, after due inspection of the premises.

The Appellant argues that the CGRF has also committed a grave error in concluding that the consumer was carrying on the same activity throughout, on the reason that there is no change in the connected load. For the purpose of DTP works and the Editing institute, the main equipments needed are Computers and therefore the absence of significant change in the connected load cannot be a reason to assume that there was no change in the activity.

Finally, the Appellant put forth another argument that at any rate, there is no justification in changing the tariff with retrospective effect. The consumer had not misused the energy and the connection was given by the Board under LT IV tariff after being satisfied about the nature of the activity. Therefore, the Appellant cannot be held responsible for the wrong fixation of tariff, if any, and Board is liable to change the tariff from the date of inspection alone.

As a conciliatory step the Appellant is agreeable to back charge him for six months prior to 1.3.2010 under the commercial tariff.

Arguments of the Respondent:

The Respondent, the AEE, Electrical Sub Division, Palarivattom, has filed the counter statement of the Petition stating that all the averments in the petition except which are admitted, are false and hence denied.

The Respondent argues that the activity of the consumer as proposed in the Application form of the industrial department for registration under SSI is "Animations, Documentaries and Video films" which was issued on 31-12-2007. The consumer's claim that he has been carrying out DTP works in his premises cannot be accepted as the SSI registration document itself shows the activity of the consumer as Documentaries and Video Films. The KSEB has given connection under good faith that the activity comes under LTIV-industrial tariff. The Respondent denies the claim of the Appellant that he has started functioning as an Editing institute only from 1.3.2010. The application dated 1-3-2010 was received in the electricity office only on 16-3-2010, i.e. the consumer approached the office only after starting the Institute, as is evident from the receipt.

The consumer failed to submit any documentary proof that he was using the connection only for DTP Centre. The site mahazar prepared by the Assistant Engineer on 29-9-2010 shows that the Appellant's Unit was functioning there as a film studio. The Respondent argues that the Appellant's claim is not genuine as he claims to be. If he intended to operate as DTP Centre, this would have been included while taking the SSI registration from Industries Department.

The Respondent denies the allegation that the Licensee has failed to establish the fact that the consumer was undercharged. According to the Respondent, the document of SSI certificate submitted by them is a clear proof of undercharging of the consumer. As per section 24 (5) of Supply Code, the Licensee has established that he has been undercharged and is well proved.

Another contention is that the Officer while inspecting the premises to give new connection might have incorrectly assessed the activity of the consumer as it is in the starting stages. The tariff was inadvertently assigned as LT IV, on seeing the registration under SSI and the officials of KSEB have to consider the consumers in good faith in assessing the purpose. The consumer's claim that he was using the premises for DTP works is not true. When an additional activity is carried out additional connected load is essential. Here there is no change in Load. The consumer was not penalized for misuse of energy. The bill was issued considering only the wrong application of tariff made and hence no penalty or surcharge was imposed.

Analysis and Findings:

On examining the Petition, the argument note filed by the Appellant, the statement of facts of the Respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the final decisions thereof.

The Hearing of the case was conducted on 03.01.2012 in my chamber at Edappally, and Mr. C. D. Salim Kumar and Advocate, Mr Ziaur Rehman, represented the Appellant's side and Smt. Savitha, A E E, Electrical Sub Division, Palarivattom, represented the Respondent's side.

The main argument of the Appellant in the Petition is that the CGRF has not considered the fact that the consumer was conducting the DTP Centre in his premises until Feb: 2010 and the Forum had not given any consideration to this averment. The consumer has not produced any evidence to prove this contention other than a mere statement and hence I feel the averment is not acceptable.

The consumer's claim that he was using the premises for DTP works only, lacks merit, in that the same activity (DTP) was not seen mentioned in the SSI Registration Certificate, issued by the Industries Department, while applying for the new electric connection. On the other hand it is shown as 'Animation, Documentaries and Video Films'. The Respondent had inspected the consumer's premises after getting the application for tariff change in 3/2010. In the mahazar dated 31.3.2010, prepared after inspection, it is not seen recorded the activities being done in the premises, but only the connected load details of the Unit. The Name of the Unit is recorded as 'Cee Dee Film city' which indicates of a different activity other than the DTP works. But the consumer has no dispute that he has switched over to Film Editing from 1.3.2010 onwards.

