

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/079/2019
(Present: A.S. Dasappan)
Dated: 26th December 2019

Appellant : The Manager
M/s Kutikul Estate,
Kootickal, Thalumkal P.O.,
Kottayam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSEBL, Kanjirappally,
Kottayam

ORDER

Background of the case:

The appellant owned a PLC Rubber factory named Kailas Rubber Company Limited having an HT-1 A electricity connection and he also owned an estate which carries out a rubber plantation in an extent of about 365 hectares, in Sy No. 60/3, in Mundakkayam village. Besides HT 1 A connection, the estate has over 100 LT connections - domestic and other connections, all in the name of the Manager, Kutikul Estate. The appellant has also a three-phase agriculture connection for its pump house with electricity connection, consumer No. 1157214006990. On 16.03.2018, the appellant had applied for a single phase electricity connection under agriculture tariff, for undertaking organic vegetable cultivation with electric fencing, in an extent of 4.75 acres of its land in Sy.No.2/2 of Koottickal village. The respondent has issued a connection to the pump house with building No. H/185-B, by 13.12.2018 with electricity connection under Consumer No.1157218009145, under tariff LT-VII A commercial. Being aggrieved, the appellant filed a petition before the CGRF, Kottarakkara in OP No. 61/2019 and the Forum disposed of the petition vide order dated 26-09-2019 with a decision that the action taken by the respondent is proper. Against the decision of the Forum, the appellant has filed the Appeal petition before this Authority on 18-10-2019.

Arguments of the appellant:

The Kutikul Estate, owned by the Kailas Rubber Company Limited, carries out a rubber plantation in an extent of about 365 hectares in Koottickal and Mundakkayam villages, Kottayam District. The Kutikul Estate has a PLC Rubber factory in its estate, in Sy.No.60/3, in Mundakkayam village, where an HT-I A electricity connection has been taken for the purpose. Besides that, the estate has over 100 LT connections - domestic and other connections, all in the name of the Manager, Kutikul Estate. Around 500 metres close to the said Rubber Factory, the Appellant has already been given one LT-VA agriculture connection for its pump house with electricity connection, consumer No. 1157214006990. The labour quarters situated at a distance of about 25 metres close to the said Rubber Factory are also provided with domestic connections with consumer Nos. 1157218008156 and others.

Around 1 Km. away from the said Rubber Factory, the Appellant is undertaking organic vegetable cultivation with electric fencing, in an extent of 4.75 acres of its land in Sy.No.2/2 of Koottickal village. For the purpose of watering the vegetables, they have established a pump house with Building No. H/185-B to draw water from their water source close by, a pond with a capacity of 2,00,000 litres. For the said pump house, the Appellant had applied to the KSEB for an electricity connection under LT-VA tariff applicable for agriculture, on 16.03.2018. In compliance of the Order No. B.O.(FTD) No. 1902/2018(D(D&IT)/D-6-AE3/Ease of doing business/2018-19) dtd, 02.11.2018 TVPM, all necessary documents including the certificates from the Agricultural Officer were submitted along with the application. The Agricultural Officer, Krishi Bhavan, Koottickal, had duly certified the extent of the agricultural area undertaken with vegetable cultivation and the availability of the water source closely with a capacity of 2,00,000 litres of water.

However, after repeated reminders, the KSEB informed that such connection can only be given under LT-IVA, applicable for industrial connections, misquoting Tariff Order NO.1007/F&T/2016/KSERC dated 17.04.2017. The said Tariff Order dated 17.04.2017 was wrongly interpreted by the KSEB, whereas the said Tariff Order specifically ordered to categorize pumping of water for irrigation and de-watering under LT-VA agriculture tariff. Subsequently, after undue delay, the KSEB, issued a connection to the said pump house, by 13.12.2018 with electricity connection under Consumer No. 1157218009145, under tariff LT-VII A applicable for commercial purpose.

The Respondent filed their objections before CGRF stating that HT-IA connection having been given to the premises, a new connection under LT-VA cannot be given, that there is no water source for pumping water and that the Tariff Order dated 17.04.2017 specifies issuance of electricity connection only under HT-1A. They also state that the applicable tariff is under LT-V1A as the same is a rubber plantation.

