

THE STATE ELECTRICITY OMBUDSMAN

Pallikkavil Building, Mamangalam-Anchumana Temple Road  
Opp: Kochi Corporation Regional Office, Edappally, Kochi-682 024  
[www.keralaeo.org](http://www.keralaeo.org) Ph: 0484 2346488, Mob: 91 95674 14885  
Email:ombudsman.electricity@gmail.com

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APPEAL PETITION NO. P/339/2013.

(Present: T.P. Vivekanandan)

Appellant : Smt. Sunitha Joy.  
M/S. Sunitha Agro Foods, Attupuram,  
Manjali House, Ayroor PO, Ernakulum (DT). Pin-683 579.

Respondent : The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
Chengamanad, Ernakulum (DT).

ORDER.

Background of the Case: -

The appellant is running a SSI unit named 'Sunitha Agro Products' and is electrical Consumer No. 8420, with a connected load of 18 KW, under Electrical Section, Kunnukara. The tariff given to the Unit was LTIV-industrial, for production of Pappadam, Rice Kondottam, Payasam mix etc. with effect from 29.4.2010 and having a connected load of 6540 watts. While so, the APTS of KSEB had conducted an inspection in the premises of the consumer on 15.05.2012 and found that only packing activity was going on at the premises instead of any manufacturing activity. Based on the mahazar prepared by the APTS, a short assessment bill was issued for Rs.1,02,486/- under commercial LT-VIIA-tariff, for the period from 4/2010 to 4/2012. Being aggrieved, the consumer filed petition at the CGRF and not satisfied by its decision, she has filed the Appeal petition dated 14.8.2012, before the KSERC. The KSERC, in its letter dated 6.11.2012, advised the petitioner to prefer an appeal against the order of CGRF before the Electricity Ombudsman. But the consumer approached the Hon. High Court of Kerala vide WP (C) No. 30259 of 2012 which was disposed of, with a direction to prefer the appeal before the Electricity Ombudsman within a period of two weeks from the date of receipt of a copy of the judgment and as such she has filed this appeal before this Forum.

Arguments of the Appellant: -

(1). The appellant is the proprietor of M/s Sunitha Agro Foods and is a SSI Unit for manufacturing Appalam (Pappadam), Rice Kondattam, Payasam Mix etc. The manufacture of pappadam etc. is hand made and no machinery is required except for packing and sealing cover. After inspection by

the KSEB officials, the power connection was granted under LT IV Tariff. It has found that the unit was a manufacturing SSI unit.

(2). The "manufacturing" has three main processes.

(i). The procurement of raw materials, (ii). The treatment of raw materials and resultant making of a commercially difference product and (iii). The intermediate process of, packing in standard size and seal it and the end products are distributed and sold. The products are thus manufactured, weighed, sealed and distributed for sale.

(3). Our unit has all the three process and is a manufacturing unit and comes under LT IV category alone. As such, the electrical power used for completing the various methods for packing etc. is part and parcel of the manufacturing process. The Asst. District Industries Officer, North Paravoor, has issued the certificate as a small scale industrial unit. Incidentally, the packing of spice powders are also done but the main manufacturing is pappadam, palada etc.

(4). The APTS of KSEB had conducted an inspection in the unit on 15.05.2012 and a mahazar was prepared. At that time the manufacturing of pappadam, payasam etc. were going on in the unit. However, the Assistant Executive Engineer (AEE), Electrical Sub Division, Chengamanad, issued a notice proposing to change the LT IV tariff to LT VII A and demanded additional amounts.

(5). Without considering the objections and giving an opportunity for being heard, the AEE issued orders changing the LT IV tariff to LT VIIA. But no documents was produced and hence demand was not correct. The true copy of the order of the AEE dated nil is marked as annexure-4.

(6). The orders of the AEE are perse illegal, arbitrary and unsustainable. There cannot be any re-categorization and that the demand for excess money is arbitrary, illogically made and unwarranted. No such re-categorization, is necessary and no additional amounts is to be paid by the petitioner.

