



TAMIL NADU ELECTRICITY OMBUDSMAN

19- A, Rukmini Lakshmipathy Salai, (Marshal Road), Egmore, Chennai – 600 008.

Phone : ++91-044-2841 1376 / 2841 1378/ 2841 1379 Fax : ++91-044-2841 1377

Email : tnerc@nic.in Web site : www. tneo.gov.in

BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No. 53 of 2012

Thiru S. Augustin,
Secretary,
Electricity Board Officers Colony Welfare Association,
EB colony,
Maharaja Nagar,
Tirunelveli – 627 011

Appellant
(Rep by party in person)

Vs

The Superintending Engineer,
Tirunelveli Electricity Distribution circle
TANGEDCO,
Maharaja Nagar,
Tirunelveli – 600 011

Respondent
(Rep by Thiru. A.P. Sekar,
EE/Distn/Urban/Tirunelveli)

Date of hearing : 31-1-2013

Date of Order : 28.3. 2013

The above appeal petition No. AP 53 of 2012 came for final hearing before the Electricity Ombudsman on 31-1-2013. Upon perusing the above appeal petition, the Counter affidavit, connected records and after hearing both sides, the following order is passed by the Electricity Ombudsman.

ORDER

1. Prayer of the Appellant:

The Appellant prayed for changing the tariff of SC No. 300-308-69 from Tariff V to Tariff I A as the above service is utilized for supplying drinking water to the EB colony houses.

2. Facts of the Case:

The SC No. 300-308-69 was obtained on 16-3-1974 under Tariff IV in the name of Secretary, EB Staff Colony, Maharaja Nagar. The connected load is 3 HP. The tariff was changed from Tariff IV to Tariff I on 11-5-1992. But the tariff was again changed to Tariff V as per Assistant Accounts Officer's letter dated 19-5-1999 based on the direction given by the enforcement wing for a similar service in Kattabomman Transport Corporation Employees Colony. The Secretary, EB Officers Welfare Association is now asking for a tariff change to IA citing clause 10.10.8 of the Tariff Order dt. 30.3.2012 issued by Hon'ble Tamil Nadu Electricity Regulatory Commission. The CGRF of Tirunelveli Electricity Distribution Circle in its Order dt. 11-10-2012 has not agreed for the change of tariff. Aggrieved over the above Order, the Appellant has filed this appeal petition before Electricity Ombudsman.

3. Findings of CGRF of Tirunelveli Electricity Distribution Circle:

The findings of the CGRF issued in its Order dated 11-10-2012 is extracted below:-

“திரு.S.அகஸ்டின், செயலாளர், மின் வாரிய அலுவலர் குடியிருப்பு நலச்சங்கம், E.B. காலணி, திருநெல்வேலி – 11 என்ற முறையீட்டாளர் E.B. Staff Cooperative Building Society Ltd.02193 என்ற ஒரு அமைப்பின் கீழ் மின் வாரிய காலணி அமைத்து அதில் தனித்தனி

வீடுகள் சுமார் 170 வீடுகள் கட்டி குடியிருந்து வருவதாகவும் அந்த வீடுகளுக்கு அதன் மத்தியில் அமைந்துள்ள கிணற்றில் இருந்து குடிநீர் விநியோகம் செய்யப்படுவதாகவும் அந்த மின் இணைப்பு எண் MHH 69 அதன் Tariff Ia ஆக இருந்து 1992-ல் Tariff V ஆக மாற்றப்பட்டதாகவும் அந்த மின் இணைப்பு உபயோகம் வீடுகளுக்கான தண்ணீர் உபயோகமாக உள்ளதால் அதன் Tariff Ia ஆக மாற்றி தர வேண்டி விண்ணப்பித்துள்ளீர்கள்.

மின் வாரிய மின் கட்டண விகிதம் Tariff Ia – க்கு 10:10:7-ல் உள்ளதுபடி. In respect of multi tenements / residential complexes supply used for water supply may be charged under Ia Tariff என்று உள்ளது.

