

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/123/2015

(Present: V.V. Sathyarajan)

Dated: 13th October 2015

Appellant : Smt. Smitha Peter
Nadukudiyil House,
Mulavoor P.O,
Muvattupuzha, Ernakulam.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
Velloorkunnam, KSE Board Ltd,
Ernakulam.

ORDER**Background of the case:**

The appellant is an agricultural consumer (LT V) with consumer No. 514 under Electrical Section No. 2, Muvattupuzha. On 03-02-2015, the APTS team of KSEB conducted an inspection in the premises of the appellant and it was found some irregularities in the classification of tariff. On 11-02-2015, the appellant was issued with a short assessment bill amounting to Rs. 11,446.00 under LT IV A tariff for the period from 5/2013 to 1/2015. Aggrieved by this, the appellant approached the CGRF, Ernakulam by filing a Complaint No. 13/2015-16. The CGRF dismissed the petition vide order dated 27-05-2015 by holding that the short assessment bill is in order. Still aggrieved with the above decisions of CGRF, the appellant has approached this Authority with this appeal petition on 24-06-2015.

Arguments of the appellant

The appellant stated that she is an agricultural consumer under Electrical Section No. 2 Muvattupuzha and cultivating plantain, elephant yam, vegetables, tuber items, spinach, coco, coconut, areca nut, nutmeg etc in her

premises. The current charges towards this service connection were being paid by Krishi Bhavan, Payipra. Consequent to an inspection conducted by the APTS team, tariff was changed from LT V to LT IV A as per the revised tariff order dated 01-05-2013 and the Board issued the above short assessment. The said revision of appellant's tariff has not been informed to the Krishi Bhavan by the respondent.

The appellant stated that there are about 300 agricultural consumers in the jurisdiction of Krishi Bhavan, Payipra like the appellant who are the beneficiaries of agricultural tariff (LT V). The appellant argued that even without issuing any notice regarding the change of tariff to the appellant or other consumers, the respondent changed the tariff to LT IV A. Hence the appellant requested to exempt from remitting the short assessment, as the bill amount is beyond her financial capacity.

Arguments of the respondent

The respondent put forward the following arguments in the statement of facts. The service connection in respect of the consumer number 514 was registered as agricultural under LT V tariff. The APTS inspection conducted in the premises on 03-02-2015 revealed that the service connection was utilized for pumping water for cultivation of cash crops. Further, it was noticed that the major cultivation in the premises is coco, areca nut, coconut, nutmeg which falls under LT IV A as per the revised tariff order with effect from 01-05-2013. As per the revised tariff order, the tariff applicable to agricultural purpose using electricity for pumping, dewatering and lift irrigation for food crops such as cereals, pulses, vegetables and fruits comes under LT V A and the tariff assigned for cultivation of cash crops is LT IV A. Based on the site mahazar, since the supply is used for pumping for cash crops, a short assessment bill for Rs.11,446.00 was issued to the appellant without any penalization. The appellant has filed an appeal before the Assistant Engineer, Electrical Section No. 2, Muvattupuzha. After conducting a hearing, the Assistant Engineer confirmed the bill amount and disposed the petition. The respondent argued that the appellant is liable to remit the short assessment bill being the difference of tariff between LT IV A and LT V A for the period from 5/2013 to 1/2015.

Analysis and findings

A hearing of the case was conducted in my chamber at Edappally, Ernakulam, on 23-09-2015. Smt. Smitha Peter was present for the appellant's side and Sri Santhosh P Abraham, Assistant Executive Engineer, Electrical Sub Division, Velloorkunnam represented the respondent's side. Both sides have presented their arguments on the lines as stated above. The brief facts

and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

The appellant argues that she is using the connection for mixed cultivation of food crops and cash crops in her premises. Fertilizers were distributed to her from the Krishi Bhavan at subsidized rate. The respondent allotted tariff to the appellant's connection under LT V on the basis of a certificate issued by the Krishi Bhavan. Regarding the revision of tariff effective from 1-5-2013, no notice was issued to her by the respondent. The appellant further contended that as a small farmer cultivating food crops and cash crops in small scale, the present revision of tariff to a higher rate, which is exclusively assigned for cash crops for large plantations, is not applicable to her. Hence issuance of the arrear bill being the difference of tariff from LT IV A to LT V A is not affordable to her. Hence the appellant prays for cancellation of the short assessment bill and requests to continue under LT V A tariff.

But the respondent's contention is that the major cultivation in the appellant's premises is cash crops which fall under LT IV A as per the revised tariff order with effect from 01-05-2013. The short assessment bill amounting to Rs. 11,446.00 was issued to the appellant on 11-02-15 being the difference of tariff between LT IV A and LT V A for the period from 5/2013 to 1/2015. On going through the records it can be seen that the respondent has failed to implement the reclassification of tariff with effect from 01-05-2013. It was detected only during the inspection conducted by the APTS that the appellant's cultivation is cash crops and tariff to be assigned for this is LT IV industrial. But in the site mahazar prepared by the Sub Engineer, No. 2 Section Muvattupuzha, it is stated that the appellant is using the electricity for pumping of water for cash crops such as coco, nutmeg, areca nut and coconut etc. Accordingly tariff was changed to LT IV industrial.

