

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO.P/079/2014

(Present: Sri. V.V. Sathyarajan)

Dated: 4th June 2015

Appellant : Sri A.N. Neelakandan
General Manager (Tech),
M/s Kochi Shipyard Limited
M.G. Road, Perumanoor. P.O.
Kochi- 682 015

Respondent : M/s Cochin Port Trust
Willington Island
Kochi - 682 009

ORDER**Background of the case**

The appellant is Cochin Shipyard doing the business of ship manufacturing and repair works. The appellant had taken possession of workshop and dry dock facilities of Cochin Port Trust at Willington Island on lease for a period of 30 years with effect from 12th April 2013, where the respondent is the power distribution licensee. Accordingly supply of electricity was given to the appellant at 11 kV system for a contract demand of 630 kVA and subsequently quantum of power was reduced to 350 kVA on executing the HT Agreement as per the relevant Supply Code. The tariff of the said HT supply was assigned as HT IV commercial. According to the appellant, it had requested for change of tariff from HT IV to HT I industrial at the time of executing the agreement. Since the respondent had reluctance to change the said connection to HT I industrial, the appellant had been compelled to agree the tariff under HT IV as assigned by the respondent. In these circumstances the appellant approached the CGRF seeking to direct the licensee to change the tariff to HT I industrial. A hearing was conducted on 30-10-2014 in the chamber of Chairperson, CGRF, where both parties were heard. The CGRF was of the view that there was no merit in the petition filed by the appellant before it. Hence the petition was dismissed. Against the said order this appeal petition was filed.

Appellant's arguments

The Cochin Shipyard Limited is a Central Government enterprise, having its shipyard at Ernakulam for manufacture and repair of different types of ships and

vessels. The ship repair facility at the shipyard at Ernakulam is not adequate to meet the demand for repairs of smaller ships and vessels. The Cochin Port Trust was having a dry dock and workshop at Willington Island for repair of vessels owned by them and which was not being fully utilized. Cochin Port Trust leased out the said workshop and dry dock to the appellant for carrying out ship repair works at Willington Island. The premises were leased out for 30 years from 12th April 2013 to Cochin Shipyard Limited. Before executing the agreement the appellant requested the Port Trust to fix the tariff for supply of electricity under Category HT I industrial, since the purpose for which the electricity supply is being drawn is industrial purpose and not commercial. Section 26 (3) of the Electricity Supply Act stipulates that the tariff must be differentiated on the basis of purpose for which the supply is required. Thus the supply of electricity to the shipyard is only for industrial purpose and not for commercial or domestic purpose. Manufacturing activity is defined in the Factories Act, which is an enactment of the Central Government. Further under the Industries Development and Regulation Act, 195, industrial undertaking is defined to mean any undertaking pertaining to a scheduled industry taken place in one or more factories by any person or authority including Government. Neither the CGRF nor any authority under the Electricity Act has any power to make its own definition of industrial purpose and the reasoning and finding of the Forum of Cochin Port Trust is perverse and untenable. It is not only a matter of legal interpretation but a matter of common knowledge that manufacturing process as defined in the Factories Act is nothing but industrial purpose. The Kerala State Electricity Regulatory Commission has issued the Retail Tariff Order for KSEBL on 14-08-2014 in which it is provided that the Retail Tariff under the said order shall be applicable to all other distribution licensees also. Therefore, the tariff applicable for the supply of electricity by Cochin Port Trust shall be HT I industrial. The denial of the industrial tariff by the Cochin Port Trust is gross violation of the order of the KSERC and Section 62 (3) and of the Electricity Act.

Respondent's arguments

The respondent is a power distribution licensee in Willington Island area and has provided HT power supply to the appellant. HT IV commercial tariff was assigned to Cochin Shipyard Limited as per the tariff orders issued by the KSERC. The appellant is carrying out only repair works and not manufacturing work at their unit at Willington Island and hence the said works come under commercial category. Before executing the HT agreement the appellant had put in a request to fix their tariff as HT I industrial. But the respondent could not consider their request due to the reason that the purpose of availing power supply by Cochin Shipyard Limited at Willington Island premises is for repair works which is purely a commercial activity. Hence the HT IV commercial tariff is applicable to their yard functioning at Willington Island. The Section 62 (3) of Electricity Act mandates that no undue preference shall be given to any of the consumers. Thus HT IV commercial tariff was assigned to the appellant as their purpose was to carry out the commercial activities. In this connection it is pertinent to note that before finalizing the new tariff, the KSERC had conducted 3 public hearings for considering the request and comments of consumers and other stake holders. M/s Cochin Shipyard Limited could have very well represented their case before the Hon'ble Commission for re-

categorisation as was done by many other consumers in the State. The registration of a firm under Factories Act and classification made by the government for providing incentives under various programmes to the industrial units etc. do not have any bearing in tariff determination process. The jurisdiction for change of categorisation rests with the Hon'ble Commission. This principle was endorsed by the Hon'ble APTEL through its various judgments. The appellants are not doing any production or manufacturing of ships at Willington Island in order to consider their request for HT I industrial tariff.

