

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P/046/2016

(Present: V.V. Sathyarajan)

Dated: 15th November 2016

Appellant : Sri. Roy Mathew,
M/S High Range Metal Crusher,
LakshmiKovil P.O., Ranimudi,
Peermade,
Idukki.

Respondent : The Assistant Executive Engineer,
KSE Board Limited,
Electrical Sub Division,
Vandiperiyar, Idukki.

ORDER**Background of the case:**

The appellant, Sri Roy Mathew, has an LT IV (A) 3 phase industrial connection with consumer No.17081 under Electrical Section, Peermade with a connected load of 125 kW. The appellant is under ToD billing system from 10/2013 onwards with a contract demand of 104 kVA. On 10-09-2015, the APTS, Ernakulam Unit inspected the appellant's premises and found that the maximum demand is continuously exceeding 100 kVA from 03/2015. Hence it was directed to issue notice to the appellant and to charge deemed HT tariff.

Accordingly the appellant was issued with regular bill for an amount of Rs. 1,47,874.00 towards the monthly bill for 12/2015 under deemed HT tariff since the contract demand of the appellant has exceeded 100 kVA. Aggrieved against the bill and change of tariff from LT to deemed HT, the appellant filed a petition before the CGRF, Ernakulam vide Petition No. 134/2015-16. The Forum vide order dated 06-06-2016, has found that the bill issued in deemed HT from 12/2015 for an amount of Rs. 1,47,874.00 is in order. Against the decision of CGRF, the appellant has submitted this appeal petition before this Authority.

Arguments of the appellant:

The appellant is the registered owner of service connection, bearing consumer No. 17081 under LT-IV (A) tariff, serviced by Electrical Section, Peer-made of the KSE Board Limited. The appellant has been promptly paying the energy bills, based on demand invoices, issued by the respondent Board. In the meantime, appellant was served with an additional invoice dated 04-12-15 for Rs.1,47,874.00, claiming to be the short fallen demand in respect of the service connection. In addition, energy bills thereafter have been assessed under HT Tariff, although the service connection strictly belongs to LT side.

Aggrieved by this, a complaint, dated 28-12-2015 was filed before the CGRF (Central Region), which was subsequently dismissed vide Order of the Forum, referred above. It is submitted that the Forum has not reviewed the issue threadbare and issued the order in haste without bothering to address the genuine grievances, raised by the appellant. Therefore, this appeal is submitted against the orders of the Forum on the following grounds with prayer for reasonable relief

1. As per Regulation 11 of Kerala Electricity Supply Code, 2014, the maximum connected load permissible for Low Tension three phase category is limited to 100 kVA and that service connections, effected as on 02/03/2005, i.e. the date of implementation of Kerala Electricity Supply Code, 2005, would be permitted to have a connected load above 100 kVA. In this case, the date of connection is 07-08-2006, which is outside the purview of the cut-off date for availing LT supply, when the service connection with a sanctioned load of 125 kW should have been effected under HT, instead of under LT. This was a fault on the part of the licensee, for which the consumer should not be made to suffer on any account.
2. Since energy, availed by the service connection was under LT, there was no reasoning or rationale behind reassessment of units, consumed under any tariff, other than the allotted LT tariff, if there is no change in the purpose of energy use. Hence, short assessment made in 12/2015 and subsequent assessment of energy charges under deemed HT tariff are not as per rules or regulations. So far, no definition of the so-called deemed HT tariff as to which category of consumers it is applicable has been issued.
3. The HT consumers have access to certain privileges, such as exemption from load-shedding etc. to name a few, bringing them under a higher category than the LT consumers. The so-called deemed HT consumers, to which appellant's service connection is forcefully subjected have no such privileges and benefits; but are made to pay a higher tariff at par with the HT consumers, which has no justification at all.

4. The appellant is not allowed a reasonable time limit by the licensee to switch over to HT side, which needs the service connection to undergo several changes. By not allowing any reasonable time period to convert to HT before enforcing penal assessment, the licensee has committed gross injustice.

