



TAMIL NADU ELECTRICITY OMBUDSMAN

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Before The Tamil Nadu Electricity Ombudsman, Chennai

Present : Thiru. S. Devarajan, Electricity Ombudsman

A. P. No. 61 of 2017

M/s Bismi Prawn Farms P Ltd.,
C/o M/s Stephen & Stephen Advocates &
Associates,
No.16, Corporation Shopping Complex,
3rd Avenue, Indira Nagar, Chennai – 20.

. Appellant
(Thiru. Senthil Viswarooban, Advocate)

Vs

The Superintending Engineer,
Nagapattinam Electricity Distribution Circle,
TANGEDCO,
19A Jyothi Nagar,
Sattiyappar East Street,
Nagapattinam 611 001.

. Respondent
(Thiru. M. Ponnusamy, EE/General/Nagapattinam
& Thiru. R. Thamizhselvan, AAO(i/c))

Date of hearing: 29.11.2017

Date of order : 18.05.2018

The Appeal Petition dt. 28.9.2017 filed by M/s Bismi Prawn Farms (P) Ltd., Dheen Complex, O.S.M Nagar, Mayiladurai, C/o. Stephen & Stephen Advocates & Associates, Chennai was registered as Appeal Petition No. 61 of 2017. The above appeal petition came up for hearing before the Electricity Ombudsman on 29.11.2017. Upon perusing the Appeal Petition, counter affidavit of the Respondent and after hearing both sides, the Electricity Ombudsman passes the following order :

Order

1. Prayer of the Appellant:

The Appellant, M/s Bismi Prawn Farms (P) Ltd., have prayed to direct the respondents to refund the electricity bill paid under protest under HT tariff III for the months of 5/2016 to 8/2016 due to non adoption of appropriate tariff.

2. Brief History of the case:

2.1 M/s. Bismi Prawn farms (P) ltd company having 3 nos LT CT services with SC Nos.06-546-001-902, 990 & 469 under Industrial Tariff IIIB is doing the business of aquaculture since 1994 at Perunthottam Village, Sirkali Taluk, Nagapattinam District.

2.2 The company submitted an application requesting to merge all the 3 nos LTCT services into a single service with a demand of 1000 KVA under H.T Industrial Tariff and the same was registered on 11.9.2015. The new HT service No.90 was effected under industrial tariff IA on 10.5.2016.

2.3 The billing for the month of 5/2016 was done under tariff IA (HT Industrial) but the bill for the month of 6/2016 was issued under tariff III(HT Commercial) including shortfall for the month of 5/2016 by revision without any notice. The appellant made an appeal to the respondent to revert back to industrial tariff. The respondent has changed the tariff from Tariff III to Tariff IA from 12.8.2016 only. The appellant filed a petition to CGRF/Nagapattinam EDC to implement the industrial tariff IA for the HTSC No.90 retrospectively from the date of service connection, i.e.from 10.5.2016. But, the CGRF ordered to bill under tariff IA only from 22.7.2016 and to refund the difference in tariff charges for the period from 22.7.2016 to 11.8.2016. Hence, the appellant preferred the present appeal.

3. Order of the CGRF

3.1 The CGRF of Nagapattinam Electricity Distribution Circle issued its order on 8.8.2017, the relevant portion of the order is extracted below :-

“குறைதீர் மன்றத்தின் தீர்ப்புரை :

இரு தரப்பு வாதங்களையும் கருத்தில் கொண்டு மனுதாரர் நேரடி விசாரணையில் கூறியுள்ளவாறு,

1. உயரமுத்த மின் இணைப்பு எண்.90 ஆனது தாழ்வமுத்த மின் இணைப்பிலிருந்து மாற்றம் செய்யப்பட்டுள்ள நிலையில் மின் இணைப்பு உபயோகம் மாற்றம் ஏதுமின்றி ஏற்கனவே தாழ்வமுத்த மின் இணைப்பில் உபயோகப்படுத்தப்பட்ட அதே தொழிலக மின் உபயோகத்திற்கு எவ்வித மாற்றமும் இன்றி உயரமுத்த மின் இணைப்பும் உபயோகப்படுத்தப்பட்டு வருவது தெரியவருகிறது.

2. மனுதாரர் உத்யோக் ஆதார் சான்றிதழை மாவட்ட தொழிலக மையம் அவர்களிடமிருந்து பெற்று கொடுத்துள்ளார்.

