

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 9539913269
Email:ombudsman.electricity@gmail.com

APPEAL PETITION No. P/051/2019
(Present: A.S. Dasappan)
Dated: 18th September 2019

Appellant : Smt. Manjusha M.S.,
Secretary,
Mananthavady Milk Producers
Co-operative Society Ltd., No. C-271,
Mananthavady, Wayanad

Respondent : Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Mananthavady,
Wayanad

ORDER

Background of the case:

The consumer number 28318 of Electrical Section, Mananthavady is registered in the name of Secretary, Mananthavady Ksheerolpadaka Sahakarana Sangam, Mananthavady and was having LT V B tariff connection, given for its milk collecting and chilling unit. As per the Gazette Notification dated 28-06-2017, LT V B Agriculture tariff is applicable to facilities for processing of milk including pasteurization and its storage and packaging or for retail sale outlets, if the connected load of such facilities or sales outlets does not exceed 10% of the total connected load. Since in the present case of the appellant, the milk chilling/freezing load is more than 10%, the tariff was changed to LT VII A with effect from 01-07-2018. Subsequently, for the recovery of amount lost due to wrong tariff fixation, a short assessment bill for the period from 7/2018 to 10/2018 amounting to Rs.2,94,297/- was served on the appellant on 13-11-2018.

This bill and the change of tariff are challenged by the Appellant before the CGRF, Kozhikode which are dismissed by the Forum vide OP No.

123/2018-19 dated 16-01-2019 and in Review Petition No. 3/2018-19 dated 09-05-2019 and this is the basis of this appeal petition.

Arguments of the appellant:

The appellant is the Secretary of Mananthavady Milk Producers Co-operative Society. The appellant received an arrear bill for Rs. 2,94,297/- on 13-11-2018 from the Assistant Engineer of Mananthavady Section, KSEB along with a notice intimating the tariff was changed from LT V B to LT VII A. The appellant filed petition before the CGRF, Kozhikode with a request to cancel the bill but the Forum rejected the request vide order OP No. 123/18-19 dated 16-01-2019. Since the appellant could not present the case properly and produce some important documents before CGRF, they filed a Review Petition vide RP-03/2018-19 before the Forum but the Forum issued order on 09-05-2019 rejecting the petition without accepting the arguments and documents presented by them.

The Mananthavady Milk Producers Co-operative Society is run by the dairy farmers residing around Mananthavady. The activity of the Society is collecting milk from the members of the Society, selling it locally and sending the balance milk to "Kalpetta Dairy". Earlier the balance milk was sent to the Dairy or chilling plants at the same temperature of the milk they got which led to the damage of milk and thereby huge loss was happened to the poor members. As a solution to the above, the society was given a machine by name, "Bulk Milk Cooler" under the Scheme "Rashtriya Krishi Vikas Yojana" launched by Government of India for cooling the milk in the society itself and sending to the Dairies.

The milk can be maintained safely by cooling it below 10° C and transferred to the dairies. The rate fixed by the MILMA for milk under normal temperature and chilled stage is same. Though the allotted machine is having a capacity to cool the milk up to 4° C depends on the availability of milk, duration of time, efficiency of the machines etc., the chance for the same is remote. The chilling machines erected in dairies and chilling plants all over Kerala are having a capacity from 5,000 litres 20,000 litres and suitable to cool the milk at 4°C or below within a short duration. The argument of retaining temperature at 4°C is chilling and others are cooling is baseless. The erection of such coolers in the societies led to the increase in energy consumption and hardships in remitting huge energy bills and they approached Government of Kerala, KSEB and Regulatory Commission for a lower tariff. Accordingly KSEB Limited assigned the appellant's tariff to LT V B vide the order dated 13-07-2017 and received the benefit of it. But the officers of the Mananthavady Section Office inspected the premises and changed the tariff from LT V (B) to LT VII A. The appellant has not made any alteration in the society, since the date from which they were allotted tariff under LT V.

The society of the appellant is functioning in accordance with Section 3 iii(b) of the Circular of KSEB and the balance milk is only being transferred to the dairies. The society has no facility to process and store the milk. The facility of lowering temperature to 4°C or below is only with the dairies.

The request of the appellant is to cancel the bill for Rs. 2,94,297/- and retain the tariff under LT V.

Arguments of the respondent:

It is true that an arrear bill for Rs. 2,94,297/- under LT VII A tariff was given to the Mananthavady Milk Producers Co-operative Society. The bills were being wrongly given under LT V (B) tariff but the correct tariff is LT VII A as per tariff order. The argument of the appellant that the milk is being cooled up to 10°C is not correct and bill was issued after inspection of the premises. The argument that the society has no facility to cool the milk up to 4° C is also not true, the society has the facility to cool down the milk up to 4° C. The process of cooling up to 5° C or below is called as “chilling” and the same process is going on in the society.

