

STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No: P/221/2011.

(Present T P Vivekanandan)

Appellant : The Christeen Trust,
Vadavathoor P.O., Kalathpady
Kottayam. Pin- 686 010

Respondent : The Assistant Executive Engineer
Electrical Sub Division, KSEBoard,
Manarcad, Kottayam-19.

ORDER.

BACKLGROUND OF THE CASE: -

The appellant is a registered Religious Trust and was provided with electrical connection, with consumer No.7699 under LT VI A tariff, from Electrical Section, Manarcad, from 15.11.1999 and having a connected load of 4 KW. The appellant is also having two other connections in the same compound, for his kitchen building (consumer No. 5784 under VII A tariff) and for the front office (consumer No.8588 under VII A tariff), both being under the commercial tariff,

While being so, the KSEB officials inspected the premises on 14.10.2005 and detected unauthorized additional load (UAL) of 19 KW being connected and in use. The UAL was regularized on 18.11.2008 in Con. No 7669 under LT VII A tariff, as there were a canteen, a book selling unit and an office unit were functioning in the same premises. The subsequent monthly bill was issued to the Consumer under LT VII A-commercial tariff on 13.1.09. Aggrieved against the tariff change imposed and the monthly bill issued at LT VIIA tariff, the consumer filed objection to the Asst. Exe. Engineer and also approached the CGRF, Kottarakkara, to redress his grievance. Meanwhile the appellant also filed a Writ petition, WP (C) 10869/09 before the Hon High Court of Kerala, which was disposed of, by directing the CGRF to hear and decide the issue. The CGRF disposed the Petition by directing the Assistant Engineer (AE) to hear the petitioner and to dispose the complaint after giving notice to the party. The Forum also directed the consumer to remit 50% of the Bill amount within 7 days from the receipt of the order from the Forum. The Asst. Engineer conducted the hearing on 21.4.2010 and forwarded the report to the Asst. Exe. Engineer for issuing final orders. The AEE disposed the case, by directing the consumer to obtain separate connections for various purposes, by segregating the load in Con.No.7699, and to

approach the Electrical Section, Manarcad, for the same and to continue in the LT VII A –commercial tariff until the connection is segregated. Accordingly the consumer applied for a separate connection in the premise, which was given as consumer No.11515, with a connected load of 17 KW under LT VII-A –commercial tariff in 8/2010. Subsequently a short assessment bill dated 16.2.2011, demanding a sum of Rs. 1, 93, 249/- as arrears towards the difference in tariff rates, for the period from 3/2009 to 8/2010, was issued to the consumer. Being aggrieved at this, the consumer approached the CGRF against the tariff change effected and the short assessment bill issued and the Forum rejected his Petition vide order dated 26.3.2011. Aggrieved by the order of the CGRF, the appellant submitted an Appeal Petition before this Authority.

Arguments 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 Christeen Trust is a religious institution and is a registered trust vide No. 221/99. The Trust is intended for the development of students by giving them counseling and also do other helps so as to bring them up as God fearing children. The Con. No. 7699, with a sanctioned connected load of 4 KW, is the connection given to the above religious institution and is coming under LT VI A tariff, as per the tariff notification and the agreement with KSEB. From the date of connection up to the bill dated 27/12/2008, the monthly bills were issued under LT VI A tariff which was paid regularly and hence there was no arrears. Two more connections were in existence in the same premise, with Con.No.5784 for kitchen building and No.8588, for front office, both under LT VI A tariff. Being a religious institution, the kitchen and the office are the necessary part of the same and as instructed by the officers of the KSEB, both the Con. Nos. 5784 and 8588 were dismantled. When it felt for additional load, application was filed for the same, which was granted by the AEE as per proceedings dated 26.5.2008 and load was regularized in 11/2008. However, when the bill dated 13.1.2009 was issued, the AE changed the tariff from LT VI-A to LT VII-A. Since the decision taken to change the tariff was not proper and without issuing notice to the party, the appellant challenged the same by filing a petition dated 22.1.2009, before the Asst. Exe. Engineer and also requested to reclassify the tariff back to LT VI A.