He argues that the request for change of tariff to his new business has been submitted by he himself before the Respondent, based on which the entire proceedings impugned in this case has been originated. Therefore, the Appellant argues that he being a law abiding consumer, is

paying price for being bona fide. The Respondent challenges this averment by stating that the officer, while inspecting the site of the consumer to give the Electric service initially, might have incorrectly assessed the activity of the consumer under the industrial tariff as it was in the starting stages. Further, they point out that the consumer had produced the SSI Registration Certificate from the Industries Dept which might have caused the wrong fixation of tariff as industrial instead of commercial, at the beginning. It is true that, the Short assessment bill was occurred, consequent to the consumer's request for tariff change in 3/2010. The respondent had inspected the consumer's premises and recorded the connected load in the Mahazar, but did not mention anything about the activities being done there with its probable period. Hence except the document of SSI Certificate, there is nothing more to suggest, a different activity being done there. There is no corroborative evidence to suggest that the Editing Institute or studio attracting a commercial tariff was functioning there from the date of availing the electric connection. Therefore the argument of respondent is not justified to assess the consumer from the Date of Electric service connection effected to his premises.

The Respondent had proceeded for tariff change with retrospective effect from 15.2.2008, the date of connection of Electric service, and also issued a provisional bill thereof. There may be lapse on the part of the KSEB in assessing the tariff of the consumer or the SSI Certificate might have misled them to assign industrial tariff initially. I am of the opinion that, the findings of the CGRF that the entries in the memorandum submitted before the Industries Dept is a sufficient proof to establish that the consumer started the Editing institute from the beginning itself, is not a conclusive proof but can only be an assumption which needs corroborative evidence to substantiate it.

If the consumer uses energy supplied for a specific purpose under a particular tariff for a different purpose not contemplated in the contract for supply and for which higher tariff is applicable without Board's knowledge and approval, surely there was an unauthorized use of energy and misuse of tariff. In this case it is required to prove this fact foolproof. The Appellant had shown the purpose as 'Animations, Documentaries, Video films' etc in the agreement papers submitted for service connection, but industrial tariff was assigned by the Respondent, either wrongly or it can be that the consumer conducted DTP works initially which warranted an industrial tariff and changed activity latter. In our case, the Appellant cannot be blamed for the misuse of tariff from the day of inception as the responsibility of fixing the correct tariff initially rests with the Respondent only. The averment of the KSEB that they gave connection in good faith assuming the activity as industrial might be true but has to establish that wrong fixation in tariff has occurred from the beginning itself which is lacking.

Point for Decision: -

- 1). In view of the rival contentions the main point that arises for decision is whether there was a tariff misuse and if so whether the misuse of tariff was occurred from the beginning of the connection?.
- 2). Whether the short assessment bill issued on 3.4.2010 for Rs 252491/- is payable by the consumer in view of misuse of tariff?

DECISION: -

The SSI registration certificate issued by the Industries Dept indicates that the purpose of Electric connection availed in 2/2008 by the consumer was for running a Unit named 'CEE DEE Film City', intended for carrying out the works of 'Animation, Documentaries and Video Films'. The Respondents gave Electric connection under industrial tariff to the unit after inspection in 2/2008 and the tariff assigned at that time has to be accepted as such itself unless there is any conclusive proof against that decision. There were no site inspection till 3/2010, i.e. almost two years, and the site inspection held on 31.3.2010 and the Mahazar prepared thereof records no details of the activities being done there. There is no mention of commercial activity or usage with probable date of misuse of tariff thereof in it. But I feel substance in the averment of the Respondent that the Editing Institute was started prior to 1.3.2010. The consumer has agreed to settle the dispute for a previous six months short assessment at commercial tariff. Though the Respondent has not agreed to the suggestion as above, I feel that the same conciliatory move is reasonable and justifiable in the circumstances detailed above.

Hence it is concluded that the misuse of tariff has occurred only for the past six months prior to 1.3.2010 and not from the beginning i.e. date of availing the service connection in 2/2008. Secondly, the short assessment bill for Rs 252419/- dated 3.4.2010 needs revision. Therefore it is decided that the short assessment bill issued to the consumer may be revised limiting to the past six months prior to 1.3.2010, at commercial tariff LT VIIA instead of industrial tariff. The Respondent shall issue the revised bill with in 30 days of the receipt of this order and the same shall be remitted by the Appellant with in the due date. Having concluded and decided as above, it is ordered accordingly. No order on costs.

Dated the 28th of March, 2012,

Electricity Ombudsman.

No: P/ 227/ 2011/ 1175 Dated 28.03.2012.

Forwarded to: - 1. C.D. Salim Kumar,
Sivaganga, 48/1978 A, Ramakodam Lane, Elamakkara, Kochi.
2. The Assistant Executive Engineer,
Electrical Sub Division, KSE Board, Palarivattom.

Copy to: - 1. The Secretary, Kerala State Electricity Regulatory Commission,
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSEB, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, CGRF, KSEB, Power House Building,
Cemetery mukku, Ernakulum, Cochin -18.