ஆனால் மின் வாரிய காலனி என்பது தனித்தனி வீடுகளாக உள்ள ஒரு குடியிருப்பு பகுதியாக உள்ளதால் குடிநீர் உபயோகம் என்ற முறையில் Tariff Ia மாற்றி தர இயலாது. மேலும் குடிநீர் உபயோகம் என்ற முறையில் Public water supply – க்குறிய Tariff II-a மாற்றம் செய்யவும் வாரிய மின் கட்டண விகிதம் 10:13:1-ல் உள்ளபடி பார்க்கையில். “This tariff is applicable to public water supply to Govt/Local bodies / TWAD Board MMSSB, Railway level crossings, private Agriculture wells. Private wells hired by Government /CMWSSB/TWAD Board/Local bodies to draw water for public distribution” என உள்ளது. ஆனால் முறையிட்ட மின் இணைப்பு எண் செயலர் என்ற முறையில் உள்ளது. எனவே Cooperative Building Society Ltd என உள்ளதால் மின் கட்டண விகிதம் மாற்றம் செய்ய இயலாது என தெரிவித்துக் கொள்ளப்படுகிறது. ”

4. Condonation of delay:

4.1 The order of the CGRF was issued on 11.10.2012. The appellant has filed his appeal petition on 17.12.2012 (ie) with a delay of 37 days.

4.2 The appellant informed that due to drinking water problem and street light problem, he was preoccupied in contacting the Tirunelveli Corporation for rectification works. He also informed due to his illness also there was some delay in filling the appeal petition and requested to condone the delay.

4.3 As per regulation 8 of regulation for CGRF & EO the appeal petition is to be filed within 30 days from the date of order of CGRF. However, the Electricity Ombudsman may entertain an appeal after the expiry of the said period of 30 days if Electricity Ombudsman is satisfied that there was sufficient cause for not filling the appeal within the stipulated period.

4.4 As the appellant has cited his ill health and following up of rectification works with Tirunelveli Corporation regarding street light and water issues as the reasons for delay, the delay is condoned.

5. Contentions of the Appellant:

The Appellant has contended the following in the Appeal petition.

- (i) The retired persons who worked for more than 30 years in TNEB and a small number of persons presently working in TNEB alone are living in the EB Colony and no concessional tariff has been provided to them.
- (ii) The CGRF has accepted their arguments and noted that the water of the well is being utilized for the people living in the EB colony. But as the service is in the name of Secretary, Cooperative building Society Ltd., the CGRF ordered that it is not possible to change the tariff to IA.
- (iii) The tariff is categorized based on the utilization only. In clause 10:10:8 of the tariff order, the following has been stipulated.

“In respect of multi storied buildings / Residential complexes having both domestic and commercial utilities, common facilities such as common lighting, common water supply and lift will be charged under

this tariff IA only if the Commercial built up area does not exceed 25% of the total built up area.”

The drinking water well is situated in the middle of the colony and the houses are available around the well. A copy of the EB layout is also enclosed for reference.

- (iv) Considering the above points, the service connection No. 300-308-69 which is used only for supplying water to the houses of the EB Colony may be charged under Tariff IA, instead of Tariff V.

6. Written argument of the appellant :

- (i) There is a play ground in the EB Colony and the same is also being used as a walking space .

- (ii) There is a proposal to develop a children’s park near the play ground.

- (iii) A pillaiyar temple has been built in the land given by the EB Staff Cooperative Building society Ltd.,

- (iv) Five numbers of shops were built by the society and rented out . A separate electric service connection was obtained for the above shops and water was not distributed to the above shops.

7. Contentions of the Respondent:

The Respondent has contended the following in the counter affidavit.

- (i) Thiru Augustin Secretary, EB Colony has requested for changing the tariff of service connection No.07-300-308-69 utilized for pumping water from the well available at Plot No.49 and distributing the same to the colony from tariff V to Tariff IA.

