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APPEAL PETITION NO. P/164/2015

(Present: V.V. Sathyarajan)

Dated: 29<sup>th</sup> February 2016

Appellant : Johnson C. O.  
Maruthayathu,  
Nellimukku P.O,  
Kavanadu,  
Kollam Dist - 691 003

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd,  
Sakthikulangara,  
Kollam District.

**ORDER**

**Background of the case:**

The Appellant is a consumer having consumer No. 11600 of Electrical Section, Thankassery, under LT I A domestic tariff. The registered connected load of the appellant is 10 kW. On 13-01-2014, the officials of Electrical section, Thankassery conducted a surprise inspection in the premises and detected that the appellant has been using the residential building with consumer No. 11660 as an establishment for accommodating tourists under the name "M/s Global Backwaters Resorts" with connected load of 19 kW. Hence a penal bill for an amount of Rs. 78,865.00 was issued to the consumer on 03-01-2014 under Section 126 of Electricity Act, 2003, after changing the tariff to LT VII A and later issued the final bill for Rs. 68,065.00.

The appellant remitted 50% of the assessed amount and filed appeal before the Appellate Authority as per Section 127. Meanwhile, the appellant filed a petition before the CGRF vide OP No: 1527/2015 which was held that "Since the case is pending before the Appellate Authority and the Appellate Authority heard the matter but not yet released the order, the Forum does not want to interfere the case at this stage". Considering the above facts, the Forum dismissed the case. Not satisfied with the above order of the Forum, the appellant filed this appeal before this Authority.

**Arguments of the appellant:**

1. The appellant stated that the service connection with consumer No.11600 is given to the residential building, where the appellant is residing and the building number assigned by the Kollam Corporation is K.C. 34/1234/181/A.
2. The appellant while staying in the house, made facilities in the house to be used as a home stay with the approval of the Tourism Department. In order to promote tourism and augment revenue to government, the Tourism Department is encouraging such home stay. The appellant also named the home stay as "Global backwaters Resorts" to attract the

tourists. The tariff applicable to the premises is LT I A domestic and the appellant has been remitting the entire bills so issued.

3. While so the KSEB officials inspected the premises on 13-01-2014 and prepared a mahazar alleging unauthorized use of electricity and issued penal bills under LT VII A tariff for an additional load of 9 kW. Home stay is classified under LT I domestic tariff as per the tariff notification. Therefore, there was no misuse of energy for a different tariff. The penal demand was therefore as per-se illegal. The appellant therefore resorted to challenge that penal demand by filing appeal, but the same happened to be dismissed without considering the entire aspect. This representation is not filed against the order in the said appeal, but against the order of the CGRF in dismissing the complaint filed by the consumer before the CGRF. The subject matter of the appeal before the Appellate Authority and that of the complaint before the CGRF were entirely different.
4. The registered load of the premises is 10 kW. The respondent asked the appellant to regularize the additional load by submitting application. Accordingly the appellant submitted application for enhancement of the load in the prescribed form. On the basis of the application the respondent regularized the load for a total connected load of 18,381 watts. While doing so the respondent arbitrarily and illegally changed the tariff to that of LT VII A commercial and issued regular bills accordingly. Subsequent bills are also issued under LT VII A tariff.
5. It is respectfully submitted that the home stay is attached with the dwelling house of the appellant. Home stay is classified under LT I domestic tariff as per the tariff notification. So the demand of the electricity charges under LT VII A commercial tariff is per-se illegal and unsustainable and liable to quashed. The correct tariff of LT I is to be assigned to the appellant's premises and the charges are to be realized as per the correct tariff applicable. The KSEB is bound to realize the electricity charges for the supply, as per the applicable tariff notification of the Honourable KSERC which LT-I domestic.
6. It is clearly ordered by the Honourable Commission in Note 3, Under LOW TENSION-I DOMESTIC (LT-I) in the Tariff Notification that home stay units approved by the Department of Tourism shall be billed under LT-I Domestic. As the appellant's unit is a home stay unit approved by the department of Tourism, the applicable tariff is LT I domestic. Hence the bills are to be issued under domestic tariff. The appellant is also entitled to refund of the excess charges realized under LT- VII A commercial.
7. The repeated requests of the appellant to issue bills under domestic tariff and refund excess amount did not evoke any sorts of response. Hence the appellant filed complaint No. 1527/2015 before the CGRF, Kottarakara. The CGRF on a wrong appreciation and misunderstanding of the facts simply dismissed the complaint without entering in to the merit, by order dated 23-09-2015.
8. The order issued by the CGRF is without examining the merits. It is issued upon a misunderstanding that the appellant concealed the fact of having filed appeal before the Appellate Authority. In fact, appellant clearly mentioned in Para 3 of the complaint that the penal demand was challenged by appropriate proceedings. The CGRF did not even read and understand the said specific pleading of the appellant. Again in the order CGRF directed to file appeal before the Appellate Authority, which is also a wrong decision. The CGRF without suggesting to file an appeal before this Honourable Ombudsman wrongly suggested filing appeal before the Appellate Authority, Shi. K.K. Unni.

