

**THE STATE ELECTRICITY OMBUDSMAN**

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**APPEAL PETITION NO. P/266/2012.**

(Present: T.P. Vivekanandan)

Appellant : Sri. G. Gopinathan  
Managing Partner,  
Bharath Hotel, D.H Road,  
Ernakulum.

Respondent : The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
College, Ernakulum.

**Background of the Case: -**

The appellant is the Managing Partner of M/s Bharat Hotel, D.H. Road, Ernakulam, a partnership firm engaged in the Hotel business. The Hotel is said to be providing free accommodation to its staff in the residential house No. 39/290 A & B in Asari lane, Karikkamuri, Ernakulum. This house belongs to the appellant and is having a 1-phase electric service connection with Consumer No 6469-9, under College Section, Ernakulum. It has a connected load of 3470 watts and the original tariff assigned was domestic LT- IA tariff. While so in 8/2007, the tariff was changed from LT IA to LT VIIA-commercial, for the reason that the premise is being used as Lodging/Hostel facility of the Hotel employees, which comes under commercial category. The consumer was paying the electricity bills under commercial tariff since then, without any protest or raising any objection against the tariff change made by KSEB way back in 8/07 till 8/2011.

Against this tariff change from domestic to commercial category done in 8/07, the consumer filed a petition before the Assistant Engineer, College Section only on 3/8/2011. The consumer's said letter has been replied by the respondent that the premise is occupied as dormitory/bachelor quarters and hence not eligible for domestic tariff, as per the prevailing tariff classification. The CGRF, Ernakulum, before whom the petition was filed by the consumer against the said decision of KSEB and requesting for restoring the tariff back to LT IA category, has dismissed the same. This Appeal Petition is filed as the petitioner is still aggrieved by the said order dated 4.2.2012, in OP No: 60/2012 of CGRF, on the issue stated above, among other things.

**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.

M/S. Bharath Hotel, D.H Road, Ernakulum is a partnership firm, which is engaged in the Hotel business and the appellant is the Managing partner of the Firm. The Bharath Hotel is providing free accommodation to its members of staff as a welfare measure and they are provided stay in the house No.39/290 A & B in Asari Lane, Karikkamuri, Ernakulum. The residential house originally belong to the appellant's mother, late Smt.G. Padmavaththi, and the appellant got the house as per the 'registered will' dated 10.08.2001 executed by his mother. The electricity connection to the residential house is provided (consumer No.6469-9) under domestic tariff with a connected load of 3470 watts.

The members of the staff of Bharat Hotel are using the residential house only for their stay there. No commercial or trading activity is carried on or undertaken in the house. Since no commercial use or activity is carried on in the house and its premises and the electricity is used only for residential purpose such as for lights, fans, radio and other appliances in domestic use of the residence, the KSEB is entitled to claim electricity charges only in accordance with the Tariff LT-1 Domestic. The KSEB had accepted the residential house under Domestic tariff under LT-1 (a) originally. The true copy of the electricity bill dated 08.06.2007, in respect of the residential house, is marked as annexure-C.

But later, the KSEBoard changed the tariff to LT VII-A, treating the stay of the members of the staff of Bharat Hotel in the Residential House as a commercial use. The Hotel is not levying any amount or fee from the members of the staff for their stay in the House. A true copy of the electricity bill dated 24.09.2011 issued by the KSEBoard to the appellant in respect of the Residential House is marked as Annexure-D, which shows that the KSEB is now charging the Residential House under tariff L 7-VII-A.

The appellant was requesting the respondent to rectify the mistake by changing the Tariff LT 7-A to LT-1 (a) domestic and categorize the electricity connection to the Residential House and issue bills accordingly, and also requested to refund the excess amount already collected from the appellant. A true copy of the request dated 03.08.2011 sent by the appellant to KSEB is marked as Annexure-E. The respondent issued a reply dated 08.08.2011 stating that the premises is occupied as dormitory/ bachelors quarters and therefore, it is not eligible for domestic tariff as per the prevailing tariff classification. A true of the said reply dated 08.08.2011 is marked as annexure-F.

Aggrieved by the decision of the respondent, the appellant filed a petition under section 42 (5) of the Electricity Act 2003 before the Hon CGRF and the Forum after hearing, passed an order No. CGRF-CR/Comp 60/2011-12 dated 04.02.2012 dismissing the appellant's petition. A copy of the said order dated 04.02.2012 passed by the Hon CGRF is marked as annexure-G.