- (ii) The service connection No. 07-300-308-69 referred by the Appellant was effected in the name of Secretary, EB Colony, Maharaja Nagar, Tirunelveli with a connected load of 3 HP on 16.3.1974 under Tariff IV. The tariff was changed to I on 11.5.92 by Assistant Executive Engineer / Distribution/Junction as per the request of the petitioner on the basis of drinking water purpose.
- (iii) The same tariff change was effected to the service available at the Katabomman Corporation Employees Colony also. But the above service was inspected by enforcement wing on 4.2.98 and instructed to change the tariff as V (commercial) as per the terms and conditions of supply since the water supply is from private water tank. Accordingly the tariff was changed to V.
- (iv) As per clause 10.10.8 of Tamil Nadu Electricity Regulatory Commission's Tariff Order in multistoried building or residential complex where the commercial usage is not more than 25% tariff IA is applicable. But, the EB officers Colony is situated in a vast area divided into plots with large number of houses and hence could not be categorized as Multi Tenements /Residential Complex. Further, there is no boundary for the above colony. Hence, the change of tariff requested by the appellant could not be given.
- (v) As the service is in the name of Secretary, EB staff cooperative building society Ltd, the change of tariff is not feasible.

(vi) The EB colony is neither a multi tenements nor a residential complex. Hence, clause 10.10.8 of Tamil Nadu Electricity Regulatory Commission's Tariff Order is not applicable. Further, change of tariff to IA for a service connection supplying water to a colony which is not having any boundary is not possible as per Tamil Nadu Electricity Regulatory Commission's Tariff Order.

8. Written submission of the respondent :

(i) The EB colony staff welfare association building is situated in the premises adjoining to the open well and over head tank provided for water supply for the colony use only.

(ii) Vinayagar Temple has been constructed in the colony premises as stated by the appellant.

(iii) 11 nos shops were constructed in the colony area and 7 nos services are in the name of the Secretary, EB Colony and 4 services are in the name of private party. No water connection for the above shops.

(iv) A vacant space of about 6 cents is kept idle in the colony and no play ground was constructed as stated by the appellant.

(v) It seem that no action has been taken for the children's park in the vacant land as stated by the appellant.

9. Hearing held by the Electricity Ombudsman:

In order to enable the Appellant and the Respondent to putforth their views in person, a hearing was held before the Electricity Ombudsman on 31.1.2013. The Appellant himself has presented his case and on behalf of the Respondent Thiru.A.P. Sekar, EE/Distribution/Urban/Tirunelveli has attended the hearing.

10. Findings of the Electricity Ombudsman:

10.1 The Appellant Thiru Augustin, Secretary, EB Officers Welfare Association argued that in the EB Colony there are 170 houses and are owned by serving and retired EB officials only. He also informed that the houses were built by availing loan by forming a EB Staff Cooperative building society Ltd. There is a well in Plot No. 49 for the use of the residents of colony and the water is supplied to all houses by pumping the water into a overhead tank using a 3 HP pump set. He argued that the water is used only by the inmates of the EB Colony. He also informed that there are 5 Nos of commercial services in the colony but they are not supplied with water from the above service. However, the respondent informed that there are 11 shops in the colony and seven number services are in the name of Secretary, EB Colony and 4 nos of services are in the name of private parties.

10.2 The Appellant argued that their colony is also a residential complex and the service connection No. 300-308-69 utilized for supplying water to all houses is a common service in the name of Secretary, EB Staff Cooperative Building Society Ltd. and hence, the above service will squarely fit into the clause 10.10.7 and 10.10.8 of the tariff Order No. 1 of 2012 dt. 30.3.2012 and hence requested that the tariff applicable is only IA. He also argued that the water pumped using the above service is not supplied to any of the commercial services available.

10.3 He also informed that certain portion of the colony was fenced but argued that the boundaries of the colony is a fixed one.

10.4 He also argued that the EE/O & M has also confirmed in his letter dt. 20.9.12 that the service connection was utilized for supplying water to 170 houses in the colony.

10.5 The EE/O&M/Urban/Tirunelveli who represented the SE/Tirunelveli Electricity Distribution Circle argued that the EB colony is not a Multi tenement/Residential Complex. Hence, the service utilized for supplying water to the residents of Colony could not be charged under tariff IA. He also argued that as it is not a Government owned service and utilized for supplying water, it cannot be charged under tariff IIA also.

10.6 He also informed that there is no fence / compound wall around the colony and there are commercial services in the colony.

10.7 The issue to be decided in this present case is whether the service connection utilized for supplying water to the houses of the EB colony is to be charged under tariff IA.