3. மேற்படி உயரமுத்த மின்இணைப்பு 90 தொடர்பான விகிதப்பட்டி விளக்கத்தில் தலைமை நிதிக்கட்டுப்பாட்டு அலுவலர் /சென்னை அவர்கள் தொழிலக விகிதப்பட்டியானது பொருட்களை உற்பத்தி செய்யும் உபயோகத்திற்கு வழங்கலாம் என கூறியுள்ளதாலும் மேலும் மாவட்ட தொழில் மையம் இதற்கான சான்றிதழ்களை வழங்குவதற்கான அதிகாரம் உள்ள நிறுவனம் (competent authority) என தெளிவு படுத்தியுள்ளதாலும்,

மேற்படி மனுதாரர் உத்யோக் ஆதாரில் 21.7.2016 அன்று பதிவு செய்ததை கணக்கில் கொண்டு மேற்படி மனுதாரருக்கு 22.7.2016 முதல் விகிதப்பட்டியினை வணிக உபயோகத்திலிருந்து தொழிலக உபயோகத்திற்கு மாற்றி வழங்கலாம் எனவும் 22.7.2016 முதல் 11.8.2016 வரையுள்ள 20 தினங்களுக்கு விகிதப்பட்டி மாறுதலுக்கான வித்தியாச தொகையினை மனுதாரருக்கு வழங்கலாம் எனவும் இக்குறைதீர் மன்றத்தில் தீர்மானிக்கப்பட்டது .”

4. Arguments of the Appellant furnished in the Appeal Petition :

4.1 M/s Bismi Prawn Farms (P) Ltd is a private limited company involving in the business of aquaculture at Perunthurai village, Sirkali Taluk, Myladurai, Nagapattinam District functioning since 08.04.1994. The company has 3 nos LTCT services 06-546-001-902, 990 & 469 under tariff IIIB (Industrial).

4.2 In order to increase its production, the company approached TANGEDCO right from 3/2015 to provide single service connection with a demand of 1000 KVA by merging all the 3 service connections under Industrial tariff. The application was registered on 11.09.2015 for a demand of 1000 KVA under tariff IA (Industrial).

4.3 After having gone through all the relevant documents and certificates from the department of Industries & Commerce dt. 25.04.2007 and certificate of registration of coastal aquaculture farm from the Ministry of Agriculture /Coastal Aquaculture Authority/ Govt. of India dt.28.6.2010 and after having a physical verification of the site to confirm the nature of production and Industry, the HTSC No.90 was effected under Industrial tariff IA on 10.05.2016.

4.4 The billing for the month of 5/2016 was also done on Industrial tariff. But, to the shock & surprise the Deputy Financial Controller has changed the tariff to commercial tariff III without any notice for the month of 6/2016 including shortfall for the month of 5/2016. Immediately this appellant made a fervent appeal to the authorities concerned to revert the tariff to Industrial as the company has involved only on production activities and not on any commercial business.

4.5 The authorities directed to produce the certificate from the Industrial department or license from the Inspectors of Factories which were already submitted at the time of submitting the application for HT service connection. But, the respondent insisted a certificate of existence from the District Industrial Concern and the same was submitted.

4.6 But to our utter dismay the Deputy Financial Controller vide her letter MEMO.NO.SE/NEDC/HGT IDFCIAO-R/RCS IASI F.HT SIC 90/D.449/17, dt 20.07.2017 stated that the Tariff has been changed from HT Tariff III to Tariff IA prospectively from 12.08.2016 in respect of HTSC No.90 of M/s Bismi Prawn farms (P) Ltd. The consumer approached the CGRF/Nagapattinam EDC to get the change of tariff retrospective effect.

4.7 The CGRF though well pleased with the contention and demands of this consumer concluded that

(i) It is clearly evident that the existing LT service connections were merged and given HT service connection and has been utilised for the same purpose for which LT service connections were utilised.

(ii) Complainant produced the Udyog Aadhar certificate from District Industrial Centre.

(iii) CFC/Regulatory cell has clarified to provide with Industrial tariff to this consumer provided on production certificate from Districts Industries Centre.

4.8 However CGRF directed the TANGEDCO to adopt Tariff IA for this consumer only from 22.07.2016 i.e. from the date of submission of certificate of existence from DIC and to refund the difference in Tariff charges from 22.07.2016 to 11.08.2016 within 20 days instead of a direction to adopt the Industrial Tariff right from the date of service connection.

