



Before the Electricity Ombudsman

9/2, 6th Floor, Mahalakshmi Chambers, M.G.Road,
Bangalore

Present: B.R.Jayaramaraje Urs, IAS (Retd.)

Electricity Ombudsman

Case No.OMB/C/G-145/2013/314

Dated 27.11.2013

Shri H.N.Madhukiran,
Hennali Village, Nidigere Post,
Sakleshpur Taluk,

HASSAN DISTRICT

**(Represented by Sri Shridhar Prabhu,
Advocate - Authorised Representative)**

.. **Appellant**

Vs

1. The Asst. Executive Engineer(EI)
O & M Sub Division,
Chamundeshwari Electricity Supply Corp.Ltd.,

SAKLESH PURA

**(Represented by Shri Devaraj ,
Advocate-Authorised Representative)**

The Chairperson
Consumer Grievance Redressal Forum
C.E.S.C.,
Superintending Engineer(EI)
O & M Circle,
Santhepet,
Bangalore-Hassan Road,
HASSAN

.. **Respondents**

1. This appeal under Clause 21.02 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations, 2004 is directed against the order passed by the Consumer Grievance Redressal Forum, CESC, Mysore (hereinafter referred to as the 2nd Respondent) vide case No ಮುಇಂ(ಬಿ)/ಮೈವ/ಅಕಾ/2012-13/7180-85 ದಿನಾಂಕ 16.01.2013 in respect of his request for change of tariff category from LT-4(c)(i) to LT-4(a) with the Assistant Executive Engineer(EI), O & M Sub-Division, CESC, Sakleshpur-573134, Hassan District (hereinafter referred to as the 1st Respondent). Aggrieved by the order passed by the 2nd Respondent, the Appellant has submitted his case as under:

2. The Appellant is the owner of 2.02 acres of land bearing Survey No 27 of Hennali Village, Sakaleshapura Taluk, Hassan District. He is also a registered Electricity Consumer of CESC coming under the jurisdiction of the Assistant Executive Engineer(EI), Sakaleshapura Sub-Division. The subject installation was serviced on 10.12.1985. The Appellant has installed 10 HP irrigation pump set in his land. In the said land, he is growing areca, banana, pepper & coffee. All irrigation Pump sets in the State are categorised under one category. The Appellant, in his application for sanction of power, had mentioned that he was growing paddy, ragi and chillies in his land. Earlier, the Appellant was billed under L.T.4 (c)(i) tariff category and had been paying the bills regularly. Suddenly, the Appellant discovered that he ought to have been billed under LT-4(a) category as he was growing coconut, areca, banana and coffee as mixed crops in his land and, hence, gave a representation to the 1st Respondent to change the tariff category from LT4(c)(i) to LT-4(a). The Section Officer, CESC in his letter dated 21.09.2011 replied that the Appellant was mainly growing coffee in the subject land and it was a major crop and, hence, the request for change of tariff could not be considered. Again, the Appellant requested the 1st Respondent to reconsider the decision, but his request was rejected. Aggrieved by the decision of the 1st Respondent, the Appellant filed a complaint before the 2nd Respondent and the 2nd Respondent, after hearing the parties, dismissed the complaint.

3. The word plantation is not defined in KERC Tariff Order. The Appellant is growing coffee along with other crops and coffee covers 10% of the subject land. Coffee requires less water and it is rain dependent. KERC tariff orders are very clear that LT 4(c)(i) is not applicable to small coffee growers, but is applicable to coffee plantations. In coffee plantations where coffee is grown in large extent, bore wells are kept as a standby in case of failure of monsoon or delay in the onset of monsoon. The Appellant's main focus is on coconut, banana, areca and coffee is grown only as an undergrowth to keep the plantation free of weeds. The subject land is not a coffee plantation and, hence, levy of tariff under 4(c)(i) category is not justified and, hence, prayed this Authority to set aside the orders passed by the 2nd Respondent and to issue directions to the 1st Respondent to change the tariff category from LT4(c)(i) to LT4(a).

4. The 1st Respondent's comments were called vide letter OMB/C/G-145/2013/178 dated 21.03.2013. The 1st Respondent filed statement of objections vide letter dated 18.03.2013.

