

**THE STATE ELECTRICITY OMBUDSMAN**  
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APPEAL PETITION No. P/001/2021  
(Present: A.S. Dasappan)  
Dated: 28<sup>th</sup> June 2021

Appellant : Sri. V.R. Krishnan  
Rani Food Products,  
Chorode, Vadakara  
Kozhikode Dist. 673 106

Respondent : Assistant Executive Engineer,  
Electrical Sub Division, KSEB Ltd.,  
Muttungal, Kozhikode

**ORDER**

**Background of the case:**

The appellant is a Low Tension (LT) consumer of Electrical Section, Muttungal. The appellant had a High Tension (HT) electric connection, which was dismantled and availed a new LT connection on 10-07-2019. The appeal petition pertains to the period of HT connection. The tariff allotted to the HT connection was under HT (I) category from 1987 onwards, but the tariff was reassigned to HT (IV) from 1999 onwards and collected excess energy charge. The appellant filed a petition before the Consumer Grievance Redressal Forum (CGRF), Northern Region, Kozhikode vide OP No. 86/2019-20 for the refund of excess amount remitted from 09/1999 to 05/2016. The CGRF dismissed the petition on 12-12-2019 observing that the subject case was being considered by KSEB Ltd. Later KSEB Ltd. decided to refund the excess amount from 09/2012 to 05/2016 for Rs.8,79,454/-. The appellant again filed a petition before CGRF, Northern Region, Kozhikode to get the refund of excess amount remitted prior to 09/2012 vide OP No.62/2020-21 and the Forum in its order dated 04-12-2020 dismissed the petition. Not satisfied with the order of CGRF, the appellant filed this appeal petition before this Authority on 11-01-2021.

**Arguments of the appellant:**

The appellant had remitted energy charge from 10/1999 to 05/2016 in excess due to the wrong fixation of tariff by the respondent. As per the contract agreement, the tariff allotted was HT(I) and which was changed to HT (IV) Commercial from 1999 onwards. While changing tariff plan from one to another, a new agreement had to be executed, but in the case of appellant, a new agreement was not signed and issued bill under revised tariff. The appellant could not find the new tariff from the bill. Immediately after finding the anomaly, the appellant made complaints to various level of officers of the Licensee and received an amount of Rs.8,79,454/- towards the refund of excess amount from 09/2012 to 05/2016. Since the refund was only a portion of eligible period, the appellant filed petition again before the officials of KSEBL, but not received any reply. The respondent argued in the hearing conducted by Consumer Grievance Redressal Forum that the disputed subject was under the consideration of KSEBL and hence, CGRF issued order rejecting the requirement of the appellant.

But on 12-05-2020, the appellant received a letter from the Licensee rejecting the application for further refund on the ground of limitation. Again, the appellant filed a petition before Consumer Grievance Redressal Forum, Northern Region, Kozhikode against the decision of KSEBL and requesting to refund the entire amount collected in excess by fixing incorrect tariff and KSEBL could not find any commercial activities in the period under dispute. The CGRF has observed that the petition is justifiable.

The appellant availed a Low Tension electric connection by closing the HT connection on 10-07-2019 since the load demand was low. Cash Deposit was also adjusted while changing the category of connection. The observation of Consumer Grievance Redressal Forum is that the appellant had not filed any petition while adjusting Cash Deposit amount. The requirement of the appellant is to refund the excess amount collected from 1999 to 2012 by wrong fixation of tariff by the respondent.

**Arguments of the respondent:**

As per the then tariff order, the firm was being billed till 13.05.1999 under HT.1 tariff, which consisted of water works, printing press, plantations, granite crushing Unit, hotels, lodges, commercial establishments, business houses, film studios and theatres. On 14.05.1999 new tariff order came into force which introduced a new category commercial tariff (HT.IV). In view of the introduction of new order, suo moto, the tariff of the appellant's firm was changed to HT(IV) commercial as it had commercial activities well and the revised tariff had been reflected in the invoices issued to the appellant since then. Above all, by virtue of agreement between KSEBL and appellant's Firm, the Firm is liable to pay revised current charge from time to time. Hence, the contention of the appellant is baseless.

No communication regarding challenging change of tariff from HT(I) to HT(IV) subsequent to the tariff revision with effect from 14.05.1999 has been received from the appellant's Firm before 21.06.2017 and the Firm failed to produce any exhibit in this regard from Sales Tax Department.

The appellant's Firm was being billed under HT(I) Industrial tariff with effect from 01.04.2016 in the light of proceedings dated 28.03.2016 of the Deputy Chief Engineer, Electrical Circle, Vadakara.

