

KERALA STATE ELECTRICITY REGULATORY COMMISSION

THIRUVANANTHAPURAM

PRESENT: Shri. C. Balakrishnan, Chairman
Shri. M.P.Aiyappan, Member

Date : January 9, 2008

Petition DP No.36	Dy.No. 01084 dated 09-10-07	M/s KPL Oil Mills Private Limited, Irinjalakuda Vs Kerala State Electricity Board and Others	Appellant Respondent
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ORDER

1. Background

- 1.1 The Petition was filed by M/s KPL Oil Mills Limited. The petitioner is a SSI oil manufacturing unit with the brand name 'KPL Shudhi'. The entire process is carried out in two building with two electrical connections. The final stage of manufacturing process viz grading, filtering and packing of coconut oil is conducted in the building No.9/683, Madayikonam Panchayat, with an electricity connection bearing consumer no. 3505 of Electrical Section Karuvannur, Irinjalakuda Circle. KSEB was collecting electricity charges from the petitioner under LT IV (industrial) tariff till 9-12-2003.
- 1.2 On the basis of the inspection by the Assistant Engineer, APTS, Palakkad on 21-11-2003, and the inspection report and Mahazar (exhibit -P1) thereon, tariff for the alleged building was changed from LT IV to LT VII-A and a bill of Rs.37,806/- was issued to the petitioner. The Petitioner approached the Hon. High Court vide writ petition No.40896/2003(R) challenging the Mahazar (exhibit P1) and the Hon. Court stayed further proceedings with a condition of remitting Rs.10000/- by the petitioner to KSEB. The Court disposed the petition on 29-6-2006, directing the petitioner to prefer statutory appeal before the Appellate Authority.
- 1.3 The Appellate Authority, (Dy. Chief Engineer, Irinjalakuda) considered the petition and passed an order dated 12-9-2007 rejecting the contentions of the petitioner, and KSEB issued an arrear bill for an amount of Rs.7,48,610/-. The petitioner again approached the Hon. High Court by filing a petition (No.29362/07) challenging the order of the Appellate Authority. Hon. High

Court disposed the petition directing the petitioner to approach the State Electricity Regulatory Commission stating the reason that the matter under challenge is on tariff change. Hence this petition.

2. Hearing on the appeal

- 2.1 The Commission heard the matter on 28-11-2007. The Petitioner was represented by Advocate Shri. Renil Anto. The petitioner stated that the electricity supply to the unit (consumer no. 3505) is under disconnection by KSEB for non payment. During the hearing, the petitioner requested the Commission to issue orders for reconnection and agreed to pay 30% of assessed amount. KSEB stated that, if 50% of the assessed amount is remitted under Section 127, the connection can be restored. The Commission issued an interim order on 28-11-2007 directing KSEB to reconnect the consumer after accepting 50% of the assessed amount and posted the matter for further hearing on 12-12-2007. The Commission also sought service connection details from KSEB to the alleged premise.
- 2.2 The matter was heard again on 12-12-2007. The petitioner stated that as per the tariff notification vide B.O.(FM) No.1462/02/TRAC/TO-1/2002 dated 24-10-2002, Oil industry included under LT IV tariff as Oil Mills, and as per exhibit P1 Mahazar it was re-grouped as LT VII-A Commercial. The petitioner is engaged in the manufacturing of coconut oil and no commercial activity is carried out in the said premises. The petitioner is purchasing copra and converting the same into pure coconut oil, after undergoing several procedures of production. The process of manufacturing of coconut oil begins from drying coconut and later upto the packing of coconut oil under the brand name 'KPL Shudhi'. The entire processing including filtering and packing are part and parcel of oil manufacturing industry and therefore charging under LT VII-A for a production/industrial unit is illegal and unjustifiable.
- 2.3 The petitioner also alleged that there was no statutory notice issued to the consumer for tariff change and unilateral alteration of tariff is illegal and irregular. The petitioner argued that manufacturing process is a 'systematic activity' in which a product is changed to a new one after various production procedures. Since the final product needs more purity and quality it has to be properly processed and packed in a clean and hygienic area. In case of extraction of oil from copra, the area where extraction is carried out would be normally full of dust and other wastes which require cleaning every time. The Counsel appearing for the Petitioner stated that, the last stage of manufacturing is done in the building (No.9/583) mainly due to hygiene requirements and lack of availability of space in

their oil mill. The raw oil from the parent KPL Oil Mill is transferred to the said premises, where several stages of sieving are done to remove impurities and foreign particles. The manufacturing process is complete when the final product is purified and packed, which is ultimately sold through distributors. The entire stock is billed from the parent unit KPL Oil Mills. No oil is purchased/brought from outside in the alleged premises.