The Respondent has erred in providing electric connection under tariff LT-VIIA instead of LT-VA to the pump house for drawing water for irrigating the vegetable cultivation of the Appellant. The Respondent went wrong initially itself by contending that they can only give connection under LT-IVA, misquoting the tariff Order No. 1007/F&T/2016/KSERC dated 17-4-2017 and after undue delay issuing a connection under tariff LT - VIIA. The Respondent failed to understand that the tariff order dated 17-4-2017, has specifically ordered to categorize pumping of water for irrigation and dewatering under LT – VA agricultural tariff.

The organic vegetable cultivation for which the LT-VA connection has been applied for in this case lie 1 KM away from the said rubber factory and is in a different survey number and different village. While so, the Respondent committed an error in not granting another electric connection to the Appellant under LT-VA for pumping water for irrigating its vegetable cultivation. There is absolutely no prohibition for granting an LT-VA connection for the pump house in the said area for the purpose of irrigating the vegetable cultivation.

The contention of the Respondent before the CGRF that there is no water source for the vegetable cultivation is false and baseless, whereas the Appellant has a water source, being a pond with about 2,00,000 Litres capacity, close to its vegetable cultivation. The Agricultural Officer of the Krishi Bhavan, Koottickal has confirmed on the vegetable cultivation and the water source in his certificate which was produced before the Respondent for availing the electricity connection under tariff LT-VA.

The Appellant has been provided with an electric connection under HT-IA tariff for its PLC Rubber Factory and not for the rubber plantation as wrongly contented by the Respondent and observed by the CGRF. There is no practice of irrigating rubber trees and in any case, the Appellant has only applied for the electric connection under tariff LT - VA specifically for irrigating its organic vegetable cultivation. The Hon'ble Kerala State Electricity Regulatory Commission vide its order dated 4-2-2016 in Petition No. 1775/CT/15, 1904/CT/15 and 1542/CT/15/KSERC has emphasized on the applicability of Tariff LT -VA for pumping of water for irrigation or dewatering purposes for cultivation of crops including vegetables, irrespective of whether such crops are grown as monoculture or mixed plantations.

In view of the Appellant having been assessed at LT 7A tariff instead of the eligible LT 5A tariff, the Appellant has suffered a tariff amount difference of Rs. 3,830.76. Further in view of the undue delay in granting the electricity connection with Consumer No. 1157218009145 to the Appellant, the vegetable cultivation of the appellant could not be properly irrigated and on that account alone, considering the expected crop and the actual crop received, the Appellant has suffered a loss of Rs. 3,55,261/-.

The appellant has requested to pass orders directing the Respondent KSEB to convert the existing electricity connection with Consumer No.1157218009145 from LT - VII A tariff to LT - VA tariff and to reimburse to the appellant the difference in the two tariff rates paid by them based on their

usage, together with compensation for the undue delay of more than 8 months in providing the said electricity connection to the appellant.

Arguments of the respondent:

The Manager, Kailas Rubber Company Ltd, Koottickal Thalumkal P.O had submitted an application for electric connection in LT VA tariff vide application No. 21572118000034 at Electrical Section, Koottickal. On field verification it is noted that the area of the premises to which electric supply applied is a part of registered Rubber Plantation named Kailas Rubber Company Limited. As stated in the first para of the appeal petition that rubber plantation is carried in an extent of land of about 365 hectares in Koottickal and Mundakkayam Villages. An HT connection with Consumer Code LC No. 24/2449 and with a connected load of 75 kVA is existing in the premises. Moreover, a perennial water source is not available at the premises to which electric supply in LT VA tariff for agricultural purpose is applied. The water source available at the premises is a storage tank in the ground constructed using tarpaulin sheet and harvesting of rain water is done as source of water. It was informed to the appellant that another connection in LT VA tariff could not be effected in the premises since as per the Schedule of Tariff and Terms and Conditions for retail Supply of Electricity by Kerala State Electricity Board Limited and other Licenses dated 17-4-2017 of Kerala State Electricity Regulatory Commission, the tariff applicable to the premises is HT 1A in High Tension or LT IV A in Low Tension and electric connection in HT 1A is already effected. Then as per the request of the Managing Director, Kailas Rubbers Company, Thalumkal P.O an LT Single Phase Electric connection with consumer No.1157218009145 and with a Connected Load of 1503W in LT VII A tariff is effected on 13-12-2018 in the said premises. This connection was effected in additional to the existing HT 1A connection.