Reliefs, sought for:

1. The impugned bill, dated 04-12-2015 may be set aside, and further subsequent bills of 5/16, 6/16.
2. The service connection may be allowed to be retained as an LT one for the time being for want of any orders or regulations to the contrary.
3. The Hon'ble Ombudsman may direct the licensee to grant a reasonable time, deemed fit by this Authority for conversion of the service connection to HT side, if and only if there is no possibility to retain in LT tariff.
4. Any other reliefs, the appellant or his nominated representative may rise during the course of conduct of the subject appeal petition.

Arguments of the respondent:

1. The appellant Sri. Roy Mathew, High Range Crusher, Ranimudi, Idukki (Con. No.17081) has an LT IV A industrial 3 phase connection under Electrical Section, Peermade with a connected load of 125 kW (139 kVA). The connection was availed under Minimum Guarantee Scheme and the Minimum Guarantee period was 7 years @ Rs. 1,55,347.00 per annum. On 22-07-2006 an amount of Rs. 96,500.00 was collected as Cash Deposit vide receipt No. 234/2006 and the connection was effected on 07-08-2006. The consumer is under ToD billing system from 10/2013 onwards with contract demand 104 kVA.
2. On 10-09-2015 the APTS unit, Ernakulam inspected the office records of this appellant and observed that maximum demand is continuously exceeding 100 kVA from 3/2015 and directed to issue notice to the appellant about this and to issue bill in deemed HT tariff.
3. Accordingly a registered notice No.BB/PMD/17081/15-16/419/24-11-2015 was served to the appellant stating that since the connected load is 125 kW (139 kVA) and the maximum demand is in excess of permissible limit of 100 kVA of LT category, it is irregular to continue this connection in LT category and directed to avail HT connection. It is also intimated that the appellant will be billed in deemed HT tariff. The appellant has not responded to the intimation.
4. Thereafter the regular bill of 12/2015 for Rs. 1,47,874.00 (for 17920 units) was prepared at the rate applicable to HT consumers (Demand charge @ Rs.

300.00 per kVA and energy charge @ Rs.5.20 per unit). It is submitted that demand charge per kVA is Rs. 300.00 in HT industrial tariff and Rs.125.00 in LT industrial tariff whereas the energy charge per unit is the same in both the LT Industrial tariff and HT industrial tariff. Because of this difference in demand charge, the bill amount of 12/2015 was much higher than that of the previous months. The actual bill amount of 12/2015 is Rs.1,48,721.00 as shown in the calculation statement attached herewith. But due to arithmetical error the initially arrived bill amount was Rs. 1,47,874.00 which later on corrected as Rs. 1,48,721.00 by issuing a bill for Rs. 847.00 also (in addition to the original bill for Rs. 1,47,874.00). Hence it is submitted that the bill for Rs. 1,47,874.00 is the regular bill of 12/2015 and not the short fallen demand as claimed by the appellant.

5. As per Regulation 11(1) of the Electricity Supply Code, 2014 maximum connected load permissible for Low Tension three phase category shall be limited to 100 kVA. Provided that a Low Tension consumer who, as on the date of implementation of the Kerala Electricity Supply Code, 2005 (02-03-2005) had a sanctioned load exceeding the limit of 100 kVA may be permitted, subject to realisation of low voltage supply charge, to operate with the same sanctioned load at the same voltage level of supply until an upward revision of connected load is sought for by the consumer.

6. As per Regulation 11(2), the maximum contract demand permissible for Low Tension consumer who avails power under demand based metering shall be 100 kVA irrespective of his connected load.

7. Exemption granted by Regulation 11(1) of Electricity Supply Code, 2014 is available only to those consumers who had sanctioned load exceeding 100 kVA on 02-03-2005, the date in which the Supply Code 2005 came into force. The appellant is not eligible for this exemption as the service connection was effected on 07-08-2006. The contract demand of the appellant is 104 kVA and he has not executed any agreement for revised contract demand, even though he was communicated about it. Hence it is submitted as per Regulation 11(1) and (2) of the Electricity Supply Code. 2014, it is illegal and irregular to allow the consumer to continue in and bill in LT IVA tariff. As the connected load is 139 kVA (125 kW), the connection should have been classified in HT industrial category instead of LT industrial category.