As there was no reply to the said petition, he approached the CGRF, (South), Kottarakkara, by filing a petition, numbered as OP No.452/2009 dated 24.2.2009. In the meanwhile, the petitioner also approached the Hon High Court by Filing WP (C) No.10869/2009 challenging the illegal change of tariff since KSEB issued an order stating that CGRF has no power to decide on the issue with regard to change of tariff. The Hon High Court disposed of the Writ petition as per judgment dated 9-10-2009 directing the CGRF to decide on the issue and also set aside the said Board order. Thereafter the CGRF disposed of the petition by order dated 15.1.2010 directing the Assistant Engineer to hear the petitioner and to dispose of the complaint after giving proper notice to the petitioner. In the order of the CGRF, it was found that no mahazar was drawn, neither detailing the activities nor was any notice served before issuing the impugned bill.

The appellant further submits that on the basis of the documentary evidence and contentions put forward by the petitioner, the Assistant Engineer, Electrical Section, Manarcad, was fully aware that

their activity is conducting retreat and the premise is principally used for religious activities only and therefore the consumer comes under LT VI A tariff. But to the dismay of the petitioner, the Executive Engineer passed an order dated 25.6.2010 stating that the consumer will continue to remain under LT VIIA-commercial tariff, until the service connection is regularized by the Asst. Executive Engineer. The order dated 25.6.2010 passed by the Executive Engineer is unjust, arbitrary, and illegal and the same was issued violating the principles of natural justice. The Executive Engineer has not heard the party and no notices were issued before passing the said order. The Executive Engineer had passed the order without applying his mind and therefore the order dated 25-6-2010 is liable to be set aside.

Further, the appellant has produced the documents like the trust deed with registration No. 221/99, Govt. order dated 1.6.2005 exempting the Trust from payment of building tax under Kerala Building Tax Act, before the Asst. Engineer to substantiate his arguments. From the objects of the trust deed, it can be seen that the main object is religious activity and the motto of the institution is not profit making. Even though documents were produced before the Assistant Engineer during hearing on 21.4.2010, in the impugned order dated 25.6.2010, the Executive Engineer has not referred the documents presumably for the reason that he has not heard the consumer before passing the order. Hence the order dated 25.6.2010 is illegal and liable to set aside.

The appellant argues that in the meanwhile he has constructed a new building in the same premise and filed an application for new connection which was given as Con. No.11515, with a connected load of 17 KW, under LT VII A Tariff. It is argued that the tariff given is incorrect and he is challenging the same tariff in a separate Petition. Pursuant to an application, addition load was sanctioned to Con. No 7699, by granting 19 KW load, thereby totaling the connected load as 23 KW under LT VI A tariff. The petitioner assumed that since load was regularized under LTVI A tariff, there will not be any penalty on consumer No.7699. However, to its great dismay, the Asst. Exe. Engineer, Electrical Sub division, Manarcad, issued a letter dated 19.01.2011, stating that an amount of Rs.8353/- is pending as the liability of Con. No.7699 and directed to pay the amount, on or before 25.01.2011. When the party reached office for settling the amount, the Assistant Engineer informed that the liability stated in it ,is incorrect and further demand will be issued shortly and subsequently issued a short assessment bill dated 16.02.2011, for Rs.1,93,249/-, as the arrears for the period from 3/2009 to 08/2010, under LT VII A tariff. The appellant submits that the order dated 25.6.2010 passed by the Executive Engineer and the short assessment bill dated 16.02.2011 issued by the AE, are illegal, unreasonable and therefore liable to be set aside.

Challenging the demand raised by the Assistant Engineer, the petitioner approached the CGRF. The Hon CGRF after hearing both the parties, passed an order dated 26.03.2011 and served the same on the petitioner on 18.04.2011. While considering the issue, the Hon CGRF failed to consider the real issue and without touching the merit of the case, had issued a one line order stating that the claims/arguments/points raised by the petitioner, in support of the reliefs sought, are not allowed. The said order is unjust and arbitrary and without considering the grievances highlighted before the CGRF.

Argument of the Respondent: - The respondent denies all the averments and allegations contained in the petition except to the extent he has specifically admitted.

The respondent states that consumer No.7699 obtained service connection from Electrical Section, Manarcad, under LT VI A tariff with a connected load of 4 KW and the consumer was being billed under LT VI A tariff up to 27.12.2008. It is true that, two other connections were also in existence in the same premises with Con No.5784 for kitchen building and consumer No.8588 for the front office both of which were under LT VII A –commercial tariff.

