



TAMIL NADU ELECTRICITY OMBUDSMAN

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BEFORE THE TAMIL NADU ELECTRICITY OMBUDSMAN, CHENNAI

Present : Thiru. A. Dharmaraj, Electricity Ombudsman

Appeal Petition No. 48 of 2012

Superintending Engineer,
Coimbatore EDC /South,
TANGEDCO,
Tatabad,
Coimbatore – 641 012.

..... Appellant
(Thiru. R. Subramanian/EE
General & MRT)

Vs.

Mrs. B. Sujatha,
2/274, Anna Nagar,
Malumichampatty Post,
Coimbatore – 641 050

..... Respondent
(Tmt. B. Sujatha)

Date of hearing : 11 - 12 – 2012

Date of Order : 28 - 02 - 2013

The appeal petition filed by the Superintending Engineer / Coimbatore EDC/South came up for hearing before the Electricity Ombudsman on 11-12-12. Upon perusing the appeal petition, the counter affidavit, connected records and after hearing both sides, the following order is passed by the Electricity Ombudsman.

1. Prayer of the Appellant :

The appellant prayed to set aside the order for reconversion of tariff from V to IA passed by the CGRF of Coimbatore EDC / South and pass a suitable order for converting the tariff from IA to V in respect of seven number of services owned by the respondent.

2. Facts of the case :

The Respondent Tmt. B. Sujatha, Malumichampatty is the owner of the following LT services.

The Service Connections No. 1199, 1232, 1235, 1521, 1522 and 1524.

The respondent, Tmt. B. Sujatha, rented out the premises of all the above service connections to students. The service connections were originally effected under tariff IA and were subsequently changed to V as requested by Tmt. B. Sujatha. However, Tmt. B. Sujatha has filed a petition to CGRF of Coimbatore EDC /South requesting for a clarification whether the house rented out to students could be charged under commercial tariff. The CGRF based on the 2 members view ordered to change the tariff from V to IA if the petitioner request for change (The Chairman opined that the petitioner's request for change in tariff will be considered based on the tariff order (ie) if the purpose of utilization is for domestic only). However, Tmt. B. Sujatha has filed an appeal to the Electricity Ombudsman . As the petition for change of tariff is pending with the licensee, the Electricity Ombudsman observed that it is premature to issue any order. The licensee has changed the tariff from V to IA and filed an appeal

petition to the Electricity Ombudsman to set aside the orders of CGRF of Coimbatore EDC/South.

3. Condonation of Delay :

The appellant SE/Coimbatore EDC/South informed that the orders of CGRF of Coimbatore EDC/South was issued on 2.3.2012. The licensee was not convinced with the orders of CGRF and proposed to file an appeal. In the meantime the petitioner has filed an appeal petition to the Electricity Ombudsman on 23.3.2012 and order was issued on 28.6.2012. The SE/Coimbatore EDC/South also informed that if the appeal is not allowed TANGEDCO will be put to irreparable financial loss and hardships and hence, prayed for condonation of delay in filing the appeal petition .

As per regulation 8 of the Regulations for CGRF and Electricity Ombudsman 2004, the Electricity Ombudsman may entertain an appeal after the expiry of the said period of 30 days if the Electricity Ombudsman is satisfied that there is sufficient cause for not filing it within the period.

As the appellant has cited that the filing of an appeal petition by the respondent to Electricity Ombudsman is the reason for delay, the delay of 201 days in filing the appeal is condoned.

4. Contentions of the appellant :

(i) The order passed by the CGRF/South/Coimbatore is against the policy of the TANGEDCO . The CGRF have not considered the entire fact in proper perspective.

(ii) As per the orders dated 2.3.2012 of the CGRF/South/Coimbatore, reconversion of tariff from LT commercial to LT domestic has been effected to the respondent LT SCs. 1199,1232,1235,1521,1522,1523 and 1524 on 28.8.2012.

(iii) The Chairman of the CGRF/South/Coimbatore EDC had directed the licensee to consider the request of the appellant for reconversion of the tariff from LT tariff V to LT tariff IA as per tariff orders. Therefore it has been submitted that any request for reconversion of the tariff has been considered as per the provisions of the tariff orders.

