

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895,
Mamangalam-Anchumana Road, Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9447576208
Email:ombudsman.electricity@gmail.com

APPEAL PETITION NO. P/118/2015

(Present: V.V. Sathyarajan)

Dated: 29th September 2015

Appellant : The Chief Engineer (E&I),
M/s FACT Ltd.,
Cochin Division,
Ambalamedu,
Kochi

Respondent : The Deputy Chief Mechanical Engineer (Ele)
Cochin Port Trust, Willington Island,
Kochi

ORDER

Background of the case:

The appellant, Sri Abraham Roy Mathew, Chief Engineer (Electrical & Instrumentation), M/s FACT, Cochin Division, representing a Public Sector Unit under Government of India is a consumer under the power distribution licensee, Cochin Port Trust. The appellant has taken possession of fertilizer berth and ammonia berth at Willington Island area of Cochin Port Trust for long lease. The respondent provided with three service connections to the above premises of the appellant with consumer numbers 100000723, 100000729 and 700000730 having a contract demand of 900 kVA, 312 kVA and 725 kVA respectively under HT IV commercial tariff. The appellant has requested to provide HT I A industrial tariff to the above consumer numbers 100000723 and 100000730 which was denied by the licensee. The grievance of the appellant is against the wrong and incorrect fixation of tariff by the under HT IV Commercial tariff it is alleged that the appellant is eligible to get a classification under HT-1 A Industrial tariff. Aggrieved by this, the appellant filed a petition before the CGRF, Cochin Port Trust which was disposed vide Order No. 04/2014 dated 05-05-2015, directing

- (a) Since the Petitioner seeking relief for re-categorization of tariff from HT-IV to HT-1 from Financial Year 2015-16 onwards, the petitioner may represent the matter before the Hon'ble KSERC during the public hearing scheduled prior to the finalization of Retail Supply Tariff for FY 2015-16, which would be made applicable from 01-10-2015

(b) the respondent shall revise the revenue from sale of power based on the decision of KSERC on the above issue and submit to the KSERC for arriving at a reasonable BST applicable to the respondent accordingly.”

Challenging the decision of the CGRF, the appellant approached this Authority by filing this appeal petition.

Arguments of the appellant

The appellant has stated the following arguments.

1) The existing Power Purchase Agreement was executed between Cochin Port Trust and FACT in 1999. At that time KSERC Tariff orders and Electricity Supply Code were not in vogue. The Electricity Supply Code was formulated subsequent to the Central Act 36 of 2003. According to clause 10 of the Power Purchase Agreement, Cochin Port Trust can decide the Tariff. Accordingly Cochin Port Trust unilaterally fixed, commercial power tariff to FACT's installations, whereas they are eligible for industrial power tariff. However FACT was unable to contest this anomaly, till the installation of the new 11KV Sub Stations at Q10 and Ammonia berths for full compliance of KSERC norms. Hence the contention of the appellant that Commercial power tariff applied to FACT installation, since their commissioning was long ago, may please be ignored.

2) The respondent's contention is that the activities of the appellants are not clearly defined in the Tariff Orders of KSERC and the activities are not coming under any other tariff category including commercial tariff. It is surprising that, if the appellant's activities are not clearly defined in any of the existing power tariff categories, only the highest tariff (Commercial Tariff) will be offered to FACT.

3) The appellant's contention is that the port facilities at Q10 and Ammonia Berth, exclusively used for the import of raw materials, for the use in their fertiliser plants. There is no commercial activity carried out in these installations. Power is consumed in these installations mainly for pumping of Phosphoric acid/ Sulphuric acid/ liquid ammonia, running conveyors for moving sulphur /rock phosphate and running equipments of ship unloader. As such facilities at Q10 and Ammonia Berth shall come under Industrial category.

4. It is stated in the KSERC Schedule of Tariffs and terms and conditions for retail supply for Cochin Port Trust (OP-23 dated 25-07-2012) that high tension (HT-1) Industrial tariff is applicable to general purpose industrial loads including non agricultural pumping.

5. Further appellant contented that as per the above order issued by KSERC, the activities as already explained, does not come under the activities listed under the category of High Tension (HT-IV) commercial tariff.

6. Above all, the respondent is not going to lose any revenue, by correctly classifying and charging the appropriate tariff (industrial or commercial), as eligible to their consumers. This is because the respondent can project these facts, in the ARR and ERC to be filed before KSERC and to get appropriate tariff for their bulk power purchase. Hence by

applying correct tariffs to customers is only a revenue neutral exercise for respondents. But it is a great relief to the beleaguered industrial power consumers of the licensee.

7. The appellant also stated that their unit is a central public sector company, owned by the Govt. of India and are engaged in the production of fertilisers, which are essential commodities for the food security of India.

