

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/261/2012.

(Present: T.P. VIVEKANANDAN)

Appellant : The State Director,
Khadi and Village Industries Commission,
State Office (Kerala), P.B. No. 198, "Gramodaya",
Mahatma Gandhi Road, Thiruvananthapuram -1.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, KSE Board,
Puthenchantha, Thiruvananthapuram.

ORDER.

Background of the Case: -

The Kerala state office of the Khadi and Village Industries Commission, is functioning on rental basis in the 2nd & 3rd floors of the building named 'Gramodaya' owned by Kerala Sarvodaya Sangh, a charitable institution. The Building was provided a Commercial tariff before its occupation by the appellant and continued so even after leasing it out, as a commercial consumer of electricity with consumer No.5937-7 under Electrical section, Puthenchantha, Thiruvananthapuram. The consumer belonged to a Govt. institution, eligible to be levied the power charges under LTVIB non-domestic tariff. The Audit party of the O/o the Accountant General, noticed the anomaly on inspection of records and objected payment of 'electricity charges' under commercial category. The appellant filed complaint and after receiving the application in the prescribed format, the respondent had carried out necessary inspection and changed the tariff from LT VIIA- commercial to LT VIB- non-domestic w.e.f. 15-11-2010. The excess amount so far collected at higher tariff has not been refunded despite the request of the appellant. A petition filed under OP No. 676/2011 before the CGRF (South), Kottarakkara on 17/12/2011, by the appellant was dismissed on the ground that the tariff has been changed with effect from the date of application and the appellant is not eligible for refund of back period. Aggrieved by this Order, the appellant has submitted the appeal dated 12/01/2012 before this Authority.

Arguments of the Appellant: -

The arguments of the appellant are based on the brief facts and circumstances which are narrated above. The main contentions of the Appellant in the Petition are the following.

1). The non-recovery of the excess amount paid under commercial tariff was included by the Accountant General in their audit report. The appellant submits that the office of KVIC is working in the 2nd and 3rd floors of the building since 1981-82 and the electricity charges were levied under the tariff LT-7 A since then and up to 15-11-2010. As per audit report, the excess amount collected

by the KSEB for the year 2009-10 comes to Rs. 33,588.31 and it is an admitted fact that the KSEB has collected the electricity charges from the particular consumer number at higher rates. The CGRF has dismissed the petition purely on the ground that no application was made by the consumer for change of tariff earlier and without considering the merit on the issue. Further the appellant argues that the KSEB admitted that KVIC's office lie under LTVI -B tariff and therefore the refund of last three years excess amount collected is possible. KVIC has the right to claim the last three years excess payment i.e. from 15-11-2007 to 15-11-2010. The appellant argue that KSEB has admitted that they collected the excess amount which they are not entitled. In the above circumstances adjusting excess amount collected prior to 15-11-2010 (for the last 3 years) is possible.

The reliefs sought are;

1. To set aside the orders of CGRF.
2. To refund the excess amount collected by the KSEB from the consumer No. 5937-7 for the last 3 years prior to 15.11.2010.

Arguments of the Respondent:

The respondent has filed the statement of facts against the averments raised in the Appeal petition. The main contentions of the respondent are the following.

The service connection for the consumer no.5937 under Electrical Section, Puthenchantha was effected on 14.5.1982 under LT VIIA commercial tariff in the name of Sri. G.S. Vijayamohan, Kerala Sarvodaya Sangh Khadi Vasthralayam. The Service connection to this building was effected under commercial tariff as per the service connection application submitted by the consumer for a commercial purpose Building. The tariff of the consumer was changed from LT-7A tariff to LT-6B (tariff applicable to Govt.office), as per the application received from the consumer for changing the tariff dated 15-11-2010, and after conducting site inspection. The change of tariff was effected from the date of application received from the consumer, i.e. 15-11-2010. The relief sought by the complainant that KSEB admitted that they collected excess amount which they are not entitled is not correct. KSEB has not collected any excess amount from the complainant in this regard. The complainant is not eligible for any refund of current charge paid in commercial tariff prior to the date of submission of application for tariff change, as the tariff change is effected only after the site inspection and the Board officials has to be convinced of the applicant's request as genuine. In this case Board has acted in good faith and changed the tariff without any delay on receiving the application from the complainant. In this circumstances, complainant's grievance that the possibility of adjusting excess amount collected prior to 15-11-2010 (for the last three years) is not admissible and complainant is not eligible for any refund as there is no Act or Rules supporting this grievance.