10.8 As the issue to be decided is tariff categorization, the clause 10.10 of the tariff order No.1 of 2012 dt.30.3.2012 is extracted below:-

“10.10 Low Tension Tariff IA :

x x x x x x x x x x x x
x x x x x x x x x x x x

10.10.1 This tariff is applicable to the following :

(1) Domestic purposes of lights, fans, Air conditioners, including radio/TV and all other home appliances and watering for gardening including growing of trees in and around residential houses/buildings.

(2) Handlooms in residences of handloom weavers (regardless of the fact whether outside labour is employed or not) and to handlooms in sheds erected where energy is availed of only for lighting and fans.

(3) Public conveniences and Integrated woman sanitary Complexes.

(4) Community Nutrition Centres, Anganwadi Centres, Nutritious Meal Centres and school buildings associated with the Government welfare scheme.

(5) Old Age Homes, Leprosy Centres run by Charitable Institutions rendering totally free services

(6) Consulting rooms of size limited to 200 square feet of any professionals attached to the residence of such professionals.

(7) In respect of multi tenements/residential complexes supply used for common lighting, water supply, lift alone may be given separate connection and charged under this tariff.

(8) In respect of multi-storied buildings/residential complexes having both domestic and commercial utilities, common facilities such as common lighting, common water supply, and lift will be charged under this tariff only if the commercial built up area does not exceed 25% of the total built up area.

(9) In multi tenements residential building/Group Houses the additional service connections requested by the owners/tenants shall be given without collecting development charges and service connection charges. All other conditions applicable for giving such multiple service connections are applicable except that more than one service connection are permitted in the same door number.

(10) Electric crematorium by local bodies. ”

10.9 On a plain reading of the said clause, 10.10.1 (7) it is noted that in respect of multi tenements / residential complexes supply used for common lighting, water supply, lift alone may be given a separate connection and charged under this tariff.

10.10 As per the above provision a separate service connection used for common water supply in a multi tenements / Residential complex may be charged under tariff IA.

10.11 On a plain reading of clause 10.10.1 (8) of the tariff order, it is noted that in respect of multistoried buildings / residential complexes having both domestic and commercial utilities common facilities such as common lighting, common water supply and lift will be charged under tariff -IA if the commercial built up area does not exceed 25% of the built up area.

10.12 The Appellant's argument is that the service in discussion is used for the purpose of supplying water to all the houses in the colony and water is not supplied to any commercial service. In other words the service owned by the society is a common service used only for supplying water to the houses of the society members only and hence it is conforming to the above clause.

10.13 The Respondent's argument is that the officers colony is situated in a vast area divided into number plots and the houses are constructed there in. Therefore it is not a residential complex and hence, the provision does not applicable. He is not disputing that the service is utilized for supplying water to the houses but his objection is that the EB Colony is not to be categorized under residential complex / multi tenements / multi storied buildings.

10.14 Hence, the issue narrows down to whether the EB Colony is to be considered as a residential complex / multi tenements / multi storied building or not.

10.15 The EB Colony consists of 170 houses built up in a specified area, hence it is not a multi storied building.

10.16 In a multi tenement, there will be number houses within a same door number (i.e) the multi tenement is a single premises with more number of houses owned by a single owner but let on rent to more than one person. The EB Colony may not fit into the above category also.

10.17 The dictionary meaning of the colony is "a place where a group of people with common interest live together."

10.18 In the boards circular memo No.ACE/IEMC/EE/(T)/N14/N141/CR19582/99-3, dt.21.3.2000, the TNEB had issued certain clarification on the applicability of tariffs for water pumping motor, common lighting, lifts in multi stored building /flats the true extract of the circular is furnished below :

“Many clarification are being sought for by the field SEs and consumers. regarding the applicability of tariff in respect of water pumping /common lighting /lifts in multistoried buildings/flats housing colonies /both private colonies and housing board colonies.

In this connection, as already instructed vide the letter cited in the references above, it is informed that if the multistoried building /flats/housing colonies both private colonies and housing board colonies are utilized exclusively for domestic purpose then the water pumping motor, common lighting in the premises lifts etc., will attract LT tariff IA. If however, the multi storey building/ flats/housing colonies both private and housing board colonies are utilized for domestic as well as for non domestic purposes, then such LT service connection catering supply/ to water pumping motors, common lighting, lifts, should be charged under LT Tariff V only.

