

STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/297/2012.

(Present: T.P. Vivekanandan)

APPELLANT : Sri. C.B. Padmakumar,
Padma Nivas, Binny Junction,
Palluruthynada, Kochi-6.

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

ORDER.

Background of the case:

The Appellant is the consumer of electric connection No. 5134, given under LT-VII B commercial tariff from Electrical section, Thoppumpady, for running a STD booth with a sanctioned connected load of 750 watts and continued in the same LT VII B tariff till 3.3.2006. As a part of improving the business, he engaged in running an ice cream cum cool drinks shop. Subsequently, from 3/5/2006 onwards the tariff was changed to LT VII A-commercial, by KSEB considering his load has increased to above 1000 watts and took his new connected load as 2 KW. It is said that, KSEB has conducted an inspection but failed to prepare any mahazar noting the anomalies found if any.

Later, the party discontinued the aforesaid business of ice cream cum cool drinks, on finding the payment of electricity bills unaffordable. He then bought a Photostat machine and engaged in the Photostat works which reduced the consumption but the respondent continued to charge him in LT VII A tariff. It is alleged by the consumer that he was ignorant about the tariff change made by KSEB in 5/2006 and only later when the bills became high even for low consumption, he enquired about it and came to know the tariff change made to higher rate. So the appellant approached the KSEB office on various occasions with a plea to review his bills from 3.5.2006 issued under LT VIIA tariff. The appellant complaints non-receipt of any reply from KSEB office and being aggrieved by this, he approached the CGRF on filing a petition dated 28.4.2012. The CGRF disposed the petition vide order No. CGRF-CR/ COMP.16/2012-13 dated 25/6/2012. It is held therein as follows.

'LT VII A shall be charged only for the bill period from 5/06 to 3/07. Subsequent bills shall be revised to LT VII B. The excess amount remitted shall be adjusted in petitioner's future bills'.

Still aggrieved by the decision of CGRF the appellant has submitted the Appeal petition before this Forum on 01.08.2012.

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.

1). The appellant contended that his business was under the permissible tariff as per the Terms and Conditions of Supply, 2005. He had used the freezer and Photostat machine in different periods. The respondent has not adhered to the procedures and rules specified in the matter of regularizing additional connected load of the consumer in the premises. On the basis of a report from the Senior Supdt of the office, the connected load and the consumption was fixed as above 1000 watts. That officer has no such powers. The Board has not prepared either a site mahazar or issued any notice to the consumer before the tariff change. The failure to produce such evidence substantiates this argument.

The following are the reliefs sought for by the appellant.

1. To assess the consumption for eight months also under VII B tariff and to refund the overcharged amount in a single payment.
2. To restore in the old tariff category since the tariff change was done without issuing a notice to the consumer and based on orders of an officer who has no competence to issue such orders. Besides the appellant demands compensation from the responsible officer.

Arguments of the respondent: -

The respondent has denied all the averments and allegations contained in the petition. The respondent has adduced the following arguments against the contentions of the appellant.

The respondent has contended that the consumer has exceeded his connected load to above 1000 watts which is above his permissible limit for LT VII B tariff. The consumer had purchased a freezer in 3/2006 and was connected to the existing load and thus his total load of the consumer became $(750+500) = 1250$ watts (commonly used freezer had a load of 500 watts). Even taking the consumer's version that the freezer has only 300 watts, then the connected load was 1050 watts. In both cases the connected load of the consumer was above 1000 watts. So the load recorded in the bill recorded as 2 KW was correct. Not only that the consumption recorded for the month of 7/2006 was 540 units and as such, if the monthly consumption of an LT VII B consumer exceeds 200 units, the entire consumption should be charged under LT VII A tariff, as per tariff rules. Hence the change of tariff to VII A is justified on the above grounds and it is the correct tariff applicable to the consumer.