8. From the reading register it is evident that the recorded maximum demand of this connection was in excess of the permissible limit of 100 kVA of LT industrial tariff. It is seen from the reading register that the recorded maximum demand of this consumer was 136.4 in 3/15, 116 in 4/15, 105.2 in 5/15, 103.6 in 6/15, 109.2 in 7/15, 109.2 in 8/15, 98.4 in 9/15, 116 in 10/15, 116.4 in 11/15, 108.4 in 12/15, 109.2 in 1/16, 108 in 2/16, 118 in 3/16, 132 in 4/16, 108.4 in 5/16, 105.6 in 6/16 and 105.6 in 7/16.

9. Regulation 97 of the Electricity Supply Code, 2014 permits the licensee to reclassify suo motu the consumer under appropriate category, if it is found that a consumer has been wrongly classified in a particular category, after informing the proposed reclassification details in advance. Here the reclassification was done after serving letter No. BB/PMD/17081/15-16/419/24-11-15 to which the appellant has not responded.

10. It is submitted that as consumers who had sanctioned load above 100 kVA on 02-03-2015 are permitted to be billed as deemed HT consumers, there is no illegality in billing this consumer in deemed HT tariff.

11. Regarding the averments in Para 3 and 4 is submitted that there is no bar or restriction to the appellant to regularise the connection by availing HT connection and enjoy the entire benefits and privileges available to HT category. As such there is no merit in the contention that they are made to pay a higher tariff by evading the benefits of HT consumer and that reasonable time limit has not been allowed to switch over to HT.

12. The Consumer Grievance Redressal Forum, Central Region, Ernakulam in its order No. CGRF-CR/Comp.134/2015-16/108 has ordered that the bill for 12/2015 issued in deemed HT tariff is in order. It is also submitted that the consumer is brought under deemed HT category from 12/2015 without any penalisation.

13. In the above circumstances it is submitted that the regular bill of 12/2015 and subsequent regular bills issued are in order. Hence it is requested that the appeal petition may be dismissed and direct the appellant to avail HT connection forthwith.

Analysis and Findings

The hearing of the case was conducted on 26-10-2016 in my chamber at Edappally, and Sri Reji Mathew, represented for the appellant and Smt. Parvathy M, Assistant Executive Engineer, Electrical Sub Division, Vandiperiyar represented for the respondent's side. On examining the petition and argument notes filed by the appellant, the statement of facts of the respondent, perusing all the documents and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions thereof.

The gist of the appeal petition is with regard to the change of tariff of the appellant's LT service connection to deemed HT category from 12/2015 and issue of regular bills thereafter, alleging that the contract demand has exceeded the limit of 100 kVA applicable to LT service. The contention of the appellant is that the respondent sanctioned the service connection under LT tariff with a connected load 125 kW. But, the respondent argued that the contract demand

was continuously exceeding 100 kVA from 3/2015 onwards and the appellant was directed to avail HT connection for which the appellant has not responded so far. The recorded maximum demand of the appellant from 03/2015 recorded is as follows:

Month	Recorded Maximum
Mar-15	136.4
Apr-15	116.0
May-15	105.2
Jun-15	103.6
Jul-15	109.2
Aug-15	109.2
Sep-15	98.4
Oct-15	116.0
Nov-15	116.4
Dec-15	108.4
Jan-16	109.2
Feb-16	108.0
Mar-16	118.0
Apr-16	132.0
May-16	108.4

As per Regulation 11(1) of the Electricity Supply Code, 2014, “**maximum connected load permissible for Low Tension three phase category shall be limited to 100 KVA.**”

Provided that a low tension consumer who, as on the date of implementation of the Kerala Electricity Supply Code, 2005 (2-3-2005) had a sanctioned load exceeding the limit of 100 KVA may be permitted, subject to realisation of low voltage supply charge, to operate with the same sanctioned load at the same voltage level of supply until an upward revision of connected load is sought for by the consumer.”

