



TAMIL NADU ELECTRICITY OMBUDSMAN

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Present : Thiru A. Dharmaraj, Electricity Ombudsman

Appeal Petition No. 42 of 2015

M/s.CSIR-Central Electrochemical Research Institute,
(Council of Science & Industrial Research),
Karaikudi 630 006.

. Appellant

(Rep by Thiru. S. Mohan, Senior Principal Scientist &
Thiru. A. Deenadayalan, Section officer)

Vs

The Superintending Engineer,
Sivagangai EDC ,
TANGEDCO,
Sivagangai 623 356. .

..... Respondent
(Rep by Thiru Anandhayi, EE/
Karaikudi)

Date of hearing : 11.8.2015

Date of Order : 31.8.2015

The Appeal Petition dated 7.05.2015 filed by M/s. CSIR Central Electrochemical Research Institute , Karaikudi – 6 was registered as Appeal Petition No.42 of 2015. The above appeal petition came up for hearing before the Electricity Ombudsman on 11.08.2015. Upon perusing the appeal petition, counter affidavit and after hearing both sides, the Electricity Ombudsman passes the following order.

ORDER

1. Prayer of the appellant:

The Appellant prayed to issue appropriate ruling to TANGEDCO, Karaikudi to refund the amount of Rs.4,46,866/- paid by them towards current consumption arrears in respect of service connection no.213& 214.

2. Brief history of the case:

- 2.1. The Appellant is the owner of SC No.402-032-213 & SC No.402-032-214 and the services are coming under the jurisdiction of the Respondent.
- 2.2. The tariff for the said services have been revised for the period from 11/2006 to 7/2013 and a sum of Rs.2,47,351 & Rs.199,515/- were collected as short fall from SC No.402-032-213 & 402-032-214 respectively due to wrong adoption of tariff.
- 2.3. The Appellant filed a petition before the CGRF of Sivagangai EDC seeking refund of the above short fall amount vide petition dt.27.1.2015.
- 2.4. As no reply was received from the CGRF of Sivagangai EDC even after 3 months from the date of filing the petition, the appellant filed an appeal petition before the Electricity Ombudsman.
- 2.5. As more than 50 days have passed without any reply since filing of a petition before the CGRF, the above petition was registered as an appeal petition as per regulation 17(4) of the Regulations for CGRF and Electricity Ombudsman.

3. Contentions of the Appellant furnished in the Appeal Petition :

3.1 An amount of Rs.4,46,866/- was claimed as current consumption arrears in respect of two street light services (viz) 213 & 214 with effect from 11/2006 & 9/2006 respectively stating that tariff II-A was wrongly effected instead of Tariff-V.

3.2 In letters dt.22.10.2013 and 12.11.2013, it was informed that the tariff change was made as per TNERC order No. 1 of 2012 dt.30.3.2012. The amount was therefore paid by them in view of ultimatum contained in letter dt.12.11.2013.

3.3 In view of regulation 9(2) of Supply Code, it is clear, the tariff could be changed prospectively after resetting the meter as required under the said regulation and tariff cannot be revised retrospectively.

4. Contention of the Respondent furnished in the Counter Affidavit:

4.1 The service connection no. 402-032-213 and 402-032-214 were effected on 23.1.2006 in the name of Director, CECRI, Karaikudi while effecting the service connection. They were categorised under tariff V for usage of street light in the premises of CECRI complex. However, bill had been made for tariff IIA since effecting of service.

4.2 The TNERC in its order No.1 of 2012 dt.30.3.2012 regarding determination of tariff for Govt aided educational institutions and research institute has specified that they are applicable under tariff IIB(1). There is no any specific mention about the street lights being utilized in such institutions. Further, the public lighting, public water supply belongs to Govt/local body only comes under IIA streetlight category as per the above tariff order.