Further it is contended by the respondent, that the appellant had submitted an application for regularizing his unauthorized additional load on 18.11.2008. Based on the completion report filed by the appellant, the Assistant Engineer, inspected the premises of the appellant, and found that the electric supply from consumer No.7699 was being misused mainly for some other purpose, than the purpose for which it was given. That is, it is used not for LT VI A tariff alone or its activities, but for purposes which include, fully furnished office, computer units, preparing compact disc for publication of the magazine, dormitories, kitchen and a book shop. It is found that major portion of the use in the premises comes under commercial purpose. The LT VII A tariff was assigned to consumer No.7699 on 18.11.2008, for the reason that multipurpose activities were being carried out in the premises, which was revealed, during the inspection of AE.

Based on the request of the appellant, power allocation to an extent of 25 KW (including existing 4 KW) was granted to consumer No.7669 on 23.05.2008. Since multipurpose activities are carried out in the premises the consumer requested to dismantle consumer No.5784 and 8588, which were under LT VII A tariff. The load of consumer No.5784 and 8588 were connected with the consumer No.7699. Based on the actual purpose for which energy was used in the premises, the tariff was assigned as LT VII A, even after regularizing the UAL (unauthorized additional load). Hence bill dated 13.1.2009 was issued under LT VII A tariff. It is true that the appellant had approached the Hon CGRF, Kottarakkara, by filing petition dated 24.02.2009, vide OP.No.452/2009. The appellant had also approached the Hon High Court of Kerala by filing WP (C) No.10896/209.

As per the order dated 15.01.2010 of the Hon CGRF, in OP.No.452/2009, a hearing was done by the Assistant Engineer on 21.04.2010, after giving notice to the petitioner. The Assistant Engineer, Manarcad, sought direction from the Executive Engineer, Electrical Division, Pallom, and as such the Executive Engineer issued an order in the matter. The respondent denies the averment that the AE, was fully convinced, that the activities carried on in the premises were on conducting retreat and the premises are principally used for religious activities only. The Executive Engineer has issued order to continue the billing under LT VII A tariff until the UAL is regularized.

Based on the direction of the Executive Engineer, Electrical Division, Pallom, consumer No.7699 has segregated its commercial load and availed a new connection under LTVIIA –commercial tariff with connected load of 17210 watts on 13.08.2010, vide consumer No.11515. This is clear indication that the petitioner has accepted the order of Executive Engineer. After that, the tariff of Con No.7699 was changed from LT VII A to LT VI A, with effect from 13.08.2010. As per the Gazette notification regarding the tariff in KSEB, the order passed by the Executive Engineer is just, legal and proper and has never violated the principle of natural justice. The order of the Executive Engineer is based on the

report on the hearing conducted and the documents submitted by the AE. Hence, the order passed by the Executive Engineer is legal and Consumer is liable to obey the order.

According to the respondent, while assigning the eligible tariff to an electrical connection, the actual activities being carried out in the premises, has to be considered and not based on the evidence of certificate produced by the appellant. There are cases where the activities going on in a premise mismatched with the purpose for which the connection was taken. The appellant's case is an example. Hence the order of Executive Engineer is legally right and has to be implemented.

Another point is that, no penal charge was imposed on Con. No.7699 except the billing done under LT VII A tariff. The appellant challenged the monthly bill dated 13.01.2009 for Rs.13,770/- under LT VII A tariff and Hon High Court had permitted to remit the charges under LT VI A tariff for a period of 3 months only. Then the appellant approached CGRF, Kottarakkara, with Petition No. OP. 452/2009.

The respondent admits the fact that before conducting 'Janakeeya Vydyuthi Adalath' in 2011 by KSEBoard, all Consumers having dispute with KSEB, were informed to submit application for the disposal of the billing related cases pending under this section. As such, the balance amount under LT VII A tariff for the month of 01/2009 was for Rs.8, 353/- , which was informed to the appellant.

The Con.No.7699 was remitting the electricity charges under LT VI A tariff (instead of LT VII A), with effect from 3/2009, as per the interim direction of the Hon High Court. After segregating the commercial load and giving it under a new connection (Con. No. No.11515), the old connection vide Con.No.7699, was again assigned LT VI A tariff, with effect from 13.08.2010. Hence Con.No.7699 is liable to pay the bills under LT VII A tariff from 03/2009 to 08/2010. A short assessment bill dated 16.02.2011 amounting to Rs.1, 93,249/- under LT VII A tariff was issued to the appellant, related to the period from 03/2009 to 08/2010. Hence, the bill issued by Assistant Engineer, is legal and proper and the appellant is liable to remit the same.

