

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:

Thiru M.Chandrasekar Chairman
Dr.T.Prabhakara Rao Member
and	
Thiru K.Venkatasamy Member (Legal)

M.P.No.14 of 2020

Thiru V.U. Maruthachalam
S/o. Uchakonar
1/3A, Duraisamy Pillai Street
ELGI Nagar Phase I
Vellalore
Coimbatore – 641 111.

... Petitioner
(Rep.by Thiru S.Gandhi)

Versus

1. The Superintending Engineer / South
TANGEDCO
Tatabad
Coimbatore – 641 012.
2. The Chairman and Managing Director
TANGEDCO
144, Annasalai
Chennai.

..... Respondents
(Thiru M.Gopinathan
Standing Counsel for TANGEDCO)

Dates of hearing : 28-07-2020; 18-08-2020; 25-08-2020;
01-09-2020; and 08-09-2020

Date of Order : 10-11-2020

1. Prayer of the Petitioner in M.P. No.14 of 2020:-

The prayer of the Petitioner in M.P.No.14 of 2020 is to order to classify “laundry” above 12 KW of power under LT Tariff III B and to direct the TANGEDCO to refund the excess amount collected under Tariff V with compensation as the Commission thinks fit.

2. Facts of the Case:-

2.1. The petitioner let the service premises having Service Connection No.03-253-001-2883 to M/s. Shine Fabcare with for laundry industry. The service was effected when M/s. Shine Fabcare was occupying the premises of Service Connection No. 03-253-001-2883 with a connected load of 31.84 KW for the purpose of laundry under Tariff III B. The connected load at the time of effecting service was 31.84 K.W.

2.2. The industry of M/s.Shine Fabcare moved the industry to the premises having Service Connection No.03-253-001-3184 with the same machineries on 19/05/2014 with same Tariff III B for a convenience of lesser sanctioned load and avoid higher fixed charges.

2.3. On 13-09-2017, the Assistant Executive Engineer / Pothanur, inspected the above premises and found that, the tariff applicable to laundry industry was only Tariff V and petitioner’s action tantamount to theft of energy under section 135 of the Electricity Act, 2003.

2.4. On the said findings, the Assistant Executive Engineer / Pothanur informed that the compounding charges of Rs.20,000/- and extra levy Rs.1,04,995/- be paid immediately otherwise the case would be processed as theft and the Service Connection would be disconnected. To avoid criminal case, it was informed to pay Rs.1,24,995/-. Fearing the criminal case and consequence, the petitioner managed to pay the entire penalty of Rs.1,24,995/- on that day.

2.5. Subsequently, the applicable tariff was changed to LT Tariff V and now the petitioner is paying the charges accordingly.

2.6. On consultation with known people, the petitioner made an appeal to the Superintending Engineer / South / Coimbatore about the validity of tariff applicable on 03-04-2018.

2.7. After a lapse of 19 months, the Superintending Engineer / South / Coimbatore rejected the petitioner's request on the basis of certificate issued by "Udyog Adhaar" and also for other reasons that there is no manufacturing activities. The letter was numbered as க.எண்.மே.பா.பொ/கோ.மி.ப.வ./உ.செ.பொ./பொது/உ.பொ/கோ.3184, வெள்ளலூர்/ அ.எண்.2435/2019, நாள் 07/11/2019 and served to me on 09-11-2019.

3. Contentions of the Petitioner:-

3.1. The tariff order now in force under section 6.2.9.5 classifying micro industries III-A(1) read as follows:-

"This tariff is applicable to small Gem cutting, waste land development, laundry work and common effluent plants."

3.2. The aforesaid tariff order also states under section 6.2.11.1 for LT Tariff III B:-
“This tariff is applicable to all industries not covered under LT Tariff IIIA (1) and III A (2). All industries covered under LT Tariff III A (1) and III A (2) shall also falls under this tariff category if the connected load of such service exceed 12 KW”.