It is humbly submitted that the decision of the Hon CGRF dismissing the petition of the appellant is unsustainable in law, erroneous, perverse and liable to be set aside. The CGRF has not considered the points and grounds raised by the appellant in the correct perspective and in accordance with law. Further, the finding of the Hon CGRF that the staffs of the Hotel who stay in the residential house are there to conduct the hotel business activity is contrary to facts, perverse and unsustainable in law. The finding of the Hon CGRF that the free accommodation given to the staffs welfare of the Bharat Hotel, cannot be included in the ambit of domestic purpose, as envisaged in the tariff order dated 26.11.2007, is also perverse and unsustainable in law. The further finding of the Hon CGRF that the staff of Bharat Hotel are associated with the hotel business and that such a premises has to be

identified as a hostel meant for a commercial activity and hence the application for commercial tariff to such a premise is in order, are also contrary to facts, perverse and unsustainable. There is no basis or material in support of the above findings of the Hon CGRF. The finding of the Forum that the free accommodation given to staff may be as part of the agreement condition is also without the support of any material or evidence. It is submitted that there is no merit in the findings of the Hon CGRF taken against the appellant in annexure- G order. The Hon CGRF ought to have allowed the petition filed by the appellant and granted the reliefs sought for in the petition.

Without considering and appreciating the issue in the proper perspective, the respondent had taken a decision that the tariff under LT-VII-A is applicable, to the residential house. This house is far away from the Bharat Hotel and is situated in a different location.

It is submitted that the Hon CGRF and the respondent have not considered the load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required. When the electricity consumed in a residential house, does not exceed over and above the connected load, there arises no question of changing the tariff into LTVII-A category. There is no legal basis or reason in changing to LT-VII A tariff. The KSEBoard ought to have charged the residential house only under tariff LT-1 domestic.

For the reasons stated above it is humbly prayed that the Hon Ombudsman be pleased to call for the records of the above case and set aside annexure-G order No. CGRF-CR/Comp 60/2011-12 dated 04.02.2012 passed by the Hon CGRF and allow the petition filed by the appellant and grant the reliefs sought for by him in the petition filed under section 42 (5) of the I E Act 2003 and allow this appeal.

The appellant has produced a copy of the judgment dated 6/11/2012 in WP (C) No.15966/2012 of the Hon High Court of Kerala, pronounced recently, which is almost a similar type of dispute. It is held therein that "Even in case the tenant is an establishment, who is utilizing the rented premises for providing accommodation to their employees, such occupancy cannot be treated as a Hostel, Lodge, Guest House or Rest House. The unilateral decision taken without examining any such aspects cannot be sustained". The Counsel to the appellant has stated that the verdict is squarely applicable in the present case and pleaded to decide the issue with due consideration of the said Judgment.

Arguments of the Respondent: -

The respondent has submitted the statement of facts opposing the contentions of the appellant. The Hon CGRF, Ernakulum, on proper appreciation of evidence and contentions raised therein, has dismissed the petition by order dated 04.02.2012. All the statements, averments, allegations and contentions in the above appeal except to the extent which are specifically admitted hereunder are denied by this respondent and may be considered to have been rejected as false and baseless. The appellant is not entitled for any of the reliefs sought as it is not maintainable either in law or on facts.

The Consumer No.6469-9 is registered in favor of the appellant under LT-1 (a) tariff and domestic LT-1 (a) tariff was assigned on the pretext that the said premise is used solely for domestic purpose. However, the said premise is being used by the appellant as a private hostel for accommodating his hotel staffs who are working at Bharath Hotel, Ernakulum. At any stage the said facts were never disputed by the appellant.

The statements in the paragraph 2, 3 and 4 are misconceived and incorrect, hence denied by the respondent. Pursuant to an inspection carried out in 8/2007, it was revealed that the said premise is being used as a private hostel, for accommodating bachelors in dormitories and amounts to misuse of domestic connection for commercial purposes and hence tariff was changed to LTVIIA on 16.10.2007. Thereafter, Rs.100/- per KW was charged bimonthly towards fixed charges as per the tariff rules. It is pertinent to note that from 10/2007 onwards the appellant has remitted the fixed charges as well as the energy charges under LT VIIA tariff without any objection and complaint. After accepting the tariff change carried out in 2007 and after consuming energy under the said tariff so long, the party is now stopped from preferring such a highly belated claim after a lapse of almost four years.

An inspection, as per Regulation 26 of the KSEBoard T & C of Supply, 2005, was conducted in the consumer premise in 08/2007, pursuant to an application made by the consumer for enhancement of his connected load. During the inspection it was found that said premises is used for non domestic purposes and that it has been converted into a dormitory for accommodating the employees of the Hotel as bachelors. The Connected load of the house was enhanced to 3470 watts, on the request of the appellant and a sum of Rs.4000/- was collected towards additional cash deposit under LT VII A tariff, for regularizing the additional load. That is, even the connected load to the aforesaid premise was enhanced under LT VII A tariff only at that time and no objection/dispute whatsoever, have been raised by the appellant, as against the tariff which was applicable to the said premise and hence the consumer had virtually accepted the change of tariff effected in August, 2007.

