

KERALA STATE ELECTRICITY OMBUDSMAN

THAANA TH BUILDING CLUB JUNCTION POOKKA TTUPADI ROAD
EDAPPALLY TOLL KOCHI 682024

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REPRESENTATION No: P8/08

Appellant:

M/S Parison Foods Private Ltd ,
6/1183 , Kunhipari Buildings,
Cherootty Road, Calicut 673032

Respondent:

Kerala State Electricity Board
Represented by
The Deputy Chief Engineer ,Electrical Circle, ,TIRUR

ORDER

M/s Parisons Foods Private Limited Calicut submitted a representation on 3.4.2008 against the order No DyCE/CGRF/OP180/07-08/753/ dated 27.2.2008 of the CGRF Kozhikode wherein the CGRF had refused to entertain the Petition dated 29.10.2007 of the Appellant .The Appellant had sought the following relief from the Ombudsman:

To issue a direction to the KSEB to refund the excess amount collected from the complainant by charging current charges at HT IV tariff instead of HT I tariff from 12.7.2002

The Reason for the delay in issuing the orders: It is recorded here that the orders on the Representation could not be issued within 3 months as stipulated in the Regulations due to administrative reasons related with the setting up of the office of the Ombudsman at Kochi and the connected works.

- I. M/s Parisons Foods Private Limited , have made the following points in their Representation, Argument Note and during hearing:
 1. The appellant is an HT Consumer under Electrical Circle Tirur having their Factory engaged in crude oil refining and manufacturing Edible oil, V anaspati and Bakery Fat at KINFRA Food Processing Park,

Kakkanchery, Malappuram Dt. They had obtained Power Allocation for 330KV A on 25.2.2002 and executed HT Agreement on 12.7.2002 in the Electrical circle Manjeri (before the formation of Electrical circle Tirur) and were allocated the Consumer No HTB 26/3870.

2. The Appellant recently found out that Invoices for current charges was issued by Respondents under Tariff HT IV commercial. They represented the matter to the Dy Chief Engineer (Commercial & Tariff) on 7.12.2006. As per the direction of the Chief Engineer (Commercial & Tariff) the Dy Chief Engineer, Manjeri inspected the Factory and sent a detailed report. Based on the said report the Respondents changed the Tariff of the Appellant to HT I Industrial with effect from July 2007.

3. The Appellant again approached the Respondents to allow retrospective effect for the Tariff change from the date of connection and refund of the excess amount with interest which was not allowed by the Respondents.

4. The Appellant has put up several arguments for establishing their claims for retrospective effect for the Tariff change which are mentioned below:

- a. Even in the application for connection it was mentioned that the purpose was Industrial. As per the various documents submitted and available with the Respondents the Concern is an Industrial Unit.
- b. While the revised HT Agreement consequent to enhancing of power from 330KV A to 600KV A was executed on 31.8.2004 the Additional CD was calculated at HT I Industrial Tariff according to the report dated 19.1.2007 of DyCE Manjeri.
- c. Industrial activity was going on in the plant right from the beginning and during the period 2002-2007 as per the various documents available. The processes and activities are same for the whole period.
- d. The assigning of the HT IV tariff was due to a mistake in the concerned office of the respondents. The mistake has happened because the Category of Service was not marked in the agreement schedule.
- e. They have pointed out that the Section 72 of the Contract Act which deals with the liability of a person to whom money is paid by mistake or under coercion is relevant here. The respondents corrected the mistake from July 2007 onwards which proves that the entire amount collected before July 2007 was only because of the mistake and is liable to be refunded.
- f. The order of the respondents in providing prospective effect for the Tariff change is highly arbitrary and violative of natural justice.

II. The Respondent KSEB have furnished the following points in the Counter Statement, Argument Note and during hearing:

1. The Ombudsman may review the admittance of the Petition since (1) the Authority for determining the tariff is SERC from 29.11.2002 onwards and (2) The service Connection was given prior to the formation of the institutions of SERC and Ombudsman.

2. The consumer should have noticed the Tariff anomaly if any at the time of execution of the HT agreement. They have every opportunity to scrutinize the agreement.
3. All Tariff changes have only prospective effect and hence the issue of retrospective effect does not arise. Tariff change can be considered only after the receipt of formal application
4. The Capacity of the plant has increased from 7500 to 67500 tons and that means there is a change of machinery and process due to enhanced capacity.
5. At the time of executing the agreement it was not clear whether it was a commercial or industrial one and hence the entry on classification was left blank. As the activity was predominantly commercial the firm was charged under HT IV tariff. It was on the basis of the nature of activity carried on in the premises. The bill raised was not under mistake or by clerical error.
6. The claim for tariff change with retrospective effect cannot be admitted as no request has been made by him at any previous occasions and the bill raised was not under any mistake or clerical error.

III. The undersigned carefully examined the documents, evidences and arguments furnished by both the parties and the findings are narrated below:

The question whether the Petition can be considered by the Ombudsman (and CGRF) shall be discussed first. The present case is not one of *determining the Tariff* which comes under the purview of the SERC. The Representation of the Appellant does not challenge any tariff order in any way. All it challenges is the placement of the appellant in HT IV tariff category. The observations in the Judgement of Appellate Tribunal for Electricity on Appeal No. 50 of 2007 & IA No. 90/07 and Appeal No. 80 of 2007 Dated 16.8. 2007 is relevant here.

The tariff order is not challenged here and accordingly the objection to the admissibility of the Representation is totally ill founded. The CGRF Kozhikode ought to have seen this simple fact and decided on the Petition .

The question whether the Service Connection was given prior to the formation of the institutions of SERC and Ombudsman is not at all relevant .The issues to be examined is whether the Appellant have a genuine grievance at present, whether the actions/inactions of the Licensee have contributed to that and whether Redressal under the frame work of Act, and Regulations are possible.

