

# STATE ELECTRICITY OMBUDSMAN

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## REPRESENTATION No: P 113/09

*Appellant* : Sri Mathew George,  
Kuruvithadom Associates Pvt Ltd (Sony Centre),  
NH ByePass, Edappally, Ernakulam

*Respondent:* Kerala State Electricity Board  
*Represented by*  
The Deputy Chief Engineer  
Electrical Circle, Ernakulam

## ORDER

Sri Mathew George, Kuruvithadom Associates Pvt Ltd (Sony Centre), NH ByePass, Edappally, Ernakulam submitted a representation on 7.12.2009 seeking the following relief :

1. *Allow HT IV Tariff from the date of connection*
2. *Refund the excess collection of Rs 3,57,447/- with interest at twice the bank rate as specified in the Supply Code*
3. *Allow execution of HT agreement in standard form*
4. *Compensation to the tune of Rs 2 Lakhs and allow costs*

Counter statements of the Respondent was obtained on 3.2.2010 and hearing of both the parties conducted on 03.03.2010 .The Appellant submitted an argument note during the hearing .

The Appellant had obtained power allocation for an HT service in February 2008. They executed HT agreement on 24.9.2008 with a reduced connected load of 64 KW and Contract Demand 50KVA. They were allotted Consumer Code number HTB9/4975.The HT installations were energized on 13.10.2008. The tariff for the supply as per schedule item 3 and category of service as per schedule item 4 of the agreement were noted as LT VII A. A special clause was inserted in the standard HT agreement as Clause 25 which reads as follows:

The consumer undertake to make payment for the energy consumed under LT VIIA tariff since the connected load is less than 100KVA and this will continue until the load is increased beyond 100KVA when the tariff can be changed to applicable HT tariff.

After availing the HT connection as per the agreement the consumer disputed the method of billing and application of LT commercial tariff. They finally approached the CGRF with a petition on 17.8.2009 seeking reliefs such as billing under HT IV tariff, refund of excess payments etc. .The CGRF did not allow the reliefs sought for. The representation with the pleas noted above is submitted to the under signed in the above back ground.

The contentions/arguments/points raised by the Appellant in the representation and during the hearing are summarized below:

As per the prevailing tariff order (Part A EHT and HT tariff General Conditions Para 2 ) Billing demand shall be recorded maximum demand for the month in KVA or 75% of the contract demand (as per the agreement) which ever is higher. Hence the billing demand of the Appellant shall be the actual recorded demand or 38 KVA which ever is higher. Charging of minimum 50 KVA as per clause 9 of the agreement is not in order. As per the Kerala Electricity Supply Code the supply voltage for different connected loads shall be as follows:

Supply voltage 240V Maximum CL 5 kW  
Supply voltage 415V Maximum CL 100KVA  
Supply voltage 11KV Maximum Contract Demand 3000KVA,  
and so on.

This obviously means that only 11KV supply shall be given for CL more than 100KVA. That does not mean that 11KV supply shall not be given for loads less than 100KVA. The provisions of the Supply Code do not provide for any differential treatment for Commercial consumers on the question of supply voltage and related tariff. As such the differential treatment insisted in the BO (FM)No 1854/08/KSEB/TRAC/Tariff-Rev08-09/28.7.2008 to the commercial consumers is illegal and without statutory or regulatory approval. KSEB can not provide differential treatment for commercial consumers in the matter of supply voltage and tariff related to supply voltage.

The entries made in the schedule to the agreement that LT VII A tariff shall be applicable for the HT service is contrary to the prevailing statutes. The entry as clause 25 additionally written into the agreement is against the rules and statutes.

The invoices issued to the Appellant by the Respondent KSEB are not in accordance with any standard tariff rates approved by the Electricity regulatory Commission . The rates were chosen arbitrarily and the MD charges and Energy charges are chosen from different tariffs. MD charges were invoiced at HT commercial rates and energy charges at LT VII A tariff. This is illegal and arbitrary.

The HT agreement with arbitrary and illegal clauses written down in ink was got executed by the Appellant exploiting the ignorance of the Appellant and their eagerness to obtain power connection. The agreement should be scrapped and a new agreement in standard form should be executed.

The Respondent had been giving HT connection for connected loads less than 100KVA and applying appropriate HT tariff in several other areas. Applying a different scale for the Appellant is not fair.