3.3. The Electricity Act, 2003 also empowers the Commission to differentiate the tariff in accordance to the “purpose” and “load” under section 62 (3) which reads as:
“..... that may differentiate according to the consumers land factor, power factor, voltage, total consumption of electricity during specified period or the time at which the supply is required or geographical position of any area, the nature of supply and the purpose for which the supply required.”

3.4. The definition of the Commission under III A (1) calls “Laundry” as industry. It reiterates the same under LT Tariff III B saying “that industries not covered under III A (1) and III A (2)”. The purpose of supply for the classification of tariff as empowered by the section 62 (3) of Electricity Act, 2003 both under III A (1) and III B, “the Laundry” is classified as industry. It is a firm declaration of the Commission under section 6.2.11.1 of tariff order that

“all industries covered under LT Tariff III A (1) and III A (2) shall also falls under this tariff category connected load of such service exceed 12 kw.”

3.5. The only difference between the industries classified under III A (1) and III A (2) and III B is the connected load. It can be simply understood, if connected load exceed 12 kw, it automatically comes under III B. It is true that the industry M/s.Shine Fabcare shifted to the premise owned by the petitioner classified under III

B with the same purpose of laundry. It is also true that accepted the applicable of tariff as III B while effecting the service connection 003-253-001-3184 with the same machineries. The action had not violated the Tariff Order of the Commission. The actions are confirmatory to the Tariff Order.

3.6. On the argument of the Superintending Engineer, that there is no “manufacturing” the petitioner submitted that gem cutting, development of waste land is not producing any manufactured products. It simply adds value to the product existing.

3.7. The dying units are classified by the TANGEDCO as industry under Tariff III B. They are not manufacturing any products. They only add value to the existing product.

3.8. Recycling “waste” like plastics, into “usable” is an industrial purpose as now existing. It is not manufacturing but converting the waste into the other usable format.

3.9. Laundry is a process of turning the waste unusable cloths into usable cloths and extending their life of usage than dumping them as “ waste”.

3.10. The enclosure to Superintending Engineer / South, Coimbatore letter dated 07-11-2019 from Chief Financial Controller largely discusses about Board internal audit remarks but does not discuss about the tariff order of the Commission.

3.11. The functions that required without altering or adding any value to the product are called services. To cite examples of transporting the product that is to say logistic and selling the product that is to say retailing, communicating the text as communication, lodging as hospitality is treated as services. Therefore, the reasons of the Superintending Engineer to conclude purpose as “no manufacturing” so therefore as “services” is short of classifying the purpose of industry in against the order of the Commission vide the Tariff Order dated 11-08-2017.

4. Contentions of the Respondents:-

4.1. The petition is not maintainable under law or as per the regulations in vogue and has to be dismissed on limine.

4.2. The petitioner has not approached this Commission with clean hands, instead, camouflaging himself as a petitioner seeking tariff clarification, has approached with a prayer to refund the amount he had paid to the TANGEDCO towards extra levy and compensation charges levied under Section 135 of Electricity Act, 2003.

4.3. The appropriate forum having jurisdiction to decide on excess billing or refund, lies with CGRF and the TN Electricity Ombudsman as per the 'CGRF & Ombudsman Regulations 2004' and therefore this petition needs to be dismissed at the instance for lack of jurisdiction.

4.4. The LT Service Connection Account No. 253-001- 3184 with connected load of 21.94KW charged under Tariff V in the name of the petitioner in the said premises

and the same is being utilized by M/s.Shine Fabcare, a service oriented company doing laundry services, which is not denied. Later on the tariff was changed to Tariff III B during 04.06.2014. It is also not denied that the above service connection was booked under section 135 of Electricity Act, 2003 based on the Tariff Order dated 11.08.2017. The order states that," the commercial tariff is applicable to consumers not categorized under LT 1A, 1B, IC, IIA, IIB(1), IIB(2), II C, IIIA1, IIIA2, III B, IV and VI. Further, the TNEO/Chennai order dated 20.07.2015 that the mechanized laundry is service oriented enterprises and could not be categorized under Tariff III B and hence to be categorized under Tariff V also confirms that the above service connection has to be under Tariff V only. The petitioner having accepted the mistake had paid the Extra levy and compounding charges.

