

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/032/2016
(Present: V.V. Sathyarajan)
Dated: 09th August 2016

Appellant : Sri. P. J. Antony
Joint Managing Director,
Jeevan Telecasting Corporation Ltd.,
Palarivattom, Kochi-25.

Respondent : 1. The Deputy Chief Engineer,
Electrical Circle, KSEBL
Vydyuthi Bhavanam,
Ernakulam

2. The Special Officer (Revenue)
KSEBL, Vydyuthi Bhavanam,
Thiruvananthapuram

3. The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd.
Palarivattom, Ernakulam.

ORDER

Background of the case:

The appellant, Sri P. J. Antony, is the Joint Managing Director of the Jeevan Telecasting Corporation Ltd., Palarivattom having and HT service connection with consumer code: 10/1056 under Electrical Section, Palarivattom. The Kerala State Electricity Regulatory Commission has notified the tariff order in OP No. 9/2014 dated 14-08-2014 in which printing of newspapers is classified under HT I industrial tariff and TV channels are under HT IV commercial tariff. Prior to this tariff notification the appellant has been honouring the bills at HT IV commercial category.

The appellant was billed under HT I industrial tariff from 10/2014 onwards instead of HT IV commercial tariff by mistake. As soon as the respondent realized this mistake, issued a short assessment bill for Rs.

9,86,211.00 for the period from 10/2014 to 9/2015 to the appellant, towards the differential tariff between HT I industrial and HT IV commercial. Aggrieved against the bill, the appellant filed petition before the CGRF, Ernakulam vide Petition No.120/2015-16. The Forum vide order dated 13-04-2016, upheld the demand raised by the respondent. Not satisfied with the decision of CGRF, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant

The appellant has stated that he is a commercial consumer having consumer number 10/1056 under Electrical Section, Palarivattom and remitting electricity bills regularly without any default. On 02-12-2015, the Special Officer, Revenue issued a notice to the appellant directing to remit an amount of Rs. 9,86,211.00 being the differential tariff between HT IV and HT I from 10/2014 to 9/2015. The appellant contented that the bill for the period from 10/2014 to 9/2015 for an amount of Rs. 9,86,211.00 was issued only because of the lapses on the part of the respondent.

In pursuance of the notice, the appellant has remitted an amount of Rs. 4,51,037.00 out of the short assessment bill of Rs. 9,86,211.00. According to the appellant, since the respondent is responsible for the lapses in claiming the bills correctly, the present demand of short assessment bill is illegal. So the prayer is to cancel the disputed bill and to adjust the amount remitted by him in future bills. It is also submitted that a petition on the subject is pending with the Minister for Power and hence requested to keep pending the decision till the disposal of the petition by the Minister.

Arguments of the respondent:

The respondent stated that by Notification No. 1/1/KERC-2004/III dated 06-10-2005 Kerala State Electricity Regulatory Commission notified the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005. As per Regulation 21(3) of the said Regulation, the representation shall be in writing duly signed by the complainant as per Form-B attached to the Regulation. Representation filed by Sri. P.J. Antony, Managing Director, Jeevan TV against the Order dated 13-04-2016 of the Consumer Grievance Redressal Forum (Central Region) in Comp. No.120/2015-16 is not in the form-B as specified and mandated by the said Regulation. Hence the representation/complaint of Sri P.J. Antony is not maintainable under Regulation 22(1)(a) of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation, 2005 and is liable to be dismissed in limine.

The relation between the consumer and the Kerala State Electricity Board Limited is governed by the Electricity Act in force, Rules and Regulations made thereto, orders issued by the Appellate Tribunal for Electricity,

Central/State Electricity Regulatory Commission as the case may be from time to time and the agreement executed by the consumer and distribution licensee and changes made in the Act, Regulation, Orders issued by the Apex Court or other statutory bodies.