As per the order dated 17-4-2017 of the Kerala State Electricity Regulatory Commission, the tariff applicable the Plantation of cash crops is HT 1A in High Tension or LT IV A In Low Tension. The premises mentioned in the appeal petition is a registered Rubber plantation and an HT connection in HT 1A tariff is already effected with Consumer code LC No.24/2449. This tariff is applicable to both plantation or cash crops and rubber factory. So, the demand of appellant to effect another connection in LT IV A tariff in the same premises is not admissible. That is another connection in same tariff is requested in the same premises by the applicant.

At present there is no order is available from the Tariff Regulatory Commission to assign a special tariff to the agriculture purpose in some portion of the Plantation. Here a small area of the plantation is utilized for the cultivation of vegetable but this area is still a part of the rubber plantation. As per the certificate issued by the Agriculture Office, Koottickal dated 14/3/2018 and 5/4/2018 the premises is identified as Kailas Rubber Company Limited, Koottickal Estate with an area of 55.7 Hectare in Sy No. 2/2 In Koottickal Village.

It is clear that the premises is a plantation with cash crops. The Appellant is requested for an electric connection in LT VA tariff connection for

agriculture purpose in registered rubber plantation. Already an Electric Connection in correct tariff is effected in the premises. So, the demand of the Appellant to provide another connection in LT VA tariff is against the existing Tariff Classification. As a licensee KSEBL is only assigning tariff as per the Tariff Classification ordered by the Tariff Regulatory Commission.

The demand of compensation by the Appellant is against the facts. There is no legal right for the Appellant to demand for the compensation which was not happened. As a license of distributing electric power, KSEBL has no obligation to give compensation since already electric connection is given based on the existing Tariff classification. The consumption recorded in Con. No. 1157218009145 which is effected in the premises is as follows. – in 2/19-212 units, 4/19-248 units, 6/19-76 units, 8/19-48 units, 10/19-72 units and the average recorded consumption 33 units / month. So the argument made by the appellant that the loss occurred is baseless.

On inspection it is noted that an HT connection with Consumer Code LC No.24/2449 and with a connected load of 75 kVA is existing in the premises. Moreover, a perennial water source is not available at the premises to which electric connection in agriculture tariff is requested. The water source available at the premises is a storage tank in the ground constructed using tarpaulin sheet and harvesting of rain water is done as source of water. There a small area of the plantation is utilized for the cultivation of vegetable but this area is still a part of the registered rubber plantation. There are a number of LT electric connections are given to the labour lines in domestic tariff. As per the certificate of the Agriculture Office, Koottickal dated 14/3/2018 and 5/4/2018 the premises is identified as Kailas Rubber Company Limited, Koottickal Estate with an area of 5.7 Hectare in Sy No. 2/2 in Koottickal Village. The Agriculture Officer also certified that the company has established a pump house and owned a pond of 2,00,000 litres capacity and not mentioned about the perennial water source in the certificate. So, the request of the Appellant to give an electric connection in LT VA tariff for the agricultural purpose or to change the tariff of the existing LT electric connection with consumer No.1157218009145 from LT VII A to LT VA is not admissible.

From the above it is noted the Appellant is requesting to provide an LT agriculture connection in LT VA tariff for the cultivation of vegetables in very small portion of the registered rubber plantation. As per the existing Tariff Regulation the tariff for plantation of cash crops is LT IV A for Low Tension and HT 1A for High Tension. Even though a very small portion of land is utilized for cultivation of vegetables it is still rubber plantation. The Appellant has not produced any valid document from the authorized authorities that the land to which agriculture electric connection in LT VA tariff requested is re classified as agriculture land from registered plantation.