- 2.4 The Counsel for the petitioner argued that the Appellate Authority did not consider the merits and facts of the petitioner and issued the Order. The order says that *“the Mapranam Unit of KPL Oil Mills is revealed as a premises for filtering, grading and hygienic packing of coconut oil where the processing is minimal and does not lead to a real transformation.”* Hence the Authority has admitted that there is processing in the petitioner’s alleged unit, though it is minimal.
- 2.5 The petitioner is a micro manufacturing unit certified by Industries Department Government of Kerala. It is covered under the Factories Act, which defines manufacturing process as any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up etc., of any article or substance with a view to its use, sale, transport, delivery or disposal.
- 2.6 The petitioner also contended that even if it is conducting packing alone in the alleged unit, it come under the definition of ‘manufacturing process’ as found by the Appellate Tribunal of Electricity (APTEL) in the Kailas Cashew Export Case. In the Kailas Cashew Case, the APTEL found that machineries mentioned in the mahazar report is used for cashew processing and packing and ruled that packing unit is not a commercial unit but as an industrial production unit for which LT IV tariff is applicable. The same set of facts are literally applicable to the petitioner. Considering the above grounds, the petitioner prayed among other things, that the alleged unit to be classified under LT IV tariff and declare the filtering and packing of oil as part of industry.

3. Response of KSEB

- 3.1 KSEB was represented by the Chief Engineer (Commercial and Tariff). KSEB stated that KPL Oil Mill Limited, Irinjalakuda, is a HT consumer vide consumer No HTB 8/727, engaged in the extraction coconut oil and marketing under the brand name ‘KPL Shudhi’. The connection for Consumer No. 3505 in the building 9/583 in Madayikonam Panchyath was in the name of Sri K.R. Babu, Ganga Oil Mills for operating an oil mill. During the inspection of APTS Palakkad, on 21-11-2003, it was found that electricity was used for purposes other than for which it was availed

by the consumer. This amounts to violation of agreement and hence unauthorized use of power. The site mahazar prepared by APTS was acknowledged Shri. P.V Noble, the packing officer. On 5-12-2003, Junior engineer of Electrical Section Karuvannur assessed the connected load particulars. Shri Noble admitted that the activity performed in the premises is packing of coconut oil. Accordingly, invoice was prepared as per Section 126(5) of Electricity Act for an amount of Rs.37,806/- and tariff was changed to LT VII(A.)

3.2 KSEB stated that the APTEL order on Kailas Cashew is challenged in the Hon. Supreme Court and hence cannot be treated as final verdict. In the said premises packing is carried out and there is no extraction of oil, for which the original connection was provided. The tariff categorization criteria is based on the purpose for which electricity is used and any other classification/categorization/nomenclature issued by any other department/agency or body other than KSERC cannot be considered for tariff determination.

3.3 The equipments /machines installed in the above premises of the petitioner did not contain any equipment used for extraction of oil. The filtering and packing is performed to enhance the marketability and commercial value of the product only hence it is appropriate to treat it as purely commercial venture. The petitioner admitted in the petition that no operation of oil mill is performed in the premise except filtering, grading and packing.

3.4 KSEB in their letter dated 10-12-2007 stated that the original connection for the said premises was given on 2-11-1981 to Shri Harshan, Ganga Oil mills. The ownership was subsequently shifted to Shri K.R. Babu on 10-7-1987 with connected load of 61 HP. The present connected load is 34 kW. KPL Oil mill is using the premises on lease based on the agreement dated 14-1-2002. The service connection is in the name of Ganga oil mills. In the lease deed it is mentioned that Ganga oil mill is taken on lease for functioning as godown and packing of coconut oil and for keeping the accessories required for the same. The ownership of the connection was not transferred in the name of KPL Oil Mill. Hence the action of petitioner falls under Section 126 of Electricity Act, unauthorised use of power. KSEB requested that the consumer number 3505 to be categorized under LT VIIA and permitted to recover the penalty including penal interest as per rules.

4. Commission's Finding

4.1 The Commission during the hearing sought clarification from the petitioner that the present petition preferred as an appeal against the Order of Appellate Authority or a petition for tariff change. The petitioner stated that he is aggrieved by the order of

the Appellate Authority and the petition is for change of tariff from LT VIIA to LT IV. Further, Hon High Court has directed the petitioner to approach KSERC. The Commission has clarified during the hearing that the appeal against the order of the Appellate Authority cannot be entertained by the Commission. Since the matter is relating to tariff change, the Commission decided to hear the matter in detail. In the present case, the issue is whether petitioner is eligible for tariff under LT IV or not. The petitioner's contention is that filtering and packing is part of the manufacturing process and it is a continuous process but in two premises. The petitioner also stated that there is no purchase of oil from outside, but only transfer of oil from the parent unit to the alleged unit. The petitioner also objected to the contention of KSEB that, the connection is in the name of Ganga Oil mills, by stating that the bills are issued in favour of KPL Oil and not Ganga Mills. KSEB has stated that, though the bills were issued in favour of KPL Oil Mill by virtue of the lease document and the ownership was not changed in favour of KPL Oil. The Petitioner admitted that the premise is taken on lease due to lack of space and hygiene conditions in the parent Unit. The petitioner has also produced copy of test report dated 27-12-2002 submitted before KSEB to reduce the connected load, which was submitted in the name of KPL Oil. KSEB however, did not object the claims of the Petitioner in this regard.