4.3 On re-viewing of adoption of tariff according to the Supply Code, it was found that wrong adoption of tariff had been made while billing i.e. IIA (street light). Hence, bill had been revised from IIA to V from 11/2006 to 7/2013, in respect of SC No.402-032-213 & 214 for which a sum of Rs.247351/- and

199515/- respectively. The Assistant Engineer/Town/South/Karaikudi had been requested on 2.9.2013 to issue notice to the CECRI authority for collecting the above said amount and tariff to be revised accordingly.

4.4 After obtaining notice from the AE/Town/South/karaikudi the CECRI authority in letter dated 14.10.2013 had objected for revision of Tariff citing the reasoning of CECRI is a research institute under the council of scientific and industrial research institute under Government of India. Based on the request of the CECRI authority EE/Distributio/Karaikudi consider all aspect and came to conclusion that there is no feasibility of compliance for adoption of tariff IIA for above said services. Hence, CECRI authority request had been set aside citing the Supply Code.

4.5 Frequent reminder had been made to the CECRI authority. Finally CECRI remitted the revised amount of the above said services vide Pr.No.Mds 402 Rs.1Q27/2.12.2013 Rs.247351/- and Mds 402 Rs.1Q28/2.12.2013 Rs.1,99,515/-

4.6 The Electricity Ombudsman already disposed the petition with no costs vide order dt.14.8.14. In the TNEO's findings in para14.5 of the said order the Appellant's request for changing the of above mentioned servies 402-032-213 & 214 as LT tariff IIB(1) is not accepted.

4.7 Service No.402-032-214 is being used for the street light in the CECRI staff quarters which is a separate campus situated opposite to CECRI campus and SC No.402-032-213 is being used for the pathway to the segregated research campus, Chidlren Park, Community Hall etc., and is completely outside the Research Campus.

5. Hearing held by the Electricity Ombudsman

5.1 In order to enable the Appellant and the Respondent to putforth their arguments in person, a hearing was conducted before the Electricity Ombudsman on 11.08.2015.

5.2 Thiru. S. Mohan, Senior Principal Scientist and Thiru. A. Deenadayalan, section officer have attended the hearing on behalf of the Appellant.

5.3 Tmt. Anandhayi, Executive Engineer(i/c)/Distribution/Karaikudi attended the hearing on behalf of the Respondent and put forth her arguments.

6. Arguments putforth by the Appellant's representatives on the hearing date :

6.1 Thiru.S. Mohan, Senior Principal Scientist, CSIR, Central Electrochemical Research Institute, Karaikudi reiterated the contents of the appeal petition.

6.2 He argued that as per regulation 9(2) of the Supply Code, the tariff revision could be effective from the date of RTR. The above regulation was adopted in AP No. 24 of 2014 while disposing their earlier petition for change in tariff. Hence, he argued that tariff revision could be effected from the date of RTR only and not from the date of effecting of the service connection.

6.3 The Appellant's representative argued that for argument sake even if the tariff change is taken as correct, the arrears could be claimed only for a back period of 2 years as per section 56(2) of the Electricity Act 2003.

6.4 The Appellants representative Thiru. Deenadayalan of CECRI argued that the regulation 12(1) of the Supply Code is applicable in case of the arithmetic error made by the licensee. The wrong adoption of tariff cannot be treated as a clerical error. It is a mistake done by the licensee. Hence, he argued that for the mistake of the licensee, the consumer cannot be penalized.

6.5 The Appellant's representatives have also furnished their written arguments on the hearing date. The arguments given are furnished below :

(i) CSIR-CECRI in its original application during the year 2006, submitted applications for SC No.402-032-213 and 214 under tariff V only. It was corrected by TANGEDCO to tariff II(A). CSIR-CECRI was not informed of the change in tariff.

(ii) Suddenly in 2013, TANGEDCO asked for the remittance of difference in payment from 2006, based on the tariff changed by TANGEDCO from tariff

II(a) to tariff V based on their audit report without even giving any notice CECRI.