1) The Appellant was placed under HT IV - Commercial category from the date of Connection. The reason for their being put under this category is not explained by the Respondents.

A certified copy of the original HT agreement was produced before the undersigned. Quite surprisingly the schedule to the Agreement which forms a very important component of the Agreement had three items left blank:

Item 1 Description of the premises at which supply is given
Item 2 Purpose for which supply is given
Item 4 Category of Service

The Deputy Chief Engineer Tirur under whom the HT service happens to be now, has given an explanation that “at the time of executing the agreement as it was not clear whether it was a commercial or industrial one the entry regarding the tariff classification in the agreement was left without assigning any tariff classification”. Then naturally the question arises as to why the item 1 was left blank. Was it because the respondents were not sure about the locality of the plant, even when the HT connection was about to be given? The explanation of the Deputy Chief Engineer Tirur does not deserve any serious consideration.

Why the items 1,2 and 4 in the Schedule was left blank while executing the HT agreement at Manjeri Circle on 12th July 2002 is not known. The Deputy Chief Engineer should not have executed the Agreement of a Major HT consumer so carelessly. Execution of Agreement also involves assigning appropriate tariff to the consumer. The Deputy Chief Engineer Manjeri evaded this responsibility. Now it should be assumed that the Special Officer Revenue Trivandrum *had taken over this responsibility* because an Invoice under HT IV tariff was issued from his office for 7/2002 in which the *Category is marked as HT IV*. What was the basis for assigning this Tariff is not known.

The undersigned sent a notice to Secretary KSEB on 31.7.2008 under Section 24(1) of the KSERC Regulations 2005 in which inter-alia the following documents were called for:

Certifies copies of all the documents/reports/notes including orders of the appropriate authorities leading to the assigning of HT IV Tariff and issue of First Invoice to the Petitioner (HTB 26/3870) in 2002 in the office of the Special Officer Revenue

The respondents have not submitted any of the above documents except a copy of the first invoice which was not at all called for. They have not submitted any explanation or recorded any cause for the failure. Hence taking recourse to Section 24(1) of the Regulations the undersigned has arrived at the conclusion that submission of the above documents would be unfavorable to them. It has to be concluded that the placing of the Appellant under HT IV Category in the Office of the Special Officer Revenue, who is not the authority for executing agreements with the HT Consumers, is an improper and erroneous action.

- 2) The above conclusion is reinforced by the fact that the respondents themselves reclassified the Appellant under HT I- Industrial tariff in July 2007 with prospective effect. The Full Time Members of the Board representing the top management of the Licensee have discussed and approved the request for classifying the Appellant under HT I-Industrial Tariff. The request of the appellant for retrospective effect was rejected by the respondents.
- 3) The basis for categorization/classification of Consumers as per the HT Tariff Order 1999 of the respondents shall be their *load requirements, nature of load etc.* The relevant question here is whether there was any change in the nature of the

load or other parameters of the consumer during the period 2002-2007 so as to reclassify them under HT I –Industrial in July 2007.

The Manager (Technical) of KINFRA Techno Industrial Park Kakkancherry has certified on 16th October 2007 that since commissioning of the refinery on 30-Dec-2001 the appellant factory is manufacturing edible oil and bakery fat which is still continuing in the same plots .The copies of the documents of various Government agencies produced by the Appellant also show that the production processes , nature of activity and nature of load in the Plants have remain unchanged from 2002 ,albeit ,increase in capacity. Hence if the Consumer can be placed under HT I – Category in July 2007 as done by the respondents them selves, he becomes eligible to be under the same category from the date of connection also.

- 4) The respondents have argued that the consumer had not applied for a change of tariff earlier and hence has no eligibility for it. This contention can be held valid when there is change in the nature of load, nature of activity etc. The Licensee is not expected to note such changes always unless notified by the consumer. Under such circumstances change of tariff or placing him under appropriate tariff can be done only when an application is received. In the instant case the request of the consumer is to reallocate him under an appropriate and eligible tariff without change in the nature of activity or nature of the load. The appellant had to pay higher charges due to the failure of the Agreement authority to record the appropriate tariff in the schedule of the agreement and due to the improper way in which the tariff classification was done by the Billing authority. The consumer can not be penalized for such developments in the offices of the respondents.

IV. After carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter and considering the facts and circumstances of the case the Appeal Representation is hereby disposed off with the following orders:

1. *The plea of the Appellant is admitted and the respondent KSEB is directed to refund the excess amount collected from the complainant by wrongly applying HT IV tariff instead of HT I tariff from 12.7.2002 onwards*
2. *The refund of the excess amount shall be done in 12 equal monthly installments by adjusting in the Monthly invoices of the Appellant.*
3. *The refund of excess amount as directed above shall commence within Three months, from the date of receipt of this order by the respondent.*
4. *No order on costs.*

Dated this the 29th August 2008

P.PARAMESWARAN
Electricity Ombudsman

No P8/2008/ 45 / Dated 02.09.2008

Forwarded to :

- 1 . M/S Parison Foods Private Ltd ,
6/1183 , Kunhipari Buildings,
Cherootty Road, Calicut 673032
- 2 . The Deputy Chief Engineer ,Electrical Circle, POOKAYIL (Po)
THAZHEPPALAM, TIRUR 676107

Copy to :

- i. The Secretary ,KSE Board,
VaidyuthiBhavanam ,Thiruvananthapuram 695004
- ii. The Chairman
Consumer Grievance Redressal Forum
KSE Board VaidyuthiBhavanam
Gandhi Road Kozhikode
- iii. The Chairman
Consumer Grievance Redressal Forum
KSE Board Vaidyuthi Bhavanam
KOTTARAKKARA
- iv. The Chairman
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