4.5. It is specific to state that the petitioner has not approached the appropriate forum or any special court against the assessment order made under section 135 of Electricity Act, 2003. It is also stated that the tariff of the subject service connection was converted from Industrial to Commercial based on the consumer application only.

4.6. The petitioner had applied to this respondent to change the tariff of his service connection (effected to laundry application) from commercial to industrial, Further he had also requested to refund the amount he had paid to TANGEDCO towards short levy and compensation charges. As per the Tariff order, the industrial tariff III B is applicable only to manufacturing industries. As per clause 6.2.11.3 if Tariff order dated 11.08.2017, the intending consumers applying for service connection under Tariff III B claiming to have established the industries engaged in the manufacture or

production of goods shall produce Udyog Aadhar Memorandum from District Industries Centre.

4.7. The Udyog Aadhar memorandum produced by the petitioner which was issued by the District Industries Centre shows that laundry industry comes under service category. A service industry does not have any production process of converting raw material into finished goods. The laundry service has been categorized by the DIC as service industry. Therefore, the request of the petitioner for restoring the tariff to industrial tariff was denied based on the above grounds.

4.8. In a similar case filed with Tamil Nadu Electricity Ombudsman, vide Appeal No.16 of 2015 between M/s. Orion Venture Vs. TANGEDCO, the request of the petitioner to consider their laundry service under subsidized tariff was rejected by the TNEO vide order dated 20.07.2015 stating that "the mechanized laundry is a service oriented enterprises and cannot be classified as a manufacturing Unit and it cannot be categorized under Tariff III B and hence to be categorized under Tariff V.

4.9. TANGEDCO had taken all actions as per tariff orders, regulations and law. If the petitioner is really aggrieved, he has to approach only the appropriate forum and not invoking the jurisdiction of this Commission.

4.10. The tariff being adopted to a Service connection is based on the nature of use of electricity by the intending consumer and the Tariff classification issued by the Commission for that particular industry. The Commission tariff order shows that industries engaged in the manufacture or production of goods may apply for service

connection under LT Tariff III B on production of certificate from the District Industries Centre.

4.11. The Udyog Aadhar memorandum produced by the petitioner which was issued by the District Industries Centre shows that laundry industry comes under service category. The Appellants enterprises namely Washing and Laundry service does not find a place in first schedule to Industries Development & Regulations Act, 1951. As per the Udyog Aadhar memorandum produced by the petitioner their enterprise has been registered as small enterprises under the service category and not under manufacturing category.

4.12. The consumer is also not in a position to produce any government related records to substantiate his claim that laundry service is a manufacturing industry. As per clause 6.2.11 Tariff III B is applicable to all industries not covered under LT Tariff III A (1) and III A (2).

4.13. All industries covered under III A (1) and III A (2) shall also fall under this category if the connected load exceeds 12 KW. The Laundry Industry comes under service category and could not be considered as a manufacturing industry. Thus Laundry work could not be considered under Tariff III B. The claim of the petitioner to do so is merely based on hearsay from persons known to him and not based on any specific provisions made in the Regulations or orders or Acts. Incidentally, it is ironical that in one of letters given to the Respondent, the petitioner had asked to effect the tariff change to his service connection to Tariff III B without demanding any

certificate, whereas the TNERC condition to effect III B is to get the Udyog Aadhar Certificate from the intending consumer for having industry.

4.14. In the above circumstances, the applicable tariff for Laundry service is commercial and the same also confirmed by the Tamil Nadu Electricity Ombudsman, Chennai that the mechanized laundry is not a manufacturing unit and it cannot be classified under industrial category and to be classified under commercial category. Hence, the petitioner request to change the tariff to industrial category does not arise and the action taken by this respondent in the above issue is proper and as per rules in vogue.