Further the appellant raised contention based on the following grounds.

- A. The impugned order of the CGRF is issued by mistake of facts and hence the order is per se-illegal and unsustainable and liable to be quashed.

- B. The impugned order is issued without examining the merits. The CGRF is legally bound to examine the case of the appellant on merits. As the complaint is against the issue of under LT VII A tariff, instead of LT I A domestic tariff, the CGRF had ample jurisdiction to pass an order, after entering in to the merits of the case. But the CGRF did not enter in to the merits of the case at all.
- C. The CGRF misunderstood that the appellant suppressed the fact of challenging the penal assessment following the inspection of the premises. The decisions of the CGRF are absolutely cryptic and wrong.
- D. The complaint before the CGRF was against the monthly billing under LT VII A tariff. Under the tariff notification, the tariff applicable to the appellant is LT I A domestic. Whereas, some bills were issued under LT VII A commercial tariff. The complaint is against such excess demand of electricity charges than authorized. The CGRF has ample jurisdiction to entertain such a complaint. But the CGRF without entertaining the complaint on merit simply dismissed the complaint, directing to file appeal before the Appellate Authority. It is noteworthy that the Appellate Authority has no jurisdiction to entertain an appeal filed against such a billing dispute. Only assessment under Section 126 can be appealed against under section 127. Thus the CGRF simply dismissed the complaint without application of mind.
- E. The CGRF is bound to dispose the complaint on merits, for which this matter is liable to be remanded to the CGRF for fresh disposal.
- F. The petitioner's premises are used as a home stay. The respondent also has no case that the supply of the premises is used for any other purpose so as to change the tariff.
- G. The appellant has been billing under LT I A domestic tariff. Subsequently the tariff was changed to LT VII A for the purpose of billing, without any notice to the appellant. On these ground alone the bills issued under LT VII A tariff is liable to be set aside.
- H. The CGRF is bound to dispose the complaint on merits, for which this matter is liable to be to the CGRF for fresh disposal.

The appellant has seeking the following reliefs.

- i) To call for the records leading to the order of CGRF and set aside the same.
- ii) To declare that the tariff applicable to the appellant's premises is LT-I domestic as per the tariff notification of the Honourable KSERC.
- iii) To pass an order directing the respondent to raise the regular bills under LT I domestic tariff.
- iv) To pass order setting aside the bills issued to the appellant under LT VII A commercial tariff and to revise the bills under domestic tariff and refund the excess amount realized
- v) To pass order remanding the matter to the CGRF for fresh disposal on merits.
- vi) Pass such other orders as this Honourable Forum may deem fit and proper in the interest of justice and in the circumstances of the case.

**Arguments of the respondent:**

The respondent contented that the appellant has been using the residential building with consumer No. 11660 as an establishment for accommodating tourists under the name "M/s Global Backwaters Resorts" with connected load of 19 kW.

The appellant remitted 50% amount of the penal bill and filed appeal to the Appellate Authority Vide No: 59/2014. The appellant filed a petition before the CGRF in OP No: 1527/2015 which was held that "As the case is pending before the Appellate Authority and the Appellate Authority heard the matter but not yet released the order, the Forum does not want to interfere the case at this stage". Hence the Forum dismissed the case. After that Appellate Authority released the order on 18<sup>th</sup> September 2015 to set aside the previous bill issued for an amount of Rs 68,065.00 and to issue revised bill under LT VII A commercial tariff at two times for fixed charges along with the energy charge on account of unauthorised use of 18605 Watts for a period of 12 months. Hence the bill was revised.

The Appellate Authority vide order no: 59/2014 clearly stated that neither the appellant nor any other family was residing in any floor of the building at the time of inspection on 13-01-2014 and the site mahazar was seen witnessed by Sri. Lukose Daniel, the supervisor of M/s Global Backwater Resorts. It is also observed that the appellant has got approval from Department of Tourism as 'Serviced Villa' instead of 'Home stay'. The scheme of serviced villa is different from Home stay as the property owner need not have to stay in the house. In Home stay the main regulation is that the owner or their relative should stay in the premises along with the tourists. Hence from the facts and circumstances of the case, the authority declared that M/s Global Backwater Resorts is not coming under Home stay classification and the tariff applicable for the assessment shall be LT VII A commercial.

### **Analysis and findings**

A hearing of the case was conducted in my chamber at Edappally, Ernakulam, on 18-12-2015. Sri C.O. Johnson represented for the appellant's side and Smt. Jasmine Rozario, Assistant Executive Engineer, Electrical Sub Division, Sakthikulangara, for the respondent's side. 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 dispute pertains in this case is with regard to the question whether the appellant's premises of consumer no. 11600 is a home stay or a resort as alleged by the respondent and the tariff applicable is domestic or commercial?