In this case, after the anomalies were reported by the meter reader, the Assistant Engineer inspected the site and confirmed the use of additional load by the appellant. If a mahazar was prepared, the party would have been penalized under section 126. This was intimated to the consumer. As per the I E Act, 2003, Section 126, for connecting unauthorized additional load by the party, it was possible to penalize him, at the rate of two times the applicable tariff, on both 'Fixed charge and the proportionate energy charges', for a period of 12 months from the date of inspection. But here the Board took a lenient view to the consumer in not taking harsh steps like penalization and only changed the tariff to LT VIIA to avoid revenue loss to the KSEB. This caused the consumer to make much difficulty to the Board.

The Tariff change from a higher to lower rate can be implemented by the AEE, only when an application of the consumer, with completion report is filed. The consumer had not submitted any completion report so far for the same. The CGRF has ordered a tariff change with effect from 3/3/2007 which was complied with and the excess amount was credited to the consumer by adjusting to his future bills.

Had the authorized person used his authority, the consumer would have been penalized which is a huge amount for the consumer. So the AE has taken steps to prevent the revenue loss only. The consumer had entered into an agreement with the Board while availing a service connection that he will oblige to the tariff orders. As per the tariff order, it is clearly mentioned that if a LT VII B consumer exceeds his connected load above 1000 watts or his monthly energy consumption exceeds above 200 units, his tariff will be changed to LT VII A category. So the action of the Board to change the tariff from VII B to VII A in 5/2006 is correct and is sustainable by law.

Analysis and Findings: -

The Hearing of the case was conducted on 14.12.2012 in my chamber at Edappally, Kochi and Sri. Padmakumar C.B, the appellant has appeared and argued for his side. Sri. Rajan P.K., the Asst. Exe. Engineer, Electrical Sub Division, Thoppumpady, appeared for the Respondent's side. On examining the Petition, the argument note filed by the Appellant, the statement of facts of the Respondent, perusing 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.

The appellant has admitted that his energy consumption has increased in 5/2006, due to the change of his business from a STD Booth, to that of running an ice cream cum cool drinks shop. According to the respondent, due to this addition of freezer with a capacity of 500 watts to the existing load of 750 watts, his total connected load has gone above 1000 watts, which warrants a higher rate LT VIIA tariff. The respondent argues that, as per the tariff rules, when the connected load exceeds 1000 watts, the consumer has to be charged under LT VII A or if the monthly energy consumption exceeds 200 KWH, then also the entire consumption has to be charged under LT VII A tariff. Considering the above aspects, the respondent has changed the tariff of the consumer from LT VII B to LT VII A in 5/2006 and the subsequent bills were also issued under LT VII A tariff.

The appellant has disputed the above contention of KSEB. The main allegation of the appellant is that, after the site inspection by the KSEB officials, neither a site mahazar was prepared nor a notice was issued to him, convincing him the existence of any additional load in his premises. The respondent has also corroborated this version of the appellant. The respondent has stated that they did not want to take harsh steps against the consumer since this is a mild case and they had taken only steps to prevent the revenue loss of KSEB by changing the tariff to its eligible one. This procedure adopted by the respondent is not a correct step and hence cannot be accepted. When ever an irregularity is noticed, it has to be dealt with as per the rules framed to deal such cases. The tariff change has to be preceded by a notice to the consumer by the Licensee, supported by the facts or documents, to establish the same.

There is no document produced from the respondent's side to suggest that the consumer has exceeded his connected load above 1000 watts. Moreover, a note filed as document by the party, said to be written by the Sub Engineer of the Section office, after inspection of his premises and

noting down the connected load details listed and signed with date as 26.5.2006, shows the total load connected of the consumer as 995 watts only.

Later in the year 2007, the appellant again switched over his business from an ice cream shop to Photostat works by installing a photocopy machine, after removing the freezer.

The appellant states that he had approached KSEB office, for restoration of tariff to LT VII B after the discontinuance of the business of ice cream cum cool bar. The appellant's contention is that he has not made any change in the wiring or connected excess load exceeding 1000 watts, so as to make the submission of a completion report mandatory for the change of tariff, as argued by the respondent. It is seen that the respondent has failed to give a reply on the appellant's request to cancel the tariff change made. In the absence of any site mahazar/inspection reports, the total connected load cannot be ascertained correctly based on presumptions. The appellant was not issued a notice or not heard by the respondent before changing the tariff to a higher rate. Hence the action of the respondent in changing the tariff of the consumer to LT VII A category from the existing LT VII B tariff done in 5/2006 is found to be not in order and hence has to be corrected.

