

THE STATE ELECTRICITY OMBUDSMAN
 Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
 Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9447576208
 Email:ombudsman.electricity@gmail.com

REVIEW PETITION No. P/425/2013

(Present: Sri. V.V. Sathyarajan)

Dated: 06th August 2015

Review Appellant	: Sri Jimmy Joseph M/s Highway Garage 11/237A Thaikkattukara P.O., Choomikkara, Aluva
Review Respondent	: The Assistant Executive Engineer KSEB Ltd., Electrical Sub division, Aluva

ORDER

Background of the Case

Service connection No. 3366 given to M/s Highway Garage 11/237A under Electrical Section, Aluva North is industrial purpose (Automobile workshop) under LT IV tariff with a connected load of 10 kW. The APTS wing of the KSEB inspected the premises of the appellant on 05-07-2013 and issued with a penal bill amounting to Rs. 4,91,790/- by the Asst. Engineer, for unauthorized additional load and misuse of tariff. Aggrieved by the above, the review appellant filed a complaint before the CGRF, Ernakulam and the Forum disposed the same vide Order NO.CGRF-Cr/Comp.73/2013-14 dated 19-10-2013. Not satisfied by the above decision of CGRF, the review appellant has submitted an appeal petition before this Authority in Appeal No.P/425/2013. The appeal petition was disposed of having dismissed vide order dated 19-9-2014. The appellant again approached CGRF on 15-11-2013 with another complaint requesting to block any proceedings to change tariff from LT IV to LT VII A. The CGRF disposed the petition allowing the request and held that he is eligible for LT IV A tariff., vide order No. CGRF/CR/Comp-146/2013-14 dated 19-02-14. Now the Review Appellant has submitted this review petition with a plea to review on the ground that the discovery of a new and important matter or evidence.

Arguments of the review appellant

The review appellant filed this revision before Hon'ble Ombudsman because the CGRF order No. CGRF-CR/Comp.146/2013-14 dated 19-02-2014 can only be considered as subsequent development after filing the petition with Ombudsman. At the time of

releasing the Order No. CGRF-CR/Comp/73-2013-14/499 dated 21-10-2013, the CGRF instructed to file a separate independent petition for fixing the tariff which is a different subject matter which was not considered by CGRF earlier.

Taking into consideration of the direction of CGRF the review appellant have filed the complaint No. 142/2013-14 and after extending a detailed hearing and also after considering the fact that appellant's is an industry because there is no service being done as alleged. The CGRF was pleased to fix the tariff as LT-IV (A). The KSEBL has failed to submit any sale bill or any service bills as directed by the CGRF. Since the subject matter has already being settled and KSEBL has been continuously billing the appellant in LT-IV A. Subsequently when the order of the Hon'ble Ombudsman came it is noticed that the significance of the CGRF order No. CGRF-CR/Comp. 146/2013-14 dated 19.02.2014 was not properly addressed.

Hence the review appellant has requested to accept this review petition by considering the CGRF order No. CGRF-CR/Comp.146/2013-14 dated 19.02.2014 as per KSERC (Consumer Grievance Redressal Forum and Electricity Ombudsman) (Fifth Amendment) Regulations, 2011 Clause 124 (i) on the discovery of a new and important matter or evidence which, after the exercise of due diligence, was not with his knowledge or could not be produced by him. It would be fair and just from the part of Hon. Ombudsman to extend a further hearing for confirming our tariff as LT-IV (A) and to keep all proceedings against us in abeyance till hearing and disposal of the petition. It is also important to note that the KSEBL has no objection for extending us the LTIV (A) tariff and they have not approached any other forum challenging the CGRF order No. CGRF-Cr/Comp.146/2013-14 dated 19.02.2014.

Arguments of the review respondent

The review respondent stated that the service connection No. 3366 given to M/s. Highway Garage 11/237-A. Thaikkattukara P.O Aluva under Electrical Section Aluva North is for industrial purpose (Automobile workshop) under LT-IV tariff having a connected load of 10 kW. APTS team with Section staff conducted an inspection on 05-07-2013 and found misuse of energy for water service station with spare parts shop and unauthorized load of 13 kW. Then Assistant Engineer had given provisional assessment bill under VII A tariff for Rs. 4,91,790/- to the review appellant as per Section-126 of the Act. The review appellant has not filed any objections before the Assessing Officer. Also not filed appeal before the appellate authority.

The Hon'ble Electricity Ombudsman declared vide ref. (3) that "while the appeal petition is pending before this authority against the order No. CGRF-CR/Comp-73/2013-11 dated: 19-10-2013 of CGRF Ernakulam, the appellant again approached the CGRF and obtained order No .CGRF-CR/Comp-146/2013-14 dated I9-02-2011 which is not proper." Hon'ble Ombudsman upheld the first order of CGRF's Ernakulam order No. CGRF-CR/Comp. 73/2013-14 dated: 19-10-2013. In the order dated 19-10-2013 Hon'ble CGRF declared that the actions and decisions taken by the Assessing Officer under Section 126 are under the jurisdiction of appellate authority under Section 127 of IE Act.