(iii) As per the regulation 9 of the Supply Code, any tariff change has to be effected only after obtaining revised test report (RTR) and to be billed proportionately from the meter reading taken during revised test report. This was not followed by TANGEDCO in this case. CSIR-CECRI in all its correspondences, insisted on this point. This was referred by TNEO also in the order dt.14.8.2014 at page 20 & 22 vide para 13.3 and 14.8 respectively.

(iv) The EE, TANGEDCO, Karaikudi in his letter during 2014, stated that there is no need to apply this Supply Code 9 and also there is no need for RTR. But in appeal petition, SE, Sivaganga referred to the original test report taken in 2006. On the one hand TANGEDCO officials say that no test report is required and on the other hand they refer to test report also and hence there is contradiction in their statements.

(v) As per the direction referred in TNEO order dt.14.8.2014, the change for the services 402-032-200 201,199, 202 and 203, TANGEDCO did not revise the tariff for the services 402-032-200, 201, 199, 202 and 203 on its own. They asked for fresh application for tariff change from CSIR-CECRI and on that basis only the revision of tariff from V to IIB(1) was effected. Hence, CSIR-CECRI once again appeal to follow the Supply Code No.9, for the revision of tariff in respect of service No.402-032-213 and 214 and refund the arrears of Rs.446866/- collected against the TNEB regulations/Supply Code.

7. Arguments putforth by the respondent on the hearing date:

7.1 Tmt. M. Anandhayi, Executive Engineer,I/c /Distribution/Karaikudi reiterated the contents of the counter.

7.2 The EE argued that arrears claimed is based on the audit report. The street lights for CECRI campus comes under tariff V. But, the charges were levied on tariff II(a) wrongly by the Board. Hence, the arrears claimed are the difference between the correct tariff and the tariff adopted wrongly and the arrears are only actual charges that were due to the Board.

7.3 The EE also argued that the RTR will be taken whenever there is change in tariff sought by the consumer due to change in utilization of the services, but in this case, the tariff applied for is tariff V and the correct tariff is also V, but, billing was wrongly done as tariff II(A). Hence, she argued that the arrears claimed is correct.

7.4 The EE also citing regulation 12(1) of the Supply Code, argued that as per the above regulation the licensee is having right to demand additional charges in case of under charging. As the consumer was under charged due to wrong adoption of tariff, the additional amount. was claimed as arrears.

7.5 Citing the order of Electricity Ombudsman in A.P.No.24 of 2014 the EE argued that the tariff applicable for the above services is tariff V only.

8. Written argument of the Appellant :

8.1 They submitted applications for service connection 213 and 214 in January 2006.

8.2 From the enclosure to Form C in r/o SC No.213, it is seen that tariff II(A) was made applicable by TNEB officials after taking test report on 23.1.2006, by visiting the spot. Hence, it is clear that tariff II(A) was applied to SC No.213 based on the then Tariff Rules.

8.3 From the Application for SC No.214, it is seen that application was for tariff V only and TNEB officials have also after taking test report on 23.1.2006, by visiting the spot changed the tariff from tariff V to tariff II(A) and charges were made accordingly.

8.4 The case of EE in charge TANGEDCO Karaikudi is that the arrears was collected as per regulation 12 of the Supply Code. However, para 12.1 of Supply Code states that it is applicable in the cases of clerical errors or mistakes only. Deciding a particular tariff to a service after taking test report by visiting the spot cannot be considered as clerical mistake or error, either on fact or in law.

8.5 It is also stated that the TNEB revised the tariff rates for the above services w.e.f August 2013 and changes were made in the monthly bills without providing revised test report or even without notice to us about the change of tariff. This procedure itself is illogical and not tenable in law and as per Supply Code No.9. As the payments were made by them without noticing the tariff change, they do not propose to contest the same at this point in time without foregoing their right to do so if situation so warrants.

8.6 It is patently clear that the demand for payment of arrear from 11/2006 to 7/2013 by the TNEB is against the Supply Code No.9 which is not protected by Supply Code No.12 for any reason as there is no clerical error or mistake and it was administrative/technical decision made to charge at tariff II(A) while effecting service connection.