Before the commencement of the Kerala Electricity Supply Code, 2014 and KSEB Terms and Conditions of Supply, 2005, the rules governing the field were the Conditions of Supply of Electrical Energy, 1990. It is submitted that as per Regulation 34(a) of the Conditions of Supply of Electrical Energy Regulation 1990 read with clauses (3) and (6) of the Regulation 19 of the KSEB Terms and Conditions of Supply, 2005, when there is transfer of ownership or right of occupancy to the premises, the registered consumer shall intimate the transfer or right of occupancy to the Assistant Engineer of the Electrical Section concerned. If the transferee desires to enjoy service connection, he shall pay the dues to the Board and apply for transfer of ownership of service connection and execute fresh agreement. Further, if no formal contract having been entered into between the Board and the consumer, the latter after once the supply of electricity has been commenced, shall be bound by the Terms and Conditions of Supply, 2005 (the regulation then in force). Here the registered consumer had not intimated the transfer of ownership to the Board, whereas the transferee did not execute fresh agreement but commenced consumption.

M/s Rashtra Deepika Limited, Palarivattom, High Tension Consumer under Electrical Section, Palarivattom was provided supply for the purpose of operating and lighting the consumer's Press-cum-office building. It was revealed that the supply from the said service connection was being used unauthorisedly for the functioning of Jeevan TV since May 2003. Tariff orders issued from time to time form part of the agreement. As per the tariff order, Television Channels are classified under HT-IV category. It is further revealed from the records kept in the premises that M/s Jeevan TV has been reimbursing the amount claimed by M/s Rashtra Deepika on the electricity charges. It is obvious that M/s. Rashtra Deepika Limited was unauthorisedly diverting energy for functioning of Jeevan TV. Act prohibits the selling/reselling without a license. An amount of Rs. 1,35,65,533.00 is 'charge as penalty was charged and imposed against the consumer on detection of misuse of tariff for a load of 88 kW assessed from May 2003 to February, 2007 since the records shows that M/s Jeevan TV had been working in the building from 05/2003 onwards. Bills issued thereafter were in HT-IV commercial category. Issuance of bill and proceedings thereafter was challenged by filing W.P. (C) No.6340/2008 and Hon'ble High Court in the light of the reported decision KSEB Vs. Najeeb (2005(1) KLT 406) quashed the penal bill and directed the Board to assess the bill at 88KW for 6 months at 1.5 times the applicable tariff as contemplated in the Electricity Act 2003. Accordingly penal bill was revised to Rs. 5,27,378.00.

The facts being so, the Kerala State Electricity Regulatory Commission notified the tariff order vide order dated 14-08-2014 in O.P No.9/2014 and published the Extra Ordinary Gazette (Vol.3 No.2379 dated 27-09-2014. Printing of newspapers is classified in HT-I industrial tariff and TV channels under HT-IV commercial tariff. Since the purchaser has not changed the ownership in the registers, books of accounts and in the computer system viz energize the title is in the name of previous owner and as such the system calculated the bills at HT-I rate.

On reviewing the bill, the technical error crept in was noted and the said error was rectified and thereupon intimated the appellant to remit the differential amount (HT-I and HT-IV) invoking provisions of the Kerala Electricity supply Code, 2014. The energy was consumed by the consumer for running TV channel. The said category is notified by the State Electricity Commission in HT-IV category. Prior to August 2014 and after the rectification errors, consumer has been honouring the bills at HT-IV category. Entities are working under the principles of going concern and the books of accounts are prepared accordingly. As such receivables/payables carried over to the forthcoming or future periods. Liability to pay current charges is a statutory one. Short assessment charges raised are for the energy consumed by the consumer and petitioner is well aware that he was billed under HT-IV category prior to 08/2014.