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 24.4.2012, at Inspection Bungalow, Trivandrum, and Mr. Sreekumaran Nair, Supdt., KVIC, represented the Appellant's side and Mr A Harikrishnan, Asst.

Exe. Engineer, Electrical Sub Division, Puthenchantha, represented the opposite side. The point to be decided is

1). "Whether the request of the consumer to refund the excess energy charges paid to KSEB for the last 3 years prior to 15.11.2010, the date of request for lower Tariff, is admissible?"

The Khadi and Village Industries Commission (KVIC) is a statutory body established under an Act of Parliament and functioning under the administrative control of Ministry of MSME, Govt. of India. On going through the records submitted by the appellant, it is found that the Kerala state office of the KVIC is holding the lease of the 2nd and 3rd floors of the 'Gramodaya' building since 1982. The owner of the building is Kerala Sarvodaya Sangh, a charitable institution. The power supply to this office was provided under commercial tariff to the Building since 1982 even before taking on rent by KVIC.

While so, the Accountant General, Kerala raised audit objections regarding the payment of electricity charges under commercial tariff for this Govt. institution. As per the tariff rules, the tariff applicable to Govt. offices comes under tariff VI B non-domestic category. Accordingly, the appellant had submitted application in the prescribed format for tariff change from LT VIIA to LT VIB. After conducting an inspection, the KSEB authorities found the request as genuine and hence changed the tariff to LT VI B with effect from 15-11-2010, i.e from the date of application. The grievance of the appellant is that the excess amount so far collected has not been refunded.

In this case there is no dispute that the appellant's office is a government institution working in the said building since 1982 and the tariff applicable to such an office is LT VI B –non domestic category. The appellant has not pointed out the wrong tariff fixation during these long years due to ignorance on the matter. Here, the wrong fixation of tariff at commercial rate has occurred since it was a multi-storied commercial building and the power supply was provided even before the occupation of the building by the Govt. organisation, KVIC. There are instances of short assessment Bills made by the KSEBoard, in cases of detection of wrong tariff fixed to consumers, for realising the back arrears. The Clause 24 (5) of the Supply Code permits the licensee to recover the amount undercharged from the consumer and hence refund of the overcharged amount to the consumer is also natural if it were found as a bonafide one. The consumer has requested the refund of the overcharged amount during the period from 15-11-2007 to 15-11-2010. Considering facts of the case, as it was a Govt. body and the request seem to me as genuine, I am of the view that the request is reasonable.

DECISION: -

From the analysis done above and the conclusions arrived at, I take the following decisions.

The appellant (Consumer No 5937) is a Govt. organization and therefore the eligible tariff is LT VIB-Non domestic. The respondent has initially fixed a commercial tariff as it was a commercial building before its occupation by KVIC and continued under the same tariff. The appellant came to know of the wrong tariff fixation in 2010 and then filed application for change to the eligible lower tariff. The respondent has acted on the request of the consumer and changed the tariff, as per clause 32, "Change of Tariff", of the T & C of the Conditions of Supply, 2005. The action of the respondent to the request was found to be in order, but they objected the refund on the pretext that the consumer is eligible for lower rate tariff from the date of application only. But, from the

conclusions arrived at as detailed above, and under the Provisions of clause 24(6) of the Supply Code, 2005, I am fully convinced that the request of the appellant is reasonable and justifiable.

Hence, I decide that the order of the CGRF stands quashed. The excess amount collected from the appellant, by way of commercial tariff, for a period of 3 years prior to 15.11.2010, shall be refunded by the respondent, after adjusting the same at non-domestic tariff. The refund shall be made within 60 days of this order with applicable interest and may be adjusted in the future bills of the consumer. The amount of refund so calculated may also be communicated to the appellant with details.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the Consumer is allowed to the extent as ordered and stands disposed of as such.

No order on Costs. Dated the 17th of August, 2012,

Electricity Ombudsman.

Ref. No. P/261/ 2011 Dated

Forwarded to: - 1). The State Director,

Khadi and Village Industries Commission,
State Office (Kerala), P.B. No. 198, "Gramodaya",
Mahatma Gandhi Road, Thiruvananthapuram -1.

2). The Assistant Executive Engineer,
Electrical Sub Division, KSE Board,
Puthenchantha, Thiruvananthapuram.

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

(2). The Secretary, KSEBoard,
Vydyuthibhavanam, Pattom, Thiruvananthapuram-4.

(3). The Chairperson, Consumer Grievance Redressal Forum, KSEBoard,
Vydyuthibhavanam, Kottarakkara.