The connected load in the premises is 81858 watts of which 60100 watts is used for the chilling purpose only. As per prevailing tariff order the tariff allotted for chilling process is LT VII A. As such the appellant is not eligible for LT VB.

Analysis and Findings:

The hearing of the case was conducted on 06-08-2019 in the chamber of Electricity Ombudsman at Edappally, Kochi. Sri Akhil P.K. has represented for the appellant and Sri. Siraj N.S., Assistant Executive Engineer, Electrical Sub Division, Mananthavady and Sri. Binu V.G., Assistant Engineer, Electrical Section, Mananthavady have appeared for the respondent’s side. On examining the petition, the counter statement of the respondent, the documents attached and the arguments made during 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 thereof.

The dispute is regarding the change of tariff of the appellant’s society from agricultural (tariff LT V B) to commercial tariff (LT VII A) on account of exceeding the chilling/freezing load beyond the 10% limit of the plant’s total load with retrospective effect and issue of a short assessment bill towards the arrears due to the difference in tariff rates. The appellant is engaged in the collection of milk from the members of the Society, selling it locally and sending the balance milk to “Kalpetta Dairy” of Milma. The appellant collects milk from small units at normal temperature and have facility to lower the temperature up to 4° C. The

approximate quantity of milk collected is 20000 litres per day. The milk is stored in containers having 5000 litre capacity. The cooled milk is conveyed to Milma through the tanker type containers on the date of collection or in the next day. The average monthly consumption of the appellant is more or less 9000 units.

On the basis of the argument put in by the appellant and respondent, this Authority has found the following issues to be answered.

Whether the appellant's Society falls under Agricultural tariff LT V (B) or Commercial Tariff LT VII (A) as per the norms fixed by the Hon: Commission?

The appellant has submitted that their unit is a Milk Producers Co-operative Society run by the dairy farmers residing around Mananthavady and the activity of the Society is collecting milk from the members of the Society, selling it locally and sending the balance milk to "Kalpetta Dairy". Usually the milk processing involves receiving raw milk, preheating, filtration, standardization, homogenization, cooling, packing and storage. The milk chilling/freezing plant/ cold storages were categorized under LT IV industrial tariff till 11/2007 by the Hon: Regulatory Commission. But as per the tariff order dated 27-11-2007, they were categorized under LT VII A commercial tariff. Further, it was clarified that the dairy farms/milk chilling plants with or without chilling/freezing/cold storage activity shall be treated under industrial category provided the chilling/freezing/cold storage load is limited to 20% of the total connected load. On the other hand, if the said load exceeds 20%, LT VII A commercial tariff shall be applicable. Later, in disposing a petition No. TP/76/2009, the Hon: Commission had deleted the norm of 20% limit of freezing/chilling load with effect from 21-06-2010. In short, the complete processing of pasteurization of milk, its storage and packing is considered as industry and LT IV industrial tariff made applicable to them from 21-06-2010 only.

As per the corrigenda notified by the Hon: Kerala State Electricity Regulatory Commission on 28-06-2017, some changes in the norm of tariff classification were introduced and one among them was LT V B Agriculture tariff applicable to dairy farms in case the consumer utilizes the electrical load for chilling/ freezing purpose not in excess of 10% of the total connected load of the plant. In this case under dispute, according to the respondent, the appellant was found using more than 10% load for chilling/freezing purpose and hence the respondent changed the tariff of the appellant to Commercial rate from the Agriculture. But the appellant insists that her unit is still an agriculture one and the agriculture tariff shall be made applicable to her.

As per tariff notification order dated 17-04-2017, dairy, processing of milk by pasteurization and its storage and packing comes under LT IV industry category. It means that irrespective of the rated load or capacity

of the electrical equipment used for chilling/freezing purpose, a dairy processing of milk by pasteurization and its storage and packing comes under LT IV industry category. At the same time, LT V (B) Agriculture tariff is applicable to facilities for processing of milk including pasteurization and its storage and packaging or for retail sale outlets, if the connected load for such facilities or sales outlets does not exceed 10% of the total connected load.