Against the issuance of additional Bill No SOR/HTB-10/1056/2015-16 dated 02-12-2015, the appellant approached the Consumer Grievance Redressal Forum. Short assessment, being the differential tariff between HT-1 industrial and HT-IV commercial from 10/2014 to 09/2015 amounted to Rs. 9,86,211.00 after adjusting credit to the tune of Rs. 2,72,622.00 and the amount payable by the Firm at the time of issuance of notice was Rs. 7,13,589.00. The CGRF (CR) by its order dated 13-04-2016 in Complaint No.120/2015-16 upheld the demand raised by the Board for Rs. 9,86,211.00. In compliance to the order of the CGRF (CR), notice dated 28-04-2016 was issued to remit Rs. 5,35,192.00 after adjusting the amount remitted during the disputed period. A consumer can file a representation before the Ombudsman only when he was aggrieved by the order of the Consumer Grievance Redressal Forum. In the representation of Sri P.J. Antony, nothing is stated regarding the order of the Consumer Grievance Redressal Forum, except a posting reference of that order. No grounds of challenge of the said order are stated in that representation. How he was aggrieved by the said order is unknown. Thus the representation/complaint is an abuse of process of this Forum. Hence the same is to be dismissed with cost.

Analysis and findings

A hearing of the case was conducted in my chamber at Edappally on 03-08-2016. Sri P.J. Antony and Sri Kurian George represented the appellant's side and Smt. K. Rajasree, Executive Engineer, Electrical Circle, Ernakulam,

Sri. Esmel P.A., Assistant Executive Engineer, Electrical Sub Division, Palarivattom, and Smt. Sudha S, Assistant Executive Engineer, Electrical Sub Division, Ernakulam 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 issue referred in this appeal is with respect to the short assessment bill for the period from 10/2014 to 9/2015 for an amount of Rs. 9,86,211.00. After hearing the submissions made by the appellant and the respondent and on perusal of records produced it is evident that the appellant was wrongly billed under HT I industrial tariff instead of HT IV commercial tariff. The CGRF considered the contentions of the respondent and confirmed the short assessment bill issued to the appellant. It is true that there was an omission on the part of the officials of the respondent in issuing the monthly bills at appropriate tariff to the appellant from 10/2014 to 9/2015, consequent to a revision of schedule of tariff and terms and conditions of retail supply of electricity.

It is the bounden duty and responsibility of the licensee to reclassify the consumer under appropriate category consequent to a revision of schedule of tariff and terms and conditions of retail supply of electricity. On going through the records it can be seen that the appellant was issued bills under HT IV commercial tariff prior to the revision of tariff. Hence it can be presumed that the appellant is aware of his tariff category and he is liable to pay the charges under appropriate tariff. Regulation 134 of the Electricity Supply Code, 2014, reads as:

“If the licensee establishes that it has undercharged the consumer either by review or otherwise, the Licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill”.

Further, as per Regulation 152 (2 & 3) of Kerala Electricity Supply Code, 2014 ***“the amount of electricity short collected by the licensee, if any, can be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted without any interest”.*** The licensee is entitled to recover from a consumer on the basis of a bill towards the charges for electricity supplied based on the approved tariff in force. Here in this case, the appellant had consumed the energy under commercial tariff he is liable to remit the charges as per the short assessment bill issued.

Decision

In view of the above discussions it is concluded that short assessment bill issued for Rs. 9,86,211.00 is found in order and the appellant is directed to remit the balance amount of Rs. 5,35,192.00. The respondent is directed to allow suitable installments as per Regulation 135 of the Supply Code, 2014, if the appellant desires so. The appeal is disposed of accordingly. The Order of CGRF in OP No. 120/2015-16 dated 13-04-2016 is upheld. No order as to costs.

ELECTRICITY OMBUDSMAN

P/032/2016/_____ /Dated:_____

Delivered to:

1. Sri P. J. Antony, Joint Managing Director, Jeevan Telecasting Corporation Ltd., Palarivattom, Kochi-25.
2. The Deputy Chief Engineer, Electrical Circle, KSEBL, Vydhyuthi Bhavanam, Ernakulam
3. The Special Officer (Revenue), Kerala State Electricity Board Limited, Vydhyuthi Bhavanam, Thiruvananthapuram
4. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd. Palarivattom, Ernakulam

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.