

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/099/2019
(Present: A.S. Dasappan)
Dated: 3rd February 2020

Appellant : Sri. J. Varghese
Deputy Director, Sub Regional Office,
ESI Corporation, Housefed Complex,
Eranhipalam, Kozhikode

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Karaparamba,
Kozhikode

ORDER

Background of the case:

The appellant is a consumer of Electrical Section, Karaparamba with consumer number 1165988019626 and the service connection was effected on 25-07-2003 in the name of Sri. Jacob K.V., Managing Director, Kerala Housing Board Federation in VII A commercial tariff. The building was rented to ESI Corporation which is a central government organization. The tariff assigned to the appellant was LT VII A categorised for commercial establishments and the appellant had been remitting the current charge bills under this tariff regularly. The tariff eligible for Central Govt. offices is LT VI B. The office of the Accountant General, Kochi who audited the records of this office has observed that the KSEB has charged an excess amount of Rs.424616/- from ESI Corporation for the period from 01.04.2015 to 31.08.2018 due to wrong classification of tariffs and directed to take action to get refund of the excess amount paid/adjust in future bills. Aggrieved by this, the appellant filed a petition before the CGRF, Kozhikode in petition no. OP 76/2019-20. The CGRF disposed of the petition vide order dated 16-11-2019 that "Here, even though the purpose of consumption of energy was found bonafide one, the rules in force is not allowing any retrospective implementation. The petitioner has requested to refund the overcharged amount for the period from 04/2015 to 08/2018. Considering the facts of the case, the claim of the petitioner to get refund of excess amount paid due to the failure on the part of the petitioner i.e. ESI Corporation, a Central Government body to point out wrong fixation of tariff during past long years,

seems to be inadmissible.” Against the decision of the Forum, the appellant has filed the Appeal petition before this Authority on 23-12-2019.

Arguments of the appellant:

ESI Corporation is a statutory body under the Ministry of Labour and Employment, Govt. of India and its Sub Regional Office is functioning at 3rd floor of Housefed Complex Eranhipalam since 2011. The electricity consumer number of the premises occupied by ESIC is 1165988019626. The office of the Accountant General, Kochi who audited the records of this office has observed that the KSEB has charged an excess amount of Rs.424616/- from ESIC for the period from 01.04.2015 to 31.08.2018 due to wrong classification of tariffs and directed to take action to get refund of the excess amount paid/adjust in future bills.

The Kerala State Electricity Board Limited, vide Circular KSEBL/TRAC/Tariff Revision/2014-15/LT dated 09.10.2014, notified that (Also as per the Gazette Notification dated 21.04.17 of Kerala State Electricity Regulatory Commission, Thiruvananthapuram, (vide order 1007/F&T/KSERC/2016 dated 17.04.2017), the electricity consumption bill of the offices, institutions, Corporations, etc. under Central Govt. arc charged the Tariff LT VI B.

However, it is noticed that the electricity bill of ESIC, SRO, Kozhikode for the period from 01.04.2015 onwards were charged under LT VII A-the tariff which is applicable to the commercial establishments. Due to this wrong classification of tariffs, the KSEB has been charging the energy charges (based on consumption of the electricity), fixed charges (based on the load of connectivity) and the duty (being 10% of the energy charge) at a higher rate.

As per the request Assistant Engineer, Karaparamba Section, Kozhikode has changed the tariff rate to LT VI-B w.e.f. November 2018 only and rejected the request to adjust the excess payment amount from future bills as per letter dated 11.10.2018 and letter dt.14.07.2019. Though this office has produced documentary evidence in occupancy in 3rd Floor of Housefed Complex, Eranhipalam, Kozhikode, the AE took the stand that the excess payment already paid cannot be refunded/adjusted in future bills since ESIC has not intimated occupancy in the building. The appellant had also represented to Executive Engineer, Kozhikode but not received any favourable decision. Hence, the appellant filed a petition in Consumer Grievance Redressal Forum (NR), KSEB, Kozhikode. As per the order dated 16-11-2019 in OP No. 76/20019-20, the Forum observed that the claim of ESI Corporation to get refund of the excess amount paid seems inadmissible and rejected the request.

