

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

APPEAL PETITION NO. P/008/2016

(Present: V.V. Sathyarajan)

Dated: 27th May 2016

Appellant : Sri. Alfred David,
Thundiparambil House,
Near Railway Station,
Chalakkudy - 680683

Respondent : The Assistant Executive Engineer
KSE Board Limited,
Electrical Sub Division
Chalakkudy

ORDER**Background of the case:**

The appellant is a consumer and is having 7 single phase service connections with Consumer Nos. 30720, 30721, 30722, 30723, 30724, 30725 and 30726, under Electrical Section, Chalakkudy. Each connection has a connected load of 990 watts and the tariff allotted was domestic LT-I A. The tariff was changed from LT I A to LT VII A - commercial, on the basis of an inspection conducted by the APTS in the premises on 25-04-2015. During the inspection it is found that the premise is being used as lodging purpose for the labourers, which comes under commercial category.

Against the tariff change from domestic to commercial category and the issuance of short assessment bill, the appellant filed a petition before the Assistant Engineer, Electrical Section, Chalakkudy who afforded an opportunity to hear the appellant and thereafter issued final bills confirming the provisional bills. Against the above decision, the appellant filed a petition before the CGRF, Ernakulum, requesting for restoration of tariff back to LT I A category. But the Forum dismissed the petition holding that "the Forum has no jurisdiction in the subject matter". Not satisfied with the decision of the Forum the appellant filed this Appeal Petition.

Arguments of the appellant

The arguments of the appellant are based on the brief facts and circumstances of the case as narrated above. Further, the appellant has adduced the following arguments.

The appellant renovated 70 year old line house building Nos. 111/331, 332, 333 , 334, 334 , 335 , 338 and after detailed inspection KSEB allowed domestic tariff connections based on his applications. The appellant rented those 7 houses to labourers and those people are using house purely for living and using for domestic purposes such as sleeping, cooking, bathing, washing, watching TV and music etc.

The argument of the appellant is that APTS surprise inspection conducted on 25th April 2015 doesn't prove anything other than those domestic purposes. APTS only claim for tariff change and that does not come under any theft, misuse/unauthorized use/offences and penalties and electrical accidents. Another contention of the appellant is that inspection was fake because at the time of inspection all the 7 houses were closed and all went for work. They don't even take pain to look inside the house or didn't take verbal witness or photo or video for support. K.P. Mani, Sub Engineer, Chalakkudy who wrote the mahazar was taken as witness.

On that bill a hearing was conducted on 27-07-2015 avoiding K.P Mani who is working in the same office. The Assistant Executive Engineer in the statement of facts filed before the CGRF has stated that the case of Aravindakshan is similar, that they are still paying domestic tariff and rented his house to other state labourers from 2014 till date.

The appellant has relied judgments of similar nature pronounced in case no: WP (C) 15966 of 2012 (3) of Honourable High court and orders issued by this Authority in Representation No: P 101/09 and representation No: P 86/09.

Arguments of the respondent:

The respondent's contention is that the petition is against the assessment bill issued for the unauthorized use of electricity by way of misuse of tariff under Section 126 of Electricity Act as per the existing rules which does not come under the definition of complaint and is not maintainable. Service connection was given to the renovated line rooms of 7 numbers under the ownership of the petitioner in domestic tariff on his application dated 31-07-2013 and in accordance with the formalities for allotting appropriate tariff.