(iv) As per tariff order no.1 of 2012 dated 30.3.2012, clause 10.10.1, low tension tariff IA is applicable to “Domestic purpose of lights, fans, air conditioners, including radio /TV and all other home appliances and usage of the water for gardening including growing of trees in and around residential houses/buildings”.

(v) The buildings with SC No. 1199,1232,1235,1521,1522,1523 and 1524 of malumichampatty distribution of kuniamuthur division are still being rented to about 30 numbers of college students. The above purpose does not satisfy the norms under category tariff IA of tariff order No. 1 of 2012. Further, it is submitted that more number of similar services are being billed under tariff V. Mostly these type of utilization are available closely around private engineering colleges/institutions situated in and around the periphery of Coimbatore Town. Particularly, the above petitioner services are situated near by Karpagam College, Karpagam University where more than 5000 students are studying.

The college students are prepared to stay outside the college hostel for availing domestic IA tariff concession.

(iv) If the order passed by the CGRF/South/Coimbatore EDC is to be complied with, there will be a lot of problems and similar consumers in the neighborhood in and around premises of the appellant, Tmt. B. Sujatha and other consumers in and around coimbatore will also be demanding for the same type of conversions in future. If, that will be done the department will incur very huge and irreparable financial loss, therefore order of the CGRF/South/Coimbatore EDC ought to have been set aside.

5. Contentions of the respondent :

The respondent has contended the following in her counter.

- (i) She has rented a house to college students. The service numbers of these houses are 1199,1232,1235,1521,1522,1523 and 1524.
- (ii) She again and again insists that how does a tariff change for renting a family comes under domestic and bachelors comes under commercial tariff when domestic consumption of power is used in both cases.
- (iii) Appealing to CGRF, they have passed orders for reconversion of tariff V to IA. Being a Chairman of CGRF, the Superintending Engineer has passed the orders. But it is he again who has appealed . Why this indifference ?
- (iv) She humbly request to dismiss the appeal petition No. 48 of 2012 filed by the appellant and thus render justice.

6. Hearing held by the Electricity Ombudsman :

A hearing was held before the Electricity Ombudsman on 11.12.2012 to enable the appellant and the respondent to put forth their arguments in person.

7. Argument of the appellant :

7.1 The appellant was represented by Thiru. R. Subramanian , EE/General & MRT.

7.2 He argued that domestic means a family. Here persons from various families are staying in a premises. Hence, this cannot be treated as domestic for tariff purpose.

7.3 He further argued that the students stay outside the hostel to enjoy the domestic service whereas the stay of student in a hostel will be billed under a higher tariff than the domestic. He also informed that whether the electricity bill is being paid by the students or the house owner is not known.

7.4 He argued that more number of students are staying in a house, and they may pay the rent including the CC charges individually to the owner. Hence, it is like a mansion and hence to be charged under tariff V.

7.5 He said that there is no commercial activity in the houses rented out. But, tariff V is levied on them as they are not coming under Tariff IA to IV and not as a commercial premises.

7.6 He also argued that domestic tariff is a concessional tariff hence, it cannot be given to the house which is rented out for students who belong to different family.

8. Argument of the respondent :

8.1 The respondent Tmt. B. Sujatha herself attended the hearing.

8.2 She argued that her houses were rented out to students only. But, the house is having kitchen, hall and bedroom and she collects the rent from one person who rented the house on behalf of all the students staying in a house. She also informed that even if one of the student left the house, the rent per month will be paid to her by the student who is normally paying the rent to her. But, she informed that there is no agreement between the students and her.

8.3 She also informed that her house was taxed under residential category only and not as a commercial complex.

8.4 She also argued that she is not running any mansion or hostel in the houses constructed. She informed that she has rented the houses to the students. Her only prayer is whether renting out a house to students make the house to be charged under commercial tariff. She also informed that the CC charges are being paid by the tenants (students) only and not by her.

8.5 She also informed that the students are not cooking and she is also not running any hostel or mansion in the houses.

9. Written argument of the appellant :

9.1 In the written argument dt. 20.12.2012, the appellant has contended the following :-

(i) The respondent Tmt. Sujatha, Malumichampatty has rented the entire building to the college students at about 30 members and collecting rent on per head basis and got 7 service connections for the said building. The

current consumption charges are also paid by Tmt. Sujatha, the owner of the service connection and not by the occupier of the premises.

