

KERALA STATE ELECTRICITY REGULATORY COMMISSION

Thiruvananthapuram

Present: Shri. C.Balakrishnan, Chairman
Shri.C.Abdulla, Member
Shri.M.P.Aiyappan, Member

September 12, 2006

Petition DP No.27	Dy.No. 00519 dated 02.05.2006	Chief Engineer, Commercial & Tariff Kerala State Electricity Board Vydyuthi Bhavanam, Pattom Thiruvananthapuram Managing Director Kerala Co-operative Milk Marketing Federation Ltd. Milma Bhavan Pattom Place.P.O Thiruvananthapuram	Petitioner Respondent
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ORDER

1. Background

1. 1 The Kerala State Electricity Board (hereinafter called 'the Board'), *vide* letter No. KSEB/TRAC/Comp/Milma/1280/R1/278 dated 29.4.2006 filed a Petition in compliance with the directive in the Judgment dated 3.2.2006 of Honourable High Court of Kerala in WA No. 1609 of 2005 and other connected WPs and WAs in the matter of tariff categorization of HT Milk Marketing Societies, Milma and other milk processing units.

1.2 The Board had introduced HT-IV (Commercial) Tariff category with effect from 15.5.1999 *vide* Gazette notification dated 14.5 99 in exercise of powers conferred by Section 49, 59 and subsection (j) of Section 79 and other enabling provisions under the Electricity (Supply) Act, 1948. As a result, High Tension (HT) electricity consumers engaged in Milk Processing having chilling/freezing plants and/or cold storage units were re-categorized to HT-IV, Commercial Tariff from HT-I Industrial Tariff, with effect from 1.5.1999.

1.3 However, the Board continued to bill these HT consumers under HT-I, industrial tariff category from May, 1999 upto December, 2002. After 18.1.2003 bills were issued to these units under HT-IV, Commercial Tariff by the Board to collect the current charges and the arrears for the period from May, 1999 to December, 2002, which was challenged by M/S Milma, Ernakulam Regional Co-operative Milk Producers Union Ltd, Thripunithura before the Honourable High Court of Kerala. The Honourable single judge disposed the said WP(C) No. 23994 of 2004 directing to revise the bills applying HT-I industrial tariff for the processing and manufacturing units of M/S Milma and HT-IV commercial tariff only for exclusive connections, if any, given to cold storage units for storage and sale purposes, staying all recovery proceedings until revised bills were issued. The Board filed WA. No. 1609 of 2005 on the above judgment before the Honourable High Court of Kerala and the Honourable Division Bench, having heard the appeal along with WA No. 1602 of 2005 filed by M/S Penta Milk products Ltd., delivered a common judgment on 3.2.2006 directing the Board to place the matter before the Kerala State Electricity Regulatory Commission.

1.4 Thus, the Board submitted the petition with following prayers:

- I. "The revision of tariff and classification of the Consumers as per Gazette notification dated 14.5.1999 issued by the Board is valid and the Board is competent to issue such Order.
- II. The classification of M/S Milma and other similarly placed milk processing firms/consumers in the State under HT-IV Commercial Tariff is valid and the respondents who are engaged in the business of collecting milk, subject to essential processing for preserving, packing and selling are liable to pay arrears of charges under commercial tariff (HT-IV) w.e.f 1.5.1999 as notified in the Gazette.
- III. Issue appropriate orders that milk freezing and chilling process carried out for preserving and packing including separating some byproducts, be continued to be billed under HT-IV, Commercial category"

The Commission admitted the Petition on 17.7.2006 and decided to conduct hearing of the parties.

2. Hearing of the Matter

2.1 The parties to the petition were heard in the proceedings of the Commission held on 8.8.2006 and 22.8.2006 in the Commission's Office.

2.2 The Board reiterated its stand and grounds given in the petition and pleaded to uphold the gazette notification dated 14.5.1999 revising and classifying the tariff category of consumers, as empowered by the enabling provisions under The Electricity (Supply) Act, 1948. The Board stated that, accordingly, the H.T. consumer M/s Milma , having major power consumption in freezing and chilling plants should be categorized in HT-IV Commercial Tariff

and the arrears due to the difference in tariff between HT-I, Industrial and HT-IV Commercial should be paid from May 1999 onwards, with the contention that the higher tariff would be applicable in a given premises where electricity would be used for a combination of more than one purpose. The Board argued that the activities such as collection, cold storage, pasteurization and sales of the pasteurized milk could not be termed as manufacturing activities, even though some by-products such as ghee, butter etc. were made; therefore, the process undertaken by these units incidental to the business of selling milk and milk products could only form Commercial activity. As the agreement for supply of HT energy between the Board and the Consumer well established the liability of the Consumer to pay H.T. tariff in force from time to time, the Board contested to justify its claim on arrears from May, 1999 onwards. The Board also relayed that the Commission's Order on ARR&ERC permitted the continuance of existing Tariff and other charges.

2.3 The respondent , Kerala Cooperative Milk Marketing Federation (KCMMF) , popularly known as 'Milma,' stated that KCMMF has 10 processing plants/dairies and 14 chilling plants with combined production capacity of about 9.9 lakh liters of milk per day. Ten dairies and seven chilling plants of KCMMF fall under HT Consumer category.

2.4 The respondent explained that the raw milk collected from the farmers at the village level would be taken to the nearby chilling centers, where it is chilled below 10 deg. Celsius and subsequently transported to the dairies/milk processing plants. The major process at the dairies comprises of pasteurization of milk wherein milk would be heated upto 72 deg. Celsius, followed by sudden cooling down to 4 deg. Celsius.