4.9 The Forum failed to note that the Udyog Aadhar certificate submitted on 22.07.2016 is not a primary one but is In addition to the existing certificates from Department of Industries & commerce dt 25.04.2007 and Certificate of registration of coastal aqua culture farm from Ministry of Agriculture / Coastal Aquaculture Authority / Govt. of India dt. 28.06.2010

4.10 The forum failed to note that the Tariff revision done without notice in HT S/ Conn. A/c No. 90 is contrary to the fact that the power was only utilised for production purpose & not otherwise.

4.11 The Appellant requested to restore the tariff of HT Service connection No.90 to its original Industrial tariff IA right from 10.05.2016 as per the code

provisions and to refund the excess amount collected from 10.05.2016 to 11.08.2016 through Tariff revision with interest.

5. Arguments putforth by the Respondent in the Counter affidavit :

5.1 It is respectfully submitted that the statement of the Appellant that the order passed by the CGRF/Nagapattinam EDC is neither analytic nor scientific is utter false since, the CGRF after hearing the Appellant passed the order based on the TANGEDCO Headquarters clarification dt. 18.07.2016.

5.2 It is respectfully submitted that the existing 3 Nos. LT Service connections under Industrial tariff were merged and to have a single HT Service connection. But, the Appellant not furnished the evidence for the production activities and hence, the above HT Service Connection No.90 was billed under HT Tariff-III (Commercial). The Chief Financial Controller/Regulatory Cell/ Chennai has clarified that M/s. Bismi Prawn Farms Pvt. Ltd/Sirkali (HT SC.No.90) may be changed under HT Tariff IA, if they produce certificate from the Industries Department or License from the Inspector of Factories.

5.3 The required certificates has been called for from the Appellant on 27.07.2016. The Appellant has produced the relevant documents on 10.08.2016 and the Tariff has been changed from HT Tariff-III to HT Tariff IA from 12.08.2016 is correct. Further, the Appellant filed a petition at CGRF/Nagapattinam to change Tariff for the period from 10.05.2016 to 11.08.2016. The CGRF has passed order on 08.08.2017 that the Tariff shall be changed from 22.07.2016 based on Udyog Aadhar Memorandum and excess amount to be refunded for the period from 22.07.2016 to 11.08.2016. Further, the Appellant produced certificate of registration of coastal aquaculture farm from Ministry of Agriculture/ Aquaculture Authority/Govt. of India dt. 28.06.2010 which was expired on 27.06.2015 (i.e. Five years validity). So, an invalid certificate was produced by the Appellant.

5.4 Besides, the A.G. audit reviewed the HTSC No.90 file during 2/2017 and observed that " *The Tariff initially adopted under HT tariff III was changed to HT Tariff I since August 2016. As per the prevailing tariff under, HT tariff I is applicable to all manufacturing and industrial establishments and factories register under factories Act, besides, other specified activities like Tea Estates, Heavy Water Plant, Common ETPs, Water supply works and Cold storage unit. Aquaculture activity was not specified in the order. The Circle was advised, in this regard, by TANGEDCO's Regulatory Cell, to adopt HT Tariff-I only, on production of certificate by the consumer from Industries Department or License from the Inspector of Factories . However, the Circle adopted HT Tariff-I from August 2016 based on a certificate from District Industries Centre. The certificate, though not from the competent authority of Industries Department, did not specify the activity as 'Industry'. The basis for adoption of HT Tariff I is not correct as the applicable tariff is HT Tariff-III*". But, the demand notice against the Audit Slip was not issued to the Appellant and again Tariff clarification requested to CFC/Regulatory Cell/Chennai that applicability of tariff in the HT Service Connection No. 90, based on the A.G. Audit Slip on 27.03.2017. The clarification received on 10.04.2017 and the relevant portion is reproduced below:

"Prawn culture has been classified under Manufacturing category and based on this certificate HT SC.No.90 of M/s.Bismi Prawn Farms (P) Limited/Sirkali may be classified under HT Industrial category of HT Tariff I-A."

5.5 Therefore in the facts and circumstances of this case it is respectfully prayed that this Hon'ble Ombudsman may please to dismiss the Appeal Petition No.61 of 2017 filed by the Appellant and thus render justice.

6. **Hearing held by the Electricity Ombudsman:**

6.1 To enable the Appellant and the Respondents to put forth their arguments in person, a hearing was conducted on 29.11.2017.