(7). The Petitioner challenged the change of tariff before the CGRF, Ernakulum. The Forum has passed order No. CGRF-CR/Comb.31/12-13 dated 19.07.2012 served on 2.07.2012 upholding the change of tariff but allowed installments facility for the amount demanded. The copy of the order of the CGRF, Ernakulum is marked as annexure-5. Meanwhile, the Assist Engineer raised another bill under LTVIIA tariff and petitioner filed an appeal before the Deputy Chief Engineer, Perumbavoor. In view of the order of the CGRF the appeal became redundant and was informed.

(8). It is noted in the order of CGRF that the Schedule of Tariff with effect from 01.01.2010, the change in tariff of the unit was effected. It is not clear whether industrial unit having manufacturing process as well as packing of the manufactured product is to be treated as commercial or industrial. Petitioner is the person affected and put to irreparable loss and hence filed a petition before KSERC under section 86 of the Electricity Act, 2003- read with Rules 22 (d) & 24 of the KSERC (conduct of Business) Regulations 2003 to clarify and cancel the orders of re-categorizing the M/s. Sunitha Agro Foods from LTIV to LTVII-A tariff and cancel the additional demand, with direction to continue under LT IV tariff itself .In the meanwhile the party remitted the entire sum demanded in LT VII-A tariffs and is continuing in it. But the Commission did not admit the petition.

(9). The complainant challenged the non-admission before the Hon'ble High Court of Kerala which permitted to file this petition in two weeks and so this petition is filed. The copy of the judgment in W.P.(C) No.30259/13 is marked as annexure-6.

(10). The complainant submits that the change of tariff is illegal and unsustainable and the orders of the KSEBoard officials and CGRF are liable to be set aside. The main products manufactured are Appalam, Palada and Vermicelli. These are handmade products. It is common knowledge that these products are manufactured by manual of skilled workers. No machines need be used with electric power. Packing is only an incidence for sale and is ancillary process. Packing of spice powders is also ancillary. Thus the principle activity is manufacturing and so the unit is a manufacturing unit.

(11). The Mahazar prepared is silent about the manufacturing of Pappadam which were going on at the time of inspection. The AEE, APTS is not competent or authorized to direct change of category. The mere noting down of packing of spice powders in the mahazar will not change the status of a manufacturing unit. The competent authority for classification is the Department of Industries.

(12). It is factually wrong that no documents were produced before the AE, AEE and CGRF. They have not appreciated the objections properly and correctly. Very conveniently the officials left out mentioning and considering the records produced. This is highly wrong and colorable exercise of power and is suppression of material documents produced.

(13). There was no finding regarding unauthorized use or theft of energy. No additional load also found. The power is used only for the purpose of running the unit.

(14). In the meanwhile the Assistant Executive Engineer and Assistant Engineer, issued notices to file objections for changing category and demanding very huge additional amount. The changing of category is totally illegal, arbitrary and unwarranted. Moreover it cannot be said that the tariff change is to be effected from the date of connection. There is no provision for such retrospective change. The conditions of supply are against such re-classification. The Government order referred has no relevance as unit is a manufacturing unit. The above being the position, there cannot be any change of category from LT IV to LT VIIA. So there arise no additional payments of any kind.

(15). There was no opportunity of being heard before the decision was taken. So it is only to be set aside. The KSEBoard and the Regulatory Commission has only notified general categorization. So it is only to be found that the change of category is applicable to the unit where the principal activity is industrial and so no commercial categorization is warranted or is applicable.

**Reliefs sought for: -**

To set aside annexure A-4 and A-5 orders cancelling the change of tariffs of the complainant's industrial unit from LT IV to LT VIIA with further direction to continue the Electric connection under LT IV tariff and accordingly refunding the excess amount collected under LT VII A.

**Arguments of the Respondent: -**

(1). The appellant is a consumer under Electrical Section, Kunnukara with consumer number 8420 who had availed electric connection under LT IV-industrial tariff on 29.04.2010 by producing SSI

certificate from Industries Dept., with purpose as 'Manufacturing Appalam, Rice kondattom, Palada and Vermicelli, with a connected load of 6546 watts. Later the connected load of the consumer was enhanced load to 17560 watts on producing an additional SSI certificate for manufacturing of Rice Powder, wheat flour-refined (Maida) etc. using Flour Mill".

