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APPEAL PETITION NO. P/156/2015
(Present: V.V. Sathyarajan)
Dated: 2nd February 2016

Appellant : Sri Valsaraj P.K.
Convenor,
Patterikkunnu Community
Irrigation,
Sruthinilayalam, Cheruppa P.O.
Kozhikode

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
Kovoor, KSE Board Ltd,
Kozhikode

ORDER

Background of the case:

The appellant in this petition representing as Convenor, Patterikkunnu Irrigation Community, Mavoor, having consumer No. 16499 under the jurisdiction of Electrical Section, Mavoor is challenging the demand notice dated 07/01/2015 for Rs. 99,178.00 issued by the respondent. The connection was issued in favour of Secretary, Mavoor Grama Panchayath under LT V, tariff. While so on 21-12-2014, the APTS of KSEB inspected the premises of the appellant and detected that the connection was seen misused for pumping water for domestic purposes. On the basis of inspection, a provisional bill amounting to Rs. 99,178.00 was issued to the registered consumer by the respondent.

Later, a final bill dated 07-01-2015 was issued as the appellant had not raised any objection against the provisional bill. Due to non remittance of the bill amount, the service was disconnected on 28-01-2015. Aggrieved by this order, the appellant had filed a petition before the CGRF. On the basis of an interim order of the CGRF, the service was reconnected after depositing an amount of Rs. 24,975.00 by the appellant. The Forum disposed of the petition by allowing 6 monthly instalments for the balance amount to be remitted without surcharge, vide order No. OP No.114/2014-15 dated 21-07-2015. Not satisfied with the above order, the appellant has approached this Authority

with this appeal petition seeking reliefs for cancellation of the disputed penal bill and restoration of agricultural tariff.

Argument of appellant:

The appellant stated that the service connection with consumer No. 16449 under Electrical Section, Mavoor is being used by the Patterikunnu Community Irrigation Project for the last 18 years for irrigating 30 hectares land planted with coconut trees, vegetables, paddy, and plantain trees. The Community Irrigation Project was implemented by the Mavoor Grama Panchayath as per Government Orders, but the current charges and expenses towards the maintenance of the project were being borne by the beneficiaries alone.

Consequent to an inspection conducted by the APTS team, tariff was changed from LT V A to LT VI E since it was found that the connection was being used for domestic purposes. According to the appellant, the APTS team had only inspected the pump house of the service connection and not any of the premises of the stakeholders. There are about 75 beneficiaries are included in the above project. But, in the site mahazar there is no specific remarks regarding the misuse of tariff by any of the stakeholders. The CGRF has not examined the appellant's arguments in this regard and denied justice.

The appellant stated that the Community Project was implemented by the State Government through the Panchayath and Agricultural Department for the development of agricultural production. In the jurisdiction of Krishi Bhavan, Mavoor there are 75 persons like the appellant who are the beneficiaries of the project under 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 VI E. The electricity bill is being collectively remitted by the stakeholders. Even after changing the tariff to LT VI E, the licensee is charging at penal rate in the subsequent bills issued.

As alleged by the respondent, the water pumped from the river cannot be used for drinking without purification process. The polluted water of Chaliyar River is not suitable for drinking. The water is not useful for any other purposes other than agriculture. Hence the appellant requested to exempt from remitting the short assessment, as the bill amount is beyond their financial capacity and to restore the agricultural tariff as such.

Argument of the respondent:

The respondent put forward the following arguments in the statement of facts. The service connection in respect of the consumer number 16449 was registered as agricultural under LT V A tariff. The APTS inspection conducted in the premises on 21-12-2014 revealed that the service connection was

misused for pumping water for domestic purposes. Hence a site mahazar has been prepared after recording the above irregularities and based on that a short assessment bill for Rs. 99,178.00 was issued in favour of the registered consumer, the Secretary, Mavoor Grama Panchayath. Due to the failure in remitting the bill amount, the service was disconnected. The appellant has filed a complaint before the CGRF, Kozhikode against the disconnection, short assessment and tariff change. The CGRF issued an interim order on 25-02-2015 directing the respondent to give reconnection after realizing 1/4th of the bill amount i.e. Rs. 24,975.00 from the appellant.

The appellant was penalized for misuse of tariff under Section 126 of the Electricity Act, 2003. The appellant has not approached the Assessing Officer or the Appellate Authority with any objection. The CGRF has not examined the maintainability of the case under Section 126 while disposing the case.

The connection is provided exclusively for agricultural purposes. It is found that the water is pumping from a well constructed near the river by using a motor pump and distributed to consumer by storing in a tank. During the hearing, the Secretary, Mavoor Grama Panchayath, the registered owner of the service connection has submitted that the Panchayath is not responsible for any misuse of tariff. The claim of the appellant that they are directly pumping the water from the river is not true. It is clearly stated in the site mahazar that the pumping is from a well constructed near the river. Since the appellant has not regularised the tariff, the licensee is collecting penal amount from the appellant.

Analysis and findings

A hearing of the case was conducted in the Court hall of CGRF, Kozhikode, on 12-01-2016. Sri P.K. Valsaraj was present for the appellant's side and Smt. Maya P.V., Assistant Executive Engineer, Electrical Sub Division, Koor and Sri. Devarajan K., Sub Engineer represented the respondent's side. 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 denies the charge of using the connection for domestic purposes. According to him, the inspection team had not examined any of the premises of the stakeholders and not detected any misuse of supply for domestic purposes. Admittedly there are 75 beneficiaries in the Patterikunnu Community Irrigation Project and the water is being pumped from a well constructed near the river and distributed after collecting in a tank. The current charges are being collected from the beneficiaries based on the usage for which separate water meters were provided to them.