Analysis and Findings: -

The Hearing of the case was conducted on 26-11-2019, in my chamber at Edappally. Sri. Sony Sebastian, Advocate represented the appellant's side

and Sri. Dennis Joseph T, Assistant Executive Engineer, Electrical Sub Division, Kanjirappally, represented the respondent's side. On perusing the Appeal Petition, the counter of the Respondent, the documents submitted, arguments during the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

The request of the appellant is to change the existing tariff LT VII A to LT V A. the appellant had requested for an LT V A connection, but the respondent effected connection and assigned tariff LT VII A. the connected load of the said connection is 1500 watts. (2 HP motor- 1 No. and 3 watts LED lamps). The premise is at a distance of about 1 km from the factory which under HT I A tariff. There is already one agriculture connection in the plantation, the connection is about 500 metre away from the factory. In addition to the above a lot of domestic connections with separate consumer number with LT supply were provided by the respondent.

The appellant has contended that he has applied for the electric connection under tariff LT - VA specifically for irrigating its organic vegetable cultivation. The Hon'ble Kerala State Electricity Regulatory Commission vide its order dated 4-2-2016 in Petition No. 1775/CT/15, 1904/CT/15 and 1542/CT/15/KSERC has emphasized on the applicability of Tariff LT -VA for pumping of water for irrigation or dewatering purposes for cultivation of crops including vegetables, irrespective of whether such crops are grown as monoculture or mixed plantations. Further the Agricultural Officer of the Krishi Bhavan, Koottickal has confirmed on the vegetable cultivation and the water source in his certificate which was produced before the Respondent for availing the electricity connection under tariff LT-VA.

According to the respondent, an HT connection with Consumer Code LC No.24/2449 and with a connected load of 75 kVA is existing in the premises and as per the certificate of the Agriculture Officer, Koottickal dated 14/3/2018 and 5/4/2018 the premises is identified as Kailas Rubber Company Limited, Koottickal Estate with an area of 5.7 Hectare in Sy No. 2/2 in Koottickal Village. The respondent has submitted that this tariff is applicable to both plantation or cash crops and rubber factory. The Agriculture Officer also certified that the company has established a pump house and owned a pond of 2,00,000 litres capacity and not mentioned about the perennial water source in the certificate.

The main argument of the respondent is that the appellant has requested to provide an LT agriculture connection in LT VA tariff for the cultivation of vegetables in very small portion of the registered rubber plantation. According to the respondent, as per the existing Tariff Regulation the tariff for plantation of cash crops is LT IV A for Low Tension and HT 1A for High Tension and at present there is no order is available from the Tariff Regulatory Commission to assign a special tariff to the agriculture purpose in some portion of the Plantation. The appellant has not produced any valid document from the authorized authorities that the land to which agriculture electric connection in LT VA tariff requested is re classified as agriculture land from registered plantation.

It is pertinent to note that the respondent has assigned tariff under LT VII A in the premises of the estate for agriculture purpose stating that the premises is identified as Kailas Rubber Company Limited, Koottickal Estate with an area of 55.7 Hectare in Sy No. 2/2 in Koottickal Village and the premises is a plantation with cash crops. The respondent's main objection to assign agriculture tariff to the appellant is that the demand of the Appellant to provide another connection in LT VA tariff is against the existing Tariff Classification because an Electric Connection under LT V A tariff is existed in the same premises. Secondly, though the Agriculture Officer certified that the appellant has established a pump house and owned a pond of 2,00,000 litres capacity but not mentioned about the perennial water source in the certificate.

As per Tariff Order NO.1007/F&T/2016/KSERC dated 17.04.2017, the LT V A tariff applicable to the use of electricity for (1) pumping, dewatering and lift irrigation for cultivation of food crops, fruits and vegetables (2) pumping, dewatering and lift irrigation for the cultivation of cash crops such as cardamom and coffee and for the cultivation of crops such as coconut, arecanut, pepper, nutmeg, cloves, cocoa and betel leaves as pure crops or as inter crops.

As per the latest tariff notification effected from 08-07-2019, the electricity for pumping and lift irrigation for the cultivation of cash crops only are included under LT V A agriculture tariff and the electricity for general purpose industrial loads like drying, further processing, value addition etc. of plantation of cash crops shall be billed under LT IV A tariff.

The CGRF has observed that "the petitioner's vegetable farm is located in the rubber plantation. The respondent has provided an electric connection under HT 1 A tariff for rubber plantation. As such, giving of another electric connection under LT V A tariff in the said premises having HT 1 A tariff is illegal." But it is pertinent to note that the HT 1 A connection is provided to the PLC Rubber factory and the premises have various domestic connections, one agricultural connection under tariff V A and recently the respondent has provided a connection under LT VII A commercial.

