

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: **Shri. Preman Dinaraj, Chairman**
 Shri. S. Venugopal, Member
 Shri. K.Vikraman Nair, Member

OA 4/2018

In the matter of Tariff applicable to M/s Ajantha Colour Lab, a Computerized Photo Printing units having photo studio and sales counter

Petitioner : Kerala State Electricity Board Limited
 Vydhyuthi Bhavanam, Pattom
 Thiruvananthapuram

Respondent : M/s Ajantha Colour Lab
 Edappal, Malappuram District - 679576

KSEB Ltd represented by Sri. Bipin Sankar, Deputy CE (TRAC)
 Sri. K G P Namboodiri, EE, TRAC
 Sri. Rajesh R, AEE, TRAC
 Sri Edward D Boniface, AEE, TRAC
 Sri Sujith T R, AEE, TRAC

Respondent represented by Sri. Adv. M. Unnikrishnan
 Sri Adv. Swaroop Mohan

Order dated 06.02.2019

1. KSEB Ltd has filed a petition before the Commission on 12.10.2017 to take appropriate decision on the ‘tariff applicable to M/s Ajantha Colour Lab, Edappal, Malappuram, a computerized photo printing unit having ‘photo studio and sales counter’, as per the directions of the Hon’ble High Court in the judgment dated 11.01.2008 in petition W.P(C) No. 37357 of 2007. The prayers of the petitioner is extracted below.

(i) *The petitioner utility KSEBL be heard, allowed to adduce evidence and the dispute be settled, as per the Hon’ble High Court order so as to prevent loss sustained by KSEBL.*

- (ii) *Supply to photo studio and sales counter along with the colour printing facility be allowed to be charged at commercial rate as per the respective ruling tariff and for back periods.*

2. The summary of the issues raised by the petitioner KSEB Ltd is extracted below for ready reference.

(a) The respondent, M/s Ajantha Colour Lab, is a low-tension electricity consumer under electrical section, running a colour lab and digital studio under the name 'Ajantha Colour Lab'. The tariff assigned to them at the time of providing electric connection was under LT IV Industrial tariff. The respondent's premises was inspected by the Anti Power Theft Squad of KSEB on 15.03.2003 and was penalized for following irregularities.

(i) The supply given for the computerized photo printing under LT IV industrial tariff being used for running photo studio and a sales counter for which higher tariff of LT VIIA is applicable.

(ii) Unauthorised load of 12KW was seen connected in the premises.

KSEB had issued a penal invoice for Rs 3,53,052/- (Rupees three Lakh fifty three thousand and fifty two only), the reassessed amount under LT-VII(A) tariff.

(b) The respondent filed petition (WP(C) No.37357 of 2007) before the Hon'ble High Court. The Hon'ble Court on 11.01.2008 suspended enforcement of the impugned demand and directed the KSERC to decide on the appropriate tariff applicable to the respondent Ajantha Colour Lab, within four months from the date of receipt of a copy of the judgment. The order is extracted below:

*“ Under such circumstances, the impugned orders would stand suspended and the parties will stand regulated by the force of this judgment to the Tariff Regulatory Commission for consideration of the issue regarding the appropriate tariff under which the petitioner has to come. **A final decision shall be taken within a period of four months from the date of receipt of a copy of this Judgment. Petitioner shall be heard in relation to the issue. Until a decision is taken as aforesaid, enforcement of the impugned demand against the petitioner would stand suspended.**”*

(c) Since KSEB being the affected party, it approached KSERC to take the decision on the appropriate tariff applicable to M/s Ajantha Colour Lab, Edappal based on the judgment of the Hon'ble High Court. However, the Commission took the stand that the petitioner consumer M/s Ajanatha Colour Lab, Edappal has to approach the Commission as per the judgment of the Hon'ble High Court. M/s Ajantha Colour Lab, has not approached the Commission till date and is enjoying the fruit of the stay order. KSEBL, on the contrary has been losing the revenue from the consumer. The stay order issued by the Hon'ble High Court is still in force.