An amount of Rs. 8,79,454/- ( Rupees Eight Lakh Seventy-Nine Thousand Four Hundred and Fifty-Four only ) was paid aback to the appellant in the wake of order dated 10.07.2019 of Special Officer ( Revenue ).

The appellant's Firm continued under the HT IV tariff between 14.05.1999 and 01.04.2016 as per the tariff order issued from time to time. Moreover, the said claim of the appellant's Firm is time barred in the wake of legal opinion dated 23.03.2020, which KSEBL obtained with respect to this issue.

The appellant failed to produce any documentary evidence obtained from Sales Tax Department showing that there was no commercial activity. The C.G.R.F (NR) vide order dated 04.12.2020 has also reiterated that no documentary evidence

could be produced by the appellant that no commercial activity was there in the premises during the period mentioned in the request.

Appellant's Firm was allowed to reduce contract demand to 90 kVA in the light of judgment dated 01.12.2003 in OP. No. 12718/2003 of Hon'ble High Court of Kerala with retrospective effect from 02.07.2001 to 07.08.2002 and to 120 kVA thereafter. Later the agreement dated 14.05.2004 ratified the reduction of contract demand with retrospective effect from 07/2001. On account of the said reduction of contract demand from 07/2001 to 04/2004, an amount of Rs.9,24,819/- (Rupees Nine Lakh Twenty-Four Thousand Eight Hundred and Nineteen only) was adjusted as excess amount against the bills issued from 07/2004 to 06/2005. An amount of Rs. 29,147/- (Rupees Twenty-Nine Thousand One Hundred and Forty-Seven only) being interest of the said refund of Rs. 9,24,819/- along with 6% additional interest per annum was allowed to the appellant's Firm in compliance with judgment dated 18.07.2019 in RSA. No. 799/2009 of the Hon'ble High Court of Kerala.

Way back in 2003, APTS, Kozhikode conducted an inspection at the premises of the appellant's Firm on 23.01.2003 and found non-segregation of power and light load and imposed penalty. Since the tariff of the appellant was claimed to be HT IV, the Deputy Chief Engineer, APTS vide letter dated 12.05.2003 withdrew the imposition of penalty for the same. From the above incident, it is clear that the appellant's Firm was well aware of its tariff.

Even if it is admitted for the sake of argument that the appellant's Firm was eligible for HT(I) tariff with effect from 14.05.1999, the claim of the appellant from 10/2002 to 09/2012 is time barred and cannot claim it by way of a suit.

The Consumer Grievance Redressal Forum has expressed doubt as to whether the ground on which the request made by the appellant is bonafide.

As per Regulation 145 (6), Kerala Electricity Supply Code 2014, the Licensee shall not have any right to recover any charge for any period prior to the date of final bill and as per Regulation 145(7), Kerala Electricity Supply Code 2014, the Licensee cannot raise any bill after dismantling. The appellant not being an HT consumer of KSEBL, the said regulation implied to the appellant too.

As per Regulation 93 (7) , Kerala Electricity Supply Code 2014, excess payment if any made by the consumer towards the expenditure, shall be adjusted by refund. While final settlement was made, no complaint was raised by the appellant. From this, it is inferred that the appellant has admitted the final settlement on dismantling of HT connections to the appellant.

In the wake of the facts mentioned above, the respondent prayed before the State Electricity Ombudsman that the contentions of the appellant deserve no merit and hence it may kindly be rejected.

**Analysis and findings:**

An online hearing was conducted at 11 AM on 25-02-2021 with prior intimation to both the appellant and the respondent. Sri. V.R. Sajeev, attended from the appellant's side and Sri. D. Sunilkumar, Assistant Executive Engineer, Electrical Subdivision, Muttungal from the respondent's side attended the hearing. On examining the appeal petition, the counter statement of the respondent, the documents attached and the arguments 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 decision thereof.

The appellant was a High Tension (HT) consumer of Electrical Section, Muttungal and the connection was dismantled on 06-06-2019 as requested by the appellant. Afterwards, the appellant availed a Low Tension (LT) electric connection. The appellant wants the refund of excess energy charge collected by the respondent with a wrong fixation of tariff in the HT category while introducing a new tariff for HT consumers in the year 1999. The period of refund claimed by the appellant was from the year 1999 to 2016, of which the year from 2012 to 2016 was refunded by the Licensee. The remaining period for the year 1999 to 2012 was disallowed by the respondent arguing that the claim was time barred.

