

## STATE ELECTRICITY OMBUDSMAN

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### APPEAL PETITION NO. P/214/2011.

(Present: T.P. VIVEKANANDAN)

APPELLANT : Sri. Antony K L,  
M/S Envirodesigns Eco Labs, 44/178 D-1,  
Aroma Garden, Lissie Junction, SRM Road, KOCHI-18.

RESPONDENT : The Assistant Executive Engineer,  
Electrical Sub Division, KSEBoard, Palarivattom, Kochi.

### ORDER.

#### Back ground Of the Case: -

The appellant is running a business firm in the name 'Envirodesigns Eco Labs' in the 'Eco Tower' building at Lissie Junction, having consumer No.19319 with LT IV –industrial tariff under Electrical Section, Kaloor. The appellant has received the connection in October 2007. The APTS (Anti-Power Theft Squad of KSEB) had conducted an inspection on the consumer's manufacturing unit, it's Office cum lab and the residence of the consumer, on 3.9.2010. During the inspection, it was detected that the electricity is being used from the industrial tariff connection (Consumer No19319) for the purpose of water pollution testing and food pollution testing, which is a commercial activity. Hence the tariff was changed to LT VIIA and a provisional short assessment bill dated 8.9.2010 for Rs. 5, 43,575/- was served on the consumer. Aggrieved against the impugned bill, the petitioner had filed a complaint before the CGRF on 16.09.2010. A site inspection was arranged on 22.2.2011 by the Chairperson and Members of the Forum to verify the genuineness of the petitioner's and the respondent's statements and arguments. But the inspection was held up due to denial of entry by the staff of the Firm. Hence the CGRF had dismissed the Petition on the ground that the bill issued by the respondent is in order and the petition is devoid of any merits. Aggrieved by the decision of CGRF, the appellant has submitted the Appeal petition before this Authority on 14.04.2011.

#### Argument of the Appellant: -

The arguments of the appellant are based on the brief facts and circumstances of the case that is narrated above. Further, the appellant has adduced the following arguments.

The appellant argues that the Hon: CGRF have gone wrong in their decision because the Forum has not considered the fact that the consumer has produced all Production procedures, Licenses, Electrical Inspectorate approval and even tax sale bills for perusal. As per Electricity Act, 2003 and subsequent Regulations like Supply Code, Terms and Conditions of Supply etc. an authorized Officer of KSEBoard can enter and inspect the consumer's installations. If the consumer did not permit the entry, the service connection can be disconnected by giving 24 hours' notice. The reason for the decision against the consumer is that they did not permit entry of the CGRF Chairperson when he came for inspection in person on 22.01.2011 along with other members of the Forum. The Chairperson of CGRF is an officer in rank of Deputy Chief Engineer and he got all quasi-judicial power. If the consumer did not permit him inside the premises for inspection even after disclosing his identity he can very well give a notice and disconnect the supply within 24 hours. Without conducting inspection (if it is required) confirming that no manufacturing activity is carried out there is wrong and hence may not be considered.

Another argument is that the consumer himself has converted one domestic connection (Consumer No: 19319) from domestic to commercial. This in fact shows the genuineness, frankness & sincerity of the consumer. The consumer have voluntarily changed his tariff to commercial rate and this "honest, good & faithful action" of the consumer have been misinterpreted and CGRF has adduced it as evidence against him which is against natural justice.

Further he argues that the CGRF went wrong in deciding that site mahazer is not a requirement for taking action for wrong tariff application. The consumer have applied for LT IV tariff because he is eligible for the same and the connection have been effected after thorough inspection by Electrical Inspectorate and KSEBoard. It is pertinent to note that the connections with different tariff rates (commercial, Domestic and Industrial) were given in the same premises. More than that KSEB have been continuously inspecting, taking reading billing etc for the services in the same premises.

No law permits collection of Additional Charges without proper notice, opportunity for reply, hearing the affected party etc. Here even the inspection by CGRF was without notice and intimation. The CGRF himself would have found that there is no theft or misuse, had taken the inspection been done without any 'hide and seek'. The CGRF would have arranged a technical expert as a commission

for inspecting and evaluating this because the CGRF does not have jurisdiction to conduct direct inspection. Subsequent to the above inspection the consumer had sent a letter asking for further inspection which is marked as Exb-1. The CGRF have not considered the same and did not come for further inspection. They were taking arbitrary decision in haste.