As the registered consumer is the Secretary, Mavoor Grama Panchayath the short assessment bill and disconnection notice were issued to him by the respondent. But the Secretary did not respond to the notice which resulted disconnection of the service. Since this is a Community Project implemented by the Government for the benefit of the farmers, the appellant representing the aggrieved stakeholders approached CGRF for reconnection, cancellation of the short assessment bill and restoration of agricultural tariff. It is not fair to penalize all the beneficiaries of the scheme without fixing the responsibility of misuse of electricity, if any, by any particular person. Further, this scheme is implemented by the Government under the control of Panchayath and Agricultural Department and the Secretary is the registered consumer and those Authorities are also responsible for any misuse of tariff.

On going through the site mahazar it is not clear that all the stakeholders are using the water exclusively for domestic purpose. Further, argument of the appellant that the water pumped from Chaliyar River cannot be used for domestic purpose has not been challenged by the respondent. The contention raised by the respondent that misuse of tariff for domestic purpose by the entire stakeholders is without proper verification and any documentary evidence and hence cannot be justified.

Further it is found that the provisional bill is prepared and issued to the registered consumer under the provision of Section 126 of Electricity Act, 2003. **The Regulation 152 of Supply Code, 2014 deals with "Anomalies attributable to the licensee which are detected at the premises of the consumer"** - (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 the purpose of use of electricity by the consumer and the inaccuracies in metering shall not attract the provisions of Section 126 of the Act or Section 135 of the Act."* In view of the finding of foregoing paragraph and the Regulation mentioned above, the respondent's action in issuing the bill under Section 126 of Electricity Act, 2003 is against the Regulation which cannot be admitted.

Regulation 155 (6) 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 of Electricity Act.***

Hon'ble Kerala State Electricity Regulatory Commission, Thiruvananthapuram vide order in OP No. 9 of 2014 dated 14-08-2014 has issued Schedule of Tariff and Terms and Conditions for Retail Supply by KSEB with effect from 16-08-2014 to 31-03-2015, in which the following water supply schemes solely for domestic purposes namely:

- (i) water supply schemes under Jalanidhi, Jaladhara or Swajaladhara Projects;
- (ii) water supply schemes coming under water supply societies or under beneficiary committees;
- (iii) water supply schemes for Scheduled Caste (SC) and/or Scheduled Tribe (ST);
- (iv) water supply schemes for Laksham Veedu Settlements taken over and managed by Local Self Government Institutions;
- (v) Social drinking water supply schemes established using local area development funds or Members of Legislative Assembly (MLA) and/or Members of Parliament (MP);
- (vi) social drinking water supply schemes established using funds of Local Self Government Institutions;
- (vii) social drinking water supply schemes under Peoples Participatory schemes (PPS);
- (viii) Rajeev Gandhi Drinking Water Schemes managed by beneficiary groups.

These schemes are included under tariff LT VI (General) E. Further, KSEB in its **B.O. (FTD)No. 1360/2015 (TRAC-II/AEE4/GEN-09/15-16 dated 04-06-2015**, 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 prepared by the respondent has not established the predominant agriculture activity is either the cash crops of any other crops. The site mahazar only reveals the beneficiaries are using water for domestic purpose, irrigating their coconut trees and for cash crops in their 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. Hence the short assessment issued based on the above findings cannot be admitted.

The respondent has assessed the appellant under tariff VI E. But the appellant's organization is not related to any of the schemes mentioned in the tariff notification referred. Water supply schemes solely for domestic purposes come under tariff VI E. It is pertinent to note that the respondent is collecting

penal charges from the appellant for the subsequent bi-monthly bills issued for non reclassification of tariff category. This is a clear violation of the Regulation 97 of Supply Code, 2014. **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 as per the above Regulation, the respondent has not taken any action in this regard. The above lapse on the part of respondent is found highly irregular, against the Regulations and hence cannot be justified.

Here, the site mahazar which is the crucial document to substantiate the claim of the respondent that the appellant had misused the tariff is insufficient in this case to issue such a short assessment bill for Rs. 99,178.00. Moreover, the respondent made the assessment without observing the Regulations mentioned above.

Decision

The short assessment made by the respondent in this case is without observing the Regulations in the Supply Code, 2014 and the procedure issued by the licensee. In the absence of a proper site mahazar to substantiate the claim of respondent that misuse of tariff by the appellant, there is no justification in issuing such a short assessment bill. So the assessment is not sustainable before law and liable to be set aside.

In view of the above discussions the following decisions are taken.

- 1) The short assessment bill for Rs. 99,178.00 is quashed.
- 2) The tariff assigned to the service connection of the appellant as VI E is also quashed.
- 3) The respondent is directed to conduct a detailed inspection in the premises of the beneficiaries and to take necessary steps as per the Regulations mentioned herein and the guidelines issued by the licensee.
- 4) The amount, if any, remitted in excess by the appellant shall be refunded or adjusted against the future bills.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the appellant is found having some merits and is admitted. The order of CGRF in OP No.114/2014-15 dated 21-07-2015 is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/156/2015/_____ Dated:_____

Delivered to:

1. Sri Valsaraj P.K., Convenor, Patterikkunnu Community Irrigation, Sruthinilayalam, Cheruppa P.O., Kozhikode
2. The Assistant Executive Engineer, Electrical Sub Division, Kovoov, KSE Board Ltd, Kozhikode

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSEBoard Ltd, Gandhi Road, Kozhikode