The Special Officer (Revenue) of the Licensee, KSEB Ltd. in the proceedings dated 10-07-2019 issued orders to refund Rs.12,57,958/- of which Rs.8,79,454/- is seen categorized as "Bill Revision Credit". No other details required for clarity of "Bill Revision Credit" is seen explained in the proceedings. The period of claim, whether claim is energy charge or others, basic data like contract demand etc. are

not seen furnished in the proceedings. Anyhow the appellant admitted that Rs.8,79,454/- was refunded by KSEB Ltd. towards the excess amount collected due to the wrong fixation of tariff from 09/2012 to 05/2016.

In the version of respondent and also in the hearing, the respondent stated that even if it is admitted for the sake of argument that the appellant's firm was eligible for HT (I) tariff with effect from 14-05-1999, the claim of the appellant from 10/2002 to 09/2012 is time barred and cannot claim it by way of a suit. The respondent also stated in the hearing that the claim of the appellant was denied on the strength of legal opinion dated 23-03-2020 of KSEB Ltd.

The appellant was billed under HT (I) tariff from 1987 to 04/1999 based on the purpose of the Firm. The purposes which can be treated for allowing HT (I) tariff were water works, printing press, plantations, Granite crushing units, Industrial Consumers, Hotels, Lodges, Commercial establishments, business houses, film studios and theatres. The appellant's Firm by name "Rani Food Products", was a factory for manufacturing curry powder, pappadam, spices and arimurukku. In the tariff order notified on 14-05-1999, a new tariff was introduced for Commercial Consumers HT (IV) and came into force from 14-05-1999. Without ascertaining the activities in the appellant's Firm, the respondent started issuing bills under HT (IV) tariff, since commercial establishments were included in the HT (I) tariff prior to 14-05-1999. Before changing the tariff from HT(I) to HT(IV), the respondent had to ascertain whether the purpose for which the premises was being used.

An inspection was conducted by Anti Power Theft Squad (APTS) of KSEB in the appellant's premises on 23-01-2003 and sent a report to the Special Officer (Revenue), KSEB, Thiruvananthapuram on 31-01-2003. The anomaly detected in the premises was "Light load connected is more than 5% of power load. No segregation for light is done. 20% extra on CC for non-segregation and misuse of 3 times normal rate for a period of six months prior to date of inspection may be charged". No other remarks or anomalies are seen furnished in the inspection report. In reply to the above report dated 31-01-2003, the Special Officer (Revenue) informed the Executive Engineer, Electrical Division, Vadakara on 23-06-2003 with copy to other officers that "M/s. Rani Food Products", Vadakara, comes under HT

(IV) category, which is a commercial establishment. There is no norm regarding segregation of power and lighting load in this category as it is obligatory in the case of HT (I), industrial consumers vide B.O.(FM) No.1462/02/TRAC/TO-1/2002 dated 24-10-2002. Therefore, the above consumer need not be penalized as reported by the Assistant Engineer, APTS, Regional Circuit, Kozhikode”.

It is pertinent to note that no further action was initiated by the concerned officials on the basis of the reply of the Special Officer (Revenue). This was the best chance to ascertain whether the establishment of the appellant was being used for commercial activities under HT(IV) tariff or Industrial activities or other activities mentioned under HT (I) tariff. The lapse on the part of concerned officials was the reason for the petitions to the CGRF and appeal petition to this Authority. It can be observed from the Inspection Report of APTS that the activities being done in the premises was that of HT I Category and so made such remarks of segregation of power load and light load.

The appellant vide letter dated 21-06-2017 requested KSEBL to refund the excess amount remitted due to the wrong fixation of tariff, from 10/2009 to 05/2016. The tariff of the appellant's Firm set right from 04/2016 onwards and no dispute in further period.

It is revealed from the documents submitted by the respondent, the observations made by the Licensee is “the activity being carried out since 1999 is manufacturing of food products, which cannot be said to be commercial. The Licensee refunded difference between the commercial tariff and industrial tariff to the appellant for the period from 10/2012 to 05/2016 even though appellant's requirement was from 1999 onwards. Though the appellant is eligible for HT(I) industrial tariff from the period from 10/2002 to 09/2012 also, the matter is time barred by limitation and cannot make a claim it by way of a suit.” As such, the Licensee admitted that the appellant is eligible for the entire period of energy charge under HT-I tariff, but the claim is denied due to time barred by limitation.

It is to be noted that it is the responsibility of the Licensee to assign right tariff in accordance with the purpose / activity for which electricity is being used. If a consumer is using electricity for the purposes other than the tariff allotted, the Licensee can take suitable action as per rules and regulations.