The respondent has been charging, Commercial Power Tariff for the two installations of appellant at the Cochin Port, namely Q10 Berth and Ammonia handling site at South Coal Berth. As explained in detail, in their submissions, these installations operate as part of the industrial activities for producing fertilizers and hence they are eligible for Industrial Power tariff. These installations have industrial license issued by the Govt. Authorities, and is classified as a major Hazardous Industry, by Pollution Control Board. The activities at these installations qualify for Industrial Tariff mentioned in the Supply Code, 2014 of KSERC. However there is some lack of clarity in the categorization of industries mentioned in the above Supply Code. Due to the above reasons the appellant is not getting the eligible, industrial Power Tariff for the above two installations.

The appellant has filed petitions requesting for extending the Industrial Power Tariff and clarifications were given to the respondents and also appeared before the CGRF of the licensee on 16/02/2014. But the appellant has not yet received any reply from the Forum even after two months. Hence this petition is submitted to the Hon. Kerala State Electricity Ombudsman.

The appellant contented that by extending the eligible Industrial Power it is only is a revenue neutral affair to the respondent since they can file ARR and ERC accordingly from 2015-16 onwards. The prayer of the appellant before this Hon. Kerala State Electricity Ombudsman is to give directions to the respondent to extend the eligible, Industrial Power Tariff to the appellant's installations, at the earliest. The respondent may also be instructed to modify their ARR and ERC for 2015-16, considering the appellant as an industrial consumer.

Arguments of the respondent

The contentions raised by the respondent against the above arguments are as follows:

1) The Respondent, Cochin Port Trust is a power distribution licensee in Willington Island area as mandated by the proviso to section 14 of Electricity Act, 2003. The respondent had provided 3 nos. of power supply connections to the appellant for their installations functioning in Willington Island listed below:

- i) At Q9 for Material handling division - 825 KVA'
- ii) At Fertilizer Berth – Q10 – 900 KVA.
- iii) At SCB for Ammonia Handling Plant -312 KVA.

2) Out of these, the supply at Q10 was categorized under HT, while the other two connections were under deemed HT. Subsequently two connections were brought under

HT category as per the tariff introduced w.e.f. 01/04/2008, approved by Hon'ble KSERC. All the above connections were assigned HT- IV (Commercial) tariff according to the purpose of their' usage.

3) To comply with the conditions specified in the Supply Code, 2005 issued by the Hon'ble KSERC, the appellant was requested several times to convert their existing system to HT supply. Finally during March 2012, the appellant intimated their consent and requested to provide HT connection.

4) The work was undertaken by the licensee as deposit work and the same was executed through outside agency by inviting tender. The work was completed in all respects on 03-07-2013 and the installations were ready for commissioning on the same day.

5) But the internal HT re-arrangement work of the appellant at their Q10 berth was completed only during October 2014. As per their request, the energisation of these installations at Q10 berth was carried out during November 2014. Accordingly the appellant was requested to execute revised HT Agreement for their new connections as per Supply Code, 2014. HT installation at South Coal Berth is not yet energised due to non completion of electrical works of the appellant.

6) At this juncture, the appellant has requested to apply HT-I (A) Tariff for their two installations instead of HT-IV commercial as the activities being carried out are under industrial only.

7) As per the latest electricity tariff that has come into force on 16-8-2014, HT I (A) Industrial tariff is applicable to all classes of consumers listed in LT-IV A category. On scrutiny of the same it can be seen that the activities being carried out by the appellant at their two units i.e. import of raw materials cannot be co-related with any of the activities mentioned therein.

8) Section 62(3) of Electricity Act, 2003 mandate that no undue preference shall be given to any of the consumers but may differentiate according to the consumers load factor, power factor, voltage, total consumption, geographical location of area, nature of supply and the supply purpose for which the supply is required, such as domestic, industrial, commercial etc. Thus the tariff was assigned to HT-IV commercial as their purpose was to carry out the commercial activities.

9) The tariff categorization of consumers is determined by Hon'ble KSERC by its orders from time to time, after duly complying with all procedures as per rule including conducting public hearing etc.

10) In this connection it is pertinent to note that before finalizing the new tariff of KSEB, the Hon'ble KSERC had conducted three public hearings for considering the request/comments of consumers/stakeholders. The appellant could have represented their case before the Hon'ble Commission for re-categorisation as was done by many consumers during the public hearing. The commission has carefully considered such proposals, in view of the legal provisions and socio-economic realities and re-categorized some group of consumers.

11) While on this issue it is also submitted that during the public hearing even though M/s Indian Oil Corporation and M/s. Hindustan Petroleum had requested Hon'ble KSERC to re-categorise them to HT-I Industrial from HT-IV commercial, the Commission did not consider their plea.

12) At this stage since the Hon'ble KSERC has already approved ARR of the respondent for the year 2014-15 and the respondent's Bulk Supply Tariff has been arrived at based on all the revenue projection from Tariff, the request of the appellant cannot be considered.

13) Under the above circumstances, the present tariff category already applicable to the appellant may be allowed to continue for their new installations at Q10 and South Coal Berth and may kindly reject the petition.