6.2 Thiru. N. Senthil Viswaroopan, Advocate has attended the hearing on behalf of the Appellant and putforth his side arguments.

6.3 Thiru. M. Ponnusamy, EE/General/Nagapattinam and Thiru. R. Thamizhselvan, AAO(i/c) of Nagapattinam EDC have attended the hearing on behalf of the Respondent and putforth their side arguments.

7.0 **Arguments putforth by the Appellant on the hearing date:**

7.1 Thiru. N. Senthil Viswaroopan, Advocate representing the appellant reiterated the contents of the Appeal Petition.

7.2 The Appellant contended that the HTSC No.90 was effected under Industrial tariff IA on 10.05.2016 only after having gone through all the relevant documents and certificates from the department of Industries & Commerce dt. 25.04.2007 and certificate of registration of coastal aquaculture farm from the Ministry of Agriculture /Coastal Aquaculture Authority/ Govt. of India dt.28.6.2010 and after having a physical verification of the site to confirm the nature of production and Industry.

7.3 The billing for the month of 5/2016 was done only under HT Industrial tariff IA. The respondent has not issued any notice for the change of tariff. Without issuing notice to the Appellant the respondent changed the tariff for the month of 6/2016 including shortfall for the month of 5/2016.

7.4 The Appellant contended that the business of aquaculture being done since 1994 with 3 nos LTCT services under industrial category has not changed their Industrial activity under HT service, only the production capacity has been increased to meet higher demand with HT supply after merging all the 3 nos LTCT supply. Hence, the change of tariff from Industrial to Commercial is not correct.

7.5 The category of supply has been clearly mentioned in the test report itself as industrial Tariff-HT-IA on the date of effecting HTSC No.90. Hence, the Industrial Tariff-HT-IA is applicable from the date of effecting supply on 10.5.2016.

7.6 The Appellant requested to restore the tariff of HTSC No.90 to its original industrial Tariff-HT-IA from 10.5.2016 and to refund the excess amount collected from 10.5.2016 to 11.08.2016 with interest.

8.0 Arguments putforth by the Respondent on the hearing date:

8.1 The Respondents Thiru. M. Ponnusamy, EE/General/Nagapattinam and Thiru. R. Thamizhselvan, AAO(i/c) of Nagapattinam EDC have reiterated the contents of the Counter.

8.2 The Respondent argued that the Appellant submitted the expired certificate of registration of coastal aquaculture farm from the Ministry of Agriculture /Aquaculture Authority/Government of India at the time of registration of HT application.

8.3 The Respondent contended that the Appellant have not furnished the evidence for the production activities and hence the HTSC No.90 was billed under HT tariff -III (Commercial). Based on the clarification from Chief Financial Controller / Regulatory Cell/ Chennai, and on receipt of the required documents from the Appellant on 10.08.2016, the tariff has been changed from HT tariff-III (Commercial) to HT Tariff -IA (Industrial) from 12.08.2016 and is correct.

9.0 Findings of the Electricity Ombudsman

9.1 On scrutiny of the available documents and arguments putforth by the Appellant and Respondents the following are observed.

9.2 The Appellant M/s.Bismi Prawn Farms (P) Ltd have submitted application for HT supply to Superintending Engineer/Nagapattinam EDC on 26.03.2015. Based on this the Superintending Engineer/Nagapattinam EDC vide his Memo No.SE/NEDC/NGT/AEE/Dev/AE/F.HT/H.T/D.No.28/15 dt.20.04.2015 had called for feasibility report from EE/Sirkali. The Executive Engineer in his letter No.EE/O&M/Sirkali/TA/F.HTSC/D.100/15 dt. 07.05.2015 has furnished the feasibility report. On receipt of feasibility report the Superintending Engineer/ Nagapattinam EDC has issued demand notice only on 11.09.2015, i.e. the Respondent took more than 5 months for issuing demand notice to the Appellant.

9.3 The Respondent, Superintending Engineer/ Nagapattinam EDC has called for the required documents along with the demand to pay Application Registration fee and EMD amount in the letter dt.11.09.2015 and HT agreement was executed on 16.10.2015 The test report furnished by the Respondent clearly indicates that the service HTSC No.90 effected on 10.05.2016 is only under tariff HT-IA (Industrial).

9.4 The arguments of the Appellant is that the HTSC no.90 was effected under Industrial tariff HT-IA on 10.05.2016 only after having gone through all the relevant documents, certificates and after having filed inspection of the site duly confirming the Industrial activity of the firm.