The Hon CGRF heard both the parties and passed an order dated 31.03.2011 dismissing the petition of the consumer. The respondent prays to dismiss the Appeal Petition and request to direct the appellant to remit the short assessment bill dated 16.02.2011 for Rs.1, 93, 249/- with surcharge for the period from 03/2009 to 08/2010 under LTVII A tariff and cost to the opposite party.

Analysis and Findings: -

The Hearing of the Case scheduled for 21.12.2011 was adjourned as per request of the appellant and then it was conducted on 16.03.2012, in my chamber at Edappally and Advocate Sri Firoz K. Robin represented for the appellant and Sri. K.C. Augustine, Assistant Executive Engineer, Electrical Sub Division, Manarcad, for the Respondent. On examining the Petition, the counter statement of the Respondent, perusing the documents filed and the arguments made in the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The cause of dispute is as follows. The appellant had submitted an application on 18.11.2008, for regularizing the unauthorized additional load (UAL), availed by it. Based on the application and the completion report of the additional load submitted, the AE, Manarcad, inspected the premises of the consumer and found that the electric supply from Con.No.7699, was being used for other activities

also i.e. for the purpose other than LT VI-A tariff, which include for the purposes of fully furnished office use, running computer units, for preparing CD's (compact disc) for publication of the magazine, for the stay of occupants at the dormitories, for kitchen use and for running a book shop. Since the major portion of the load in the premises comes under commercial purpose, the AE assigned LT VII A tariff to the consumer on 18.11.2008, for the reason of multipurpose activities being carried out in the premises, as revealed in the inspection.

There is no dispute that the appellant's institution is a religious oriented one. But it is not used for religious worship alone and it is a part of the Trust activities among other objects of the Trust. There is no disagreement in the activities going on in the premises. According to the respondent there are some commercial activities like functioning of a studio, CD manufacturing, book sale, functioning of a canteen and a dormitory etc. in the premises, which are supplied electricity from Con No 7699, under LT VI A tariff, given for religious worship activity. The consumer does not dispute the activities listed above but argues that it is a part of the main religious work and hence eligible for the LT VI A tariff.

As per rules, the LT VI A tariff is applicable to premises of religious worship, Govt. or aided private educational institutions, libraries and reading rooms of educational institutions, convents, X-ray units, govt. hospitals, laboratories and mortuaries attached to govt. hospitals, private hospitals registered under Cultural, Scientific and Charitable Societies Act and exempted from payment of income tax.

The appellant's institution will not come under any of the above categories. The points for decision;

1). In view of the rival contentions the main point for decision is whether there was a misuse of tariff?

The main argument of the Appellant is that the Executive Engineer concerned and the CGRF has not considered the fact that the consumer is a religious institution under trusteeship deed and has not referred the documents presented as proof of the evidence, while disposing the petition. The contention of the appellant is that his institution being a religious one will not come under the LT VIIA – commercial tariff. The appellant has produced the true copies of Trusteeship Deed, a Govt. order sanctioning exemption from building tax payment and a letter issued by Kottayam Bishop to prove his version that the appellant's institution is a religious one.

On verifying the copy of the Trust Deed, it is seen that it refers to an amendment effected to clauses 25 & 26, in the deed of declaration of trust, registered as No.36/IV/99 dated 28th January 1999 of Kottayam Sub Registry on 2-8-99. Further the main Objects of the Trust are given as;

- a). to help teenage people and youngsters to develop personality, character and faith in God,
- b). to establish or acquire periodicals, other publications or media to attain the objects,
- c). to engage teachers instructors and give training and education,
- d). to print and publish books, video/audio cassettes for training and educating,
- e). to hold seminars and consultations on social and religious subjects,
- f). to do gospel works and construct buildings for worship of God, training in Christian oriented studies etc.

As per the tariff rules, the premises of religious worship is eligible for the LT VIA-non domestic tariff. That is to say, the Temples, Churches, Mosques or like Institutions meant for religious worship, are eligible for LTVI- A tariff. In the case of the Appellant's Trust, the objects of the Trust deed, produced

as document, show that the Trust is engaged not only in religious activities, but also in cultural and social fields. The work of audio /video cassette production, publication of books, stay by people in the dormitories for training etc, as alleged to be done by the consumer in the said premises, may be part of religious work but it does not fully conform to 'religious worship' activity alone. Therefore it is clear that the above activities do not come under purview of tariff meant for 'religious worship'- LT VI A.