As per the corrigenda notified by the Hon: Kerala State Electricity Regulatory Commission on 28-06-2017, the following notes is inserted, under the heading LT-V- Agriculture (B) [LT-V (B)]

“Note-2. LT-V (B) Agriculture tariff is applicable to the dairy farms, which have facilities for collection and storing of milk, till it is sent to the processing units, and also applicable to the primary milk producer’s co-operative societies, the primary function of which is the collection of milk from the farmers and to sell the same to the processing units in bulk. The tariff will be applicable to the facilities for processing of milk including pasteurization and its storage and packaging or for retail sales outlets if the connected load for such facilities or sales outlets does not exceed 10% of the total connected load.”

According to the respondent, it is found that the total chilling/freezing load of the appellant’s society comes to 60100 watts out of the total connected load of 81858 watts which is more than 10% limit and hence invokes the commercial tariff. But a site mahazar is not seen prepared by the respondent and the provisions under regulation 97 of the Supply Code, 2014 is not followed by him before issuing the short assessment bill. On the basis of the clarification and Corrigenda notification issued by the KSERC, the KSEBL had issued a circular of directives for implementation. Accordingly, the eligibility for tariff categorization under LT B is fixed for the following three categories.

“LT V (B) Agriculture:

- a) LT V (B) Agriculture tariff is applicable to the Dairy farms which have facilities for collection and storing of milk, till it is sent to the processing units.
- b) LT V (B) Agriculture tariff is also applicable to primary milk producer’s co-operative societies, the primary function of which is the collection of milk from the farmers and to sell the same to processing units in bulk.
- c) LT (B) Agriculture tariff is also applicable to facilities for processing of milk including pasteurization and its storage and packaging or for retail sale outlets, if the connected load for such facilities or sales outlets does not exceed 10% of the total connected load.”

On the basis of the above classification, there is no need to inter connect these three categories. The appellant's society is a primary milk producer's co-operative society, the primary function of which is the collection of milk from the farmers and to sell the same to the processing unit in bulk. The respondent has not raised argument that the appellant's society has the facility for processing of milk including pasteurization and its storage and packing. The Hon: Commission, in its order in petition No. TP/76/2009, has observed that the complete processing of Milk by pasteurization storage, packing etc is to be considered as industry and LT IV Tariff shall be applicable to them. Units having cold storage chilling, freezing and or packing alone, shall be treated as Commercial and LT VII (A) Tariff shall apply. The Clause "But dairy farms/ milk chilling plant with or without chilling / freezing /cold storage activity shall be charged under industrial category provided the chilling / freezing /cold storage load is limited to 20% of total connected load. If it exceeds 20% LT VII A Tariff shall be applicable" shall be deleted and the order amended accordingly."

Pasteurization is the process of heating milk up and then quickly cooling it down to eliminate certain bacteria. For effective pasteurization, milk can be heated up to 145 degrees Fahrenheit for 30 minutes. It is pertinent to note that, the appellant's society is using only the bulk milk coolers to cooling the milk so as to prevent the damage of the milk.

The tariff under LT VII A category is applicable to commercial and trading establishments such as freezing plants, cold storages and milk chilling plants. The units used exclusively for cold storage, chilling/freezing or packing purpose alone shall be treated as commercial and LT VII A tariff shall be applicable to such units. If the consumer has the facilities for processing of milk including pasteurization and its storage and packaging, the applicable tariff shall be LT IV A industry.

The Society is not a chilling plant, but an intermediate point where collecting milk from dairy farmers and sending to the milk processing units. The Society is neither a commercial premises nor a trading point as chilling plant. The respondent assigned tariff LT VII A on the ground of chilling the milk up to a temperature of 4° C and not for the activities. The average monthly consumption is around 900kWh and daily average of 300 kWh against the connecting load of 80kW is not sufficient for a chilling plant. The dairy like Milma having the facilities of pasteurization and its storage and packaging or for retail sale outlets is availing the tariff under industry only.

Since there is a specific classification under tariff order for primary milk producer's co-operative society and the appellant's society comes under the purview of this classification, the application of LT VII A tariff is not justifiable and not sustainable.

Decision

From the conclusions arrived at as detailed above, I decide to quash the short assessment bill for the period from 7/2018 to 10/2018 amounting to Rs.294297/- issued to the appellant. The respondent shall retain the appellant under LT V (B) tariff category.

Having concluded and decided as above it is ordered accordingly. The appeal petition filed by the consumer is allowed as ordered and stands disposed of as such. The orders of CGRF, Kozhikode in OP No.123/2018-19 dated 16-01-2019 and review petition No. 3/2018-19 are set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/051/2019/_____ /Dated:_____

Delivered to:

1. Smt. Manjusha M.S., Secretary, Mananthavady Milk Producers Co-operative Society Ltd., No. C-271, Mananthavady, Wayanad
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Mananthavady, Wayanad

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, KSE Board Ltd, Gandhi Road, Kozhikode