9. Written argument of the Respondent :

9.1 It is to state that SC No.402-032-213 and 402-032-214 applications have been signed by CECRI authority agreeing to get supply under tariff V only. But the Test Report for SC No.402-032-213 submitted by CECRI authority for Tariff IIA only. For their purpose the tariff applicable is only tariff V. But based on the CECRI's test report wrongly tariff mentioned as IIA.

9.2 CECRI was informed that about the revision of Tariff and payment of revised amount by Executive Engineer/Distribution/Karaikudi in letter dated 02.9.2013. After allowing one month time the miscellaneous slip was raised on 1.10.2013. There was one month time for payment from the date of raising the slip. Hence, two months time was allowed to CECRI authority for payment of CC arrears.

9.3 The revised test report should be obtained whenever any change in sanctioned demand or change in load and purpose. Hence, revised test report is not applicable in this case. Whenever, the consumer applies for tariff change then such change shall be effected after obtaining a revised test report and the reading taken shall be conclusive proof of electricity supplied. In this case the purpose of usage did not change. Hence, RTR was not obtained.

9.4 The statement given by Executive Engineer/Distribution/Karaikudi during 2014 and reply given by SE/SEDC/Sivaganga in appeal petitions said that no revised test report is required in this case. Hence, there is no contradiction in their statements.

9.5 SC No.402-032-199, 200, 201 were effected on 30.12.2005 for the purpose of Guest House under Tariff V in addition to that SC No.202 and 203 being energized for purpose of B.Tech hostel, which are under tariff V . CSIR-CECRI subsequently changed their purpose. Hence, as per the section 9 subsection 2 tariff changes have been effected only after obtaining a revised test report and the reading had been taken towards conclusive proof of the electricity consumed till the change of tariff. But for 213& 214 there is no purpose change only because of wrong adoption of tariff hence there is no feasibility for refund of short levy collected in respect of SC No.213 & 214 towards error in billing.

10. Findings of the Electricity Ombudsman :

8.1 I have heard the arguments of both Appellant and Respondent. On a careful consideration of the rival submissions the issues to be decided are,

- (i) What is the tariff to be adopted in respect of the said services?
- (ii) What is the provision in the regulation to claim the short fall amount ? whether the claim of the respondent of short levy is confirming to the regulations?
- (iii) Whether the claim of short levy is time barred?

11. Findings on the first issue :

11.1 The Appellant argued that the TNEB's officials have applied tariff IIA after taking the test report on 23.1.2006 by visiting the spot. Hence, it is clear that tariff IIA was applied based on tariff rules prevailing at that time only.

11.2 The Respondent argued that the tariff was wrongly adopted as IIA but the tariff applicable was tariff V only.

11.3 As the issue is about the tariff applicable from 23.1.2006 to 7/2013 the relevant tariff orders are to be referred to arrive at conclusion the tariff on applicable . The following tariff orders cover the disputed period.

(i) Tariff Order TP No. 1 of 2002 dt.15.3.2002: effective from 16.3.2003 to 31.7.2010.

(ii) Tariff Order T.P. No. 3 of 2010 dt 31.7.2010: effective 1.8.2010 to 31.3.2012

(iii) Tariff Order T.P.No.1 of 2012 dt. 30.3.2012 : effective from 1.4.2012 to 20.6.2013

(iv) Tariff Order T.P.No.1of 2013 effective from 21.6.2013 to 12.12.2014.