(ii) The purpose in which the premises / SC utilized does not come under the domestic category (ie) domestic means a family and relatives. Whereas the college students staying in the building are not belonging to one family.

(iii) The purpose of the service connection utilized cannot be categorized under tariff IA, IB, IC, IIA, IIB(1), IIB(2), IIC, IIIA(1), IIIA(2), IIIB and IV. Hence, it has been charged under Tariff V . As per clause 10.21.1 of TNERC Order No. 1 of 2012 dt. 30.3.2012, the Commercial Tariff is applicable to the consumers not categorized under tariff IA, IB, IC IIA, IIB(1), IIB(2), IIC, IIIA(1), IIIA(2), IIIB and IV.

(iv) The purpose of the building rented is utilized for the college students without mansion, name board, without registration etc.,

(v) Tmt. B. Sujatha and other consumers in and around coimbatore will also be demanding for the same type of tariff conversions in future. If, that is done then the TANGEDCO will incur very huge financial loss which is unbearable.

(vi) The judgment delivered in W.P. No.8344 of 2012 dt.24.9.2012 does not relate with this case, since the rent is being collected from students per head basis and the benefit of IA domestic tariff concession is being utilized by the building / service connection owner.

10. Written argument of the respondent :

(i) The service connections are in the name of the owner of the building only and not in the name of the tenants occupying the building. But the consumption charges are paid by the tenants.

(ii) Though bachelors or students are staying they are utilizing the same power consumption as that of a family, which comes under domestic tariff.

(iii) All the houses are full fledged for a family with a kitchen, hall and bedroom with attached bathroom. As no family had come, the respondent has rented to students who are in need of it. Since, bachelors are staying it does not make it as a mansion.

(iv) The High Court judgment in W.P. No.8344 of 2012 dt. 24.9.2012 relates to her case wherein it has been quoted clearly that renting to bachelors and students does not mean commercial.

11. Findings of the Electricity Ombudsman :

11.1 I have heard the arguments of the appellant and respondent and perused the documents adduced before me. On a careful consideration of the arguments of both sides, I find that the only issue is whether the house rented out to the students is to be charged under domestic tariff IA or Tariff V.

11.2 The appellant argued that the dictionary meaning of the domestic is relating to a home or family. Here the students belonging to various families are renting a house. Hence, it is not a domestic usage and it has to be charged under tariff V.

11.3 The appellant's representative also argued that the students staying in the houses may make their payment of rent including the current consumption charges individually to the owner. Hence, the transaction is similar to a mansion and argued that the house of the respondent is utilized as mansion without name board and without registering it as mansion. Hence, the tariff applicable to the mansion category is to be charged for this case also.

11.4 He also argued that rent for students occupation will be more than a family occupation. Hence, tariff applicable is tariff V only. The EE/Gen&MRT also argued that the students are staying in the rented house to enjoy the domestic tariff whereas if they stay in the hostel the tariff will be higher and hence, the tariff applicable is tariff V.

11.5 The appellant also argued that the above premises were charged under V not because they are commercial but because of the utilization of the premises does not fall under any of the tariff IA, IB, IC, IIA, IIB(1), IIB(2), IIC, IIIA1, IIIA(2), IIIB and IV.

11.6 The judgment delivered in W.P. No. 8344 of 2012 dt.24.9.2012 does not relate with this case, since, the rent is being collected from students per head basis and the benefit of IA domestic tariff connection is being utilized by the building / service connection owner.

11.7 The respondent argued that, her house is rented to the students / bachelors only for residing . She also informed that the rent for the house is being paid by the inmates totally and not by each individual separately. The rent fixed is for a house and not for individual occupants. She also informed that

the service are only in the name of the owner but CC charges are directly being paid by the tenants and not by her. Hence, she argued that, it cannot be compared with the mansion wherein every occupant of a room will be paying the rent to the owner of the mansion separately which includes CC charges and other maintenance charges also.

11.8 She also informed that she is paying the property tax as a house and not as a mansion. She also furnished a copy of house tax receipt for the year 2011-12 in proof of having paid the tax under house category. She further informed that the house is having kitchen, bedroom and hall separately for occupation of a family, but, as no family has come, she has rented it to students. She however, informed that the students staying in the houses are not doing any cooking in the house. Further, she informed that her only prayer is whether renting a house to a student attract commercial or domestic tariff.

