

**KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM**

**Present: Shri T.M.Manoharan, Chairman
Shri. K.Vikraman Nair, Member
Shri. S. Venugopal, Member**

OP No 30 / 2015

In the matter of categorization of consumers – Tariff applicable to the buildings in the factory premises where labourers are residing and to the buildings outside the premises on rented basis – petition disposed of.

M.M.Mujeeb Rahman : Petitioner
President, All Kerala Plywood and Block Board
Manufacturers' Association, MC Road
Perumbavoor

Kerala State Electricity Board Ltd. : Respondent:
Vydyuthi Bhavanam,
Pattom, Thiruvananthapuram.

Order Dated: 19.10.2015

1. The petition has been filed under Regulation 22(d) of KSERC (Conduct of Business) Regulations, 2003 regarding categorization of consumers for determine tariff applicable to buildings within the factory premises where labourers of the factory residing and to the building outside the factory premises where labourers residing on rented basis.

Prayer

2. The prayers in the petition are :
 - (i) *The tariff of the labourers stay outside the factory building, labourers rest room inside the factory, labourers stay in the factory compound but not in the same building as industrial (LT IV (A) in LT and HT I (A) in HT)*

- (ii) *The tariff of labourers stay outside the factory compound in separate house rented or owned by the owner of the factory as Domestic Tariff.*
- (iii) *An interim direction may be given not to disconnect the supply of the affected party for which the list is attached till hearing and disposal of the petition by the Hon'ble Commission.*

Hearing of the petition

3. The parties were heard on 13.08.2015. Both the parties have filed their written submission to establish their claims.
4. In addition to the averments contained in the original petition, the petitioner has filed an argument note at the time of hearing and an additional submission on 10.09.2015. The petitioner states as follows,-

- (a) As mandated by Section 47 of the Factories Act, 1948

'Shelters, rest rooms and lunch rooms (1) in every factory wherein more than one hundred and fifty workers are ordinarily employed , adequate or suitable shelters or rest rooms and suitable lunch room , with provision for drinking water, where workers can eat meals brought by them shall be provided and maintained for the use of workers.'

This implies that accommodation for labourers and rest rooms are part of the industry and are constructed based on standards prescribed by the State Government. Petitioner stated further that, like hostels are treated as part of colleges, labourers stay rooms /rest room should be treated as a part of the concerned industry. The accommodation within the factory premises for their workers is free of cost and is provided to them for complying with the provisions of Factories Act, 1948. Hence the petitioner requested that industrial tariff shall be extended for the accommodation of workers within the premises of the factory.

- (b) In cases where there is not enough area to accommodate all workers within the area of the factory, they have availed rented buildings outside the area of the factory to accommodate their workers. In this case also accommodation is

provided free of cost to their workers and the electricity consumption is for domestic purpose only. Hence their requested to assign domestic tariff to such places of dwelling.

5. In the hearing held on 13-08-2015 and in the written submission dated 20-7-2015 and 24-08-2015, KSEB Ltd. has submitted the following facts for the consideration of the Commission.

a) The petitioner has requested for re-categorization of the consumer into different category. Tariff determination including re-categorization of consumers shall be done as per Section 64 of the Electricity Act, 2003. The Commission has already issued orders on Tariff applicable to various categories of consumers as per its order dated 14.08.2014. Hence, KSEB Ltd submitted that the issues raised by the petitioner can be considered only along with the next tariff revision. If the petitioner is aggrieved by the existing tariff order dated 14-08-2015 approved by the Commission, the petitioner has to prefer an appeal before the Hon'ble Appellate Tribunal for Electricity under Section 111 of the Electricity Act, 2003. If the petitioner is aggrieved by the penal bills issued under the Section 126 of the Electricity Act, 2003, the petitioner has to prefer an appeal before the appellate authority as per Section 127 of the Electricity Act, 2003. Without availing the above legal provisions, the petitioner has approached the Commission for re-classification. Hence the petition itself is not legally sustainable. There is lack of clarity in the petition regarding the grievances of the petitioner. The contentions of the petitioner were made referring to the 'Factories Act, 1948', which mandates the requirement of the rest room/ wash room/ toilets etc in the factory premises for the well-being of the labourers. The relevant portion of the Factories Act, 1948, is extracted below for ready reference.