(2). The APTS, Ernakulum had conducted a surprise inspection in the premises of the consumer on 15.05.2012 and found that the petitioner is using electrical energy for the purpose of packing of powders of coriander, chilly, turmeric, sambar and masala brought from their other manufacturing units and site mahazar was prepared accordingly. No manufacturing activity was going on in the premises at the time of inspection as mentioned in the SSI certificate.

(3). The appellant in the statement of facts has stated that manufacturing involves three main process namely procurement of raw materials, treatment of raw materials and packing. But in their unit the process that is going on is only packing i.e. the third process mentioned in the petition like, packing of powders of coriander, chilly, turmeric, sambar which were powdered in other different flouring unit in Coimbatore and Chengamand, owned by the same management and the masala products is the process done in the unit.

(4). As the process going on in the premises is only packing and no manufacturing activity was going on there, the tariff was changed to LTVII-A from LT IV w.e.f. the date of connection. The consumer had availed electric connection under LT IV category by producing SSI certificate and hence estimated cost was not remitted by her as per the Board Order in force at the time of connection. But actually there was no manufacturing activity in the premises and hence the tariff was charged to LT-VII A and a demand as mentioned below was issued to the consumers.

Estimate amount	- Rs. 110436/-	- (1)
Additional Cash Deposit	- Rs. 27000/-	- (2)
Balance OYEC	- Rs. 10550/-	- (3)
Short Assessment Bill	- Rs. 102486/-	- (4)

Aggrieved by the demand, the consumer had filed compliant before the CGRF and the Deputy Chief Engineer. After site inspection, the CGRF vide order No. CGRF-CR/Comp.31/12-13/ 19.07. 2012 has ordered to collect the demanded amount in (1) and (3) in 20 and (2) in 10 and (4) in 15 installments with no interest for the petition pending period. But the petitioner did no avail the facility of installments, instead remitted the total amount in onetime. Even at the time of inspection of CGRF, for which the respondent was witness where manufacturing of pappadam and palada was not seen done in the premises.

(5). As per the tariff order, packing does not come under LT-IV tariff and hence tariff is changed to LT-VII A and the party was asked to remit the other charges applicable to LT- VII A category . The respondent was not known about the petition filed by the petitioner before the KSERC. The change of tariff is done as per the prevailing orders of KSEBoard and hence is legal and sustainable. Although the unit is registered as a manufacturing unit, only packing of powder of coriander, chilly, turmeric, sambar and masala was going on there. The registration of unit was done prior to the starting of the unit.

(6). The petitioner's statement that Appalam, Palada, Vermicelli are manufactured in the premises is wrong. If these items are manufactured in the premises, the packing of these items is to be done at the premise. But as per the site mahazar packing of powder coriander, chilly, turmeric, sambar and masala are done in the premises and nothing is mentioned about pappadam etc. Also the electrical machineries seen at the time of inspection are only for packing and filling.

(7). If there was manufacturing of pappadam in the premises at the time of inspection the Assistant Executive Engineer would have mentioned the same in the site mahazar. The mahazar is witnessed by Sri.C.O.Jose, Chirackal Manavalan on behalf of the consumer.

(8). The competent authority to change the tariff of LT consumption as per the prevailing Board Order is Assistant Executive Engineer of KSEBoard and not the Department of Industries.

(9). The Appropriate tariff for packing unit as per rules is LT VII A. Even though the petitioner has submitted documents required for LT IV, the activity going on was only packing and hence even though the petitioner had availed connection under LT IV, the tariff was changed to LT VII A. When the consumer has filed objection before CGRF, the Forum had inspected the site and passed orders. The Forum could not find any manufacturing activity in the premises. Hence the tariff change is correct and legal.

(10). The remittance of additional amount was necessitated due to wrong application of tariff, as the consumer misled KSEB, that the unit would run as a manufacturing unit, after availing the electric connection. Hence the tariff was changed with effect from the date of connection. It may be noted that the CGRF had sanctioned installments for the additional amount demanded. The decision was taken by CGRF only after hearing the consumer.