- (d) The inspection by APTS was done on 15.03.2003, that is before the commencement of Electricity Act, 2003. The tariff order prevailing at that time was the tariff notified by KSEB vide the order dated 24.10.2002 as per B.O(FM) No. 1462/02/TRAC/TO-1/2002 was in force from 01.10.2002, the same was issued with the approval of the State Government. The said tariff order was also issued much before the constitution of the KSERC by the State Government during November 2002.
- (e) As per the prevailing tariff order at that time, the SSI units engaged in computerized colour photo printing were categorized under LT IV Industrial tariff, whereas, the cinema studios and other commercial premises has been categorized under LT VIIA Commercial tariff. This is continued even now in the tariff order dated 17.04.2017 issued by the Hon'ble Commission.
- (f) As per the rules and regulation in force, if any portion of the supply given for a particular purpose is required to be utilized for another purpose with higher tariff, then such load are to be segregated and separate service connection shall be obtained under appropriate tariff. Otherwise, the entire use of electricity in the premise shall be billed at the higher tariff.
- (g) The main activities in the premises of M/s Ajantha Colour Lab are studio activity and photographic material sales, as compared with the industrial activity of bulk printing of photographs using computerized machines. Unless the activity of computerized colour printing is segregated and separate connection availed, the whole connection has to be considered under commercial tariff only.
- (h) The Anti Power Theft Squad (APTS) of KSEB, during the inspection done on 15.03.2003, found that, the M/s Ajantha Colour Lab, Edappal has been using the connection for commercial activities such as photo studio and sales counter. Accordingly, the tariff applicable is LT-VII Commercial tariff.
- (i) Since the Hon'ble Commission is also one of the respondents in the WP(C) No. 37357/2007 filed by M/s Ajantha Colour Lab, Edappal, the Hon'ble Commission can take an appropriate decision on the tariff applicable to the M/s Ajantha Colour Lab, Edappal in compliance of the directions of the Hon'ble High Court in judgment dated 11.01.2008 in WP (c) No, 37357 of 2007. The judgment of the Hon'ble High Court does not specify who should represent the matter before the Commission. Though KSEB, on 25.04.2009 filed a representation with the copy of the judgment before the Commission to take a decision on the issue based on the judgment of the Hon'ble High Court, the Commission has not entertained the same and taken a stand that, the consumer M/s Ajantha Colour Lab, who had filed the original petition before the Hon'ble High Court has to approach the Commission.

- (j) Since M/s Ajantha Colour Lab, Edappal is benefited by way of the stay order issued by the Hon'ble High Court till the Hon'ble Commission take a decision on the appropriate tariff applicable to them, they had not approached before the Commission to take a decision on the matter based on the judgment of the Hon'ble High Court.
3. The Commission scheduled the admissibility hearing on the petition on 18.01.2018 at the office of the Commission. Sri K G P Namboodiri, Executive Engineer, KSEB Ltd presented summary of the petition and submitted that KSEB Ltd has been suffering substantial revenue loss on account of the wrong application of tariff to the M/s Ajantha Colour Lab, Edappal. But the respondent M/s Ajantha Colour Lab is enjoying the benefit of stay order for all these time. He prayed before the Commission to kindly admit the petition and take an appropriate decision on tariff applicable to the respondent as per the direction of the Hon'ble High Court in its judgment dated 11.01.2018.
4. Adv. Unnikrishnan, appearing on behalf of Ajantha Colour Lab submitted as follows;
- (a) On the subject issue, the Commission had issued an order on 20.05.2009. Hence the present petition filed by KSEB Ltd can be considered as a review petition against the order dated 20.05.2009. As per the provisions in the Code of Civil Procedure 1908, the review against the order of the Commission can be entertained only on the following grounds.
- (i) *the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or;*
- (ii) *on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him*
- (b) The petition filed by KSEB Ltd is against a consumer. The petitioner has to file this application before the CGRF or Electricity Ombudsman. The Commission has no jurisdiction to entertain the petition.
5. During the hearing, the Commission clarified the following.
- (i) The petition filed by KSEB Ltd is not a review petition and the same was filed based on the direction of the Hon. High Court of Kerala in the judgment dated 11.01.2008.
- (ii) As per the provisions of the Electricity Act, 2003, Kerala State Electricity Regulatory Commission (KSERC) is the statutory authority for determining the electricity tariff in the State.