The arguments raised by the respondent “the appellant failed to produce any documentary evidence obtained from Sales Tax Department showing that there was no commercial activity” is not an acceptable and justifiable argument. Being a HT consumer, an officer of the Licensee is taking meter reading in every month from the premises. At any time, any officer could not find any commercial activity in the premises even in the inspection conducted by APTS. The above argument and the observation made by the respondent that the appellant is not eligible for refund of excess amount due to “time bar by limitation” are contradictory. The argument of the respondent that the appellant was well aware of the tariff is not a correct statement. At no ground, a consumer allows the Licensee to continue realization of a higher tariff for years if a consumer is aware of the facts.

It is also understood from the version of the respondent that the penalty imposed by the Inspection Team in its report on 23-01-2003 was withdrawn by the Agreement Authority on 12-05-2003. Even for deciding the withdrawal of the penalty, no inspection is seen conducted to ascertain whether the premises was being used for commercial purpose.

As per respondent, the Licensee shall not have any right to recover any charge for any period prior to the date of final bill and the Licensee cannot raise any bill after dismantling in accordance with Regulation 145 (6) and 145 (7) of Kerala Electricity Supply Code 2014 and as the appellant not being a HT consumer of KSEB Ltd., the said regulations implied to the appellant.

Regulation 145 of Kerala Electricity Supply Code 2014 “**Dismantling on the request of the consumer**”:-

- 145(5) On payment of all dues by the consumer, the licensee shall issue a ‘No Dues Certificate’ and a receipt for the payment with the words “Final Bill” stamped on it.
- 145(6) Thereafter, the licensee shall not have any right to recover any charge for any period prior to the date of final bill.
- 145(7) The licensee shall not raise any bill after dismantling.

As per the above regulations, the Licensee cannot recover any charge for any period prior to the date of final bill. But the appeal petition is connected with refund of excess amount remitted by the appellant. The final settlement while

dismantling a connection is the bill preparation based on the final reading of the meter, any arrear bill pending to be recovered from the consumer, refund of any amount like security deposit, interest of security deposit etc. Once the bill is settled with the available data, the Licensee is restricted to generate bills later. Though the HT service was dismantled on 06-06-2019, the appellant had been assigned right tariff from 04/2016 onwards.

Another hearing was conducted at 11 AM on 23-03-2021. In the hearing, it is revealed by the appellant that wrong tariff was assigned from 05/1999 onwards and which was known from the respondent.

On verifying the electricity bills issued by the respondent from 01/1999 to 10/1999, the tariff applied was not furnished for the period from 01/1999 to 04/1999. But from 05/1999 onwards the tariff applied is seen as HT IV. The bill for 05/1999 is seen prepared based on the tariff revision dated 15-05-1999. As such, wrong fixation of tariff and the excess realization of energy charge started from 15-05-1999 onwards.

The appellant's requirement is only to refund the excess energy charge collected by the respondent due to the wrong fixation of tariff by the Licensee. The respondent could not prove that any commercial activities were made by the appellant attracting HT IV tariff. The respondent refunded a portion of excess amount remitted and denied another portion of amount arguing "time barred by limitation" without any support of rules or regulations. The denied amount was actually paid by the appellant. Also, it is to be noted that the amount to be refunded is not a disputable amount or an assessed/reassessed amount. The appellant requested the refund of excess amount from the year 1999 to 2016 and the respondent refunded the excess amount from the year 2012 to 2016. As such the refund of excess amount from 1999 to 2012 cannot be denied stating "limitation" and the appellant is eligible to get the amount.

**Decision: -**

From the analysis done and the conclusion arrived at, which are detailed above, I take the following decision:-

The respondent is directed to refund the excess energy charge remitted under HT IV tariff from 15-05-1999 to 09/2012. The respondent shall prepare electricity bill from 15-05-1999 to 09/2012 under HT I tariff and the excess amount collected under HT IV tariff shall be refunded within 30 days from the date of this order. The order of CGRF, Northern Region, Koizhikkode in OP No:62/2020-21 dated 04-12-2020 is set aside.

Having concluded and decided as above, it is ordered accordingly. The appeal petition filed by the appellant is found having merits and is allowed. No order on costs.

**ELECTRICITY OMBUDSMAN**

P/001/2021/\_\_\_\_\_ dated \_\_\_\_\_.

Delivered to:

1. Sri. V.R. Krishnan, Rani Food Products, Chorode, Vadakara, Kozhikode  
Dist. 673 106
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd.,  
Muttungal, 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,  
Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthi  
Bhavanam, KSE Board Ltd, Gandhi Road, Kozhikode.