**Analysis and Findings: -**

The Hearing of the case was done in my chamber at Edappally, Kochi on 20.08.2013, 5.9.2013 and 24.9.2013. The appellant was absent on 20.8.2013. Sri. C.O. Jose represented the appellant's side and Smt. Jessy Jose Chacko, Asst. Exe. Engineer, Chengamanad appeared for the respondent's side. The appellant has not adduced any arguments other than that specified in his appeal and her main request was for the restoration of LT-IV industrial tariff. On perusing the Petition, the counter statement of the Respondent, the documents filed and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

**1.1.** The APTS of KSEB had inspected the consumer's premises on 15.5.2012 and found that the electric connection was not used for manufacturing activities alone and instead the main activity going on in the premise is the Packing activity of Curry powders brought from outside for sale. They also prepared a Mahazar noting down the anomalies and got it witnessed by the representative of the consumer. Hence KSEB changed the consumer's tariff to LT VII A commercial, since the existing LT IV-industrial tariff was found not eligible to the appellant. Accordingly, KSEB has raised short assessment bills on the consumer for Rs. 1, 02, 486/- and later demanded the following sums from the consumer.

(i). The estimate amount for providing new connection on 29.4.2010 as, Rs. 110436/-,

(ii). The additional Cash Deposit under the new tariff of LT VII-A tariff as Rs. 27000/-,

(iii). Balance OYEC amount as Rs. 10550/-

(iv). The short assessment bill of Rs. 102486/-, being the differential amount under the two tariffs.

The consumer being aggrieved filed Petitions before the CGRF, Ernakulum against the bills, which were heard and disposed of by the Forum rejecting the prayers of the consumer but allowed installments facility for payment.

**1.2.** In this case, *the question to be decided is, 'whether the activities of the appellant in the case under dispute warrant an industrial tariff or a commercial tariff?'*

**1.3.** The main dispute is on the change of the appellant's tariff from LT IV-industrial to LT VII A-commercial category. 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 KSERC, 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 consumer was under industrial tariff. Later, it was discovered, pursuant to an inspection carried out on 15.5.2012 that the premises were used for only packing of powders of coriander, chilly, turmeric, sambar and other masala powders brought from outside and is not producing any items on the said consumer Unit. The respondent hence changed the tariff of the consumer from the date of taking the electric service connection i.e. from 4/2010. The respondent alleges it as 'misuse of tariff' given for an industrial purpose, which was utilized for a commercial purpose.

**1.4.** The appellant has filed a petition before the CGRF and according to CGRF, the electricity being used will not fall in the list of activities mentioned under LT IV category and will fall under the LT VII-A commercial tariff only. It is noted that CGRF has inspected the premises and convinced themselves of the activities being going on in the consumer premises. The Forum has held that, no manufacturing activities are going on there and only packing of the powders of coriander, chilly, turmeric, sambar and masala were being done in the premises. As per the Hon KSERC order, the packing and sealing will not entail for an industrial tariff but falls under commercial category.

**1.5.** It has to be borne in mind that the industrial tariff is issued based not on manufacturing process alone. The Hon. KSERC notifies the tariff proposals filed by the Distribution Licensees and seeks the opinion of general public and other interested stake holders and conduct public hearings and take a final decision. The Hon. KSERC is also guided by the National Tariff Policy of the Govt. announced from time to time. Hence the approval of Dept. of Industries and Commerce, as pointed out by the appellant, is not the factors in deciding the tariff of an electricity consumer.

For example, the public water works, sewage pumping, electric crematoria, pyrolators of local bodies etc. have been classified under industrial tariff by the Hon. Commission, where no such production activity is taking place. Normally, the purpose for which electricity was used or the activity done using electrical energy, which is close to the activity specifically earmarked by the Hon Commission under the Tariff category List, will be assigned in case the specific purpose or item (for which electric connection is requested) is not included in the Tariff order list.