5. The 1st Respondent, referring to the contention of the Appellant that he had been growing coffee as a mixed crop along with other crops, namely, areca, banana, & pepper, submitted that, in practice, coffee alone cannot be grown as mono crop and other crops are generally grown for providing shade to coffee plants. After taking into consideration the number of coffee plants grown in the subject land, the CESC had come to the decision that the Appellant had been growing coffee as a major crop in the subject land and categorisation had been rightly done. It is a fact that from the beginning the Appellant had been levied LT4(c)(i) tariff and the Appellant had been paying the bill under this category. The Appellant's contention that he was not aware of the electricity tariff categories was simply unacceptable. Hence, he justified levy of LT 4(c)(i) tariff.

6. The case was taken up for hearing on 22.08.2013 and for the Appellant, Advocates Shri Shridhar Prabhu & Shri Manjunatha Rao appeared and advanced

their arguments. On behalf of the 1st Respondent, Advocate shri Devaraj appeared (colleague of N.K Gupta) and submitted his arguments.

7. During the arguments, the Advocates for the Appellant reiterated the submissions made in their appeal memo.

8. The Advocate for the 1st Respondent Shri Devaraj argued that the 1st Respondent had inspected the subject land during the course of the hearing. The Inspection revealed that the Appellant had grown 531 coffee plants in his land measuring 2.02 acres and further the 2nd Respondent had also written to the coffee Board seeking details regarding planting distance to be maintained in coffee cultivation and also plant population per acre/hectare. The coffee Board in its letter vide No SLO/SKP/EXTEN-1/2013-14/451 dated 21.10.2013 furnished details which said that 302 coffee plants could be grown in one acre with a planting distance of 12 x 12 feet. The subject land measures 2.02 acres and in this land 531 standing coffee plants were found to have been existing at the time of inspection and the Appellant, following the guidelines of the coffee board, might have planted 302 plants per acre initially and later because of elephant incursion into the subject land, some plants might have been destroyed. Hence, it should be construed that the Appellant had followed the coffee Board's recommendation with regard to planting distance which signifies that the Appellant is not growing coffee as minor crop, but as a major crop and, hence, levying of LT-4(c)(i) tariff was justified and the Appellant's request for change of tariff category from LT-4(c)(i) to LT-4(a) could not be considered.

9. Both parties were informed vide letter No.OMB/B/G-145/2013/209 dated 14.06.2013 regarding availability of Sub-Regulation 1 of Regulation 20 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2004 which provides for settlement by agreement through conciliation and mediation. However, both parties have not availed this opportunity. Hence, I am proceeding to pass an order in this matter.

10. Having regard to the contending positions of the parties, issues that emerge for our consideration are:

a) Whether the 1st Respondent had the necessary information posted before him regarding the subject land before rejecting the request for change of category from LT4(c) (i) to LT4 (a)?

b) Whether the 1st Respondent has followed the procedure before rejecting the claims of the Appellant for change of tariff category from LT4c (i) to L T4(a)?

11. From the arguments of the parties, it is noted that the Appellant's father got 10 HP power sanctioned for his IP Set in the year 1985 and the installation was standing in the name of the Appellant's father. The Appellant's father, in his application for sanction of power mentioned that he required power for irrigating survey No 33 measuring 2-16 acres for growing mixed crops like paddy, Ragi and chillies. However, the CESC, after examining all the facts, had come to the conclusion that in survey No 33, coffee was being grown as major crop and, hence, categorised the consumer coming under LT-4 (c)(i) tariff. The consumer accepted the tariff and paid the energy charges accordingly. Subsequently, it appears that the land bearing survey No 33, survey No 27 and installation bearing No YP-150 have been transferred in the name of the Appellant from his father. The Appellant, later on 28.07.2011, seems to have applied for change of tariff category from LT-4 (c)(i) to LT-4(a) claiming that he was growing areca in his land. In that application, the Appellant appears to have not mentioned the survey No of the land for which he claimed LT4(a) tariff. Similarly, the CESC in their reply dated 05.08.2011 to the Appellant has not mentioned the survey No. for which they had refused change of tariff category. The Appellant appears to have clarified in his letter dated 17.08.2011 that in survey No 27 he was growing areca as a major crop and coffee was only undergrowth to keep the plantation free from weeds.

12. The 1st Respondent is found to have made correspondence with the Executive Engineer (EI) regarding the request of the Appellant for change of tariff category from LT-4 (c)(i) to LT-4(a) dated 21.09.2011 and 15.10.2011 and, even in these

correspondence, the 1st Respondent appears to have not mentioned survey No 27. Further, the 1st Respondent, in his endorsement dated 05.08.2011 and 21.08.2012 issued to the Appellant, has not mentioned any Survey No. It appears from the correspondence that the 1st Respondent was not clear about the survey No for which the Appellant had sought change of tariff category from LT-4(c)(i) to LT-4(a) and appears to have issued endorsement rejecting the request without any application of mind. From the records produced before this Authority, it is seen that the 1st Respondent, without mentioning the survey No., has endorsed to the Appellant that his request could not be considered as the land comes under the definition of coffee plantation.