11.4 The tariff order No. T.P.No. 1 of 2002 dt.15.3.2002 is inforce from 16.3.2003 to 31.7.2010.

11.4.1 The relevant para 4 of part I clause 7.17 of tariff schedule is extracted below :

“7.17 Tariff Schedule

Part 1 : High Tension Supply

xxx xxx xxx

Part 2 : Low Tension Supply

xxx xxx xxxx

4.0 Low Tension tariff II-A

<i>Tariff</i>		<i>Energy Charges in paise/kW hr</i>	<i>Fixed charges Rs./Month</i>	<i>Monthly Minimum in Rupees</i>
<i>LT Tariff II-A</i>	<i>Village/Town Panchayat</i>	<i>340</i>	<i>Nil</i>	<i>50 per month (or) 100 for two months</i>
	<i>Municipality/ Corporation</i>	<i>350</i>	<i>Nil</i>	<i>50 per month (or) 100 for two months</i>

i.) This tariff is applicable to public lighting, public water supply and public sewerage system belonging to village/Town Panchayats, Township areas, Municipalities, Municipal Corporation, TWAD Board.

ii.) xxx xxx xxx”.

11.4.2 On a careful reading of the said para 4(i), it is noted that the tariff IIA is applicable to public lighting, public water supply and public sewerage system belonging to village/town panchayats, Township areas Municipalities, Municipal Corporation, TWAD Board.

11.4.3 As the Streets lights erected in CECRI campus are maintained by the CECRI and not maintained by local body it shall not fall under the category of tariff II-A..

11.4.4 Further, the above utilization will not fall under the tariff category under IA, IB, IC, IIB, IIC, IIIA(1), IIIA(2), IIIB and IV also. Hence, the said services are to be categorised under tariff V only.

11.5 Order No.3 of 2010 dt.31.7.2010 effective from 1.8.2010 to 31.3.2012.

11.5.1 para 9.11.13 of the tariff order No.3 of 2010 dt.31.7.2010 is extracted below :

“9.11 TARIFF SCHEDULE :

xxx xxx xxx

9.11.13 LOW TENSION TARIFF II-A:

<i>Tariff</i>	<i>Description</i>	<i>Energy charges in paise / kWhr</i>	<i>Fixed charges (Rupees / Month)</i>	<i>Monthly minimum (in Rupees)</i>
<i>Low Tension Tariff IIA</i>	<i>Village / Town Panchayat</i>	<i>340</i>	<i>Nil</i>	<i>50</i>
	<i>Municipality / Corporation</i>	<i>350</i>	<i>Nil</i>	<i>50</i>

(1) This tariff is applicable to Public Lighting, Public Water Supply and Public Sewerage System belonging to village/Town Panchayats Township areas, Municipalities, Municipal Corporations, Railway level crossing, TWAD Board, private agriculture wells hired by CMWSSB, village/Town Panchayats Township areas, Municipalities, Municipal Corporations and TWAD Board to draw water for public distribution, Public Water Supply by New Tirupur Area Development Corporation and separate service connection for streetlight in SIDCO and other Industries Department

(2) xxx xxx xxx”.

11.5.2 On a careful reading of the said para 9.11.13(1), it is noted that tariff IIA is applicable to the categories specified in the above para only.

11.5.3 As the streets lights erected in the CECRI campus areas are not public lighting belonging to local bodies and are maintained by CECRI, the above cannot be categorised as tariff II-A.

11.5.4 Further, the above utilization will not fall under any of the tariff category under IA, IB, IC, IIB, IIC, IIIA(!), IIIA(2), IIIB and IV also. Hence, the said service are to be categorised under tariff V only.

11.6 Order No. 1 of 2012 dt.30.3.2012 effective from 1.4.2012 to 20.6.2013

11.6.1 Para 10.13 of tariff order 1 of 2012 dt.30.3.2012 is extracted below :

“10. Tariff Schedule :

xxx xxx xxx

xxx xxx xxx

10.13 Low Tension Tariff II-A:

Tariff	Energy charges in paise / kWh	Fixed charges (Rupees / Month)
Low Tension Tariff II-A	550	Nil

10.13.1 This tariff is applicable to Public Lighting, Public Water Supply and Public Sewerage System belonging to Government/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, Public Water Supply by New Tirupur Area Development Corporation, Public Water Supply in plantations, separate service connections for streetlights for SIDCO and other Industries Department. Lighting arrangements in the Rockfort temple area, its environs and for the roads and pathways leading to temple at Tirchy.