The SE/EDC are requested to follow the above instructions in respect of the above common utility services in multistoried buildings/flats. ”

10.19. On a plain reading of the above circular, it is seen that the TNEB has treated, Multistoried buildings/flats housing colonies both private and housing board as one group as for as common facilities are concerned for tariff purpose.

10.20 The definition of residential complex as given in section 65(91a) of the Finance Act 1994 for service tax purpose is given below :

“Service Tax - Chapter V of Finance Act, 1994 - Section - 65 Clause - 91 - Definition of Rent-a-cab scheme operator

(91) "Rent-a-cab scheme operator" means any person engaged in the business of renting of cabs;

(91a) "residential complex" means any complex comprising of —
(i) a building or buildings, having more than twelve residential units;
(ii) a common area; and

(iii) any one or more of facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system, located within a premises and the layout of such premises is approved by an authority under any law for the time being in force, but does not include a complex which is constructed by a person directly engaging any other person for designing or planning of the layout, and the construction of such complex is intended for personal use as residence by such person.

Explanation. — *For the removal of doubts, it is hereby declared that for the purposes of this clause, —*

(a) "personal use" includes permitting the complex for use as residence by another person on rent or without consideration;

(b) "residential unit" means a single house or a single apartment intended for use as a place of residence;

Notes -

Clause (91a) Inserted by the Finance Act, 2005, w.e.f. 16-6-2005”

10.21 It is noted from the above definition, that a residential complex shall have more than 12 residential units, a common area, and any one or more facilities or services such as park, lift, parking space, community hall, common water supply or effluent treatment system within the premises. Though the above definition is given for service tax purpose, I took the definition for consideration as no definition is given in the tariff order for the residential complex.

10.22 It is noted from the statements of both appellant and the respondent that the EB colony in question is having about 170 houses with common water

supply system and there is a common area owned by the housing society such as temple, etc., The layout has also been furnished by the appellant.

10.23 The appellant informed that there is a play ground whereas the respondent disputed it. But informed that there is a vacant space of about 6 cents and is kept idle in the colony.

10.24 Hence, I am of the view that the EB Colony could also be classified as residential complex as per the definition given in clause 91(a) of section 65 of Finance Act 1994.

10.25 It is also noted that there is no dispute that the SC No.300-308-69 is a common service utilized for supplying water to all the 170 houses of the EB colony. As the service is a common service utilized for supplying water to the houses of the residential colony only and not to any commercial services, I am of the view that the above service connection is to be charged under tariff IA as per clause 10.10.1(7) of the tariff order No.1 of 2012 dt.30.3.2012.

11. Conclusion:-

11.1 In view of my findings in para 10 above, the licensee is directed to change the tariff of the service connection No.300-308-69 from tariff V to Tariff IA and sent a compliance report within 30 days.

11.2 With the above findings the Appeal Petition No.53 of 2012 is finally disposed of by Electricity Ombudsman. No Costs.

(A. Dharmaraj)
Electricity Ombudsman

To

1. Thiru S. Augustin,
Secretary,
Electricity Board Officers Colony Welfare Association,
EB colony,
Maharaja Nagar,
Tirunelveli – 627 011

2. The Superintending Engineer,
Tirunelveli Electricity Distribution Circle
TANGEDCO,
Maharaja Nagar,
Tirunelveli – 600 011

3. The Chairman (Superintending Engineer),
Consumer Grievance Redressal Forum,
Tirunelveli Electricity Distribution Circle
TANGEDCO(formerly TNEB),
Maharaja Nagar,
Tirunelveli – 600 011

4. The Chairman & Managing Director,
TANGEDCO,
NPKR Malaigai,
144, Anna Salai, Chennai – 600 002.

5. The Secretary
Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmipathy Salai
Egmore,
Chennai – 600 008.

6. The Assistant Director (Computer) - **FOR HOSTING IN THE WEBSITE**
Tamil Nadu Electricity Regulatory Commission,
No.19A, Rukmini Lakshmipathy Salai,
Egmore,
Chennai – 600 008.