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APPEAL PETITION NO. P/315/2012.

(Present T.P. Vivekanandan)

Appellant : Sri. Simon K. Francis
Joint Managing Director,
Park & Hotels (Dream World),
Chalakkudy, THRISSUR-680 307.

Respondent (1). The Special Officer (Revenue),
KSEB, Vydyuthibhavanam, Pattom, : ..
THIRUVANANTHAPURAM.

(2). The Deputy Chief Engineer.
Electrical Circle, KSEBoard,
Irinjalakkuda, THRISSUR.

ORDER.

Background of the case: -

The appellant, M/S.Kanjirappally Amusement Park & Hotels (Dream World) represented by its Joint Managing Director, Sri. Simon K. Francis, is a HT consumer having a contract demand of 400 KVA under Electrical Section, Pariyaram. The consumer had made a representation before the KSEB on 9-12-2011, requesting to change the tariff from HT IV commercial to HT I industrial. Since no action was taken to dispose the representation, the appellant filed WP(C) No.2225/2012 before the Hon: High Court of Kerala. The WP was disposed of by the Hon: High Court on 03.01.2012, by directing the first respondent, the Special Officer (Revenue) to dispose of the petition within two months from the date of receipt of a copy of the judgment after affording an opportunity of hearing to the petitioner. The Special Officer heard the complainant on 3-5-2012 and issued orders rejecting the request of the consumer, vide order no. HTB-1/3760/2011-12/SOR/ dated 03.5.2012. The complainant challenged the said order before the Hon: High Court of Kerala by filing W P (C) No. 11517/2012 which was disposed on 3-7-2012 by directing to file an appeal before the CGRF. The CGRF dismissed the same as it found that the petition is devoid of merits. Being aggrieved by the decision of CGRF, in Order No. CGRF-CR/Comp.66/2012-13 dated 27/10/2012, the appellant has submitted the Appeal petition before this Forum.

Arguments of the Appellant: -

(1). The complainant is running an amusement park situated 8 kms away from the Chalakkudy-Athirampilly route. The complainant has established the unit in an extensive area spending a huge amount. A large amount of loan has been taken from various financial institutions to establish the unit. Apart from the main office buildings, there are a few residential quarters for the electrical and sanitary workers working in the unit. There are no commercial buildings inside the park except the snacks shop run by the unit itself for the benefit of the visiting public.

(2). The KSEB is charging the HT-IV Commercial tariff instead of HT-1- Industrial on the petitioner. The KSEB has prescribed a schedule of tariff as per order no: TP 23/2006, TP 30/2007 and TP 66/2009 dated 02.12.2009. Therein High Tension (HT-IV) Commercial has been made applicable to the following shops and the same reads as follows:-

“ Tariff applicable to Airports, Hotels/Restaurants, Lodges, Hostels, Guest/Rest House, Travelers Bungalows, Commercial Cold Storage, Freezing unit, Commercial Establishments, Business houses, Film studio, Cinema theatres, Self Financing Educational Institutions, Hospitals other than Govt. Private nursing homes, Seafood processing units, Milk chilling plants, Private scanning units, Pvt. X-ray units, Private Clinical Laboratories, offices/Telephone Exchange of Telecom Companies, Radio Stations, Television Broadcasting companies, Television channels, Construction works.”

Similarly, the High Tension (HT-1) Industrial has been made applicable to the following institutions;

“Tariff applicable to Printing Presses (including presses engaged in printing dailies), Plantations, granite crushing units, Industrial consumers, Daily farms, Hatcheries, Software development units, all Non-agricultural pumping, Drinking water pumping for public by Kerala Water Authority, Corporations, municipalities and Panchayath.”

(3). The consumer pumps water in the pools and other entertainments by using electrical motors. He is using electric motors for running the amusement park and employs more than 20 workers in the amusement park. Hence it comes within the definition of a factory. In this connection it may be noted that under section 29 (K) of the Factories Act, making, altering, repairing, ornamenting, finishing, packing, Oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adopting any article or substance with a view to its use, sale transport, delivery or disposal or pumping oil, water, sewage or any other substance is also a manufacturing process. Since there is pumping of water in the unit, amusement park squarely comes within the definition of a factory.

(4). By virtue of the provision of the Electricity Act, 2003 and the Regulations specified to the KSEB by the Regulatory Commission and the Terms and Conditions of Supply, KSEB has prescribed the schedule of tariff for retail supply of electricity. The tariff mentioned in the schedule applies to consumers to whom the KSEB has undertaken or undertakes to supply electricity. The rates given in this schedule are exclusive of Electricity Duty and any other cesses, taxes, duties that may be levied or imposed in future by the Govt. or the Commission, which are payable in addition to the charges as per the tariff mentioned in this schedule. Different rates are prescribed for HT industrial /Commercial/ Agriculture and for LT consumers. The tariff of the complainant's establishment has been fixed as HT-IV Commercial.