The appellant's averment in the appeal petition is that he while staying in the house, the house is being used as a home stay with the approval of the Tourism Department and the tariff applicable to such home stay is LT I A domestic and the appellant has been remitting the entire bills so issued under LT I A category. The Home Stay is named as 'Global backwaters Resorts' to attract the tourists. The appellant was issued a penal bill for an amount of Rs. 78,865.00 under Section 126 of Electricity Act, 2003, under LT VII A tariff on the basis of the inspection conducted on 13-01-2014, by the officials of Electrical Section, and detection that the appellant has been using the residential building with consumer No. 11660 as an establishment for accommodating tourists under the name "M/s Global Backwaters Resorts" with connected load of 19 kW. According to the appellant, Home stay is classified under LT I domestic tariff as per the tariff notification and there was no misuse of energy for a different tariff.

On the other hand, the respondent's contention is that neither the appellant nor any other family was residing in any floor of the building at the time of inspection on 13-01-2014. Further, the appellant has got approval from Department of Tourism as 'serviced Villa' instead of 'Home stay'. The scheme of 'serviced villa' is different from Home stay as the property owner need not have to stay in the house, the authority declared that M/s Global Backwater Resorts is not coming under Home stay classification and the tariff applicable for the assessment shall be LT VII A commercial. It is an admitted fact that a 'Home Stay' is an arrangement that provides accommodation for students or tourists in the home of a family in exchange for payment.

According to the circular No.Plg.Com.4405/02/2007-08 dated 06-07-2007, issued by KSEB it can be seen that "The houses where 'Home stay' facility provided are directed to install sub meter for the portion of the building identified for accommodation of tourist. The consumption as per the sub meter installed is to be charged at LT VII A commercial tariff. If the sub meter is not installed, the entire consumption shall be charged at LT VII A." Further the Board had issued the following guidelines for providing electric connection through separate meter for 'home stay' within the portion of the houses approved for the purpose, vide circular no. Plg.Com.4405/02/10-11 dated 23/6/2010.

1. "The consumer shall produce the sanction/clearance for operating the 'home stay' from the Tourism Department.
2. The wiring of the portion identified for 'home stay' shall be segregated from the domestic portion of the building.
3. The consumer shall furnish an undertaking in non-judicial stamp paper worth Rs.100.00 to the effect that the consumer is agreeable to disconnect the supply if Secretary of the local body or any other Statutory Body requests in writing to disconnect the supply.
4. The tariff applicable to the home stay shall be LT commercial tariff'.

As per the tariff order dated 14-08-2014, it is found that the tariff for home stay having sanction from Local Body and Tourism Department is revised to LT I A from 8/2014 onwards. Hence it is clear that the tariff then existed till 8/2014 for home stay was LT VII A and applicable to the appellant also. The segregated domestic portion of the building is eligible for domestic tariff up to the period of 8/2014.

The Section 62 of the Electricity Act, 2003, enabling the provision for determination of tariff and is read as follows: The appropriate Commission shall determine the tariff in accordance with the provisions of this Act. The Hon'ble KSERC had issued tariff notification vide order dated: 14-08-2014 in OP No. 09/2014 with effect from 16-08-2014 to 31-03-2015. As per tariff notifications issued by KSERC, home stay units approved by Department of Tourism shall be billed LT I domestic. On a perusal of the certificate issued to the appellant by the Tourism Department it can be seen that the premises of appellant's Global Backwaters Resources has been approved as a 'serviced villa'. At the same time Kollam Corporation Council has issued license to the appellant's premises as 'home stay' ('serviced villa'). So it is concluded that if the appellant produces the required certificate establishing the premises is a home stay he may be granted domestic tariff from 8/2014 onwards.

According to Tourism Department, Accredited Serviced Villas are independent, furnished home providing comfortable stay facilities of standardized high quality to tourists. Apart from providing a clean and affordable place of stay for tourists, the villas offer a never before opportunity to experience authentic Kerala at its best. The appellant has got approval from Department of Tourism as 'serviced villa' instead of 'home stay'. The scheme of 'serviced villa' is different from 'home stay' as the property owner need not have to stay in the premises. In home stay the owner or their relatives should stay in the premises along with tourists.

In the above circumstances the appellant's premises, "Global Backwaters Resources" cannot be included under home stay classification and not eligible for domestic tariff.

### **Decision**

In view of the above discussions it is concluded that the appellant failed to produce necessary documents to include the premises under home stay classification and hence not eligible for domestic tariff. The order of CGRF is upheld and the appeal is disposed of accordingly. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/164/2015/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Johnson C. O., Maruthayathu, Nellimukku P.O, Kavanadu, Kollam District - 691003.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Sakthikulangara, Kollam District.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.