Though the Forum has rightly observed that tariff eligible to the appellant is VI B, quoting Regulation 98(1) and Regulation 98 (5) of KSEC 2014 which are not relevant in this case, rejected the request stating that the rules in force not allowing any retrospective implementation. The said regulations do not say anything about retrospective implementation. Regulation 98(1), says about the procedure to be followed by a consumer for

changing the consumer category. Which says only about the procedure to be followed by a consumer if there is any dispute from his side against the classification of tariff demanded by KSEB or procedure followed if he wishes to change to a different category of consumer due to change in business or operation. In this case there is no change happened in consumer category, and only wrong classification of tariff has happened from KSEB. ESI Corporation is a statutory body under Central Govt. and the eligible tariff rate is VI B. Also, Regulation 98(5) states the procedure to be followed by KSEB when the actual period of wrong classification cannot be ascertained reasonably. In this case the period of wrong classification is very clear and this provision is not applicable in this case. It is very clear that the wrong classification of tariff was happened from KSEB during the period from 04/2015 to 08/2018. It is very clear that it is the responsibility of KSEB officials to conduct periodic inspection to ascertain whether there is any wrong tariff usage, determine the revising the tariff rates periodically and issue demand and disconnection notice according to the class of consumer. KSEB is the agency entrusted by Stale Govt for this purpose.

Determining the tariff rate, conduct periodic inspection, determine the applicable tariff rates are the sole responsibility of KSEB. Hence evading from this responsibility and blaming the appellant on the mere ground that appellant has unnoticed the irregularity from KSEB and hence the excess amount paid is non-refundable is unacceptable. The respondent has already agreed that the eligible tariff rate to the appellant is LT VI B and hence the excess amount paid is the money of the appellant and should be refunded as per law. Being a Govt. organisation KSEB should comply with govt orders and responsible for refunding the amount which arc inadmissible to their account. The CGRF did not address these issues. Hence, the appellant requests to refund the excess amount/adjust-the amount in future bills kept by KSEB from respondent.

Arguments of the respondent:

The appellant is a consumer of Electrical Section, Karaparamba with consumer number 1165988019626. This service connection was effected on 25-07-2003 in the name of Sri. Jacob K.V., Managing Director, Kerala Housing Board Federation in VII A commercial tariff. Neither the registered consumer nor the tenant (now the appellant) has not brought to the notice of the KSEBL that the building was rented to ESI Corporation which is a central government organization. Without getting an application for tariff change KSEBL is not liable for any of the contentions raised by the appellant.

The appellant has requested for the tariff change only in the month of November 2018. Soon after the receipt of the application of the appellant, KSEBL has initiated steps to change the tariff. Now the appellant's service connection has been changed to VI B tariff which is the applicable tariff to such a consumer. It is clear from the petition itself that the appellant has lodged such a complaint because of the objection raised by the audit of Accountant-General office and not suo-motto. The laxity, negligence 'and ignorance of the relevant officers of the ESI Corporation is very much evident

from this. As the appellant was responsible for filing an application for tariff change, the KSEBL is not at all responsible for the loss being raised by the appellant. As KSEBL cannot act in speculation for the tariff change of each and every consumer unless a request has been made and hence KSEBL is not liable to pay or adjust the excess amount issue being raised by the appellant. The KSEBL has collected only the amount in applicable tariff in which the connection has been registered and has not charged any excess amount as stated in the petition.

As per the information available, it is found that all the service connections except one in this building are in the name of Sri. Jacob K.V, Managing Director, Kerala Housing Board Federation. The tariff applicable at the time of availing service connection was VII A, since the purpose mentioned was purely commercial.

KSEBL will normally allow tariff change only after receiving the request from the consumers. Based on the request from the consumers and as on conducting proper inspections only tariff change is usually effected. Suo-moto tariff change will come into effect only if KSEB has noticed that. In this case, any one going for meter reading cannot identify the consumers/consumer type with the existing LT distribution panel arrangements with in the building.

Analysis and Findings

The hearing of the case was conducted on 28-01-2019 in the chamber of Electricity Ombudsman at Edappally, Kochi. Sri P.M.M. Najeeb Khan, Advocate and Standing Counsel, ESI Corporation, represented the appellant and Sri. Anand T.M., Assistant Executive Engineer, Electrical Sub Division, Karaparamba, Kozhikode has 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 point to be decided is

Whether the request of the appellant to refund the excess energy charges paid to KSEBL for the period from 01-04-2015 onwards being wrong tariff fixed is admissible?

The ESI Corporation is a Central Government institution. The Accountant General's audit report reveals that the office of the ESI Corporation is functioning in the 3rd floor of the premises of Housefed Complex since 01-04-2015 and the respondent wrongly fixed tariff under LT VII A instead of LT VI B. The Accountant General, Kerala raised audit objection regarding the payment of electricity charges under commercial tariff for this govt. institution. As per the tariff rules, the tariff applicable to Govt. offices comes under LT VI B non-domestic category and the A.G. directed to take action to get refund of the excess amount of Rs.424616/- from KSEBL for the period from 01.04.2015 to 31.08.2018 due to wrong classification of

tariffs paid/adjust in future bills. The respondent found that the request of the appellant is genuine and hence changed the tariff to LT VI B with effect from 11/2018 from the date of application. The grievance of the appellant is that the excess amount collected has not so far been refunded/adjusted. In this case there is no dispute that the appellant's office is a government institution working in the said building since 01-04-2015 and tariff applicable to such office is LT VI B.

