

**THE STATE ELECTRICITY OMBUDSMAN**

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**APPEAL PETITION NO.P/089/2015**

(Present: Sri. V.V. Sathyarajan)

Dated: 09<sup>th</sup> July 2015

Appellant	:	Sri Joseph Jacob, Managing Director, POABS Enterprises Pvt. Ltd, Kuttoor P.O., Pathanamthitta 689106
Respondent	:	The Assistant Executive Engineer, Electrical Sub Division, Vandiperiyar KSE Board Ltd., Idukki

**ORDER**

**Background of the Case: -**

The appellant, the Managing Director of M/s POABS Enterprises (P) Ltd is a commercial consumer with consumer No.19693 under Electrical Section, Peerumadu. It is alleged that the appellant had submitted vide letter dated 4/3/2014 before the Assistant Engineer requesting to change the tariff wrongly assigned to him. But the officers of the respondent have not taken any action on this request and hence the appellant filed a petition before the CGRF, (Central Region), Ernakulam on 12/08/2014, which was disposed directing the respondent to process the appellant's application for change of tariff as per rules. Aggrieved by the Order No. 79/2014-15 dated 27/11/2014 of CGRF, the appellant has submitted this appeal before this Authority.

**Arguments of the Appellant: -**

The appellant stated that the service connection was availed by the Poabs Group during July 2008 for pumping water for non agricultural purpose including drinking water. According to the appellant they are eligible for LT IV industrial tariff by virtue of Tariff Order dated: 28-11-2007 issued by Hon'ble KSERC, which is applicable with effect from 01-12-2007.

The classification of LT IV A industrial Tariff as per the tariff order is as follows:

*"Tariff applicable for general purpose industrial loads (single or three phase) viz. grinding mills, flour mills, oil mills, rice mills, saw mills, Ice factories, rubber smoke houses, prawn peeling units, tyre vulcanizing / retreading units, workshops using power mainly for production and/or repair, pumping water for non agricultural purpose, public*

*water works, power laundries, screen-printing of glassware or ceramic, printing presses, bakeries (where manufacturing process and sales are carried out in the same premises/ diamond cutting units, stone crushing units, book binding units with allied activities, garment making units, SSI units engaged in computerized colour photo printing, audio/video cassette / CD manufacturing units, seafood processing units, granite cutting units (where boulders are cut into sheets in the some premises), cardamom drying and curing units, and units carrying out extraction of oil in addition to the filtering and packing activities carrying out in the same premise under the same service connection, manufacturing rubber sheets from latex, telemetry stations of KWA, processing of Milk by pasteurization, storage & packing , granite slabs manufacturing units."*

The appellant's contention is that though he made a request for changing the tariff on 04-03-2014, no action has been taken by the respondent. Hence the appellant approached CGRF, Ernakulam and the respondent changed the tariff to LT IV industrial with effect from 22-12-2014. The appellant further argued that as the service connection is being used for pumping water for non-agricultural purpose including drinking water, the appellant is eligible for LT IV A industrial tariff as per notification from the date of connection. So the appellant requested this Authority to issue directions to reassign the tariff retrospectively from the date of connection and to refund the excess amount collected under LT VII A tariff.

**Arguments of the respondent:**

The respondent has stated that the appellant is a leading tea planter and producer having many connections in various tariffs under Electrical Section, Peerumedu. An application for tariff change was received from the appellant on 23-09-2014. The respondent's contention is that as the issue was pending before the Hon'ble CGRF, the tariff change was effected only on 22-12-2014, after the disposal of petition by the CGRF.

The respondent further stated that the appellant has unilaterally requested for change of tariff without observing the official formalities. For changing the tariff, the appellant has to submit application in the concerned Section with all relevant papers and to remit application fee. Instead of submitting the details, the appellant filed complaint before Hon'ble CGRF (Central Region) vide Comp 79/2014-15 dated 16/08/2014 for changing the tariff.

The respondent submitted that the date and purpose of original connection was not known to them, suo motu change in tariff as demanded by the appellant, could not be allowed. However, tariff change was accorded as per the request of appellant after verifying the genuineness.

**Analysis and Findings: -**

The Hearing of the case was conducted on 2/6/2015, in my chamber at Edappally, Kochi and Mr. P. Reghuvaran represented the Appellant's side and Mr. Tony M. Keeranchira, Assistant Executive Engineer, Electrical Sub Division, Vandiperiyar represented the respondent's side. On examining the Petition, the argument note filed by the Appellant, the statement of facts of the Respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the decisions thereof.

The point to be decided is as to whether the request of the appellant to refund the excess energy charges realized from the appellant with effect from the date of service connection is admissible or not?

On a perusal of documents, it can be seen that there is a delay in reassigning the tariff by the respondent. The appellant argued that an application along with documents was submitted during March 2014, but the same was not accepted by the Assistant Engineer. The appellant failed to produce any documents to substantiate this argument and hence cannot be accepted.

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 provision 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 of 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 approximately.*

*(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 an application for tariff change from LT VII A to LT IV A on 23-09-2014. But the respondent changed the appellant's tariff to LT IV A only on 22/12/2014 as per the direction of Forum. The delay for the tariff change was due to the case pending before the CGRF (Central Region), Ernakulam. At the same time the appellant contended that even though there is provision for suo motu reclassification of consumer category by the licensee under Regulation 97 of the Kerala Electricity Supply Code, 2014, the respondent has not taken any action. 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. Here the respondent changed the tariff of the appellant even after lapses of 3 months, that too, after the intervention of CGRF. The Provision for *suo-motu reclassification of consumer category by the licensee is introduced as per Regulation 97 of Kerala Electricity Supply Code, 2014 which came into force with effect from 01-04-2014*. Hence the claim for retrospective tariff change as demanded by the appellant from the date of connection cannot be admitted.

**DECISION: -**

Going by the pleadings, there is no proper explanation forthcoming from the side of respondent for the delay of about 3 months for the tariff change to the appellant. Hence it is decided to allow the tariff change as per the Clause 2 & 3 of Regulation 98 of Supply Code, 2014. Accordingly reclassification of appellant's category shall be issued at the earliest at any rate within a period of 15 days from the date of receipt of copy of this order. Also the payments already made shall be appropriated and adjusted in accordance with the future bills. CGRF order is modified. Appeal is allowed to the extent as ordered above and disposed accordingly. No order as to costs.

**ELECTRICITY OMBUDSMAN**

Appeal Petition No. P/089/2015/ /Dated: \_\_\_\_\_

Forwarded to:

1. Sri Joseph Jacob, Managing Director, M/s POABS Enterprises Pvt. Ltd, Kuttoor P.O., Pathanamthitta 689106
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Vandiperiyar, Idukki.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, KSE Board Ltd. Thiruvananthapuram.
3. The Chairperson, Consumer Grievance Redressal Forum, Power House, Power House Buildings, Cemeterymukku, Ernakulam-682 018