DECISION: -

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

(i). The APTS had conducted an inspection and detected that the appellant's Firm is engaged in the packing and sealing of various Masala powders (powders of coriander, chilly, turmeric, sambar etc.) brought from outside. This fact is not disputed by the appellant. The appellant argues that he is engaged in the manufacture of Papadam etc. in the same premises, which requires only manual labor and no machineries were required. If the consumer was seen engaged for the said activity of Papadam production and Rice Kondattam etc. which requires only manual labor, then he is eligible for industrial tariff, even if no machineries were used. But, along with the said activity, if he is also utilizing the electricity for packing the Curry powders brought from outside, then surely he/she is misusing the electricity given for a certain purpose for other unauthorized uses, which comes under the anomaly of misuse of tariff. The CGRF inspection also confirmed the said activity of Packing of Curry powders produced out side and brought to the Consumer's Unit for Packing. This activity requires a commercial tariff to be assigned to the consumer. In brief, the production or manufacturing activity coupled with its own packing, of those items listed in conformity with the tariff order, will only attract the industrial tariff.

In this case, the APTS's and the CGR Forum's inspections have confirmed the misuse of tariff in the consumer's premises and hence, I am of the opinion that the action taken by the respondent to issue a penal bill for misuse of tariff is justifiable.

(ii). But even if the tariff was misused, I feel that the decision of KSEB to change the tariff, from LT IV-industrial to LT VII- A commercial, from the date of taking electric connection by the consumer is not reasonable, as it is not established conclusively that the Party has misused tariff from the day of taking electric connection itself. According to Regulation 50(5)-Misuse of Energy- in KSEB Terms and Conditions of Supply, 2005, it is stated as follows;

*".....if however the period during which such unauthorized use of electricity has taken place cannot be ascertained such period shall be limited to a period of 12 months immediately preceding date of inspection".*

Hence, I feel that the consumer is liable to be penalized for misuse of tariff only for one year prior to the date of inspection, as per Regulation 50 and 51 of KSEB T & C of Supply, 2005. Accordingly, the respondent is directed to revise the penal bill to the previous one year prior to the date of inspection. If any excess amount has been collected from the consumer on that account, it shall be adjusted in the consumer's future bills. The respondent shall also issue a calculation statement of the excess amount for adjustment within 60 days of this order. The penalization will continue till the misuse of tariff is discontinued and the fact is reported to the respondent. The respondent may inspect and shall restore the industrial tariff to the party once it is convinced of its eligibility.

(iii). As per Sect. 46 of the Electricity Act, 2003, the Licensee can recover the expenses reasonably incurred for providing that supply. The respondent states that they have collected the estimate

cost amount for providing the new electric connection, Rs. 110436/- and the balance OYEC sum of Rs. 10550/- from the consumer. The appellant has not raised any serious objection on the said amounts. Hence I feel it is in order.

(iv). The appellant is eligible to have LT IV-industrial tariff from the date, she engages in production of Papadam, Rice kondattam, vermicelli, Palada etc. in her own unit either manually or with the aid of machines. It is to be noted that the, Packing activity of materials brought from outside does not qualify for industrial tariff. It is also made clear that the appellant can be given industrial tariff from the date the respondent is convinced of the said activity of the consumer in her Unit. Once this is done, the excess Security deposit collected under LT VII-A tariff may also be refunded with applicable interest in KSEB.

(v). Generally speaking, if all the activities including production (manufacturing) and packing is carried out in the same Unit, it will attract an industrial tariff, subject to Tariff notifications.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the appellant is found having some merits and is allowed to the extent ordered and is disposed of accordingly. The related CGRF order vide No. CGRF-CR/Comp. 31/12-13 dated 19.07.2012 is set aside. No order on costs. Dated the 6<sup>th</sup> of November, 2013.

Electricity Ombudsman.

Ref. No. P / 339 / 2013 / 2041/ Dated 06.11.2013.

Forwarded to : 1). Smt. Sunitha Joy,  
M/S.Sunitha Agro Foods, Attupuram,  
Manjali House, Ayroor.P.O,  
Ernakulum Dt. Pin- 683 579.

: 2). The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
Chengamanad P O, Ernakulum (DT). Pin-683578.

Copy to: - 1). The Secretary, Kerala State Electricity Regulatory Commission,  
KPFCBhavanam, Vellayambalam, Thiruvananthapuram-10.

2). The Secretary, KSEB,  
Vydyhuthibhavanam, Pattom, Thiruvananthapuram-695004.

3). The Chairperson, Consumer Grievance Redressal Forum,  
KSEB, Power House Buildings, Ernakulum-682 018.