The statements in paragraph 4, 5 and 6 are not correct and baseless, hence denied. No documents are produced either before the CGRF or before them, by the consumer to retain the connection given in favor of the consumer, under LT-1(a) tariff. Whereas, it has been admitted that the said premises is used as private hostel, for accommodating the staff of the Hotel of which the appellant is the MD. As admitted by the appellant, commercial activities are carried out at the said Hotel, where in LT VII A tariff is applicable. The above premises, where in consumer No.6469-9 is registered in favor of the appellant, is used for accommodating the staffs and employees of the said Hotel and hence it is to be treated as an extension of the activities carried out by the mother concern, the Bharath Hotel.

The term 'Domestic' means, "of or involving the home or family". Hence in the present case the said premise is occupied by unrelated persons at the instance of the appellant, with a motive of profit making and thereby has misused electricity unauthorisely. Hence for the aforesaid reasons, the tariff applicable to the premises owned by the appellant cannot be converted to LT-1 (a) from LT VII A. The Hon CGRF has accepted the contentions of the respondent and rightly found those hotel employees residing in the above premise is for the hotel business, rather exclusively associated with the hotel business and thus the said premise has to be identified as a hostel meant for commercial activities. The order dated 04.02.2012 of the Hon CGRF, Ernakulum is legal and proper. The contentions raised by the appellant in the appeal memorandum contra to the above are made without any bonafide and hence liable to be dismissed.

Moreover, as per gazette notification dated 26.11.2007 issued by the Hon KSERC vide order No. TP 23 of 2006 and TP 30 of 2007, private hotels/lodges/guest/rest house, will fall in LT- VII A tariff. Hence

the tariff applicable to the premises owned by the appellant is in LT VIIA. Thus the conversion of tariff applicable to a premise owned by the appellant from LT-1 (a) tariff to LT VII A tariff is correct and this respondent have not done anything which is contrary to law as alleged. The reply given to the request for tariff change and the bills issued to the appellant after the tariff change done are legal and proper.

The petition filed before the Hon CGRF, Ernakulum was highly belated and the delay of almost four years in staking the claim is left unexplained. No sufficient reason explaining the said delay has been raised either in the petition or in the appeal memorandum. Though, tariff applicable to the premise owned by the appellant was converted from LT-1 (a) to LT VII A, as early as in 8/2007, the consumer preferred his first complaint against the same only on 3.8.2011. No cogent reasons have been stated by the consumer for explaining the said delay of four years. Thus the said complaint before the CGRF, Ernakulum itself is not maintainable either in law or on facts. The grounds A to I, cited in the Appeal Petition to assail the order dated 04.02.2012 of Hon CGRF, are baseless, illegal, improper and denied and the appellant is not entitled for the reliefs as prayed for. Hence it is humbly prayed that this Hon Forum may be pleased to accept the above contentions and dismiss the above Appeal with cost.

The respondent did not file any arguments, on the point that the 'Hostels or accommodations' of the employees of a Firm, need not be booked under the commercial category based on the Judgment of the Hon High Court cited above.

ANALYSIS AND FINDINGS: -

The hearing of the case was done on 26.09.2012 and 30.01.2013, in my Chamber at Edappally and the appellant was represented by his Learned Advocate, Sri. Prinsun Philip, and the respondent's side by the Assistant Executive Engineer, Electrical Sub division, College, Sri Ramesh Babu and they have argued the case, mainly on the lines stated above. On examining the Petition 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 decisions thereof.

The main dispute relates to the tariff assigned to the appellant's house, which is used for the stay of his Hotel employees. The KSEB is supposed to assign the tariff to the consumer, based on the guide lines, directions and notifications issued from time to time, by the Hon KSEB, which is the statutory empowered body to classify the appropriate tariff of a particular class of consumers. Accordingly, the tariff of a consumer is fixed based on the purpose or the activity for which the electrical energy was utilized. In this case, originally the tariff assigned to the said house was under domestic tariff, as it was used for a residential purpose. Later, it was discovered, pursuant to an inspection carried out in August 2007 that the house is being used for the stay of Hotel employees and hence changed the tariff. The respondent alleges it as 'misuse of tariff' given for a domestic purpose, utilized for a commercial purpose of providing lodge/hostel facility to the staff of a Hotel.

The main contention of the appellant is that the employees of the Hotel are accommodated in the house is true, but they are only staying there as in a house. Further, 'electricity' is being used there just like a residential purpose and since no commercial business or activities are under going in the said premises, he is eligible for domestic tariff, argues the appellant.