During inspection of Anti Power Theft Squad on 25th April 2015, tariff misuse of energy was detected in all the premises and building numbers.

| Sl. No. | Consumer No. | Room No. | Registered Connected Load |
|---------|--------------|----------|---------------------------|
| 1 | 30720 | 11/331 | 990 W |
| 2 | 30721 | 11/332 | 990 W |
| 3 | 30722 | 11/333 | 990 W |
| 4 | 30723 | 11/334 | 990 W |
| 5 | 30724 | 11/335 | 990 W |
| 6 | 30725 | 11/336 | 990 W |
| 7 | 30726 | 11/337 | 990 W |

No families were found residing in any of the line rooms for domestic purpose. A group of male people including workers with origin of other States are found occupied purely for lodging purpose which comes under commercial activities as per prevailing norms of KSEB Limited and hence the assessment that the consumer misused the tariff is correct. Accordingly site mahazar was prepared and the details were convinced and acknowledged by the witness Sri. Deepak Antony, son of the petitioner who was present at the time of inspection.

The argument of the appellant that the inspection was fake and all the seven rooms were closed at the time of inspection is not correct. The inspection conducted by the APTS Wing, Thrissur is absolutely genuine. All the seven rooms were opened and found occupied by group of male occupants clearly for lodging purpose. The APTS is authorised to inspect the premises of consumers to find out irregularities and misuse of energy, if any committed by the consumer or any occupants in the premises.

Provisional bills for misuse of tariff were served to the appellant as per Section 126 of the Electricity Supply Code, 2014. A hearing was conducted on 27-07-2015 at the request of the consumer Sri. Alfred. During hearing the appellant had specifically stated that the seven rooms were given on rental basis to these people as specified above for a period prolonged more than 2 years. No documentary evidences or proof in support of the argument were produced by the appellant during hearing to prove that the connections were purely used for domestic purposes. By letter dated 09-10-2015, the Assistant Engineer, Electrical Section, Chalakkudy has issued the final bill as per norm.

In a similar case of misuse of tariff in WP(C) 10152/2015 filed by Sri. Aravindakshan. K (Consumer No. 7045) under the same Electrical Section, Chalakkudy whereas in the judgement dated 30-03-2015 directed the Deputy Chief Engineer as Appellate Authority to hear the case and the Appellate Authority disposed of the case in favour of the KSEB.

Analysis and findings

The hearing of the case was done on 03-05-2016 in my Chamber at Edappally and the appellant's side was represented by Sri Alfred David and Sri Deepak Antony, and the respondent's side by Sri V.P. Mohammed Sheriff, Assistant Executive Engineer, Electrical Sub division, Chalakkudy and they have argued the case, mainly on the lines as stated above. On examining the petition filed by the appellant, the statement of facts of the respondent, perusing the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings, leading to the decisions thereof.

The first point to be decided in this case is whether the appeal petition is maintainable or not.

The respondent's contention is that the petition is against the assessment as per Section 126 of Electricity Act issued for misuse of tariff which does not come

under the definition of complaint and is not maintainable before this Authority. On going through the short assessment bill issued to the appellant, it can be seen that the Section under which the short assessment bill is issued has not furnished by the respondent. Further, **Regulation 152 of Supply Code, 2014 stipulates that "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 be attracted the provision of Section 126 of the Act or Section 135 of the Act."** Hence the argument of the respondent that the petition is not maintainable before this Authority is not sustainable.

It is the duty of the licensee to assign appropriate tariff to a consumer, based on the purpose or activity for which the electrical energy is utilized as per the guidelines issued by the Hon'ble Commission from time to time. During an inspection carried out by the APTS on 25-04-2015, 'misuse of tariff' was detected as the premises were being used for accommodating labourers and hence the respondent changed the tariff from domestic to commercial. The contention of the appellant is that the labourers are accommodated in the building is true, but they are using the supply for domestic purposes like cooking, bathing, washing, watching TV and music etc. as in the case of other domestic users.

Further, 'electricity' is being used in the above premises like any other residential building and no commercial business or activities are undergoing in the said premises. Hence he argued that he is eligible for domestic tariff. The appellant also produced copy of judgment in a case disposed by the Hon'ble High Court in WP (C) No. 15966/2012 dated 06-11-2012, to substantiate his argument. On a perusal of the judgment it can be seen that the Hon'ble High Court had directed KSE Board to take appropriate decision after giving an opportunity to the consumer of being heard and as per rules. Hence, I find that the above judgment has no relevance in this case and his argument in this regard cannot be sustained. Similarly orders issued by this Authority in appeal petitions No: P 101/09 and P 86/09 have also no relevance in this case since the issues are not related to the present case.