11.9 She also cited the High Court judgment in W.P.No. 8344 of 2012 dt.24.9.2012 and argued that as per the above judgment, renting to bachelors and students does not mean commercial.

11.10. The Appellant has contended that Tariff V is levied on the Respondent as the Respondent is not coming under Tariff IA to IV and not as a commercial premises. The Appellant has conceded that there is no commercial activities in the houses rented out. But the appellant informed that the above was charged under tariff V as the utilization of energy in the premises of the Respondent cannot be categorized under Tariff IA to IV.

11.11 In the tariff order the Commission's view on objections / comments / suggestions have been furnished. Against tariff categorization, the Commission's view was furnished in para 2.1.478 to 2.1.483. Among the above, the para 2.1.479 deals with commercial tariff. The same is reproduced below :

"Tariff categorization :

2.1.478 Tariff categorization is dealt with in detail within the tariff schedule.

2.1.479 In this context, quite a few consumers have been representing before the Commission during the Public Hearings, stating that they are not undertaking any "commercial" activity or activities for making "profit" within their premises, and hence, they should not be classified under the "commercial" category. It is clarified that the Commercial category actually refers to all "non-residential, non-industrial" purpose, or which has not been classified under any other specific category. For instance, all office establishments (whether Government or private), hospitals, educational institutions, airports, bus-stands, multiplexes, shopping malls, small and big stores, automobile showrooms, etc., are all covered under this categorization, since they cannot be termed as residential or industrial ."

11.12 On a careful reading of the above, it is noted that the Commission has clarified that the commercial category actually refers to all non residential , non industrial purposes or which has not been classified under any other specific category. All office establishment (whether Govt. or private) hospitals, educational institutions, airports, bus stands, multiplex , shopping malls, small and big stores, automobile show room etc., are all covered under commercial category, since they cannot be termed as residential or industrial.

11.13. The services referred in the case on hand are utilized in houses which are having kitchen, hall and bedroom with attached bathroom and are rented out to students. The houses are utilized by the students only for the residential purpose and hence could not be categorized as non residential or non industrial so as to treat them as commercial service.

11.14 In view of the above position, the contention of the Appellant that the services to be charged under tariff V as it is not categorized under tariff I to V is not acceptable.

11.15 As the matter relates to the applicability of the tariff IA, I would like to refer tariff order No. 1 of 2012 dt. 30.3.2012. The relevant clause 10.10.1 of the said tariff order is extracted below :

“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.”

11.16 On a careful study of the said clause 10.10.1 of the tariff order No.1 of 2012 dt. 30.3.2012, which is relevant to this case, it is noted that tariff IA is applicable to domestic purpose of lights, fans, air conditioners, including radio/TVs and all other home appliances.

11.17 The clause 10.21 of the tariff order, which deals with tariff V is extracted below :

“10.21 Low Tension Tariff V:

Tariff	Fixed Charges	(Rupees per kW per month)
Low Tension Tariff V		
For consumer with consumption 50 units per month or 100 units bimonthly	60	430
For consumer with consumption above 50 units per month or above 100 units bimonthly	60	700

10.21.1 This tariff is applicable to All Commercial establishments, private communication providers, cinema studios, cinema theatres and consumers not categorized under LT IA, IB, IC, IIA, IIB (1), II B (2), IIC, IIIA (I), III A (2), IIIB, and IV.

10.21.2 This tariff is also applicable for LT supply for construction activities of residential house/building till the completion of construction activities.

10.21.3 *In respect of multi tenements/multistoried buildings/residential complexes where the number of flats/Tenements utilized for commercial purposes exceeds 25% of the total built up area, the LT services relating to common utilities such as common lighting, water supply, lift shall be charged under this tariff.*

10.21.4 *In respect of residential complexes used for domestic, the common facilities such as Gym, swimming pool, recreation clubs, indoor stadiums and grounds, indoor and community halls, amphi theatres, shops etc will be charged under this tariff.”*

11.18 It is noted from the above, that the tariff V is applicable to all commercial establishments, private communication providers, cinema studios, cinema theatres and consumers not categorized under LT IA, IB, IC, IIB(1), IIB(2), IIC, IIIA(1), IIIA(2), IIIB, and IV.