In the inspection, APTS team found that water service station and spare parts shop is functioning in the Automobile workshop of the consumer. Also found 13 KW of UAL. As per Schedule of Tariff and Terms and Conditions for Retail Supply by KSE Board with effect from 01-05-2013 to 30-01-2014, issued by KSERC vide order OP No. 02 of 2013 dated 30-04-2013, workshop with automobile service station shall segregate the work shop load for availing the benefit of industrial tariff. Since the review appellant has not segregated the work shop load, he is not eligible for LT-IV A tariff as per the above order. The decision taken by the Assessing Officer under Section 126 is under the jurisdiction of appellate authority under Section 127 of the Act. Hence the claim of the review appellant cannot be admitted.

In the spite of the above facts it is requested review the order No. CGRF-CR/Comp.146/2013-14 dated 19-02-2014 and kindly declare the tariff of above review appellant as LT- VII A.

Analysis and findings:

Hearing of the case was conducted on 11-06-2015 in my chamber at Edappally. Sri Jimmy Joseph and Sri Shaji Sebastian represented the review appellant's side and Sri. Thomas K.D., Assistant Executive Engineer, Aluva, Sri Tito William, Nodal Officer (Litigation) and Smt. Anitha K.J., Senior Superintendent, Electrical Section, Aluva appeared for the review respondent and they argued the case on the above mentioned lines.

A detailed perusal of the documents revealed that the APTS team had conducted a surprise inspection in the premises of the review appellant and detected misuse of tariff and unauthorized load of 13 kW. Accordingly, the review appellant was issued with a provisional bill amounting to Rs. 4,91,790/- by the Assistant Engineer. The petition submitted by the review appellant against the above penal bill before the CGRF was dismissed on 19-10-2013, stating that the same is not maintainable as per Section 145 of Electricity Act, 2003. This Authority also upheld that decision of the CGRF and dismissed the appeal preferred by the appellant. Against the above order, the review appellant has submitted this review petition for consideration on the basis of the CGRF order No. CGRF-CR/Comp.146/2013-14 dated 19.02.2014.

On going through the above order it can be seen that dispute raised on the tariff categorisation was considered by the Forum and held that **“The installation of the complainant as per installation report approved by the respondent on 29-10-2013 is eligible for LT IV A industrial tariff.”** During the hearing, the review respondent has argued that the review appellant is not eligible for tariff under LT IV A as no segregation of the load of service station was done. Further stated that a review petition submitted against the order no. 146/2013-14 dated 19-2-14 of the Forum is pending for disposal. In the above circumstances, this Authority feels that there is no need to interfere in the matter of tariff categorisation.

The contention of the review respondent that there were two counts of charges for which the review appellant was penalized. One is for the unauthorized additional load and the other is for misuse of tariff and the Forum analysed these issues in detail and found that

there was no misuse of tariff in the premises of the review appellant and hence re-categorised the tariff as LT IV A. But in the case of unauthorised additional load, Forum has thoroughly mistaken and declared as not maintainable as per Clause 2(1) (f) (vii) of Regulation for Consumer Grievance Redressal Forum & Electricity Ombudsman of Hon'ble KSERC. On a detailed perusal of records revealed that the findings of CGRF in the complaint No. CGRF-CR/Comp.73/2013-14 dated: 19-10-2013 is not justifiable since the unauthorised additional load in the same premises and under same tariff cannot be reckoned as unauthorised use of electricity.

Regulation 153 of Supply Code, 2014 stipulates the estimation and regularisation of unauthorised additional load which reads as: *If it is detected, on inspection, that additional load in excess of the sanctioned load has been connected to the system without due sanction from the licensee, further action shall be taken in accordance with the sub regulations mentioned.* In the light of the above Regulation, I am of the view that the assessment made under Section 126 of Electricity Act, 2003 is not applicable in this case.

Decision

In view of the above discussions, it is decided to reclassify the tariff category of the review appellant as IT IV A industrial as per the installation report already prepared by the review respondent. The Assessing Officer shall revise the assessment as per the provisions in Regulation 153 of Supply Code, 2014. Having concluded and decided as above it is ordered accordingly. The review petition is found having some merits and is allowed.

ELECTRICITY OMBUDSMAN

Review Petition No. P/425/2013/ _____ /Dated: _____

1. Sri Jimmy Joseph, M/s Highway Garage 11/237A, Thaikkattukara P.O., Choornikkara, Aluva
2. The Assistant Executive Engineer, KSEB Ltd., Electrical Sub division, Aluva

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, CV Raman Pillai Road, Thiruvananthapuram-10.
2. The Secretary, KSE B Ltd, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Power House, Power House Buildings, Cemeterymukku, Ernakulam-682 018