11.6.2 On a careful reading of para 10.13.1, it is noted that low tension tariff IIA is applicable to the categories of users mentioned in the said para only.

11.6.3 As the streets lights erected in the CECRI campus areas are not public lighting belonging to Govt/local bodies and are maintained by CECRI, the above cannot be categorised as tariff II-A.

11.6.4 Further, the above utilization will not fall under any of the tariff category under IA, IB, IC, IIB, IIC, IIIA(1), IIIA(2), IIIB and IV also. Hence, the said service are to be categorised under tariff V only.

11.7 Tariff Order No. 1 of 2013 dt.20.6.2013 effective from 21.6.2013 to 11.12.2014

11.7.1 Para 6.13 of the tariff order No.1 of 2013 dt.20.6.2013 is extracted below:

“6.13 Low Tension Tariff II-A:

<i>Tariff</i>	<i>Energy Charges in paise/KWh</i>	<i>fixed charges (Rupees /Month)</i>
<i>Low Tension Tariff II-A</i>	<i>550</i>	<i>Nil</i>

- i. This tariff is applicable to Public Lighting by Government/Local Bodies and Public Water Supply & Public Sewerage System by Government/Local Bodies /TWAD Board/CMWSSB.*
- ii. Private agriculture wells/private wells hired by Government/Local bodies/CMWSSB/TWAD Board/ to draw water for public distribution.*
- iii. Public Water Supply by New Tirupur Area Development Corporation as long as they supply drinking water predominantly to local bodies/public and Public Water Supply in plantation colonies.*
- iv. Separate service connections for street lights for SIDCO and other industrial estates.*
- v. Supply to Railway level crossings.”*

11.7.2 On a careful reading of said para, it is noted that low tension tariff IIA is applicable to the categories mentiond in para 6.13(i) to 6.13(v) only.

11.7.3 As the streets lights erected in the CECRI campus areas are not public lighting maintained by Govt/localbodies and it is maintained by CECRI, the above cannot be categorised as II-A.

11.7.4 Further, the above utilization will not fall under any of the tariff category under IA, IB, IC, IIB, IIC, IIIA(1), IIIA(2), IIIB and IV also. Hence, the said service are to be categorised under tariff V only.

11.7.5 As per my findings in para 11.4.4, 11.5.4, 11.6.4 & 11.7.4 the service connection No.402-032-213 & 214 are to be categorised under tariff V only. Hence, it is held that the tariff applicable for the said services are tariff V only during the disputed period from 11/2006 to 7/2013.

12. Findings on the second issue :

12.1 The Respondent has claimed a short levy of Rs.4,46,866/- due to wrong adoption of tariff for the period from 11/2006 to 7/2013 in respect of the following services as detailed below :

(i)	SC No.402-032-213	-	Rs.2,47,351/-
(ii)	SC No.402-032-214	-	<u>Rs.1,99,515/-</u>
	Total	-	<u>Rs.4,46,866/-</u>

12.2 The Appellant argued that the above short fall was claimed by the Respondent without any notice to CECRI which is against natural justice.

12.3 The Appellant also argued that as per regulation 9 of the Supply Code, any tariff change has to be effected only after obtaining a revised test report (RTR) and to be billed proportionally based on the meter reading recorded in the RTR. But the licensee has not followed the above regulation. They have changed the tariff from II-A to V without any RTR and retrospectively from 11/2006. The Appellant also cited para No.13.3 and 14.8 of Electricity Ombudsman's Order in A.P.No. 24 of 2014 dt.14.8.2014 in support of the above argument. As tariff for some of the services were changed based on RTR the Appellant argued that the same rule is applicable for these two services also.

12.4 The EE/Karaikudi,i/c in his letter dt.22.11.2014, stated that there is no need to apply the regulation 9 of the Supply Code and also there is no need to take RTR. But, the Superintending Engineer/Sivagangai EDC has referred the Test Report taken on 2006. Hence, the Appellant argued that there are contradiction in Respondent's statement.