The KSERC in order dated 04-02-2016 has issued a clarification on the applicability of tariffs notified for agriculture. In the clarification order it is observed that 'from the beginning plantations are being categorised under HT 1 A Industrial Tariff and so far, no dispute or problem relating to the said tariff categorization of plantations has been brought to the notice of the Commission. Till last tariff revision, there was no specific mention about the tariff applicable to the plantations availing supply at LT level. During the last tariff revision applicable from 16.08.2014 onwards, the 'plantation of cash crops' availing supply at LT level is included under LT IV A industrial category. It has been clearly stated in the tariff order that LT IV A tariff is applicable to the general-purpose industrial loads which include the groups of industrial units mentioned thereunder. In the case of HT 1 A Industry tariff it has been stated that it is applicable to the industrial load of all classes of consumers listed in LT IV A category availing supply of electricity at high tension. In the

case of cash crops like rubber, tea, coffee and cardamom, there is no practice of giving irrigation as a part of regular cultivation activity. It can also be seen that the plantation activities will include agricultural operations, processing of agricultural produce and providing statutory labour amenities such as drinking water, latrines and urinals, medical facilities, canteens, creches, recreation facilities, educational facilities and housing facilities of the labourers. The tariff under LT IV A Industry and HT 1 A Industry are the common tariff of electricity for the use of various activities related to plantation of cash crops such as rubber, tea, coffee, cardamom and cinnamon, as explained above.’ The following clarification was issued in the order. ‘ (i) Supply of electricity at LT V (A) Agriculture tariff and HT III (A) Agriculture tariff shall be given to pumping of water for irrigation or dewatering purposes for the cultivation of crops such as coconut, paddy, areca nut, cereals, pulses, tubers, vegetables, fruits, irrespective of whether such crops are grown as monoculture or mixed plantations. (ii) Coffee cultivators who require electricity for pumping water for providing artificial blossom and setting showers for coffee plants may be given supply of electricity at LT (V) Agriculture tariff since it is an agriculture operation.’

Considering the above clarifications, providing a commercial tariff LTVII A to the appellant for the purpose of agricultural operations is not in order. At present, the appellant has a three-phase agriculture connection under LT V A tariff with consumer number 6990 and another connection applied was a single-phase connection for operating a 2 HP motor for pumping and this connection is about 500 metre away from the existing three phase agriculture connection. Regulation 52 of the Electricity Supply Code, 2014 says, supply shall be given only at one point for same purpose at the same voltage level in a single premises.

Here the dispute between the appellant and the respondent is not in providing a low tension electric connection in the plantation having High Tension supply but whether the tariff allotted to the LT connection under LT VII A can be changed to LT V A. This Authority has inspected the plantation on 20-12-2019 and ascertained that electric supply from the disputed connection is being used for the agriculture purposes like cultivation of vegetables etc. Regarding the eligibility of cultivation of vegetables in the plantation, the contention of the appellant is that they are eligible 5% of the total extent of land for floriculture or for the cultivation of vanilla or medicinal plants or other agricultural crops or for establishing hotels or resorts or other tourism projects and for purposes ancillary or connected therewith under Section 81 (4) of the Kerala Land Reforms Act.

Decision

From the findings and conclusions arrived at as detailed above, the respondent is directed to assign LT V A tariff instead of LT VII A from the date of connection effected having consumer number 9145. The excess amount collected being the difference of tariff categorisation shall be refunded by adjusting it in appellant’s future bills.

Regarding the compensation for the undue delay of more than 8 months in providing the said electricity connection, the appellant is free to approach the concerned Executive Engineer under the provisions of Kerala State Regulatory Commission (Standards of Performance of Distribution Licensees) Regulations, 2015.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having some merits and is allowed to the extent ordered. The order of CGRF, Southern Range, Kottarakkara in Petition No. OP/61/2019 dated 26-09-2019 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/079/2019/ _____ /Dated: _____

Delivered to:

1. The Manager. M/s Kutikul Estate, Kootickal, Thalumkal P.O., Kottayam
2. The Assistant Executive Engineer, Electrical Sub Division, KSEBL, Kanjirappally, Kottayam

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Kottarakkara - 691 506.