The appellant was seen changed his business at least two times, first by adding a freezer and then removing the same and connecting a Photostat machine in its place. This means he has made some changes in his electrical installations load. But as per clause 26 of the KSEB T & C of Supply, 2005, - Extensions, Alterations & Renovation of installations: - "Should the consumer at any time after the supply of energy has been commenced, desire to increase the number or wattage or capacity of lights, fans, motors etc on his premises on a permanent or temporary basis or in any way alter the position of his wiring therein request thereof must be made by the consumer in writing to the Board....". Here the consumer is seen to have done the alterations to his electric connection without the knowledge of the Licensee. Hence, there was found some lapse on the part of consumer also in not intimating the KSEB about his additions and deletions of the Load connected to the Electric Supply system of KSEB. The respondent has inspected the site in 5/06 and noted the freezer load as 500 watts and the corresponding month's consumption was also high (more than 200 units) warranting a LT VII A tariff rate for billing purpose and accordingly has ordered the tariff change. The action of KSEB, in changing the tariff of the consumer to higher rate is found to be done, not as a deliberate attempt to harass the consumer, by this Forum. There was lapse on either side and for the reasons stated above, I am of the view that the consumer is not eligible for any compensation, on the ground of wrong tariff change ordered by the Respondent, but feel that justice will be met by ordering the refund of excess amount collected by KSEB.

DECISION: -

The respondent has not acted as per the rules in force, while effecting the tariff change of the appellant from LT VII B to LT VII A category in 5/2006. It is true that, if the consumer has exceeded his energy consumption to more than 200 units per month, the party has to be billed under LTVIIA tariff. The billing under LT VII A tariff has to be raised for that particular month, but that does not make the consumer liable to be changed over to LT VII A tariff permanently, from that date. An inspection and a site mahazar or a notice to the same, is the minimum requirement followed by a new agreement, for the change of tariff unless there is a request with necessary papers submitted from the consumer side. In the present case, the rules are not followed strictly by the respondent. Also, even though the consumer has altered his connected load twice, first by installing a freezer

and then by a photo copier machine having different capacity ratings, the net total connected load has not been established as gone above 1000 watts.

For the above reasons stated, it is decided that the consumer shall remain under LT VII B tariff for the whole disputed period i.e. from 3/2006 onwards and he shall be billed accordingly. If the energy consumption in a particular month has crossed the limit of 200 units, that month's billing may be done under LT VIIA, as per rules. For all other months having below 200 units per month, he shall be billed under LT VII B tariff. The excess amount collected by way of change of his tariff to LT VIIA from LT VII B from 5/2006 onwards, shall be worked out as stated and refunded to him, with applicable interest from the date of payment to the day of refund, with in 60 days of this order.

It is made clear that the excess amount already adjusted in the future bills of the consumer, if any, as per the CGRF order dated 25.6.2012, shall not be reopened. But a calculation statement of the revised bills shall be prepared for the whole disputed period, including the above adjustments made, if any, and a copy of the same shall be issued to the appellant for his information alongwith the refund of the balance amount.

Having concluded and decided as above, it is ordered accordingly. The Appeal petition filed by the consumer is found having merits and is allowed to the extent ordered. No order on costs.
Dated the 14th of March, 2013,

Electricity Ombudsman

Ref. No. P/297/ 2012/ 1625/Dated 14.03.2013.

Forwarded to

1. Sri. C.B. Padmakumar,
Padma Nivas, Binny Junction,
Palluruthy nada, Kochi-6.
2. The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board, Thoppumpady.

Copy to: -

- 1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.
- 2). The Secretary, KSEB,
Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4
- 3). The Chairperson, Consumer Grievance Redressal Forum,
KSEB, Power House Bldg, Ernakulam-682018.