12.5 Regarding the error in billing, the Appellant argued that the clerical error referred in the regulation may be an arithmetic error. Deciding a tariff after taking test report by visiting the spot was an administrative /technical decision and can not be termed as a clerical error either on fact or in law. Hence, he argued that the regulation 12(1) is not applicable to this case.

12.6 The Respondent argued that the tariff for the SC No.402-032-213 & SC No.402-032-214 as per the tariff order is V only. But, it was wrongly adopted as II-A by the employees of the licensee. The Respondent argued that the short fall claimed is only the difference between the tariff rate of V & II-A and it is a legitimate claim as the correct tariff is tariff V.

12.7 As per the orders of Ombudsman in AP No.24 of 2014, the tariff to be adopted for the two number disputed services are tariff V only. Hence, the Respondent argued that the tariff adopted for arriving the short fall is correct.

12.8 The Responent citing regulation 12(1) of the Supply Code, argued that the licensee is having right to claim the short fall from the consumer in case of less claim due to clerical error or mistake. Adoption of wrong tariff is a clerical error/mistake only. Hence, argued that as per regulation 12(1) of the Supply Code the short fall claim is correct.

12.9 As the Appellant has cited regulation 9(2) of Supply Code in support of his argument ,the said regulation 9(2) of the Supply Code is extracted below :

9. Meter readings when there is changes in sanctioned demand etc.,

(1) xxx xxxx xxx

(2) *Whenever a tariff change is to be effected in a service connection, such change shall be effected only after obtaining a Revised Test Report (RTR) and the reading taken shall be conclusive proof of the electricity consumed till the change of tariff.*

12.10 On a careful reading of the said regulation, it is noted that whenever tariff change is effected in a service connection, such change shall be effected only after obtaining a RTR and the reading taken on that day is consumption recorded till the change of tariff.

12.11 In this regard, I will also refer regulation 9 of the Distribution Standards of Performance Regulation which is extracted below :

“9. Change of Tariff

A consumer can utilize a service connection given to him for a purpose different from the purpose for which he originally obtained the service connection, only if the same tariff is applicable to the new purpose also. If a different tariff is applicable to the new purpose, the consumer shall apply to the Licensee before changing the purpose and a revised Test Report will be taken indicating the change in the tariff.

The Licensee shall effect change of tariff within seven days from the date of receipt of application from the consumer.

However no consumer shall be permitted to change the tariff of the service connection from any Low Tension Tariff (other than agriculture) to Low Tension Tariff for agriculture.”

12.12 On a careful reading of the regulation, it is noted that whenever there is a change in utilization of the service by the consumer and if the tariff applicable for new utilization is different from the one for which the service was obtained, the consumer shall apply to the licensee before changing the purpose and a revised test report will be taken indicating the change in the tariff.

12.13 In the case on hand there is no change in the purpose of the utilization of the service. The service was utilized for lighting the Roads inside the CECRI campus from the date of effecting the service. Hence, I am of the view, the regulation 9(2) is not applicable here.

12.14 The Respondent argued that the tariff change is not done as per the requested the consumer, but the tariff is wrongly adopted as II-A instead of V due to mistake. Hence, argued that regulation 12(1) of the Supply Code is applicable for this case. The said regulation is extracted below :

12. Errors in billing

(1) In the event of any clerical errors or mistakes in the amount levied, demanded or charged by the Licensee, the Licensee will have the right to demand an additional amount in case of undercharging and the consumer will have the right to get refund of the excess amount in the case of overcharging.

12.15 On a careful reading of the said regulation, it is noted that in the event of any clerical error or mistake in the amount levied by the licensee, the licensee is having right to demand an additional amount in case of undercharging and the consumers are having right to get refund of the excess amount in case of overcharging.

12.16 On a careful examination of the copy of the applications, sanction copies and the test certificates, the following are observed inspect of tariff categorization.