5. Findings of the Commission:-

5.1. The prayer of the Petitioner in Miscellaneous petition is to order to classify “laundry” above 12 KW of power under LT Tariff III B and to direct the TANGEDCO to refund the excess amount collected in his Service Connection No. 03-253-001-3184 (under Tariff V) with compensation as the Commission thinks fit. Further the petitioner has requested the Commission to treat this petition as by an individual consumer for tariff clarification with reference to the prevailing Tariff order in respect of “Laundry” purpose.

5.2. Any consumer grievance on excess billing, wrong adoption of tariff or any other defect/deficiency in electricity provided by the licensee, is lies within the jurisdiction of Consumer Grievance Redressal Forum and the TN Electricity Ombudsman as per the TNERC’s Regulations for CGRF and Ombudsman 2004; it is needless to say that the above prayers are to be filed before CGRF, hence the

prayers which ought to be heard by CGRF are not taken by us; however, the consumer in this petition has sought clarification on applicability of tariff for the usage of power for “Laundry” above 12 KW, therefore we look into this issue in line with the tariff order issued by the Commission.

5.3. Tariff order in T.P.1 of 2017, dated 11-08-2017 –

As stated under para 6.2.9.1 to 6.2.9.4, Commission classified the tariff category LT – IIIA(1) basically for the supply whose contracted load shall not exceed 12 KW; and this tariff is made applicable to Cottage and tiny industries, Micro enterprises engaged in the manufacture or production of goods pertaining to any industries - specified in the first schedule to Industries (Development and Regulations) Act 1951 or having the cottage industries certificates from the industrial department /acknowledgement issued by the District Industries Centre under the Micro Small and Medium Enterprises Development Act, 2006 (Act 27 of 2006) for manufacture or production of goods.

In addition to the above, Commission specifically classified certain other purposes as mentioned under para 6.2.9.5 to 6.2.9.8 including ‘*laundry works*’ under LT – III A (1) category though these activities were not finds place in the aforesaid manufacturing industrial activities. It was Commission’s conscious decision to incorporate certain categories by permitting them for its limited load under this LT III A (1) in respect of small business entrepreneurs according to earlier tariff orders.

6.4. In this miscellaneous petition, the petitioner relies on para 6.2.11.1 in such a way that, LT III – B is applicable to all the activities specified under para 6.2.9 if the contracted load of such services exceed 12 KW.

6.2.11 Low Tension Tariff III-B:

6.2.11.1 This tariff is applicable to all industries not covered under LT Tariff III A (1) and III-A (2). All industries covered under LT III A (1) and III A (2) shall also falls under this tariff category, if the connected load of such services exceed 12 kW.

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6.2.11.3 The intending consumers applying for service connection under LT Tariff III B claiming to have established the industries engaged in the manufacture or production of shall produce Udyog Aadhar Memorandum from the District Industries Centre.

But the petitioner failed to understand that, as stated in para 6.2.11.1 above, LT – III B is applicable to all industries covered under III A (1) if the contracted load of such services exceed 12 KW i.e., applicable to industries only. Further, in para 6.2.11.3 of the tariff order stipulated the submission of Udyog Aadhar Memorandum from DIC for having established the industries for the manufacture or production. Here the conjoint reading of para 6.2.11.1 with 6.2.11.3 is insisted upon. If any of the industry seeking supply of power under LT III-B, it is required that the industry shall have manufacturing activity in the establishment. With due cognizance of section 62(3) of the Electricity Act, 2003, Commission classified this category especially applicable for “Industries” which requires sensitive monitoring of demand supply and power load factor, and since the consumers under this category requires huge per capita consumption. Moreover, it is the established practice that the industries under this classification are required to furnish the certificate from concerned authority as stated in para 6.2.11 for engaged in manufacture/production.

5.5. The LT tariff III A is designed in such a way so as to promote and encourage the cottage, tiny and small scale industries and to create more employment opportunities in the State by the Commission by fixing the subsidized tariff i.e., Rs.4 per Unit upto 500 units bimonthly and Rs.4.60 per Unit for above 500 units bimonthly

compared to Rs.6.35 per unit charged under LT III B category from first unit onwards from medium and large scale LT industries.