Hon'ble Kerala State Electricity Regulatory Commission, Thiruvananthapuram vide order in OP No. 2 of 2013 dated 30-04-2013 has issued Schedule of tariff and terms and conditions for retail supply by KSEB with effect from 01-05-2013, in which cash crops are included under tariff IV A. The prevailing tariff order envisages the change of electric connection provided as above LT IV industrial tariff on the grounds that, 'at premise where electricity is being used for multiple purposes, then highest tariff among them will be charged on the connection till separate connection is availed for each purpose.' The KSEB had reported that there is no rational in charging the electric connections given for mixed crop cultivation under LT IV industrial tariff where the predominant agriculture activity is the cultivation of food crops. Hence the Board, in its B.O. (FTD)No. 1360/2015 (TRAC-II/AEE4/GEN-09/15-16 dated 4/6/15, ordered that **the electric connection availed for irrigation**

purposes for mixed crop activity including plantation crops like nutmeg, coffee, pepper etc along with food crops like coconut farms, vegetables, cereals etc shall be charged under LT V (A) agriculture tariff, if the predominant agriculture activity is the cultivation of food crops including coconut farms, vegetables, cereals etc. The agreement authority is also authorized to ascertain the predominance of agriculture activity in such premises. In this particular case, the site mahazar not established the predominant agriculture activity is the cash crops. The site mahazar only reveals the appellant is cultivating cash crops in her premises. In the Board Order dated 04-06-2015 referred above, cultivation of coconut farms is included in the category of food crops under LT V A agricultural tariff. The site mahazar shows that coconut farms as cash crops under LT IV industrial tariff which is not in order.

Regulation 97 of Kerala Electricity Supply Code, 2014 which reads as

- (1) “If it is found that a consumer has been wrongly classified in a particular category of the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category as per the tariff order of the Commission or the category has changed consequent to a revision of tariff order, the licensee may suo motu reclassify the consumer under appropriate category.**
- (2) The consumers shall be informed of the proposed reclassification through a notice with a notice period of thirty days to file objections, if any.**
- (3) The licensee after due consideration of the reply of the consumer, if any, may reclassify the consumer approximately.**
- (4) Arrear or excess charges shall be determined based on the actual period of wrong classification and the account of the consumer shall be suitably adjusted.**
- (5) If the actual period of wrong classification cannot be ascertained reasonably, the period shall be limited to a period of twelve months or a period from the date of last inspection of the installation of the consumer by the licensee whichever is shorter.”**

Even though there is provision for suo moto reclassification of consumer category by the licensee under Regulation 97 of the Kerala Electricity Supply Code, 2014, the respondent has not taken any action. On a plain reading of the above contentions it is revealed that if the respondent has taken timely action to change the tariff after conducting proper inspection, the whole issue

could have been avoided. The action of the respondent for revision of tariff without issuing a notice to the appellant in time is also against the rules. A notice was seen issued only at the time of issuance of short assessment bill after the inspection of APTS team. This is highly irregular and hence cannot be justified.

Further it is found that the provisional bill is prepared and issued to the appellant under the provision of Section 126 of Electricity Act, 2003. **The Regulation 152 of Supply Code, 2014 in which the heading itself stated that "anomalies attributed to the licensee which are detected at the premises of the consumer". In clause 1 "Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in purpose of use of electricity by consumer and the inaccuracies in metering shall not attracted the provision of Section 126 of the Act or Section 135 of the Act."** Regulation (6) of 155 reads as **"An order of provisional assessment comprising the electricity charges payable by the consumer or such person benefited by the unauthorised use shall be prepared by the assessing officer as per Section 126 of the Electricity Act at a rate which is two times the tariff rate applicable for the purpose for which electricity is found to be used without authorisation"**. The short assessment issued by the respondent is also not prepared as per the above provisions, even though the appellant was not liable to be charged under Section 126.

The agreement authority has the authority to implement the decision issued by the Hon'ble Commission with due notice to the consumer/appellant. Here, in this case, an agriculturist whose electricity charges are paid through Krishi Bhavan was not aware of the change of tariff with effect from 01-05-2013. It is the bounden duty of the officers of the respondent to conduct a proper assessment in the agricultural activities of the consumer and to verify which is the predominant activity conducted therein and intimate them accordingly. This was not done in this case. It can be seen from the records that the mahazar is only prepared during the inspection of APTS. So there is no justification in issuing the short assessment amounting to Rs. 11,446.00 for the previous period from 05/2013 to 01/2015 to the appellant to cover up the lapses on the part of respondent. Hence the short assessment bill is not sustainable and the same is quashed.

It is further directed the respondent to verify the predominant nature of agriculture activity conducted in the appellant's premises and change the tariff accordingly as per the revised tariff order issued by Hon'ble Commission. This can be done with retrospective effect from the date of inspection on 03-02-2015.

Decision

In view of the discussions, it is concluded that even without conducting a proper assessment on the agriculture activities of the appellant and even without verifying which is the predominant activity conducted therein and that too without due notice, the short assessment issued for a previous period from 05/2013 to 01/2015 is not sustainable and the same is quashed. The respondent is directed to verify the predominant nature of the agriculture activity conducted in the appellant's premises and to revise the tariff accordingly as per the revised tariff order issued by Hon'ble Commission with retrospective effect from 03-02-2015. The order of CGRF in OP No. 13/2015-16 dated 27-05-2015 is set aside. Appeal is admitted to the extent as ordered above. No order as to costs.

ELECTRICITY OMBUDSMAN

P/123/2015/_____ /Dated:_____

Forwarded to:

1. Smt. Smitha Peter, Nadukudiyil House, Mulavoor P.O, Muvattupuzha, Ernakulam.
2. The Assistant Executive Engineer, Electrical Sub Division, Velloorkunnam, KSE Board Ltd, Ernakulam.

Copy to:

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