- (5). The complainant's establishment does not come within the establishments mentioned under the schedule for commercial consumers. The complainant's establishment cannot be treated as a commercial establishment or business house. It can only come under the category of industrial consumer. If so the complainant is liable to pay only a lower rate towards electricity charges. The consumer has been paying amounts of Rs.20000/- to Rs 30000/- per month towards electricity charges. During Saturdays, Sundays and holidays, consumption of electricity is higher and had he been treated as an industrial consumer there will be a substantial reduction in electricity charges.
- (6). Pointing out these facts, the party made a representation before the KSEB on 09.12.2011, requesting it to change the tariff as an industrial consumer under HT-1 (Industrial) instead of the commercial category (HT-IV- commercial tariff).
- (7). The impugned order dated 27.10.2012 of the CGRF is illegal as the said order is passed without appreciating the contentions of the complainant in the proper perspective and is liable to be set aside by this Hon Forum. The finding of the CGRF that which formed the basis of its decision is that "The all non agricultural pumping is mentioned along with drinking water pumping in the tariff order and the Forum feels that this itself clarified that the purpose of all these "non agricultural pumping" should be similar to the case of "drinking water pumping" and can never be commercial activity". The said finding of the CGRF is patently illegal. If the "all non agricultural pumping" mentioned under the HT-1 - Industrial Tariff is similar to "drinking water pumping", there was no need to mention both separately. It is nobody's case that the complainant is not pumping water to facilitate rides in the Amusement Park.
- (8). Again, there is no case for the KSEB that what the complainant does in the Amusement Park is not "non agricultural pumping". There is no case that it is agricultural pumping either. Therefore, the activities in the Amusement Park run by the complainant come under the HT-1 Industrial tariff. Hence, as the activity in the Amusement Park is non-agricultural pumping, it can come only under the HT-1-Industrial tariff and not under the Commercial Tariff, as found by the Forum.
- (9). It is clear that the establishments included in HT IV Commercial, do not include the category of Amusement parks. The closest Tariff under which it can be included is the HT-1 Industrial, as the non agricultural pumping "which is being done in the Amusement Park is mentioned therein. The CGRF should have seen that the mere running of a snack bar, in the Amusement Park of the customers who use the rides will not convert the entire activity in the Amusement park into the one under the HT IV Commercial Tariff. The CGRF should have followed the dictum of the Hon High Court in the Judgment reported in 2011 (1) KLT 623. The CGRF should not have refused to apply the said decision without assigning any reason for the same.
- (10). The CGRF should have seen that the mere fact that the running of Amusement Park has a profit making motive, will not take it out of HT-I Industrial Tariff to the HT-IV Commercial Tariff. The CGRF should have actually bifurcated the activities in the snack bar inside the Amusement Park and the other activities in the Amusement Park as HT IV Commercial and HT I Industrial respectively and should not have categorized the Amusement Park as such coming under the HT-IV Commercial tariff.

(11). Forum below should have relied on 29 (k) of the Factories Act as contented by the consumer and ought to have found that the activities in the Amusement park amount to manufacturing process as defined therein. The purpose of the Factories Act is to provide various guidelines and maintain standards necessary for factories and Forum may decide accordingly.

Nature of relief sought for: -

- i). Set aside the order No. CGRF-CR/Comp.66/2012-13 of the CGRF, Ernakulum, dated 27.10.2012.
- ii). Direct the KSEB to include the complainant in HT-I Industrial tariff forthwith.

Arguments of the Respondent: -

The respondents deny all the averments and allegations contained in the compliant except to the extent as are expressly and specifically admitted here under.

(1). The petitioner has an HT electric connection under Electrical Section, Pariyaram. He has filed a complaint before the Hon CGRF and the same was dismissed on 27.10.2012. Albeit the activities of the complainant's undertaking would come under the definition of the factories Act 1948, this has no relevance in determining the electricity tariff.

(2). From the short title and extent of Factories Act 1948; "the Factories Act is meant to provide protection to the workers from being exploited by the greedy business establishments and it also provides for improvement of working conditions within the factory premises. Hence, a beneficial construction should be given and the provision of the Act should be so constructed/interpreted so as to achieve its object, i.e. the welfare of the workers and their protection from exploitation and unhygienic working conditions in the factory premises" (Ravi Shankar Sharma v.State of Rajasthan, AIR 1993 Raj 117). From the above, it is obvious that the determination of electricity tariff has no connection with the Factories Act 1948. The determination of tariff for electricity comes under the provision of the Indian Electricity Act 2003 itself.