The contentions/arguments/points raised by the Respondent in the counterstatement and during the hearing are summarized below:

The Appellant had furnished an undertaking on 23.9.2008 in which it was stated that 'we undertake to make payment under LT VII A tariff until we increase the connected load beyond 100KVA'. Later they executed the HT agreement with KSEB incorporating the contents in the above undertaking in the agreement.. The clause 25 written in the agreement was nothing but the same provision given in the undertaking. The entries made in the schedule to the agreement regarding the LT VII A tariff were also as per the undertaking. The agreement with the above modifications was signed by the Appellant at their own will and choice. No compulsions were made by KSEB. If they had any objections to the clauses in the agreement they should have made it before signing the agreement. They did not make any protest before signing the agreement. It is not fair to raise disputes after will fully signing the agreement accepting the conditionality. As per clause 45(2) of the Terms & conditions of Supply by KSEB, upto a maximum connected load of 100 KVA the supply to be given at 415V, ie, LT3 Phase. HT supply was given to the Appellant as a special case on condition that they are willing to pay energy charges under LT tariff since the connected load is less than 100KVA. HT supply had been given to other applicants such as BSNL also on the same condition. As per clause 9 of the standard HT agreement the minimum charge payable shall be for 50KVA contract demand. The KSEB is prepared to revise the agreement deleting this clause.

As per Chapter 2 Clause 5 of Supply Code the maximum connected load for 415V ie 3 phase LT supply is 100 KVA and maximum contract demand limit for 11KV supply is 3000KVA. Hence it is clear the contract demand for 11KV supply starts from 100KVA onwards in normal cases. The Board had given HT supply to the Appellant as a special case which deserves a special treatment also.

#### Discussion and Findings:

The first point to be examined is the claim of the Respondent that the Appellant was not eligible for an HT connection since the connected load was less than 100KVA. The statutes specify that the supply voltage shall be 415V for a maximum Connected Load of 100KVA. The technical reasons for specifying such a maximum value are obvious. But the argument of the Appellant is that specifying such a maximum value do not imply that only LT supply should be given for loads below 100KVA. This view point seems to be reasonable. The interpretation of the Respondent that 'the contract demand for 11KV supply starts from 100KVA onwards in normal cases' do not have any statutory sense. If the rule makers had such an intention they would have framed the regulations accordingly. Heavy investment required for availing HT supply would generally deter applicants from taking HT supply at low loads. More over every distribution licensee would normally encourage consumers to avail connection at higher voltages since it would result in reducing distribution losses and improving HT/LT ratio. Hence technically as well as legally the applicant should be able to avail HT supply for loads less than 100KVA. The Section 4 of the Kerala Electricity Supply Code or the Clause

45 of the Terms & conditions of Supply by KSEB do not empower the licensee KSEB to deny HT supply for loads less than 100KVA.

The KSEB themselves have accepted this view point finally in the BO (FB) 451/2010/(KSEB/TRAC/HT/2009-10) dated 20.02.2010. As per the order, 'as a measure for encouraging consumers to avail supply at higher voltages' it has been ordered 'to provide power at higher voltage to all categories of consumers including commercial category who opts to receive power at higher voltage (HT or EHT) at their cost and billed at respective HT or EHT tariff'.

Now the special conditions imposed by the Respondent for providing HT supply to the Appellant are to be examined. As noted earlier the Respondent had obtained an undertaking from the Appellant to make payment under LT VII A tariff until they increase the connected load beyond 100KVA. Similar special conditions were incorporated in the HT agreement also. Accordingly LT VIIA commercial tariff was applied for energy charges. The Appellant has alleged that HT tariff was applied for the demand charges or fixed charges. This looks to be a peculiar and unique way of invoicing, which is ridiculous on the face of it. The tariff orders issued from time to time by the KSEB as well as the Schedule of Tariff and Terms & Conditions for Retail Supply by KSEB issued by the KSERC on 27.11.2007 had a common and basic feature which linked supply voltage with the tariff classifications. Every classification and categorization was voltage specific. Cost of service was linked to voltage levels and this voltage specific tariff levels had been one of the basic features of every tariff orders. Invoicing a consumer with HT rates for KVA MD and LT rates for energy is totally unacceptable and illegal.

Here the basic issue to be examined is whether the Licensee KSEB can enter into such a 'special agreement' with a consumer and apply tariff rates at its own will and pleasure. I have not come across any provision in the Electricity Act 2003 or the statutes framed under it which empowers a Distribution Licensee to incorporate special clauses in the supply agreement and tamper with the tariff rates, even by mutual agreement.