The Commission also noted the lapses from the part of the M/s Ajantha Colour Lab, Edappal, in not taking up the matter for classification of tariff with supporting details as per the direction of the Hon'ble High Court in its judgments dated 11.01.2008. KSEB Ltd has also not taken earnest efforts to resolve the issue by vacating the stay order the Hon. Court, even after the specific direction issued by the Commission vide its letter dated 25.05.2009.

6. Based on the petition filed by KSEB Ltd, and deliberations of the subject petition during the hearing held on 18.01.2018, the Commission ordered that,
 - (i) *The petition stands admitted.*
 - (ii) *The petitioner KSEB Ltd and the respondent M/s Ajantha colour Lab, Edappall shall submit additional details/ documents if any, latest by 31.01.2018.*
 - (iii) *KSEB Ltd shall submit the month wise details of the connected load, energy consumption, the tariff applied for raising the invoice, fixed charge, energy charge etc, for the entire disputed period since the year 2003 till date.*
7. In compliance of the direction of the Commission, KSEB Ltd submitted the details on 19.03.2018. KSEB Ltd also submitted the 'commercial tax' remittance details of M/s Ajantha Colour Lab obtained from Sale Tax department.
8. The Commission scheduled second hearing on the petition on 20.03.2018. Sri Swaroop Mohan, Advocate, appearing on behalf of Adv. Unnikrishnan, who was authorized to appear before the Commission by Ajantha Colour lab, submitted that Adv. Unnikrishnan could not turn up due to some personal inconvenience and prayed for postponement of the petition. During the deliberations of the subject, the Commission directed KSEB Ltd to clarify whether any similar issues on 'photo printing units having photo studio and sale counter' are pending with them. Based on the deliberations during the hearing, the Commission issued the following directions to KSEB Ltd for compliance by 12.04.2018.
 - (i) Ascertain the number, status and position of similar cases of 'photo printing units having photo studio and sale counter' decided by Hon'ble High Court and other legal forums.
 - (ii) Similar cases pending at Hon'ble High Court, Electricity Ombudsman.
9. In compliance of the direction of the Commission, KSEB Ltd has submitted the details of the similar cases decided by the Hon'ble High Court and similar legal forum, and its summary is given below.