“47. Shelters, rest rooms and lunch rooms. (1) In every factory wherein more than one hundred and fifty workers are ordinarily employed, adequate and suitable shelters or rest rooms and a suitable lunch room,

with provision for drinking water, where workers can eat meals brought by them, shall be provided and maintained for the use of the workers: Provided that any canteen maintained in accordance with the provisions of section 46 shall be regarded as part of the requirements of this sub-section:

Provided further that where a lunch room exists no worker shall eat any food in the work room.

(2) The shelters or rest rooms or lunch rooms to be provided under sub-section (1) shall be sufficiently lighted and ventilated and shall be maintained in a cool and clean condition.

(3) The State Government may- (a) prescribe the standards in respect of construction, accommodation, furniture and other equipment of shelters, rest rooms and lunch rooms to be provided under this section; (b) by notification in the Official Gazette, exempt any factory or class or description of factories from the requirements of this section.”

- b) At present KSEB Ltd is levying electricity charges for the electricity used for shelters, rest rooms, lunch rooms etc in the same building at the same tariff applicable for the industries or factories, i.e. the tariff as per the original purpose of use of electricity.
- c) It is further submitted that as per sub paragraph 7 of the paragraph I(c) to the Annexure-A to the BO (FB) No. 2518/2013 dated 28-11-2013, extension of electricity supply through a meter to the adjacent rooms or toilets or sheds etc in the same premises of the same consumer for the same sanctioned purpose shall not be treated as unauthorized extension so long as the additional load is within 10% of the sanctioned load. The relevant portion of the BO dated 28-11-2013 is extracted below for ready reference.

“7) Extension of electric supply through the meter to adjacent rooms or toilets or sheds etc or for usage of portable electrical equipments within

the same premises belonging to the same consumer for the same sanctioned purpose (or tariff) shall not be treated as unauthorized extension for assessment so long as the additional load is within 10% of the sanctioned load.”

- d) KSEB Ltd further submitted that, electricity connection availed purely for residential accommodation has been charging at the appropriate tariff applicable for such purpose, i.e.
- (i) “Individual connections availed for the buildings exclusively used for residential purposes has been charging at domestic tariff, and*
 - (ii) The single point supply availed for use in the staff quarters, colonies of universities, colonies of State and Central Government establishments, colonies of BSNL, Railways, AIR etc has been charging under LT-II Colonies tariff.”*

Hence, if separate electricity connections are availed for providing each residential accommodation for the labourers of a factory they shall be charged at the appropriate tariff applicable as stated above. However, the petitioner has been interpreting the tariff applicable for the ‘rest houses’, ‘guest houses’ etc within the purview of permanent residential accommodations’. In this matter KSEB Ltd submitted that,

- (i) The provisions under Section 47 of the Factories Act 1948 does not mean for providing permanent residential accommodation to the labourers of the factory, within the same premises. The provision envisages for providing necessary live hood facility for the labourers during their work time.*
- (ii) The rest houses/rest rooms and guest houses are not intended for permanent residential accommodation.*
- (iii) As per the prevailing tariff schedule, ‘rest houses, ‘guest houses’ etc categorized under LT-VII (A) Commercial category. The relevant portion of the tariff order is extracted below for ready reference.*

Low Tension – VII-COMMERCIAL (A) (LT-VII (A))

“ Tariff for commercial consumers such as shops, other commercial establishments for trading, showrooms, display outlets, business houses, hotels and restaurants (having connected load exceeding 1000W), private

lodges, private hostels, private guest houses, private rest houses, private travelers, bungalows, freezing plants, cold storages, milk chilling plants, bakeries (without manufacturing process), petrol/diesel/LPG/CNG bunks, automobile service stations, computerized wheel alignment centers, marble and granite units, LPG Bottling plants, house boats, units carrying out filtering and packing and other associated activities using extracted oil brought from outside, share broking firms, stock broking firms, marketing firms.”