Analysis and findings

A hearing of the Case was conducted in my chamber at Edappally, Ernakulam, on 19-08-2015. Sri Abraham Roy Mathew, Deputy General Manager (E&I), FACT-CD and Sri Sunny K.I., Senior Manager, FACT-CD were present for the appellant's side and Sri M.M. Abdul Rahim, Executive Engineer, (Electrical) and Smt. Latha Menon. G, Executive Engineer (Electrical), Cochin Port Trust represented the respondent's side. Both sides have presented their arguments on the lines as stated above.

The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in 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.

The main issue to be decided in this case is as to whether the appellant, an HT consumer using the licensees facilities at Q10 and Ammonia Berth, exclusively for the import of raw materials, for their own use in their fertiliser plants will fall under industrial tariff or commercial tariff?

The tariff has to be fixed according to the purpose for which electricity is being utilized and in consistence with the tariff rules laid by the Hon'ble Regulatory Commission. The appellant contented that the power supply at the port facilities at Q10 and Ammonia Berth, exclusively for the import of raw materials, for own use in its fertiliser plants. There is no commercial activity carried out in these installations. Power is consumed in these installations mainly for pumping of phosphoric acid/ sulphuric acid/ liquid ammonia, running conveyors for moving sulphur /rock phosphate and running equipments of ship unloader. As such the facilities at Q10 and Ammonia Berth shall come under Industrial category.

The appellant further argues that their unit is a Public Sector Central Government Company and a service organization and its activities are not for any commercial purpose. These installations operate as part of the industrial activity for producing fertilizers and hence eligible for Industrial Power tariff. These installations have industrial license issued by the Government of India, and is classified as a major Hazardous Industry, by Pollution

Control Board. In the instant case the main dispute relates to the reclassification of tariff and consequent bill issued. According to the appellant, their unit is a service organization and its activities are not for any commercial purposes.

On the other hand the respondent argued that 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 HT IV commercial in the present case is that the purpose for availing supply was not included in HT 1A industrial tariff applicable to all classes of consumers listed in LT IV A category and according to the respondent the activities being carried out by the appellant at their two units i.e. import of raw materials cannot be co-related with any of the activities mentioned therein.

The respondent also contended that the Hon’ble KSERC before finalizing the tariff structure for 2014-15 has given ample opportunity to all consumers of the State for suggestion, modification, re-categorization etc. But the appellant did not appear before the Commission to address their issue relating to re-categorization of their tariff. The Hon’ble Commission has carefully considered the proposals in view of the legal provisions and socio-economic realities and re-categorized 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 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 Bulk Supply Tariff 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 appellant’s case. On going through the above contention, it is seen that neither the respondent nor the appellant has approached the Hon’ble KSERC for fixing tariff in this case. The argument of the respondent that if the appellant takes up the issue before the Hon’ble Commission at the time of public hearing in connection with the approval of ARR and ERC for the year 2014-15 it will be easy to find out a solution for the issue is not correct. The respondent can also take up the issue before the Commission and to sort out the issue. The respondent can approach the Hon’ble Commission with Truing up petitions for compensating the revenue gap if any occurred as per approved ARR and ERC along with proper accounts. Hence the argument of the respondent cannot be justified.

Tariff in respect of consumers under the Kerala State Electricity Board and also other small distribution licensees including the respondents herein were uniformly fixed by the order dated 25-07-2012 of the KSERC in OP No. 23/2012. It is admitted that neither the appellant nor the respondent has approached the Commission for clarifications in the above tariff order. The appellant is using the port facilities at Q10 and Ammonia Berth exclusively for the import of raw materials for the production of fertilizer. The power

supply is used for pumping of Phosphoric Acid / Sulfuric Acid / Liquid Ammonia, running conveyors for moving Sulfur / raw Phosphate and running equipment of ship unloader and these operations are part of industrial activities for the production of fertilizers which cannot be termed as commercial activities. Further the respondent has not produced any documents to show that commercial activities are being carried out in the appellant's premises. Hence the categorization of the appellant's tariff in HT IV commercial cannot be justified.

Decision

In view of the above discussions it is held that the findings of the CGRF of the licensee is not in order and hence set aside. The respondent is hereby directed to re-categorize the appellant's tariff as HT I A industrial for the financial year 2015-16 at any rate within 30 days from the date of receipt of this order. The appeal is allowed as indicated above. However, there is no order as to costs.

ELECTRICITY OMBUDSMAN

P/118/2015/_____/Dated:_____

Forwarded to:

1. The Chief Engineer (E&I), M/s FACT Ltd, Cochin Division, Ambalamedu, Kochi
2. The Deputy Chief Mechanical Engineer (Ele), Cochin Port Trust, Willington Island, Kochi

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, CV Raman Pillai Road, Thiruvananthapuram-10.
2. The Secretary, KSE B Ltd, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. Consumer Grievance Redressal Forum of Cochin Port Trust, Chief Mechanical Engineer Office, New Administrative Buildings, Willington Island, Kochi - 682009