Sl No	Petition No and date	Consumer	Judgment of Hon'ble High Court
1	WP (c) No. 22014/2004 dated 11.10.2006	FOTO Digits, CMS complex, Perambra, Calicut	Use of a camera for taking photographs and also maintaining a counter, is an integral part of an SSI unit engaged in computerised colour photo printing. Therefore the petitioner is entitled to be retained under LT-IV tariff instead of LT-VII A commercial tariff
2	WP (c) No. 37357/2007 dated 11.01.2008	Ajantha Colour Lab, Malappuram	Remanded the dispute to the KSERC to determine the appropriate tariff for the Photo processing unit with reception and cash counter.
3	WP (c) No. 9198/2008 dated 18.03.2008	Maxima Photoshop and Colour Lab, Parappanangadi.	Remanded the dispute to the KSERC to determine the appropriate tariff for the Photo processing unit with reception and cash counter.
4	WA No. 1637 of 2011, dated 07.12.2011	Photo Tech, Kozhikode	Photo colour printing unit is eligible for LT-IV Industrial tariff, which is for Industrial purpose. Eventhough the sale by itself should go under commercial tariff, in this case essentially the respondent is an industry eligible for LT-IV tariff.
5	WA No. 1118/2012 dated 21.06.2012	FOTO Focus, Palakkad	Followed the judgment dated 07.12.2011 as above
6	WA No. 410/2014 in WP (C) No. 1224/2006, 27th June 2014	M/s Classic colour lab, Kozhikode	Endorsed the decision to have two separate connection for SSI unit having a colour photo processing lab and studio. Industrial connection under industrial tariff LT IV for colour processing lab and commercial connection with LT VII A tariff for studio with sale counter. Hon'ble High Court also decided that, the concessional industrial tariff applicable for the colour processing unit under LT-IV tariff cannot be used for other purposes including the sales counter attached to the photostudio
7	WA No.154/2014 in WP (C) No. 11965/2009 dated 08.07. 2014	Kala studio, Mele Pattambi, Palakkad	Division Bench of the Hon'ble High Court decided as follows. ' As per the tariff order, insofar as the photo studio is concerned , the only activity therein which attract LT-IV tariff is computerized colour photo printing. It is also not appropriate to apply the entire consumption under commercial tariff on the reason that, the electricity is being used for other purposes as well. Some of the activities carried on by the respondent attract the tariff under LT-IV. In such a situation, there is no reason to deny him the benefit of LT-IV tariff atleast insofar as the activities which attract that tariff are concerned. Therefore the appellant consumer shall make an appropriate application for the segregation of the supply and after segregation, the appellant KSEB will assess the quantity to be charged under LT IV and LT VII tariff and on that basis issue a fresh demand to the respondent.

10. The Commission conducted third hearing on the petition on 13.11.2018. During the hearing, Adv. Unnikrishnan, appeared on behalf of M/s Ajantha Colour Lab submitted that, there is no evidence to show that the sale counter is functioning or not. KSEB Ltd submitted the site mahassar before the Commission.

Analysis and Decision

11. The Commission has examined in detail the petition filed by the KSEB Ltd, the argument of the respondents, the judgments of the Hon'ble High Court in similar cases, with the provisions of the Electricity Act, 2003 and Tariff orders issued by the Commission from time to time.
12. The State Electricity Regulatory Commission is a quasi-judicial body functioning as per the provisions of the Electricity Act-2003 (Central Act 36 of 2003). As per the Section 62 and Section 86 (1)(a) of the Electricity Act, 2003, the tariff determination is one of the statutory functions of the SERCs. The subsection (3) of Section 62 of the EA-2003 which is extracted hereunder provides the various factors to be considered while categorizing the consumers while determining the tariff.

(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".
13. The basic issue before the Commission is to determine the appropriate tariff applicable to photo studios with sales counters.
14. It is noted that, the dispute on the tariff applicable to the consumer M/s Ajantha Colour Lab was raised by KSEB on 15.03.2003, based on the inspection conducted by Anti Power Theft Squad (APTS) of KSEB at the premise of the consumer.
15. As per the tariff orders prevailing as on date of the inspection of the APTS, the tariff applicable to the SSI units engaged in computerized colour photo printing was LT-IV Industrial tariff. Further, the appropriate tariff applicable to electricity used at the sale counters come under the commercial LT-VII(A). Though there is considerable changes and technical advancement in the activities of photo studio and computerized colour printing, till date the Commission has not made any changes in the tariff applicable to the computerized colour photo printing and photo studios. Further, till date, the Commission also has not determined separate tariff applicable for the electricity used for photo studios with sales counter.

16. In a similar issue, the Division bench of the Hon'ble High Court in the judgment dated 08.07.2014 in WA No. 154/2014, (Kala studio, Mele Pattambi vs KSEB), decided as follows.