2.5 The respondent argued that the H.T power connections were availed at their premises for processing of milk which come undoubtedly under industrial

activity. The respondent placed before the Commission copy of agreements executed after the Tariff revision dated after 14.5.1999 between the Board and some of the units of the KCMMF in which the milk processing units were categorized under HT-I, Industrial Tariff. The KCMMF refuted vehemently the Board's contention that these units were wrongly billed due to clerical error under HT-I, industrial Tariff for such a long period from May, 1999 to December, 2002, particularly in the context of various scrutiny, inspections and checks being made by the Board's personnel on the electrical installation/metering as well as the documents such as bills, agreements etc. The respondent objected the Board's action of levying arrears from May 1999 onwards and changing Tariff Category from HT-I, Industrial to HT-IV, Commercial merely based on an internal letter of the Board dated 18.1.2003 from Deputy Chief Engineer to the Special Officer Revenue informing to charge Milma under HT-IV Commercial Tariff. The KCMMF pointed out that from 14.11.2002, *i.e.*, from the date of formation of the Kerala State Electricity Regulatory Commission, it was mandatory for the Board to obtain the Commission's approval for any revision and/or re-categorization of Tariff. Milk being a perishable commodity and an excellent media for growth of bacteria, the respondent emphasized the essentiality of chilling units at the collection centers and cold room at the routing of pasteurized milk packets. The respondent stated that the freezing point of milk which is 0.53 deg Celsius is much lower than the normal range of 10 deg. Celsius to 4 deg. Celsius chilling carried out in their units; and the milk collected in a day is processed and dispatched on the same day, without any cold storage. Considering the above points, the respondent insisted that milk chilling and processing should be included under HT-I, industrial Tariff category.

3. The Commission's Findings

3.1 The gazette notification dated 14.5.1999 announcing the tariff revision and introduction of HT-IV, Commercial category by KSEB is legally sustainable as the Board was empowered to determine tariff and terms and conditions for Supply as per Section 49, 59 and subsection (j) of Section 79 and other enabling provisions under repealed statute, viz., The Electricity (Supply) Act, 1948.

3.2 Determination of Tariff under Section 86(1) (a) of the Electricity Act, 2003 is one of the major functions of the Commission, wherein the tariff categorization would be covered. However, from its inception, Kerala State Electricity Regulatory Commission approved the continuation of the existing tariffs and other charges in all the previous orders on ARR&ERC of the Board.

3.3 The activity of dairies engaged in production of milk and milk products is essentially a manufacturing activity. Reference is made to Clause 1520, manufacturing of dairy products under Section D of manufacturing category of the United Nations International Standard Industrial Classification (UN ISIC). The Ministry of Statistics and Programme Implementation, Government of India had also adopted and developed the Standard Industrial and Occupation Classification on the basis of the UN International Standard Industrial Classification (ISIC) of all Economic Activities.

3.4 The Stand alone chilling and cold storage units operated in separate premises engaged in non-manufacturing activity and availing separate HT service connections shall be treated as Commercial units.

3.5 The Commission is not inclined to accept the contention of the Board that “clerical error” delayed the submission of bill as per the revised tariff to the respondent from May 1999 to December 2002. It is necessary to mention here that the Board while performing the stupendous task of meeting electricity supply obligations to the consumers in the State, overlooked what was so called as “wrong billing” for a period of almost little less than three years, which could only be construed as a grave dereliction of duty. And on the very same ground the respondent is legitimate to seek most lenient consideration as far as the 'amount of arrears', if any, is concerned.

4. The Commission's Order

In view of the foregoing, the Commission Orders the following:

4.1 The Dairy plants of KCMMF engaged in production of milk and milk products in a given premise having HT Electricity service connection shall pay electricity charges applicable to the HT-I, Industrial category, as per the bills raised on these plants by the Board in line with the Tariff Orders in force from time to time.

4.2 KCMMF Units engaged in chilling and/or cold storage unit(s) under a given HT Electricity service connection shall pay electricity charges applicable to the HT-IV, Commercial category, as per the bills

raised on these Units by the Board in line with the Tariff Orders in force from time to time.

4.3 The Board shall allow interest free installments to KCMMF in the case of arrears payable, thereof, if any.

The petition No: DP27 from the Kerala State Electricity Board is disposed of accordingly.

Sd/-
M.P.AIYAPPAN
MEMBER (F)

Sd/-
C.ABDULLA
MEMBER (E)

Sd/-
C.BALAKRISHNAN
CHAIRMAN

Authenticated copy for issue

Secretary

List of Participants during the Hearing

Hearing dated 08.08.2006

1. Shri. Johnson Jacob, CE, TRAC, KSEB
2. Shri. Ramesh Babu, Dy.CE, TRAC, KSEB
3. Smt. Mini George, EE, TRAC, KSEB
4. Shri.Prasad .S, AEE, TRAC, KSEB
5. Shri.Firoz.K. Robin Counsel, KCMMF
6. Shri.Jimmy Abraham, Project Manager, KCMMF
7. Shri.C.P. Thomas, Consultant, KCMMF

Hearing dated 22.08.2006

1. Shri.Johnson Jacob, CE, TRAC, KSEB
2. Shri.Ramesh Babu, Dy.CE, TRAC, KSEB
3. Shri.Prasad .S, AEE, TRAC, KSEB
4. Shri.Firoz.K. Robin Counsel, KCMMF
5. Shri.Jimmy Abraham, Project Manager, KCMMF
6. Shri.C.P. Thomas, KCMMF
7. Shri.V.N. Kesavan, Manger, M&G, Milma, MRCMPU
8. Smt. Shirly.K. George, Asst. Manger, Plant, ERCMPU