The consumer has another factory at Edayar Industrial Estate. Due to the heavy pollution in the Industrial Estate, most of the time heavy works are done at Edayar. Ingredients are brought as semi-finished raw material from Edayar and final processing and quality assessment are being done at Eco Tower, Janatha Junction, Palarivattom, Ernakulum. Both the industrial units have got registration from District Industrial Centre as small scale units.

Argument of the Respondent: -

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

The argument of the consumer is that the Electricity Act, 2003, authorizes the disconnection of supply if an authorized officer is not permitted to inspect the consumer premises; but the Chairman, CGRF has not done the same. According to the respondent, not giving notice to disconnection even though Act authorizes so, cannot be taken as evidence for misconceptions of facts, but only thing is that Hon: CGRF has not taken any action for the same. The statements of the consumer in this regard are not at all relevant to the case, since the dispute to be addressed is the category of tariff.

Another contention is that, had the consumer's action were honest, good & faithful as he claims to be, he would have done the same at the time of taking electric supply itself. He has put in the request for change of tariff only after the inspection was done by the APTS. Thus it is very clear that the tariff conversion is requested only to misinterpret the facts.

It is argued that, APTS has taken the detection of anomaly in tariff as a case of 'wrong application of tariff' only. Since there was no case of Meter tampering etc, they did not intend to penalize the consumer, if he is genuine and hence did not apply 'misuse', but only reassessment was done taking it as a case of wrong fixation of tariff. Further, the Electrical Inspectorate does not decide the type of tariff to be applied. At the time of giving connection, KSEB has trusted the consumer in his claim of purpose shown as industrial. Before starting the activity, there is no means to assess the type of activity that is going to take place and KSEB can only trust the consumer and assign tariff in good faith. The meter readers do take reading from the premises bimonthly but are not supposed to verify

and determine the correct tariff. The meters are installed at ground floor, entry to which is different from the entry to the Lab. Further, permission to enter inside the premises is restricted.

The consumer has admitted that the Board officers can enter into the premises because the Act authorizes so. Further, this type of an inspection for misuse of tariff cannot be carried out after giving notice. KSEB has served the assessment bill to the consumer giving proper intimation. The consumer can seek clarification if required from the office.

A point raised by the respondent is that Hon: CGRF is authorized by statutes to collect evidence of any type in its decision making process. Hence if it feels that site inspection is required to make correct assessment, it is only genuine and with in law to conduct such an inspection.

The respondent raised the contention that mere registration from the District Industries centre can not be treated as a claim for industrial tariff. It is the tariff regulations, determined by the Hon: KSERC from time to time that categorizes the applicable tariff.

Another point which is highlighted by the respondent is that most of the arguments in the petition are on the decision making process of Hon: CGRF. It is felt that the main concern need to be tariff category and consumer has not given any strong points about the same. During the inspection conducted in the site, no raw material or finished goods were seen kept there. No valid documents which are relevant to the core subject are seen attached to this Petition.

Analysis and Findings: -

The Hearing of the case was conducted on 21.12.2011, in my chamber at Edappally, and Mr. K.L. Antony, Mr. Ajoy K Antony and Mr. Shaji Sebastian represented for the appelland and Smt. Savitha KS, Assistant Executive Engineer, Electrical Sub Division, Palarivattom, represented the Respondent's side. On perusing the Petition, the counter statement of the Respondent, the documents submitted and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The additional demand of power charges, towards the revenue loss due to wrong tariff fixation of the Unit, amounting to Rs. 5, 43,575/-, for the period from the date of connection i.e. October 2007, arose consequent to a site inspection conducted by the APTS of KSEB in 9/2010, and the detection of wrong tariff assigned. The issue of the reassessment bill and the decision to change the tariff by KSEB were questioned in the petition filed before CGRF, Ernakulam. The CGRF considered the contentions of the petitioner, verified the records and decided to conduct a site inspection. But the consumer did

not allow for a surprise inspection of the premises, and hence passed the order dated 17.3.2011 confirming the demand raised against the appellant. The appellant had filed this Appeal Petition contending that the short assessment bill confirmed by the CGRF is not sustainable.