Distribution licensees have no mandate to enter into any agreement with any consumer/applicant and enforce tariff structures contrary to the Schedule of Tariff and Terms & Conditions for Retail Supply issued by the Regulatory Commission under the prevailing regulatory regime. As such I have come to the conclusion that the special clauses inserted in the standard agreement to provide differential treatment to the Appellant are arbitrary and illegal. These clauses shall be treated as null and void. The power connection to the Appellant had been provided at 11KV and hence the appropriate HT tariff shall be applied from the date of connection.

Another issue to be examined is the contradiction between tariff order and clause 9 of the agreement regarding the minimum 50 KVA of the billing demand. As per the tariff order dated 27<sup>th</sup> November 2007 (Part A EHT and HT tariff General Conditions Para 2) Billing demand shall be the recorded maximum demand for the month in KVA or 75% of the contract demand (as per the agreement) whichever ever is higher. But the clause 9 of the standard HT agreement states that :

'the demand based on which the consumer will be billed for a month (billing demand) shall be: a) Actual maximum demand ---- or b) 75% of the contract demand or c) 50KVA whichever ever is higher'. On recourse to the previous tariff orders it was found that the minimum 50 KVA clause was present in all the tariff orders issued in the recent past.

This has been dropped in the Tariff order dated 27<sup>th</sup> November 2007. Hence the clause 9 of the agreement has to be conceived as modified to that extent, since 'the tariff mentioned in this schedule shall apply to Consumers to whom the Kerala State Electricity Board has undertaken or undertakes to supply electricity not with standing anything to the contrary contained in any agreement entered into with any consumer earlier by Board/Government' . Hence the Respondent can not take minimum 50 KVA as billing demand .The demand based on which the consumer will be billed for a month (billing demand) shall be the actual maximum demand or 75% of the contract demand which ever is higher.

The Appellant has argued that the ignorance of the applicant regarding Electricity Act/rules/Regulations/tariff etc has been exploited in the agreement. Hence they were pulled on to sign and approve the special terms and LT commercial tariff for the HT supply. But the Respondent stated that they had all along explained to the Appellant that normally KSEB do not provide HT supply for loads below 100 KVA. These procedures and practices were well known to the Appellant also. They had well experienced Class A Electrical Contractor at their service. The Appellant had applied for and obtained power allocation for loads above 100 KVA but could not install all the planned loads due to their own problems. But they had proceeded with HT service installations separately and hence had no choice other than approach for HT connection. The contention that the KSEB had exploited the ignorance of the Appellant to impose LT commercial tariff is not correct, according to the Respondent. I am inclined to accept this statement of the Respondent, and the theory of ignorance seems to be fabricated. I am also inclined to conclude that it was not a question of ignorance and its exploitation, but a strategic submission to obtain power connection, over looking an existing practice. But this does not preempt their right for eligible relief. Hence I am ordering the reliefs cited. How ever claims for interest, compensation, costs etc can not be considered under the above circum stances.

#### Orders:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

- 1. The Appellant shall be billed at the appropriate HT tariff under Schedule of Tariff and Terms& Conditions for Retail Supply by KSEB issued by the KSEB on 27.11.2007 from the date of connection. The demand based on which the consumer will be billed for a month (billing demand) shall be the actual maximum demand or 75% of the contract demand which ever is higher.*
- 2. The excess amounts collected from the Appellant shall be refunded by adjustment in future bills by twelve equal monthly installments. The adjustment of first installment shall commence within three months from the date of this order.*

3. *The Appellant and Respondent shall execute an HT agreement in standard format within three months.*
4. *The Appellant shall not be eligible for interest on the excess payments nor for any compensation or costs.*

Dated this the 4th day of May 2010,

P.PARAMESWARAN  
Electricity Ombudsman

No P 113/09 / 544 / dated 04.05.2010

- Forwarded to:
1. Sri Mathew George,  
Kuruvithadom Associates Pvt Ltd (Sony Centre),  
NH ByePass, Edappally, Ernakulam
  2. The Deputy Chief Engineer  
Electrical Circle,  
Power house Road, Ernakulam

Copy communicated to: The Special Officer (Revenue)  
K S E Board , VaidyuthiBhavanam, Pattom,  
THIRUVANANTHAPURAM 695004

Copy to :

1. The Secretary,  
Kerala State Electricity Regulatory Commission  
KPFC Bhavanam, Vellayambalam,  
Thiruvananthapuram 695010
2. The Secretary ,KSE Board,  
VaidyuthiBhavanam ,Thiruvananthapuram 695004
3. The Chairman , CGRF,KSE Board ,  
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