Analysis and findings

Hearing of the case was conducted on 17-04-2015 in my chamber at Edappally, Kochi. Sri Harikumar K, Assistant General Manager, Cochin Shipyard Limited, Sri Saifuddin A.S., resident Electrical Engineer, Cochin Shipyard Limited and Sri Saji Varghese, Advocate represented the appellant. Sri C. Rajasekharan, Superintending Engineer (Electrical) Cochin Port Trust and Smt. Jayalakshmi S., Assistant Engineer (Electrical) Cochin Port Trust represented the respondent. Hearing the arguments of the parties, perusing the case records and considering all the facts and circumstances of the case, this Authority comes to the following observations and findings in the matter.

The case of the appellant is that 11 kV supply was given under HT IV (commercial) tariff instead of HT I (industrial). On finding the above irregularity the appellant approached CGRF of the licensee with a petition. The appellant argued that they are doing the ship manufacturing as well as repair works of ships and are eligible for HT I industrial tariff as per the tariff order issued by KSERC dated: 14-08-2014. The ship repair facility at Willington Island is not a commercial activity as contended by the respondent. Further, the ship repair facility at Willington Island is having factory license under Factories Act and the process of reconstruction / repair of ships are purely manufacturing as defined in Section 2 (k) - (v) & I of Factories Act. But at the same time the respondent contended that the activities carried out by the petitioner at Willington Island was purely repair service and not manufacturing process and the tariff of the petitioner was rightly assigned as HT IV commercial. The respondent has admitted that ship repairing activity is being conducted in the appellant's premises. In this connection it may be seen that the main task of the Cochin Shipyard Limited is manufacturing of ships, which is purely industrial in nature. The repair works and maintenance and periodical service of ships are appurtenant to the main activity of ship building. It appears that the said activities cannot be differentiated from the ship building and cannot be labelled as commercial.

As per Sub Section 3 of Section 62 of Electricity Act, which deals with determination of tariff, reads as follows:

"The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumers load factor, power factor, voltage, total consumption of electricity during any specified period or the time, at which the supply is required or

the geographical position of any area, nature of supply and the purpose for which supply is required." The alleged justification to assign LT IV commercial in the present case is that the purpose for availing supply was to carry out the repair works which is commercial in nature.

The Hon'ble KSERC before finalising the tariff structure for 2014-15 has given ample opportunity to all consumers of the State for suggestion, modification, re-categorisation etc of proposal moved by the KSEBL. But the appellant did not appear before the Commission to address their issue relating to re-categorisation of their tariff. The Hon'ble Commission has carefully considered the proposals in view of the legal provisions and socio-economic realities and re-categorised some group of consumers. The respondent's main contention is that if the petitioner takes up the issue before the Hon'ble Commission at the time of hearing it will be easy to find out a solution. The tariff petitions are being filed by the KSEB alone and the Hon'ble Commission conducting public hearings before issuing orders.

The respondent has continued his arguments on the following lines. Hon'ble KSERC has already approved the ARR of the respondents for the year 2014-15 and their BST has also been arrived based on all the revenue projection from retail tariff. Hence any distortion of ARR and ERC after approving the same may affect the financial status of the respondents. The respondent's argument is that Hon'ble KSERC has never assigned any specific tariff for the petitioner's ship repair division at Wellington Island. However, the licensee can also approach the Hon'ble KSERC for fixing tariff to the appellant if required. Hence the argument of the respondent cannot be justified.

Except for the argument that the appellant ought to have been approached KSERC for re-categorisation of tariff, the respondent has not produced any relevant aspects to show that commercial activities are being out in the appellant's premises. It is also pertinent to note that another argument from the respondent that any change in the tariff will affect the revenue projection approved by the KSERC on ARR and ERC of the respondent is also not sustainable. On the contrary the appellant's contention that their main activity is manufacturing ships and repair and maintenance of ships is auxiliary to their main activity. Their contention that it is only a manufacturing process is not negated by producing any relevant materials by the respondent.

It is brought to the notice of this Authority that as per the tariff notification issued by KSERC dated: 14-08-2014 "workshops using power mainly for production and / or repair" are categorized under industrial category. Since the ship repair facility at Wellington Island comes under such category, the tariff of the petitioner shall be reassigned to HT I industrial.

Decision

In view of the above discussion, it is held that the appellant is entitled to avail HT I (industrial) tariff and the respondent is directed to reclassify the category of the appellant with effect from the date of submission of application as per Regulation 98

(1) of Supply Code, 2014. The impugned order of CGRF is set aside and the appeal petition stands allowed. No order as to costs.

ELECTRICITY OMBUDSMAN

No.P/079/2014/ _____ /Dated: _____

Forwarded to:

1. Sri A.N. Neelakandan, General Manager (Tech), M/s Kochi Shipyard Limited
M.G. Road, Perumanoor. P.O., Kochi- 682 015
2. M/s Cochin Port Trust, Willington Island, Kochi - 682 009

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC
Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom,
Thiruvananthapuram.
3. The Chairperson, Consumer Grievance Redressal Forum, Cochin Port Trust,
Willington Island, Kochi - 682 009