4.2 As per the tariff existed during the currency of dispute, LT IV industrial tariff is applied to "Grinding mills, Flour Mills, Oil Mills, Rice mills, Saw mills, ice factories with or without cold storage etc....." The tariff is applied to 'Oil mill' specifically and not for 'Oil Industry' as argued by the Petitioner. If the tariff was applicable for 'oil industry', perhaps the contention of the petitioner could have been acceptable as the manufacturing process of entire oil industry can be treated as same. As admitted by the petitioner, the activities in the cited premises are filtering and packing. Hence, the Commission is of the view that the activities of 'filtering and packing of oil' cannot be treated in the same parlance of 'Oil mill' for which industrial tariff is applicable, especially in a situation where, process is carried out in two premises. Filtering and packing may be as part of the manufacturing process of oil Industry. But the LT IV industrial tariff is given for 'oil mill', which is in a limited sense. However, there are instances where entire 'manufacturing processes' of the oil industry may be under one roof, which is billed under industrial tariff for practical convenience. The cited premise is non-contiguous with the parent unit and the petitioner has not claimed that ownership was changed in favour of KPL Oil. Hence, the premises can only be treated as 'standalone connection', and cannot be treated as 'Oil Mill' eligible for industrial tariff.

4.3 The petitioner contended that in the Kailas Cashew case, APTEL has considered similar case and allowed industrial tariff. KSEB argued that APTEL order on Kailas

Cashew was challenged in the Hon. Supreme Court and hence cannot be treated as a settled case. The Petitioner objected to the same and argued that the case was dismissed by the Hon. Supreme Court even in the admission stage itself. Petitioner placed the Order of Hon. Supreme Court before the Commission.

- 4.4 The Commission has perused the order of APTEL on Kailas Cashew. It is stated in the Order that:

“14. In view of the above finding, we are constrained to allow both the appeals and set aside the impugned order. We hold that the processing and packing units of cashew kernels with activities as described in Para 9 above, shall be placed in category LT IV for the purpose of electricity charge as was being done by the respondent No.1 before coming into force of the tariff order dated 1-4-2003.” (emphasis added)

It is clear that the said order has limited application in the case of processing and packing of cashew kernels, and not a general case to be applied in favour of the petitioner.

The question now remains on the bill raised by KSEB against the petitioner for change of tariff including the surcharge and penal interest for unauthorized use of power. The Commission is constrained to consider the lapse of KSEB in this regard. During the present proceeding, it was clear that the petitioner had taken earnest effort to appraise KSEB on change of connected load while taking the premises on lease in favour of KPL Oil Mills as evidenced by the test report dated 27-12-02. It is also pertinent to mention that KSEB did not challenge the contention of the petitioner in this regard. Thus, it squarely falls on the responsibility of KSEB field engineers to assess the nature of use of electricity while accepting the test report and to categorize the consumer in the appropriate tariff. The connected load and machineries mentioned in the test report is not materially different from that of the one produced by KSEB before the Commission during the present proceedings. There was no mention of oil extraction machine in the test report, and the concerned officers of KSEB should have categorized the cited unit under LT VII-A at the time of test report itself. If the cited unit was categorized correctly then, the question of ‘unauthorized use of power’ wouldn’t have arisen. The petitioner argued that no notice was also given to the petitioner for tariff change. This contention is to be accepted in the light of application for load reduction and the test report submitted to KSEB. The change of tariff was effected after the inspection of APTS on 21-11-2003 only. In such circumstances, it is not fair to impose penalty and penal charges on the consumer for the lapse of KSEB in this regard.

5. Commissions' Decision

5.1 Based on the above, the Commission finds that the building No.9/683, Madayikonam Panchayat, with a electricity connection bearing consumer no. 3505 of Electrical Section Karuvannur, Irinjalakuda Circle, is not eligible for tariff under LT IV as the nature of use of electricity is not for the purpose of milling oil and shall be billed under LT VII-A tariff. KSEB is responsible for appropriately fixing the tariff while accepting the test report and at the time of reduction of connected load. It is evident from the documents presented before the Commission that same was not carried out by KSEB diligently and hence the Consumer cannot be entirely penalized for that. KSEB shall withdraw the bill of Rs.7,48,610/- issued in favour of the KPL Oil Mill and issue a new bill to the petitioner under the prevailing LT- VII(A) tariff from the date of acceptance of test report or date of commencement of operations by M/s KPL Oil Mills in the said premises, which ever is later. Interest on belated payments limiting to twice the bank rate shall only be collected from the date of test report. Excess if any paid by the petitioner as on date, shall be adjusted against the future bills.

5.2 The matter is disposed and ordered accordingly.

Sd/-

M.P. Aiyappan
Member

Sd/-

C. Balakrishnan
Chairman

Authenticated copy for issue

Sd/-
Secretary (in charge)