The appellant does not dispute the fact, that the consumer is engaged in a number of various other activities in the same premise, as enumerated by the respondent and stated above. The specific item of audio/video cassettes recording/ duplication units is included under LT VIIA tariff classification. The dormitory accommodation of instructors, teachers etc for training will attract a higher tariff. When different activities are performed in a premise, each individual activity attracting different tariffs, a combination of such activities within a premises of a single electric connection, will attract the highest of the individual tariff, till it is segregated into different independent connections under appropriate tariff. In this case various activities that warrant different tariffs are run using electricity obtained for a religious worship purpose. Therefore the appellant cannot insist LT VI A tariff for the whole premises, when different works or activities, attracting different tariff, are being carried out. The consumer ought to have taken different connections, for different usages, to get the eligible tariff according to use. For multi purpose use of electricity from the electric connection or combination usage in a premise, the highest of the eligible tariff is applicable. Hence the action of the respondent to impose LT VIIA- commercial tariff on the consumer, is found to be justifiable.

2). Whether the short assessment bill issued on 16-2-2011 for Rs. 1,93,249/-- is payable by the consumer?

The appellant had obtained the electric service connection, Con.No.7699, on 15.11.1999, from Electrical Section, Manarcad, under LT VI A tariff with a connected load of 4 KW. During 10/2005, an inspection in the premises revealed that the consumer has availed 19 KW additional load, with out the sanction of KSEB and was paying the penal charges for the same till it is regularized. It is also true that two other electric connections were also in existence in the said premises, consumer No.5784 for kitchen building and consumer No.8588 for the front office, both of which were under LT VII A- commercial tariff, till 15.3.2007. This fact of two independent electric connections under LT VIIA- commercial tariff till 15.3.2007, along with the Con.No.7699, under LTVI-A-non domestic tariff, suggest that the consumer was aware that higher rate tariff is applicable for other purpose usages. When the said two higher tariff service connections are dismantled (as per request of the consumer in 3/2007), and clubbed with the existing service connection No.7699, then that connection (No. 7699) will become a multi purpose and therefore will attract the commercial tariff, as detailed under point(1) above.

The UAL was regularized and separate connection obtained in 8/2010. That is to say, the different activities were segregated and individual connections availed according to purpose in 8/2010. This shows that the consumer has enjoyed a combination of activities through the electric connection No. 7669, till 8/2010. This necessitates the assigning of LT VIIA-commercial tariff for the disputed period and the consumer was paying the electricity charges under LT VIA tariff. Therefore the respondent is

eligible to demand the difference in tariff rate for the said period and I don't find any infirmity in raising the short assessment bill, for the period 3/2009 to 8/2010, for the recovery of actual charges.

The Private Hospitals registered under the Cultural, Scientific and Charitable Societies Act and exempted from Income Tax are only eligible for LT VI A tariff rate and no Religious Trusts has the said eligibility. In this case, the building tax was exempted on the ground that the main activities of the institution are principally religious in nature. The Electric Tariff classification is based purely on the Rules and Regulations issued by the Hon KSERC only and does not depend on other Govt orders.

Decision

From the analysis done and detailed above and the findings and conclusions arrived at, I find no merit in the Appeal Petition filed by the Consumer and hence stands dismissed. However, there is a direction to the respondent, to issue up to 12 installments, if requested by the appellant, to pay the disputed bill. It is also made clear that no interest is payable by the consumer for the Appeal pending period before this Authority and up to 30th day of this order. The respondent shall issue the Bill with 30 days time (due date) for making payment. The consumer may remit the whole amount or the first installment (if requested) by the due date, failing which the consumer is liable to pay interest, for the whole belated period. Having concluded and decided as above, it is ordered accordingly. No order on costs.

Dated the 1st January, 2013,

Electricity Ombudsman.

Ref. No. P/221/2012/1514/ Dated 01.01.2013.

Forwarded to:

- 1). The Christeen Trust,
Vadavathoor P.O., Kalathpady
Kottayam, Pin- 686010.
- 2). The Assistant Executive Engineer
Electrical Sub Division, KSEBoard, Manarcad

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission,
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSEB, Vydhyuthibhavanam, Pattom,
Thiruvanathapuram-4
3. The Chairperson, consumer Grievance Redressal Forum, KSEB,
Power House Bldg, Cemetery mukku, Ernakulam-682018.