11.19 In a similar case, the Hon'ble High Court of Madras has given its order on 24.9.2012 in writ petition No.8344 of 2012 and MP No.2 of 2012. The relevant paras 15,16, 17 & 18 of the said order are extracted below :

“15. In my view, there is no basis for the first respondent to treat 2nd, 3rd and 4th floors as commercial establishment. The stay of the students or stay of the employees would not make the same as commercial establishment. Various tariff for domestic purposes and non-commercial purposes make it clear that even studios, cinema theatres and private educational institutions are treated as non-commercial establishments for the purpose of energy consumption.

16. In my view, renting the premises for stay of employees of the shop would not make it commercial establishment and Low Tension Tariff V is not applicable to the same. The payment of rent by the textile shop to its employees would not make the occupation as commercial, when admittedly no commercial activity is carried on.

17. As stated above, the Municipality has assessed the 2nd, 3rd and 4th floors as residential for the purpose of property tax. Though it is mentioned that bachelors are staying in 2nd, 3rd and 4th floors, the respondents cannot classify it as

commercial establishment. It is not the case of the respondents that the petitioner runs a hostel or mansion on commercial lines.

18. Therefore the impugned order dated 2.1.2012 passed by the first respondent is quashed.”

11.20 On a careful reading of the above judgment of the Hon'ble High Court of Madras, it is noted that, the Hon'ble High Court has observed that the stay of students or stay of the employees would not make the premises as commercial establishment. Further, observed that renting the premises for stay of employees of the shop would not make it commercial establishment and low tension tariff V is not applicable to them. The payment of rent by the textile shop to its employee would not make the occupation as commercial, when admittedly no commercial activity is carried on. The municipality has assessed the 2nd, 3rd & 4th floors as residential for the purpose of property tax. Though it is mentioned that bachelors are staying in 2nd, 3rd and 4th floors, the respondent cannot classify it as commercial establishment. It is not the case of the respondent that the petitioner runs a hostel or mansion on commercial basis.

11.21 The case on hand is also similar to the above case. Here also the students are staying in the premises and the property tax is paid under residential category, the only difference is, here the licensee argued that the premises is being utilized as a mansion without any registration or name board. The licensee also argued that rent is being collected on per head basis but not produced any copy of receipt to establish the above. The licensee has not produced any other evidence also to establish the premises as mansion.

11.22 The respondent argued that she is not running any mansion and only rented the house to students and receiving rent from the students on per house basis only and not from the individual students. She also informed that electricity charges are being paid by the students directly to the licensee and not by her. She also not produced any documentary evidence in support of her claim such as agreement copy or receipt given to the tenants except property tax receipt. She also informed that there is no written agreement and the renting out is only based on verbal agreement.

11.23 As the property tax for the premises was paid under residential category and as the licensee has not produced any evidence to establish the above premises as mansions, I am of the view that, the case on hand is similar to the case where the Hon'ble High Court of Madras has quashed the assessment done on commercial basis (ie) under tariff V in respect of a premises where employees of a textile shop, were staying. Accordingly, I confirm the view of the CGRF of Coimbatore EDC/South.

12. Conclusion :

In view of my findings in para 11, I am unable to interfere with the orders of CGRF of Coimbatore EDC/South with the above findings, the Appeal Petition 48 of 2012 is finally disposed by Electricity Ombudsman. No Costs.

(A.Dharmaraj)
Electricity Ombudsman

To

1. Mrs. B. Sujatha,
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Malumichampatty Post,
Coimbatore – 641 050.
2. Superintending Engineer,
Coimbatore EDC /South,
TANGEDCO,
Tatabad,
Coimbatore – 641 012.
3. The Chairman,
Consumer Grievance Redressal Forum,
Coimbatore EDC /South,
TANGEDCO, Tatabad,
Coimbatore – 641 012.
4. The Chairman
TANGEDCO,
NPKR Malaigai,
144, Anna Salai,
Chennai – 600 002.
5. The Secretary
Tamil Nadu Electricity Regulatory Commission
No.19A, Rukmini Lakshmi pathy Salai
Egmore,
Chennai – 600 008.
6. The Assistant Director (Computer) - **FOR HOSTING IN THE WEBSITE.**
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