- e) KSEB Ltd further submitted that, there is no difference in the purpose of the use of electricity at ‘rest houses’ with respect to its location, i.e., rest house is at same premise of the factory/industry or outside. In the case of rest houses, the occupants in the building are subject to change from time to time. The rest houses only have single point supply. The company will be remitting the current charge of the building. So any relaxation given in tariff will be beneficial to the company and not to the actual occupants. Such an accommodation in which the occupants keep on changing and are not a beneficiary of the tariff cannot be classified as a domicile activity to be treated under domestic tariff.
- f) KSEB Ltd stated further that the petitioner in the petition itself has compared the stay of the labourers in the rest houses with the college hostels. As stated above, private hostels are also classified under LT-VII (A) category. The hostels of self financing educational institutions are classified under LT-VI (F) tariff. Hostels run by State and Central Government, aided educational institutions etc are categorized under LT-VI (B). The electricity used for rest houses also may have a similar treatment as that of hostels. based on the purpose of usage, nature of supply etc. Hence, the classification of private rest houses etc, in line with the classification of hostels are proper and in order. The section 62(3) of the Electricity Act 2003 empowers the Commission to categorize the consumers based on the purpose of usage. The relevant section is extracted below for ready reference.

“62(3) 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 consumer's 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, the nature of supply and the purpose for which the supply is required.”

- g) KSEB Ltd further stated that the argument regarding the non disconnection of supply provided to a list of consumers doesn't have any basis. It is presumed from the petition that the above bills were issued to the consumers under Section 126 of the act to which the consumer can file appeal to the appellate authority under Section 127 of the Electricity Act, 2003. There is no merit in the argument raised by the petitioner on the relief sought and Commission may reject the petition filed by the 'All Kerala Plywood and Block Board Manufacturers Association'.

6. In the additional submission filed by KSEB Ltd as per letter No.TRAC-II/AEE4/Petition-Workers stay /15-16/2082 dated 24.08.2015 stated as follows,-

Issue No. (a) Tariff to be assigned for the electricity used for lighting etc for the 'shelters, rest rooms, lunch rooms, toilets etc' provided inside the factory.

The electricity supply given to the 'Factory'/ 'Industry' can be extended for providing lighting, ventilation etc to the 'shelters, rest rooms, lunch rooms, toilets etc' provided inside the factory/ industry under Section 47 of the Factories Act 1948. No separate connection is mandatory for such cases. Hence, the entire consumption including the electricity used for the shelters, rest room, lunch rooms etc shall be charged at 'Industrial tariff' applicable.

Issue No. (b): Tariff for the supply/extended supply availed for providing accommodation to the labourers within the factory/ inside the factory premises.

KSEB Ltd had appraised the matter in detail and suggested that, the electricity supply availed for the 'Factory'/ 'Industry' can be extended for providing accommodation to the labourers within the factory/ inside the factory premises and the entire consumption can be charged under 'Industrial tariff', subject to the following conditions.

- (1) *The total connected load of the extended use shall be limited to the 10% of the connected load/ 5 KW whichever is less, invoking the section 153(4) of the Supply Code, 2005.*
- (2) *If the connected load of such use is more than 10% of the connected load or 5KW, then separate connection shall be availed for the building/ use and the same shall be charged under 'domestic tariff'.*
- (3) *If separate connection is availed, the 'Factory'/ 'Company' shall provide an undertaking that, the connection was availed exclusively for providing 'residential accommodation'.*

Issue No. (c): The tariff to be assigned on the building owned by the company or rented by the company for the accommodation of the labourers 'outside the factory premises'.

KSEB Ltd suggest that, the tariff for the building owned by the company/ rented by the company for the accommodation of the labourers, outside the factory premises shall be given at 'domestic tariff' subject to the following

- (i) *The company shall provide an undertaking to the effect that the connection was availed exclusively for providing residential accommodation to the labourers; and*
- (ii) *Separate connection shall not be allowed to each room separately under any circumstances.*

7. In reply to the additional statements filed by KSEB Ltd on 24.08.2015, the petitioner as per letter dated 10.09.2015 submitted as follows,-

1. *"Their suggestions like permission up to 10% of the CL for lighting, domestic tariff if lighting load is more than 10% or 5 KW etc is admissible.*
2. *The domestic tariff extended for workers stay outside the factory in rented building or on building is admissible. Separate connection to the each room is not a requirement. If separate Building No is available, KSEB Ltd can always give separate connection to each building number."*

Analysis.

8. Regarding the first prayer on the issue of tariff to be assigned for the electricity used for lighting etc for the 'shelters, rest rooms, lunch rooms, toilets etc' provided inside the factory, the electricity supply given to the 'Factory'/ 'Industry' can be extended for providing lighting, ventilation etc to the 'shelters, rest rooms, lunch

rooms, toilets etc' provided inside the factory/ industry as per Section 47 of the Factories Act, 1948,

As per Sub regulation 4 (b) of Regulation 153 of Kerala Electricity Supply Code, 2014

“(b) If the additional load in the case of other consumers is of and below ten percent of sanctioned load, it shall not be reckoned as additional load”

No separate connection is mandatory for such cases. Hence, the entire consumption including the electricity used for the shelters, rest room, lunch rooms etc shall be charged at 'Industrial tariff'. Regarding the issue of Tariff for the supply/extended supply availed for providing accommodation to the labourers within the factory/ inside the factory premises, the electricity supply availed for the 'Factory'/ 'Industry' can be extended for providing accommodation to the labourers within the factory/ inside the factory premises and the entire consumption can be charged under 'Industrial tariff' up to a certain limit of the connected load. Beyond that limit, supply can be extended under domestic tariff as a separate connection.

9. Regarding the second prayer on the issue of the tariff to be assigned on the building owned by the company or rented by the company for the accommodation of the labourers 'outside the factory premises the extracts on the Judgment on WP(C) No 14491 of 2013 (J) dated 27-08-2013 of the Hon High Court of Kerala on a similar issue is given below,-

“4. The first question to be decided is as to whether the purpose for which the electricity is used is domestic or commercial. When the Regulatory Commission, which derives power under the statute, had categorized the usages into different tariffs, undoubtedly the billing has to be done on the basis of such categorization considering the nature of usage. The schedule of the tariff orders issued by the Regulatory Commission, brought into effect on 1.12.2007 as well as on 1.1.2010, indicate that the tariff applicable to "domestic use" is categorized under LT-I. But the tariff order does not define or illustrate the term, "domestic use". Commercial use is categorized under LT-VII. Sub category LT VIIA clearly illustrates the commercial usages coming within the said category. It is the tariff applicable for commercial consumers such as display lights, cinema studios, commercial premises, hotels and restaurants, show rooms

business houses, private hostels/lodges/guest/rest house, freezing plants, cold storages etc. When the tariff order defines/illustrates nature of the commercial use or activity, only the commercial use falling within any one of such specific categories alone can be treated under the said category. Private Hostels/lodges/guest houses/rest houses are usages included in the category of LT VII a tariff. Whether the usage in the present case will fall within any of the said categories is the question to be decided. There is no allegation that the building is used as a lodge or guest/rest house. Therefore the only question is whether it will fall within the ambit of a 'private hostel'. The meaning of the word Hostel contained in 'Chambers 21st century Dictionary' revised edition 2004 is, "a residence providing shelter for the homeless, especially one run for charitable rather than for profitable purpose and a residence for students or nurses outside the confines of the college or youth hostel". On the facts of the case at hand, there is no dispute that the petitioner is using the building only for accommodating workers in their own Hotel establishment. There is no case that any activity connected with the hotel business is carried on in the building in question. The owner of the building is not providing accommodation to any homeless persons or to any students. Providing accommodation or facility for stay to own workers cannot be termed as Hostel or as private Hostel. The tariff under LT VIIA will be attracted only if a Hostel activity is run in the building in question. When specific categorization is made through illustrations with respect to usage contained in the Tariff Order issued by the Regulatory Commission, meaning of any term in common usage or in common parlance cannot be imported for deciding the issue. The use cannot be categorized as 'private Hostel' included in LT VII A categorization under the tariff order. In view of the discussions contained in Ext.P8 decision of this court, the observation made by the 2nd respondent in Ext.P7 that, this court has not conclusively ordered that the employees hostel accommodation as one falling under domestic tariff, is not a correct appreciation of the dictum contained in the judgment."

. 5. In the counter affidavit filed on behalf of respondents 1 & 3 it is contended that, the petitioner had conceded to the change of tariff effected earlier. Even at the time of applying for additional power allocation he had not objected the inclusion of the connection under LT VII A. But it is pertinent to note that in Ext.P3 request the petitioner had specifically raised a contention that the energy supplied in the premises is used only for domestic/residential purposes and therefore the use of energy will not fall within the category of LT VII A. It cannot be denied that the consumer is at

liberty to request for correction of the billing pattern if he is of the opinion that the usage is being billed under a wrong tariff. Therefore merely because he had conceded for billing under a different tariff, it will not preclude him from making a request for the change of tariff. Hence I am of the opinion that the only point to be decided is with respect to sustainability of the rejection of such request. As already observed, the usage cannot be included within the ambit of a private Hostel included in the tariff order, falling under LT VII A category. Hence the writ petition has to succeed.

6. In the result, it is declared that the petitioner is entitled to get his connection reclassified under LT-I category (domestic tariff). Therefore Ext.P4, P5 and P7 orders are hereby quashed. It is noticed that, by virtue of an interim order issued by this court on 10.6.2013 the respondents were directed to collect electricity charges only at domestic tariff of LT-IA. Therefore it is directed that the electric connection in question is to be treated as one falling under domestic tariff from 10.6.2013 onwards (the date of the interim order). The authority concerned shall work out and issue revised demands and shall appropriate amount already paid by the petitioner. Needless to observe that amounts if any found further due on the basis of such revision shall be paid by the petitioner. The directions shall be given effect at the earliest possible, at any rate within one month from the date of receipt of a copy of the judgment”

10. KSEB Ltd also suggested that, the tariff for the building owned by the company/ rented by the company for the accommodation of the labourers, outside the factory premises shall be given at ‘domestic tariff’ subject to the factory owner providing an undertaking that the connection is availed exclusively for providing residential accommodation to the labourers and separate connection shall not be allowed to each room separately under any circumstances
11. Regarding the third prayer not to disconnect the supply to a list of consumers , it is presumed from the petition that the above bills were issued to the consumers under Section 126 of the Act to which the consumer can file appeal to the appellate authority under section 127 of the Electricity Act, 2003.

Decision

12. After due consideration of the relevant regulations, the Tariff order dated 14.08.2014 and the submissions made by the petitioner as well as KSEB Ltd, the Commission hereby orders as follows,-

- (1) No separate connection is required for using electricity in the 'shelters, rest rooms, lunch rooms, toilets etc' provided inside the factory / industrial unit in accordance with the provisions in Section 47 of the Factories Act, 1948 and the tariff applicable to industrial purposes shall be applicable for the consumption of electricity for such shelters, rest room, lunch rooms etc.
- (2) For the supply / extended supply availed for providing accommodation to the labourers within the factory / inside the factory premises, the consumption shall be charged under the tariff for industrial purposes, subject to the following conditions.
 - (i) The total connected load of the supply / extended supply availed for providing accommodation to the labourers within the factory / inside the factory premises shall be limited to the 10% of the connected load as specified in sub-regulation 4 (b) of regulation 153 of the Kerala Electricity Supply Code, 2014.
 - (ii) If the connected load of such supply / extended supply availed for providing accommodation to the labourers within the factory / inside the factory premises is more than 10% of the connected load, then separate connection shall be availed for the building / use and the same shall be charged under 'domestic tariff'.
 - (iii) If separate connection is availed as above, the factory / company shall provide an undertaking to the licensee to the effect that, the connection is availed exclusively for providing residential accommodation.
- (3) The tariff to be assigned for consumption of electricity in the building owned by the company or taken on rent by the company for the accommodation of its labourers outside the factory premises shall be domestic tariff subject to

the factory owner providing an undertaking that the connection is availed exclusively for providing residential accommodation to its labourers and separate connection shall not be allowed to each room.

- (4) Regarding the prayer not to disconnect the supply to consumers in the list, it is seen from the petition that the above bills were issued to the consumers under Section 126 of the Electricity Act, 2003, and therefore the appropriate remedy is to file appeal to the Appellate Authority under section 127 of the Electricity Act, 2003.

The petition is disposed of as above and it is ordered accordingly

Sd/-
K. Vikraman Nair
Member

Sd/-
S. Venugopal
Member

Sd/-
T.M.Manoharan
Chairman

Approved for issue

Sd/-
Santhosh Kumar K.B
Secretary