Earlier on 3.9.2010, the premises of the consumer were inspected by APTS of KSEB along with the officers of Electrical Section Kaloor, and this was not disputed by the consumer. During the inspection the team noticed that the electricity was being used for commercial purpose also instead of industrial tariff sanctioned to the consumer. But the inspection team failed to prepare a site mahazar noting the anomaly of, wrong tariff fixation, found on the inspection. The respondent states no site mahazar was prepared since any misuse or malpractice was noticed except a wrong tariff fixation. Hence it is clear that the inspection is not covered by a site mahazar.

As per Section 126 (6) (b) (iv) of the Electricity Act 2003 an 'unauthorized use of electricity' means the usage of electricity 'for the purpose other than for which the usage of electricity was authorized'. In this case it is not considered as 'misuse' or 'unauthorized' use of electricity but treated as wrong tariff assignment which needs to be rectified, if the allegation is found correct.

The appellant challenges the authority of CGRF to inspect the premises of the complainant without issuing a notice. The KSEB Regulations notified in this behalf allows the Forum to specify its own way or procedures in conducting the Case. Hence it is needless to question the wisdom of the Forum to conduct an inspection of the Consumer's premises and take abreast themselves of the true facts that are revealed through a site inspection. The idea to conduct a surprise inspection by the CGRF, that includes an independent member, shall be with good intentions only and I find it difficult to understand why it was not permitted by the consumer and thereafter leveled unwanted questions about their visit. It is quite natural that the CGRF got the impression that there must be something to hide or does not want to reveal before the CGRF that had prevented their surprise inspection.

The appellant's argument that the inspection done by the CGRF is an inspection by the Deputy Chief Engineer of KSEB and therefore they could issue 24 Hrs notice and disconnect the Supply if the visit of an authorized officer of the Licensee was denied etc. are all mere arguments only. I think it is a misconception to assume the Chairperson of CGRF as an Officer of KSEB only, whereas in essence once duly appointed, he/she is the legal Chairperson of a Statutory Forum established by Law.

The contention of the appellant is that no law permits collection of Additional Charges without proper notice, opportunity for reply, hearing the affected party etc. In this case a bill was served on

the consumer along with a notice. It was clearly mentioned in the notice that objections, if any, may be filed before the Assistant Engineer within 7 days from the date of receipt of the bill. In this case the appellant has not taken any pain to file objections against the bill before the AE or any Superior officer above him. He directly approached the CGRF on receipt of the bill with a petition, which is also found to be in order, as the consumer has every right to do so.

It is stated by the respondent that the APTS inspection revealed the main activity undergoing in the consumer No19319 is testing of various products brought from outside and that the applicable tariff of the consumer, considering his purpose of energy use, comes under commercial and not industrial tariff. The appellant requested for tariff change only after the inspection by APTS. The responsibility of fixing the correct tariff initially rests with the Respondent only. Hence the question to be answered is whether it comes under industrial or commercial tariff and if it is commercial, from which date it is applicable as the consumer was given a lower tariff by the Licensee itself for the said activity.

The activities relating to 'testing works only' of various products in a lab, comes under commercial category and do not come under the purview of industrial tariff, as per the existing Tariff provisions. The Licensee's Inspection should conclusively establish what activity is going on there. The actions taken consequent to that inspection would be legally correct and more proper, if the same is supported with a duly prepared site mahazar prepared on inspection.

Further, if the consumer uses energy supplied for a specific purpose under a particular tariff for a different purpose not contemplated in the Agreement executed between them and for which higher tariff is applicable, without KSEB's knowledge and approval, surely there is a case of unauthorized use of electricity. But in this case the Appellant cannot be blamed for the wrong tariff as the responsibility of fixing the correct tariff rests with the Respondent only. The production of edible oil is shown in the Industry license issued by the Industrial Dept. and produced for getting the electric connection under LT IV –industrial tariff. The tariff categorization, of different business activities and according to the purpose of energy use etc. is determined by the Hon: KSERC (Commission), after conducting Public Hearings on the draft tariff proposals and considering the 'National Tariff Policy' announced by the Govt etc. and now a days, it is not at all linked with the Directives or Policies of the Industries Dept.