13. During the hearing, the Appellant claimed that in his land he was not growing coffee as a major crop but only as a mixed crop along with areca and other crops. This was disputed by the other side and the other side furnished coffee Board's recommended spacing. The Coffee Board in their letter has clarified that 302 Robusta Coffee Plants could be grown in an acre by maintaining space of 12' x 12' between the plants. Based on this letter, this Authority advised the 1st Respondent to visit the land and find out how many coffee plants were being grown in the land. Following this observation, the 1st Respondent, after visiting the land, submitted a report. The 1st Respondent, in his report, stated that in survey No 33 measuring 2-16 acres, the Appellant had grown 966 coffee plants which conforms to the Coffee Board's recommended spacing and, hence, the land comes under the definition of coffee plantation. Therefore, the categorisation done is as per the KERC Tariff order. Further, in the report, the 1st Respondent pointed out that enroute survey No 33, there is one more land bearing survey No 27 belonging to the Appellant and, during inspection, it had been observed that the Appellant had been pumping water to this survey No from the IP set for which CESC had not granted permission and, hence, this amounted to illegal use of power as the Appellant had not mentioned this survey No when he first got power connection. However, the 1st Respondent did not clarify whether use of water to some other survey No other than the one for which power had been sanctioned constitutes an offence. If such diversion of water

to some other land other than the one for which power had been sanctioned is not an offence, then CESC has to examine whether survey No 27 comes under the category of LT-4(a) or LT-4(c)(i). Though, the 1st Respondent insisted during the hearing that in survey No 27 the Appellant had planted 531 coffee plants and spacing of plants conformed to the Coffee Board norms and, hence, bracketing the Appellant under LT4C(i) is justified etc, but the 1st Respondent when he rejected the request of the Appellant for change of tariff category seems to have not posted before him all the information like (a) exact survey No for which the Appellant was requesting for change of tariff category (b) the exact location of survey No 27 and appears to have taken decision under a mistaken notion that the Appellant had been seeking change of tariff for survey No 33 with regard to installation bearing R.R No Y.I.P-190. This is clear from the correspondence he has made with the Executive Engineer(EI) and also the endorsement he has issued to the Appellant. None of these correspondence bear survey No 27. It is only when this Authority directed the 1st Respondent during the hearing to conduct spot inspection to find out the characteristics of the land, the 1st Respondent discovered during the spot inspection that the Appellant had illegally been using water to survey No 27 from the existing installation. This is narrated in the Inspection Report. Thus, it is proved beyond doubt that the 1st Respondent had not posted with all the relevant information before rejecting the request of the Appellant. This inadequacy has vitiated the entire proceedings and resulted in flawed decision. This vitiating can be cured by the 1st Respondent following the following: (a) conducting fresh enquiry giving opportunity to the Appellant (b) conducting spot inspection (c) record the exact survey No on which decision is being taken. The 1st Respondent may inspect both survey No 33 & 27 of Hennali Village and find out whether these survey Numbers have the characteristics of Coffee plantation as per the Coffee Board's recommended spacing and take final decision on the request of the Appellant.


14 In the light of the discussions made, the following order is passed:

ORDER

15. The impugned order vide No. ಮುಇಂ(ಬಿ)/ಮೈವ/ಅಕಾ/2012-13/7180-85 ದಿನಾಂಕ 16.01.2013 is hereby set aside.

16. The case is remanded to the 1st Respondent for conducting fresh enquiry and pass order taking into account the observation made in the body of this Order.

17. In the result the appeal **is partly allowed**.


(B.R. Jayaramaraje Urs)
Electricity Ombudsman

1. Shri H.N.Madhukiran, Hennali Village, Nidigere Post, Sakleshpur Taluk, Hassan District (represented by his Legal Counsel, Sri Shridhar Prabhu, Advocate, Bangalore).
2. Consumer Grievance Redressal Forum, CESC, Hassan District, Hassan
3. The Assistant Executive Engineer (Ele), O & M Sub Division, CESC, Sakleshpura, Hassan District. (represented by its Authorised Representative, Shri Devaraj, Advocate).
4. Managing Directors of ESCOMs.
5. PS to Hon. Chairman, KERC
6. PS to Secretary, KERC