The appellant has not pointed out the wrong tariff fixation during these long years due to ignorance of the matter. Here the wrong fixation of tariff at commercial rate has occurred since it is a multi storied commercial building and the power supply was provided even before the occupation of the building by this government organization.

Further, Regulation 98 of Supply Code, 2014 clearly indicated the procedures to be followed in the case of tariff change application which reads as follows: ***As per Regulation 98 of Supply Code, 2014 (1) if a consumer wishes to change his consumer category he shall submit an application to the licensee in the format given in Annexure 10 to the Supply Code and the licensee shall process the application as per the relevant provisions of the Code.***

(2) The licensee shall conduct site inspection within 7 days from the receipt of application and record the meter reading at the time of inspection.

(3) If on inspection, the request of the consumer for reclassification is found genuine, change of category shall be made effective from the date of inspection and a written communication shall be sent to the consumer to this effect within 15 days of inspection.

(4) Arrear or excess charge, if any, shall be determined based on the actual period of wrong classification and the account of the consumer shall be adjusted accordingly.

(5) If the actual period of wrong classification cannot be ascertained reasonably, the period shall be limited to a period of 12 months or a period from the date of last inspection of the installation of the consumer by the licensee whichever is shorter.

(6) If the licensee does not find the request for reclassification genuine, it shall inform the applicant in writing giving the reason for the same, within 7 days from date of inspection.

(7) For the period in which the application of the consumer for reclassification is pending with the licensee the consumer shall not be liable for any action on the ground of unauthorized use of electricity.

Regulation 97 of Kerala Electricity Supply Code, 2014 which reads as

(1) "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 motu reclassify the consumer under appropriate category.**
- (2) The consumers shall be informed of the proposed reclassification through a notice with a notice period of thirty 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 classification and the account of the consumer shall be suitably adjusted.**
 - (5) If the actual period of wrong 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.”**

On going through the documents, it can be seen that the appellant had submitted applications for tariff change to LT VI B in November 2018 only. At the same time, there is provision for suo moto reclassification of consumer category by the licensee under Regulation 97 of the Kerala Electricity Supply Code, 2014 and the respondent has not taken any action. It is the responsibility of the licensee to assign correct tariff to consumers based on the purpose of usage of electricity. On a plain reading of the above contentions it is revealed that if the respondent has taken timely action to change the tariff, the whole issue could have been avoided. **The Provision for suo-moto reclassification of consumer category by the licensee is introduced as per Regulation 97 of Kerala Electricity Supply Code, 2014 which came into effect from 01-04-2014.**

There are instances of short assessment bills made by KSEBL, in cases of detection of wrong tariff fixed to consumers for realizing back arrears. The Clauses under 134 of the Supply Code 2014 permits the licensee to recover the amount undercharged from the consumer and hence refund of the overcharged amount to the consumer is also natural if it were found as a bonafide one. In Appeal No. P/305/2012 order dated 21-05-2013, this Authority held that the action of the respondent to raise the short assessment pertaining to the back period, towards the undercharged amount from the consumer owing to wrong fixation of tariff, as maintainable and payable by the consumer. Similarly, the overcharged amount if any, can be refundable to the consumer, if it is found genuine.

As per Kerala Electricity Supply Code, 2014, the Licensee can suo moto reclassify tariff of a premises observing the purpose for which the premises is used. As the Supply Code 2014 enacted on 01-04-2014, it is decided to change the tariff of the premises to LT VI B from 01-04-2015 onwards. Considering facts of the case, as it is a government office functioned in the premises and the request seem to me as genuine, I am of the view that the request of refund of excess amount collected from 04/2015 is reasonable.

Decision:

From the analysis done above and the conclusions arrived at, this Authority takes the following decisions.

Under the provisions of Regulations 97 and 134 of Kerala Electricity Supply Code, 2014, I am fully convinced that the request of the appellant is reasonable and justifiable. Hence this Authority decide that the order of the CGRF stands quashed. The excess amount collected from the appellant by way of tariff LT VII A for the period from 04/2015 onwards, shall be refunded/adjusted in future bills by adjusting the same at tariff under LT VI B. The amount of refund so calculated may also be communicated to the appellant with details.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is found having merits and is allowed. The order of CGRF, Kozhikode in Petition No. OP/76/2019-20 dated 16-11-2019 is set aside. No order on costs.

ELECTRICITY OMBUDSMAN

P/099/2019/ _____ /Dated: _____

Delivered to:

1. Sri. J. Varghese. Deputy Director, Sub Regional Office, ESI Corporation, Housefed Complex, Eranhipalam, Kozhikode
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Karaparamba, Kozhikode

Copy to:

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