The appellant has produced few sale tax bills of products sold to various firms from the year 2007 to 2010. The sales tax bills were seen issued in the name of 'Envirodesigns Eco Lab, Aroma Gardens, Lissie Jn, SRM Road Cochin-18. The appellant himself has admitted that he is running

another factory at Edayar Industrial Estate. He has stated that Ingredients are brought as semi-finished raw material from Edayar and final processing and quality assessment are being done at Eco Tower, Janatha Junction, Palarivattom, Ernakulum. The details of products manufacturing at various units under him and whether the sales tax bills produced for the products are manufactured in the premises of the consumer no. 19319 itself, as claimed by the appellant, cannot be confirmed and hence not considered here.

DECISION: -

From the detailed analysis done and the conclusions arrived at, I take the following decision.

Generally speaking, it would have been more appropriate, had a detailed site mahazar been prepared by KSEB upon inspection on any consumer and in the event of detection of any abnormality or unauthorized use of electricity or theft of electrical energy etc. being done there. The procedure to be followed is the same even for the detection of a wrong tariff or misuse of tariff at the consumer end. The mahazar, noting down the irregularities or anomalies detected on the inspection, will aid the Licensee, if it wants to proceed with actions like issue of short assessment bill with retrospective effect or change of tariff etc. The Licensee is bound to establish the 'cause of action' for raising such an additional bill on the consumer. Here, in this case under dispute, there is no site mahazar prepared by KSEB and is a lapse on the part of the respondent. So the finding of CGRF that site mahazar is not a requirement, in the case of detection of wrong tariff fixation application, does not seem to be fully correct, as it may lead to litigation only.

The APTS inspection has found that the consumer was having a wrong tariff and based on it, the respondent has raised the disputed Bill. The fact that the appellant did not permit the visit of the CGRF's (Chairperson and Members) to conduct a surprise inspection (in 2/2011) at his premise and also the fact that the consumer had changed his tariff of Con. No. 19316 to commercial tariff plan on request, immediately after the APTS inspection, corroborates the APTS findings. It suggests me that some other activity might have been going on there for some time, invoking a higher rate commercial tariff. Further, it is felt strange to note that even after changing the tariff of Con.No.19316 to LT VIIA (commercial), on 25.9.2010, (just after the APTS inspection on 3.9.2010), it is seen recording nil consumption for the next six months and very negligible energy recordings there after.

But the respondent has failed to establish the date of occurrence of wrong tariff. They have assumed that the tariff of the consumer has changed from the very date of availing the electric

connection that was obtained in 10/2007. Initially the tariff was LT-IV-industrial and the change of activity could occur any time after getting the connection. I feel the APTS finding of wrong tariff was correct but since the period of wrong tariff is not established inconclusively, I give the benefit to consumer and am therefore inclined to limit the tariff change of Con. No. 19319/LT IV to LT VII A, for just three months prior to APTS inspection done in 9/2010. It is also made clear that the consumer No. 19319 will continue to remain under LT IV- industrial tariff after 9/2010, as the respondent has no case after that date.

Having concluded and decided as above, it is ordered that the disputed bill dated 8.9.2010, for Rs 5, 43, 575/- for the assessment being done for the period of 10/2007 to 9/2010, shall be revised to three months of 6/2010 to 8/2010, as decided above. The Appeal petition filed by the consumer is allowed to the extent ordered and stands disposed of. No order on costs.

Dated the 9<sup>th</sup> of November, 2012.

Electricity Ombudsman.

Ref. No. P/214/2011/ 1444/Dated 09.11. 2012.

Forwarded to : 1). Sri.AntonyK.L.

M/S Enviro designs Eco Labs, 44/178 D-1, Aroma Garden,  
Lissie Junction, SRM Road, KOCHI-18.

2).The Assistant Executive Engineer,  
Electrical Sub Division, KSEBoard, Palarivattom, KOCHI.

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, Consumer Grievance Redressal Forum, KESB,  
Power House Building, Ernakulam- 682018.