The Hon High Court order in WP (C) No.15966/2012 dated 6.11.2012, which deals a similar issue, was produced by the Counsel to substantiate the argument that the appellant is eligible for domestic tariff in this case. The Hon Court, in the said WP has made observations against assigning commercial tariff while dealing a similar issue, but has not delivered a firm decision, on the tariff applicable in the case referred. The Hon Court has directed the KSEB authority to take appropriate decision after giving an opportunity to the consumer being heard and as per rules. Hence, I feel since a final decision on the eligible tariff is not decided by the Hon High Court, it cannot be made applicable in this case.

Further, in the 'Schedule of Tariff and Terms & Conditions for Retail supply by KSEB with effect from 26.11.2007', published in Kerala Gazette on 27.11.2007, by the Hon KSERC, it is classified as follows;

"LT- VI (B) -

The tariff applicable to .....Hostels of educational institutions (other than self financing educational institutions) affiliated to Universities or under the control of the Director of Technical/ Medical education/public instruction or such other offices of Govt. or run by the Govt. or State social Welfare board, Hostels run by institutions that are registered under cultural, scientific and charitable societies Act and exempted from payment of Income Tax....." .

That is to say, the electricity being used for the above listed activities (among others) will fall under the Tariff of LT VI-B (non domestic) category.

From the above list, it is seen that the Hostels run by Govt. Educational Institutions for the students occupation and the Hostels of the Institutions registered under Charitable Societies Act, are not even given the benefit applicable to residential purpose, i.e. the domestic tariff and instead given a specific higher tariff of LT VI-B-non domestic with rates much higher than domestic rates. Moreover, I feel the student's Hostel is more eligible for a concessional tariff than an employees Hostel, as the employees are salaried class of people compared with non earning 'students community'. Hence I am of the view that the 'accommodation provided to the employees of a Firm or Concern like a Hotel', will not fall under a residential purpose activity and hence not eligible for domestic tariff.

It is argued by the appellant that the Hon CGRF and the respondent have not considered the load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required and states that when the electricity consumed in a residential house, does not exceed over and above the connected load, there is no need of changing the tariff into LTVII -A category. The above argument does not seem to be correct. The tariff is decided in general, by the activity or purpose for which the electricity is being utilized by the consumer and in particular, in accordance with the Tariff notification issued by the statutory body, the Hon Commission, who fix the appropriate tariff of the consumers, from time to time after conducting public hearings. The load factor, power factor, energy consumption etc does not influence the tariff fixation of a consumer.

The consumer has not raised any objection against the Tariff change (to higher slab), effected in 10/2007, almost for the last four years i.e. till 8/2011 and he has remitted all the bills accordingly. This suggests me that the consumer was aware of the tariff change made in 10/2007.

DECISION:-

The appellant has produced a copy of the judgment dated 6/11/2012 in WP (C) No. 15966/2012 which is a similar type of dispute. The Hon Court has made some pertinent observations and has not inconclusively ordered the Employees Hostel accommodation will fall under 'domestic tariff. The Hon Court has remanded the case to KSEB with a direction to fix the appropriate Tariff after giving the consumer an opportunity of being heard. Hence the judgment is not relied upon in this case.

As per the tariff rules prevailing at least from 2002 onwards, it is an undisputable fact that the private hostels/lodges/guest/rest houses comes under the purview of LT VII A commercial category. But here the question to be answered is 'whether the rent free accommodation provided by a person in his own building to his employees can be considered as a private hostel or lodge'?

The term "Home, family, domestic purpose" etc are given importance in our society and is usually given preference in almost all fields, whether it relates to electricity tariff, water charge, LPG Cylinder rate etc. Even if a family is staying in a Lodge or Guest house where no commercial activity or purpose is being done, the tariff assigned for such an accommodation or stay is classified as under commercial category. This is fixed by the Hon Commission after conducting Public hearings. The Hon Commission has not treated in par with 'domestic purpose' that types of stays or accommodations, but differently and assigned a higher rate tariff. Therefore I am of the considered opinion that a group of employees of a Hotel or any Business establishment, staying in a House, tantamount to be treated as a Lodging facility only and the eligible tariff is LT VII A-commercial and cannot be treated in par with a domestic family for the reasons stated above.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the consumer is found devoid of merits and stands dismissed. No order on costs.

Dated the 26<sup>th</sup> of March, 2013.

Electricity Ombudsman

Ref. No. P/266/2012/ 1653/ Dated 26.3.2013.

- Forwarded to :
1. Sri. G. Gopinathan  
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- Copy to: -
- 1). The Secretary, Kerala State Electricity Regulatory Commission,  
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  - 3).The Chairperson, Consumer Grievance Redressal Forum,  
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