(3). The Board has classified its consumers into categories on the basis of supply and the purpose for which supply is required and charge different tariffs to different categories of consumers in compliance with the directions issued by the Kerala State Electricity Regulatory Commission in this regard. From the name of the complainant's establishment, it is obvious that it is an amusement park and no industrial activities are going on there. The activity of the complainant's establishment never comes under the industrial nature even on the literal or harmonious construction. Hence the inimical argument of the complainant may be dismissed treating it as sans substance.

(4). It is settled law that the objects and reasons of the Act are to be taken in to consideration in interpreting the statute. It is a cardinal principle of construction of statute or statutory rule that efforts should be made in constructing the different provisions, so that each provision may have effective meaning and implementation. The legislative policy shall be bear in mind while applying the provisions of the statue. From the above it is obvious beyond doubt that factory Act 1948 has no bearing with the determination of Electricity tariff. Hence, this argument of the compliant is frivolous one that need not be reckoned in all respect.

(5). The comparison of tariff rate of HT commercial and industrial consumers is only an argument for the sake of argument.

(6).The activities in the premises of the complainant are not industrial. The Pumping of water for various pools maintained by the complainant for the entertainment for the general public do not come under the purview of either industry or manufacturing process. The payment of entertainment tax by the complainant obviously conveys that it is not industrial. The various rides, pools etc maintained by the complainant cannot be treated as an industrial activity rather the purpose of it is commercial one without having a social commitment.

(7). The complainant himself averred that it is an amusement park and has been running with snack bar in the Amusement park. The word amusement park itself unequivocally carries the meaning that the complaint is frivolous, vexatious and sans substance.

(8). The findings of the Hon CGRF are correct and true. In the case of Kores India Limited, Chennai Vs Commissioner of Central Excise Chennai (2005) 1 SCC 385, the court held in para 12 as; "Manufacture is a transformation of an article, which is commercially different from the one, which is converted. The essence of manufacture is the change of one object to another for the purpose of making it marketable. The essential point thus is that in manufacture something is brought I to existence, which is different from that, which originally existed in the sense that the thing produced is by itself a commercially different commodity whereas in the case of processing it is not necessary to produce a commercially different article".

In Black's Law Dictionary, (5th Edition), the word 'manufacture' has been defined as " the process or operation of making goods or any material produced by hand, by machinery or by other agency; by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labour or machine". Thus the process of manufacture means something is produced and brought into existence which is different from that out of which it is made in the sense that the thing produced is by itself a commercial commodity capable of being sold or supplied . The material from which the thing or product is manufactured may necessarily lose its identity or may become transformed into the basic or essential properties. It is self evident that the tariff of the complainant need not be revised and the tariff allotted i.e. HT IV is the correct one in all respects.

Analysis and Findings: -

The Hearing of the case was done on 16.4.2013 in my chamber at Edappally and Mr Premnath, B, the learned Advocate appeared for the appellant and Mr. P.M.Thomas, Deputy Chief Engineer, Electrical Circle, Irinjalakuda, Mr N Thankappan, A O, and U. Viju, SS, O/o the SOR, represented the Respondent's side. On perusing the Petition and argument note filed by the Appellant, the counter statement of the Respondent, the documents filed and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The main issue to be decided in this case is whether the HT electric consumer, the Amusement Park named 'Dream land', Chalakudy, will fall under commercial or industrial tariff?

The appellant argues that the main activity of his Firm i.e. pumping of water will fit well into the definition of Factories Act 1948 and hence come under the class of 'industry'. Further, he contents that HT- IV commercial tariff is not specifically marked for 'Amusement parks' in the existing tariff rules. There fore, his activity can be classified only as 'non- agricultural pumping', which falls under HT-1 tariff (Industrial) of the Tariff rules, argues the party. The consumer is seen relying heavily on Sec. 29 K of the Factories Act, 1948, which defines 'pumping of water' as one among the criteria for treating as manufacturing process and hence he claims an 'industrial status' to his Firm.

But the fact is that, the activity in any Amusement Park is not restricted to 'pumping of water' alone, but various other activities are also being done there, for the full functioning of the Park, for which electric power is used. Many Rolling/rotating devices and other equipments using electricity meant just for the frolic enjoyments and playing of the visiting public or tourists, are arranged in an amusement park. Normally an industry is a place where a manufacturing/ Production process is taking place by transforming the Raw materials into final products after going through one or more processes. Here there is no such a claim from the consumer side. Hence the appellant cannot demand industrial tariff stating that his Firm is just like a Factory.