S.No.	Details	SC No.402-032-213	SC No.402-032-214
a.	Application Reg.No	C253/03-04 dt.30.10.2003	C254/03-04 dt.30.10.2003
b.	tariff applied by the consumer	Tariff V	Tariff V
c.	Type of usage mentioned by the consumer	street light	street light
d.	load	1000w	6250 w
e.	Tariff as per sanction copy	Tariff V II(A) (corrected in red)	Tariff V
f.	Test Report	Tariff II(A)	Tariff V

12.17 As per the above details, it is noted that the tariff applied for in the application seeking service connection is tariff V in both the service.

12.18 In respect of SC No.213, the sanction copy and test report say the tariff is II-A and in respect of SC No.214, the sanction copy and test report say the tariff is V.

12.19 As per my findings in first issue, the applicable tariff is tariff V only. As per the Electricity Ombudsman's order in A.P.No. 24 of 2014 also the tariff

applicable for both the service is tariff V only. Both Appellant and Respondent are agreeable that the applicable tariff is V only.

12.20 As the applicable tariff and applied tariff is V, adoption of tariff II-A for the licensee for both the services is only a wrong adoption or a mistake done by the employee of the licensee while raising the bills. Hence, I am of the view that it is a billing error, and the licensee is having right to claim the difference in amount that was not claimed due to wrong adoption of tariff in both the services.

13. Findings on the third issue :

13.1 The Appellant argued that the short fall was claimed for a period of about 6 years. But, as per section 56(2) of the Electricity Act 2003, the arrears beyond a back period of 2 years is time barred and cannot be claimed.

13.2 The respondent argued that the audit short fall raised is only a supplementary bill and the time period of limitation starts only from the date of issue of demand notice citing their internal circular dt.11.10.2011.

13.3 As the Appellant has cited section 56(2) of the Electricity Act 2003, the same is extracted below :

“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity”

13.4 With reference to the applicability of section 56(2) of the Electricity Act, 2003, for limitation, the judgment of Appellate Tribunal for Electricity, 2003 in appeal Nos 202 and 203 of 2006 is relevant and the relevant portion of the judgment is reproduced below :

“Thus, in our opinion, the liability to pay electricity charges is created on the date electricity is consumed or the date the meter reading is recorded or the date meter is found defective or the date theft of electricity is detected but the charges would become first due for payment only after a bill or demand notice for payment is sent by the licensee to the consumer. The date of the first

bill/demand notice for payment, therefore, shall be the date when the amount shall become due and it is from that date the period of limitation of two years as provided in Section 56(2) of the Electricity Act, 2003 shall start running. In the instant case, the meter was tested on 03.03.2003 and it was allegedly found that the meter was recording energy consumption less than the actual by 27.63%. Joint inspection report was signed by the consumer and licensee and thereafter, the defective meter was replaced on 05.03.2003. The revised notice of demand was raised for a sum of Rs. 4,28,034/- on 19.03.2005. Though the liability may have been created on 03.03.2003, when the error in recording of consumption was detected, the amount become payable only on 19.03.2005, the day when the notice of demand was raised. Time period of two years, prescribed by Section 56(2), for recovery of the amount started running only on 19.03.2005. Thus, the first respondent cannot plead that the period of limitation for recovery of the amount has expired”.

13.5 It is clear from above judgment that, even though the liability to pay energy charges is created on the day the electricity is consumed, the charge would become first due only after a bill or a demand notice is served. Therefore, the limitation in the present case also shall run from the date of demand notice.

13.6 In the case on hand, the short fall amount was intimated on 28.9.2013 and was collected on 2.12.2013. Hence, I am of the view that the claim is not time barred.

14. Conclusion :

14.1 In view of my findings in first, second and third issue, given in paras 11, 12 & 13 above, I am unable to accept the prayer of the Appellant and the petition is dismissed.

14.2 With the above findings the A.P.No.42 of 2015 is finally disposed of by the Electricity Ombudsman. No costs.

(A. Dharmaraj)
Electricity Ombudsman

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