“ 4. *We heard the learned Senior Counsel appearing for the appellants and the learned counsel for the respondent.*

5. *As per the tariff order, LT-IV is the tariff applicable to the low tension industrial consumers and LT-VII applies to commercial consumers. As per the tariff order, Insofar as the photo studio is concerned, the only activity therein which attracts 02LT-IV tariff is computerised colour photo printing. As far as the respondent is concerned, the nature of the activities that are carried on are given in detail in Ext.P3 mahazar and photo printing is only one of the activities. It was, therefore, that the APTS recommended that the tariff applicable should be changed from LT-IV to LT-VII.*

6. *The learned counsel for the appellants relied on the judgment of this Court in W.A. No. 1637 of 2011. This judgment was also relied on by the learned single Judge in the judgment under appeal. According to the learned counsel, when a small portion of the supply availed is used for a purpose different from those attracting LT-IV tariff, that does not mean that the whole tariff should be one applicable to the small quantity of supply thus diverted. True, the Division Bench has held to that effect in the judgment relied on. However, insofar as this case is concerned, among the various activities, only one activity attracts LT-IV tariff and therefore, the reasoning adopted by the Division Bench cannot be made applicable. In such a situation, the learned single Judge ought not have directed that the respondent be continued to be levied under LT-IV tariff. We, therefore, find that the judgment is untenable and the same will stand set aside.*

7. *Be that as it may, even going by Ext.P3 mahazer, some of the activities carried on by the respondent attract the tariff under LT-IV. In such a situation, there is no reason to deny him the benefit of LT-IV tariff at least insofar as the activities which attract that tariff are concerned. Therefore, we direct that the respondent will make an appropriate application to the competent authority among the appellants, within one month from today, for segregation of the supply as indicated above insofar as the activities that attract LT-IV tariff are concerned. If such an application is made, necessary follow up action will be taken and after segregation, the the appellants will assess the quantity of energy mentioned in Ext.P2 to be charged under LT-IV and LT-VII tariff and on that basis issue a fresh demand to the respondent. If such a fresh demand is issued, the respondent shall pay the amounts that are due from him.”*

17. The above decision of the division bench of the Hon'ble High court is squarely applicable in the present case also. Hence the Commission hereby directs the

respondent M/s Ajantha Colour Lab, Edappal, Malappuram district that, within one month from the date of this order, they shall segregate the electrical installation to supply for 'computerized colour photo printing' which attract LT-IV Industrial tariff and to supply for 'sale counter and related activities' which attract LT-VII(A) Commercial tariff and make an application to the concerned section office of the KSEB Ltd for separate connection. KSEB Ltd shall separately charge the electricity used for the computerized colour printing and sale counters based on the respective electricity consumption, once the separate connection is effected as per the application of M/s Ajantha Colour Lab. If M/s Ajantha Colour Lab fails to apply for separate connection within one month, the whole consumption will be billed at LT-VII (A) tariff from the date of this order.

18. Orders of the Commission

The Commission, after examining the petition filed by the KSEB Ltd, the argument of the respondents, judgments of the Hon'ble High Court in similar cases, with the provisions of the Electricity Act, 2003 and other facts and records, hereby orders the following.

- (1) The respondent M/s Ajantha Colour Lab, Edappal, Malappuram district shall, within one month from the date of this order, segregate the electrical installation to supply for 'computerized colour photo printing' which attract LT-IV Industrial tariff and the supply to 'sale counter and related activities' which attract LT-VII(A) Commercial tariff and make an application to the concerned section office of the KSEB Ltd for separate connection. KSEB Ltd shall separately charge the electricity used for the computerized colour printing and sale counters based on the respective electricity consumption, once the separate connection is effected as per the application of M/s Ajantha Colour Lab. The status quo shall be maintained till the date of separate connection.
- (2) If M/s Ajantha Colour Lab fails to apply for separate connection within one month from the date of this order, the whole consumption will be billed at LT-VII (A) tariff from the date of this order.

The petition disposed off.

Sd/-

**K.Vikraman Nair
Member**

Sd/-

**S.Venugopal
Member**

Sd/-

**Preman Dinaraj
Chairman**

Approved for Issue

Secretary