Further, when multi activities are being done in a premise, the consumer cannot single out one activity or purpose and argue to fix the tariff based on that. That is to say, he cannot demand to fix his tariff based on his 'pumping water' activity alone, when he uses electricity for other purposes also. The electric connection is given to the consumer for the purpose of running an Amusement Park named 'Dreamland', on the banks of Chalakudy River, and not for a 'pump house'. The party has conceded that the Firm has erected various plants and machinery inside the park for Rotating chairs and other items that are working on electric power. The associated other facilities like shops and restaurants maintained in the park also uses the same electricity supply and is a part of the Park. From all the above details, it appears that the Amusement park runs more as a business or rather commercial establishment.

The main dispute relates to the tariff assigned to the appellant's Amusement Park.

The provisions in Section 61 to 65 of the IE Act, 2003, read as;

61. Tariff regulations: - The Appropriate Commission shall subject to the provisions of the Act specify the terms and conditions for the determination of tariff and in doing so shall be guided by

the following, namely: -.....(d) safeguarding of consumers interest and at the same time recovery of the cost of electricity in a reasonable manner.....

62. Determination of tariff.- The appropriate Commission shall determine the tariff in accordance with the provisions of this Act.

The State Electricity Regulatory Commission is the empowered body, as per the Electricity Act, 2003, to frame the Power tariff rules for different categories of consumers and its rates. The Hon Commission shall do so after conducting public Hearings on the Tariff proposals submitted by the Licensees, which is notified for General public's information and interested stake holders attention and getting their objections and suggestions to the same. Generally, the tariff rules made by the Regulatory Commission are not depended or influenced by the Factories Act or others.

The KSEB is supposed to assign the power tariff to the consumer, based on the notifications and directions issued from time to time, by the State Electricity Regulatory Commission (KSERC), which is the statutory empowered body to classify the appropriate tariff of a particular class of consumers. The tariff of a consumer is fixed based on the purpose or the activity for which the electrical energy is utilized. In this case, it is convinced that the 'pumping of water is only a part of the activity and in its entirety, the consumer is more business or commercial oriented and hence only deserve a commercial tariff for his Firm.

Further, the appellant cited the relevant tariff orders regarding HT I Industrial tariff given to other Firms such as, Printing Presses (including presses engaged in printing dailies), Plantations, granite crushing units, Daily farms, Hatcheries, Software development units, all Non-agricultural pumping, Drinking water pumping etc. These cases are specifically dealt by the State Regulatory Commission and have issued appropriate tariff orders. The appellants Firm is not included in the said list and hence cannot demand parity with the above mentioned Units here, but can represent before the Hon Commission, as per rules.

DECISION: -

From the analysis done above and the Findings and conclusions arrived at, I decide as follows. The appellant's establishment is an Amusement Park and no production or any manufacturing activities exist in the premises. The activity of 'Pumping of water' for various pools maintained in the park, is one of the activities that uses the electrical energy and all other machineries fitted in the Park, shops and restaurant use the electric power for the purpose of the entertainment and

treat of the visitors. In this case, the appellant focuses on the tourists and others, who approach the Park for enjoyment and recreation. The said activity is a business oriented setup and does not belong to a Factory status having 'Production or manufacturing' system that attracts industrial tariff. Hence it is convinced that the consumer belongs to commercial category and accordingly deserves a commercial tariff only.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition No. P/ 315/ 2012, filed by the appellant stands dismissed as it deserves no merits. No order on costs. Dated the 9th of September, 2013,

Electricity Ombudsman

Ref. No. P/ 315 / 2012/ 1952/ Dated 09.09.2013.

Forwarded to: - (1). Sri. Simon K. Francis,

Joint Managing Director,
Park & Hotels (Dream World),
Chalakkudy, THRISSUR-680 307.

(2). The Special Officer (Revenue),

KSEB, Vydyuthibhavanam, Pattom, : ..
Thiruvananthapuram- Pin: 695004.

(3). The Deputy Chief Engineer.

Electrical Circle, KSEBoard, Irinjalakkuda- Pin : 680121.

Copy to :-

- 1). The Secretary, Kerala State Electricity Regulatory Commission,
KPFChavanam, Vellayambalam, Thiruvananthapuram-695010.
- 2). The Secretary, KSEB,
Vydyuthi Bhavanam, Pattom, Thiruvananthapuram - 695004.
- 3). The Chairperson, CGRF,
KSEB, Power House Buildings, Ernakulum, Cochin -682018.