In the 'Schedule of Tariff and Terms & Conditions for Retail supply by KSEB with effect from 16-08-2014, the following group of consumers are categorized under the Tariff of LT VII A (commercial) category.

"Tariff for commercial consumers such as shops, other commercial establishments for trading, showrooms, display outlets, business houses hotels and restaurants (having connected load exceeding 1000W), private lodges, private hostels, private guest houses, private rest houses, private travelers bungalows, freezing plants, cold storages, milk chilling plants, bakeries (without manufacturing process). Petrol/diesel/LPG /CNG bunkers, automobile service stations, computerized wheel alignment centres, marble and granite cutting units, LPG bottling plants, house boats, units carrying out filtering and packing and other associated activities using extracted oil brought from outside, share broking firms, stock broking firms, marketing firms".

As per the tariff notifications prevailing from 2002 onwards the private hostels/lodges/guest/rest houses are under the purview of LT VII A commercial category. The term "Home, family, domestic purpose" etc are given importance in our society and is usually given preference in almost all fields, whether it relates to electricity tariff, water charge, LPG Cylinder rate etc. Even if a family is staying in a Lodge or Guest House where no commercial activity or purpose is being done, the tariff assigned for such accommodation or stay is classified under commercial category. Classification of tariff is approved by the Hon'ble Commission after collecting suggestions / remarks and after conducting public hearings. The Hon'ble Commission has not treated at par with 'domestic purpose' that type of stays or accommodations, but differently and assigned a higher tariff.

On going through the records it can be seen that this is a case of incorrect application of tariff by the licensee and shall not attract the provision of Section 126 or Section 135 of the Electricity Act. ***As per Regulation 97***

(1) of Supply Code, 2014, "if it is found that a consumer has been wrongly classified in a particular category or 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 moto reclassify the consumer under appropriate category".

(2) The consumer shall be informed of the proposed reclassification through a notice with a notice period of 30 days to file objections, if any.

(3) The licensee after due consideration of the reply of the consumer, if any, may reclassify the consumer appropriately.

(4) Arrear or excess charges shall be determined based on the actual period of wrong reclassification and the account of the consumer shall be suitably adjusted.

(5) If the actual period of 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. Here in this case, the respondent had not taken any action as per Regulation 97 of Supply Code, 2014.

From the records and the arguments submitted by the appellant it is evident that the appellant is letting out these line rooms for accommodating labourers. Nowhere, it is stated that each room is provided with separate kitchen or similar amenities necessary for a residential building. It is a fact that the line rooms of the appellant having 7 independent connections are that of the nature of a lodge. So in this factual position the only tariff applicable to the appellant's line rooms is commercial (LT VII A) because the activity is of commercial nature which comes under the Schedule of Tariff and Terms and Conditions for Retail Supply issued by the Commission. Hence the action taken by the respondent to revise the tariff from domestic to commercial is found in order.

Decision

In view of the above discussion, it is evident that though the appellant availed separate service connections to the line rooms, failed to establish that each room is provided with separate kitchen or similar amenities necessary for a residential building. Hence the change of category of tariff from domestic to commercial is found in order. However, the respondent is directed to revise the bills under normal tariff applicable to the period during such anomalies persisted, as per Regulation 152 of Supply Code 2014.

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 to the extent ordered above. The order of CGRF in OP No.109/2015-16 dated 16-02-2016 is hereby set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/008/2016/ _____ /Dated: _____

Delivered to:

1. Sri. Alfred David, Thundiparambil House, Near Railway Station, Chalakkudy - 680683
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Chalakkudy

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, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.