9.5 Initial billing was done under HT-IA (Industrial) and later changed to HT – III (Commercial) after one month without any proper notice to the appellant by the Respondent for the reasons only known to them. During the hearing, the respondent replied that the notice for the change of tariff was not issued to the Appellant and approval of the competent authority also has not been obtained. The action of the Respondent is clear violation of Regulation.

9.6 The contention of the appellant that their nature of production activity i.e. aquaculture remains same under both LT & HT supply, only the production

capacity has been increased to meet higher demand and hence the change of tariff from Industrial to Commercial is not acceptable is valid.

9.7 Further in the Test Report of HTSC No.90, the respondent have clearly indicated the tariff category as HT- IA (Industrial). Therefore, no further clarification is required on the category of tariff, since the Respondent have indicated the tariff as HT-IA in the test report only after satisfying themselves convincingly.

9.8 The arguments of the Respondent is that the Appellant submitted expired certificate of registration of coastal aquaculture farm from the Ministry of Agriculture/Aquaculture Authority/Government of India dt.28.6.2010 valid for 5 years at the time of registration of HT application. On scrutiny it is found that when the application was submitted by the appellant on 26.03.2015, the certificate is valid one and it expired only on 27.06.2015.

9.9 Therefore, it is observed that only after expiry of the certificate, the Respondent has issued the demand notice on 11.09.2015, registered the application and executed the HT agreement on 16.10.2015. Further when effecting the HT SC No.90 on 10.05.2016 also, the certificate is invalid. Therefore, the arguments of the respondents that the Appellant had submitted the expired certificate of registration of coastal aquaculture farm from the Ministry of Agriculture /Coastal Aquaculture Authority/Government of India at the time of registration of HT application is not acceptable to me. The issue of expiry of the certificate of registration should have been raised at the time of registration of application and even before issuing the demand notice itself. Therefore I am of the opinion that the validity of certificate is not relevant for the change of tariff.

9.10 Further, the contention of the respondent that the Appellant have not furnished the evidence for the production activities is unwarranted and not a rational one since the Appellant M/s.Bismi Prawn Farms have not changed the

nature of production activities, only the production capacity has been increased to meet higher demand.

9.11 In view of my findings in the foregoing paras I am of the considered opinion that the request of the Appellant to restore the tariff of HT SC No.90 to its original Industrial tariff HT-IA right from the date of effecting supply i.e. from 10.05.2016 and to refund the excess amount collected for the period from 10.05.2016 to 11.08.2016 with interest is acceptable to me.

10. Observation :

10.1 On receipt of feasibility report from the Executive Engineer/Sirkali in 5/2015, the Respondent Superintending Engineer/Nagapattinam EDC has taken 4 months to issue demand notice on 11.09.2015 and later registered the application and executed the HT agreement only on 16.10.2015. The HTSC No.90 was effected on 10.05.2016 after one year from the date of application against the maximum of three months from the date of application being the time period for effecting the new service as per the Standards of Performance prescribed in the Regulations. There is a delay of about 10 months causing considerable revenue loss to the licensee. The delay is observed to be deliberate and intentional.

10.2 Apart from the revenue loss to the licensee the Appellant has also been subjected to mental agony, curtailing the growth of the industry. This kind of attitude may be avoided in the future in the interest of consumer as well as TANGEDCO.

11.0 Conclusion :

11.1 In view of my findings in para 9 above, the Respondent is directed to adopt the tariff of HT-IA (Industrial) from the date of effecting HTSC No.90 and to refund the excess amount collected from 10.05.2016 to 11.08.2016 along with interest applicable to security deposit till the date of payment or at the option of the appellant the same shall be adjusted in the appellant HT SC No.90 within 30 days from the date of issue of this order.

11.2 A compliance report in this regard shall be furnished within 45 days from the date of receipt of this order.

11.3 With the above findings the AP. No. 61 of 2017 is finally disposed of by the Electricity Ombudsman. No Costs.

(S. Devarajan)
Electricity Ombudsman

To

1) M/s Bismi Prawn Farms P Ltd.,
C/o M/s Stephen & Stephen Advocates &
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2) The Superintending Engineer,
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3) The Chairman & Managing Director,
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4) The Secretary,
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5) The Assistant Director (Computer) – **For Hosting in the TNEO Website please**
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