As per regulation 11(2), “**the maximum contract demand permissible for low tension consumer who avails power under demand based metering shall be 100 kVA irrespective of his connected load.**”

Later the Kerala State Electricity Regulatory Commission, in its notification No. 934/CEX/KSERC/14 dated 23rd Sep. 2014, has issued the

Kerala Electricity Supply Code (Removal of Difficulties) Third Order, 2014 by inserting the following proviso to sub regulation (2) of Regulation 11.

“Provided that the consumers existed on the date of implementation of the Kerala State Electricity Supply Code, 2005, and who were permitted to operate at low tension up to a connected load or contract demand of 150 kVA in accordance with clause (b) of sub regulation (5) of Regulation 4 of the Kerala Electricity Supply Code, 2005 (substituted by Regulation 3 of the Kerala Electricity Supply code (Fourth amendment) Regulations, 2008) shall be allowed to operate at the same voltage level and connected load or contract demand subject to realization of low voltage surcharge until an upward revision of connected load or contract demand is granted on application submitted by the consumer or becomes otherwise necessary.”

On a perusal of records it can be found that the appellant’s service connection was effected only on 07-08-2006 and hence he is not eligible for this exemption. Further, as per the tariff order, **in the case of Deemed HT consumers, the tariff applicable shall be demand charges of respective HT category and energy charge of respective LT category.** Similarly, the excess demand charges under ToD tariff for HT consumers is as follows: **“Additional demand charges shall be levied if the recorded maximum demand exceeds the contract demand during normal period and peak period, which shall be charged at 50% extra for the excess over the contract demand (i.e., additional demand during normal/peak period x ruling demand charges x 0.5). Additional demand charges during off-peak period shall be levied only if the recorded maximum demand during off peak period is in excess of 130% of the contract demand”.**

The question to retain the service connection as an LT industrial one is left open to the appellant. For that the appellant herein is directed to approach the licensee as per **Regulation 100 of the Supply Code, 2014** which deals with the procedure for reduction of connected load or contract demand of the consumer. If the appellant wishes to continue as LT consumer, he shall apply for reduction of connected load or contract demand to the licensee specifying the reasons thereof, in the form **specified in Annexure 11 to the Supply Code, 2014.** As per Sub regulation 7 of Regulation 100 of Supply Code, 2014, the licensee shall issue a demand note to the consumer in writing, under acknowledgement, in accordance with the timeline specified in Regulation 81 *mutatis mutandis* and thereafter both the licensee and the applicant shall follow *mutatis mutandis* procedure and timelines as laid down in **Regulation 81 to 83 of Supply Code, 2014.**

In the present case it is evident that the recorded maximum demand of the appellant was exceeding the permissible limit of 100 kVA for LT industrial consumers. Further, exemption granted as per Regulation 11(1) of Supply

Code, 2014 is relevant only to those consumers who had sanctioned load exceeded 100 kVA as on 02-03-2015, the date on which the Supply Code, 2005 came into force. As the appellant's service connection was effected on 07-08-2006 he is not entitled for any exemption as per the above mentioned Regulation. In the above circumstances I don't find any reason to interfere with the decisions taken by the CGRF vide its order CGRF-CR/Comp.134/2015-16 dated 06-06-2016 in this regard.

Decision

In view of the above findings the appeal is disposed of directing the respondent to issue bills under deemed HT category with effect from 03/2015 onwards. The order of CGRF-CR/Comp.134/2015-16 dated 06-06-2016 is upheld. No order as to costs.

ELECTRICITY OMBUDSMAN

P/046/2016/_____ /Dated:_____

Delivered to:

1. Sri. Roy Mathew, M/S High Range Metal Crusher, LakshmiKovil P.O., Ranimudi, Peermade, Idukki.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Limited, Vandiperiyar, Idukki.

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.