Though activities of some of the concerns/units are not purely industries in nature, in order to encourage and promote such units/concerns, the Commission has consciously included such industries under this LT-III A for cottage, tiny and small scale industrial category.

Such Concerns/Units those are specially included in the existing & earlier tariff orders of the Commission are as below:

Small Gem cutting units, Waste land development, **laundry works** and Common effluent treatment plants.

Coffee grinding, Ice factory, Vehicle body building units, Saw mills, rice mills, Battery charging units and Dairy units.

Sericulture, floriculture, horticulture, mushroom cultivation, cattle farming, poultry & bird farming and fish/prawn culture.

The petitioner is running his laundry in a mechanized manner on a medium scale basis (Sanctioned load is about 22 KW). Further the Udyog Aadhar Memorandum issued by the DIC is for service category and not for Industrial category, since the laundry is by nature is a Service activity only.

5.6. From the submissions of the Respondent, it is seen that the Udyog Aadhar memorandum produced by the petitioner which was issued by the District Industries Centre shows that laundry works categorized under “service” category. The activity classified under service category does not have any manufacturing/production process of converting raw material into finished goods. For this reason, the laundry has been categorized by the DIC as service industry.

5.7. Further, the Respondent referred a similar case held before the Tamil Nadu Electricity Ombudsman vide Appeal no.16 of 2015 between M/s. Orion Venture Vs TANGEDCO, in which the request of the petitioner to consider their laundry service under subsidized tariff was rejected by the TNEO vide order dated 20-07-2015 stating that “ the mechanized laundry is a service oriented enterprises and cannot be classified as a manufacturing unit and it cannot be categorized under Tariff III B and hence it was decided to be categorized under Tariff V.

5.8. In the above tariff order dated 11-08-2017, the Commission has already clarified the similar issue against the TANGEDCO’s comments under para 5.2.3.25, in respect of the services under LT III A(1) when the load of such service connection exceed 10 hp, as below.

“5.2.3.24 TANGEDCO submitted that the present SMT Order permits to extend LT Tariff III B to all industries covered under LT Tariff III A (1) and III A (2) if the connected load of such industries exceeds 10 HP. The agriculture and allied activities are also covered under LT Tariff III A (1). Since agriculture and allied activities are not considered as industries, field officials are finding it difficult to convert such services under LT Tariff III B when connected load exceeds 10 HP. Considering the difficulties in converting the service, TANGEDCO requested the Commission to modify this clause as ‘all services’ instead of ‘all industries’ covered under LT Tariff III A (1) and III A (2) and if the connected load of such industries exceeds ‘10 kW’ instead of ‘10 HP’, as stated earlier.

Commission’s View:

5.2.3.25 The Commission does not find any merit in TANGEDCO’s proposal to include agriculture and allied activities under LT III B Industries, as agriculture and allied activities cannot be categorised under industrial category.”

5.9. From the all above, the petitioner is clarified that, the consumers intending the supply under LT III B shall have the ‘manufacturing’ activity in their establishment

and to produce the relevant certificate under 'Udyog Aadhar Memorandum' as stated in the tariff order, excluding the services specifically mentioned under para 6.2.11.2 which are covered under ICT policy 2008.

Therefore, though the petitioner claiming himself covered under the category of LT III – B in consonance with para 6.2.11.1 as "All industries covered under LT III A(1) and III A(2) shall also fall under LT III B category when the connected load of such services exceed 12 kW", the "Laundry" cannot be categorized under LT III B unless the condition stated in para 6.2.11.3 is fulfilled.

5.10. With the above clarification, this petition is disposed of.

(Sd.....)
(K.Venkatasamy)
Member (Legal)

(Sd.....)
(Dr.T.Prabhakara Rao)
Member

(Sd.....)
(M.Chandrasekar)
Chairman

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission