

THE KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: Shri. T.M. Manoharan, Chairman
Shri. S. Venugopal, Member
Shri. K.Vikraman Nair, Member

File No. 809/Com.Ex/2015/KSERC

In the matter of: Request for penalising KSEBL for the noncompliance of provisions of Electricity Act, 2003 and Supply Code 2014.

Complainant : Mr. Hashim K.P,
Managing Director, Harbour Fisheries,
Plot No. 4, Cochin Fisheries Harbour,
Thoppumpady, Ernakulam – 602 005.

Respondent: (1) Secretary, KSEB Ltd
Vydyuthi Bhavanam, Pattom,
Thiruvananthapuram.
(2) Assistant Engineer, KSEB Ltd,
Electrical Section, Thoppumpady,
Ernakulam.

Order dated 11.11.2015

T.M. Manoharan, Chairman

1. The petitioner is the Managing Director of a seafood processing unit namely, Harbour Fisheries, which is an industrial consumer bearing consumer No. 12692 of Electrical Section, Thoppumpady having a registered connected load of 77KW, for the purpose of processing of seafood. The petitioner has the MSME registration as well as Panchayath licence for seafood processing. This industrial unit has the Form VI registration issued under the Marine Products Export Development Authority, Rules 1972. The seafood processing activity includes preservation, processing and storage of marine products. The petitioner has filed this petition with the following prayers,-

- (a) to penalise the Asst. Engineer under Section 142 of the Act for the non compliance of provisions of Supply Code 2014.

- (b) direct KSEBL to cancel the impugned bill and to retain the tariff of the premises as LTIVA itself.
 - (c) direct KSEBL not to disconnect the supply till hearing and disposal of the case.
- 2. On 16.03.2015, the petitioner submitted an application to the Assistant Engineer, Electrical Section, Thoppumpady requesting him to inspect his premises and confirm the tariff as LT IV A Industry. Subsequently an inspection was conducted at the above premises on 23.3.2015 by the Anti Power Theft Squad (APTS) of KSEB Ltd along with the authorities of Electrical Section, Thoppumpady. During the inspection, a site mahazar was prepared by the section authorities. Based on the site mahazar, the Assistant Engineer, Electrical Section, Thoppumpady who is the Assessing officer under Section 126 of the Electricity Act, 2003, issued on 24.03.2015, a provisional assessment of Rs.30,47,015/- to the consumer allegedly on the ground that the premises was used for storing seafood under frozen condition.
- 3. Based on the objections filed by the complainant consumer, hearing was conducted by the Asst. Engineer and the provisional assessment was made absolute. Aggrieved by this final order the complainant approached this Commission with a complaint to penalise KSEBL for the non-compliance of Electricity Act, 2003 and Supply Code 2014.
- 4. The main contentions of the complainant were
 - (i) The purpose of the electric supply to the premises of the Con.No.12692 is industrial and there was no misuse of electricity as alleged in the mahazar or provisional assessment or final assessment since there is no change in the purpose for which the supply of electricity was availed.
 - (ii) As per sub-regulation(2) of Regulation 97 of the Kerala Electricity Supply Code, 2014, the licensee cannot arbitrarily change the tariff of a consumer without providing a prior notice. Hence implementing the tariff change and operating penalty clause without proper notice or intimation is against natural justice, Act, Rules and Regulations
 - (iii) The premises is an industrial unit carrying out seafood processing, categorized under LT IV A as per the tariff order dated 14.08.2014. When the inspection was carried out by the officers of KSEB Ltd, the processing of the fish had been completed and was moved towards the tunnel freezer for preservation purposes, which is the only reason the inspection team could not see the processing. The raw material used in the said process is raw fish. The processing includes cleaning, grading, cutting etc. and there after the product should be frozen packed and stored therein.

(iv) The seafood processing industrial unit had obtained licenses/sanctions from various authorities including MPEDA, Export Inspection Agency and Inspector of Factories and Boilers.

(v) With effect from 01.01.2014 the premises were leased out to one Mr.Ubaid J.S. for running the unit for seafood processing only and as such there is no change of activity in the premises. The tenant is using the same for processing of seafood, in various stages such as weighing, cleaning, grading, cutting etc. Thereafter the processed items are frozen and kept in the cold storage so as to maintain its quality which are integral part of seafood processing.

(vi) The Assessing Officer is liable to issue a speaking order complying sub-regulation 2 of Regulation 157 of the Kerala Electricity Supply Code, 2014. In the final order he has expressed only his view as "*The Assessing Officer is in the view of as not to intervene the provisional assessment of Rs.30,47,015/- and hereby confirm the same*". This is a clear violation of the above provisions of the Supply Code, 2014. Therefore the petitioner submitted the prayers as mentioned above.

5. The respondents have filed their detailed response. The main contentions are the following,-

- (i) the complainant has no cause of action under Section 142 of the Act, as the subject matter of the complaint is a final decision under Section 126 of the Act, which is a quasi judicial decision. If the consumer is not satisfied with the final order of the Assessing officer, his only remedy is to file appeal under Section 127 of the Act.
- (ii) the Commission lacks jurisdiction to sit in judgment on the final decision of the Assessing Officer under Section 126 of the Act.
- (iii) during inspection on 23.3.2015, it is found that the premises was exclusively used for storing seafood under frozen stage without any iota of evidence of seafood processing. Hence appropriate applicable tariff was LTVIIA.

6. Sri. T.N. Pushpangadhan, Junior Consultant was deputed by the Commission for inspection of the premises. After inspection on 5.8.2015, report was submitted by him. In the inspection report, it is stated as

- (i) at the time of inspection, tuna fish processing was being carried out in the premises.
- (ii) as the part of fish processing, grading, cleaning, glistening, freezing are being carried out in the premises.

(iii) 14 workers including 3 operators are working in the premises for the past one year, as per the attendance register.

7. A Hearing was conducted at 11 AM on 15.09.2015 at Commission's Office, Thiruvananthapuram. Sri. Hashim K.P presented his case in person. The respondents were represented by Adv. B. Sakthidharan Nair. The Advocate for the respondents argued that

- (i) The remedy for the petitioner against an order issued under Section 126 of the Electricity Act, 2003, is to prefer appeal before the Appellate Authority under Section 127 of the Act and therefore the petition is not maintainable before the Commission.
- (ii) The petitioner has no locus standi to file the petition under Section 142 of the Act since there is no cause of action for him in view of the provisions in the lease deed by which he has leased out the impugned premises.
- (iii) The respondents have not violated Regulation 97 or Regulation 149 (2) of the Kerala Electricity Supply Code, 2014.
- (iv) The Assessing Officer has the protection of Section 168 of the Act for all the actions taken by him in good faith.

Therefore the Advocate for the respondents argued that the petition is not maintainable.

8. After hearing the parties, the Commission expressed its preliminary view that the Commission is examining only whether the allegation raised by the petitioner to the effect that Regulation 97 and Regulation 149 (2) of the Kerala Electricity Supply Code, 2014, has been violated by the respondents is true or not and that the Commission is not hearing appeal under Section 127 of the Act, from the order passed by the Assessing Officer under Section 126 of the Act. As per the records submitted by the petitioner the premises of the petitioner has been leased out to one Shri. Ubaid. J.S with effect from 01.01.2014. The petitioner is not doing any industrial activity in the concerned premises. The electricity was being supplied to the impugned premises for the purpose of industrial activity and therefore tariff under LT IV (A) Industrial was made applicable to the petitioner. Now after having leased out the impugned premises, the crucial question is whether or not the present activity done by the lessee would qualify for getting industrial tariff. Therefore the Commission directed the petitioner to submit necessary and sufficient documentary evidences to support the claim of the petitioner, on or before 30.09.2015. The Commission also directed the Advocate to submit the notes on argument on or before 30.09.2015.

9. Kerala State Electricity Board Ltd submitted their argument note through their Counsel Adv. B. Sakthidharan Nair wherein it is submitted that,-

- (i) The petition filed by the petitioner under section 142 of the Electricity Act, 2003 alleging irregularities against the final decision of the Assessing

- Officer, which is a quasi judicial decision; is prima facie not maintainable in view of Section 168 of the Act , 2003.
- (ii) The Electricity Act, 2003 is a special statute which provides a special remedy to a consumer against the final decision under Section 126 of the Electricity Act, 2003, to file appeal under Section 127 of the Act after remitting 50% of the assessed amount. Hence it is mandatory that the consumer shall avail that remedy and he cannot approach the Commission with the oblique motive to evade the 50% of the statutory deposit.
 - (iii) The unauthorised use of electricity detected by APTS, cannot be considered as a suo motu reclassification of consumer category by the licensee due to wrong classification so as to attract regulation 97 of the Supply Code.
 - (iv) The Hon'ble High Court of Kerala in Syriach Kurien Vs. Union of India (2014(3) KCT 557) held that it is not the law that the assessing officer himself should inspect and detect irregularity.
“Insistence that the presence of Assessing Officer is mandatory at the time of inspection will create procedural hurdle in the matter of detection of theft or unauthorised usage and assessment of penalty.”
 - (v) In the instant case, the Assistant Engineer of the Electrical Section Office, Thoppumpady and the Sub Engineer of the said section were also members of the inspection team and the said Sub Engineer who prepared the mahazar, has also affixed his signature in the mahazar along with the concerned Asst. Engineer of the Section. Hence the allegation raised by the petitioner that Regulation 97 and Regulation 149(2) has been violated in devoid of merits and only to be discarded.
 - (vi) The petitioner had leased out his premises to Mr. Ubaid.J.S as per agreement dated 1.1.2014 and has been conducting business since then. The inspection and detection of unauthorised usage of energy by the APTS was on 23.3.2015. Thus the petitioner is not competent to say, what where the activities going on in the licensed premises at the time of inspection. No activity of sea food processing was going on there at the time of inspection
 - (vii) When consumers running freezing, cold storage units, they are specifically included under LT VII A tariff. During 1999, 2002, 2007 and 2010 tariff orders seafood processing units were not included under LT IV tariff and the same was included only in 2014 under LT IV industrial tariff. At the same time, freezing plants, cold storages are specifically included under LT VII A Commercial Tariff. It is stipulated in the 2007, 2010 tariff orders that chilling and cold storage activities shall be limited to 20% of the total connected load in order to get the benefit of the industrial tariff.
 - (viii) From the site mahazar dated 23.3.2005 prepared by the inspection team, the usage of electricity is for freezing and cold storage and not for seafood processing within the meaning of LT IV industrial tariff.

10. The petitioner has filed an additional statement on 30.09.2015 in which it is submitted that,-

- (i) The electricity was being supplied to the premises with effect from the year 1993 for the purpose of industrial activities, i.e., processing of raw fish, freezing the same as preserving in the cold storage. Now, after having leased out the service rendered by the establishment to Shri. Ubaid.J.S also, the same activities are going on in the establishment. The clauses Nos. 5,11,16 in the lease agreement establish the above factual position.
- (ii) During the inspection of the officer, deputed from the Commission, there were persons engaged in the processing activities. He had convinced himself of the activities carried out in the establishment of the consumer such as grading, cleaning, cutting, glistening and freezing at -40° C, packing the processed frozen fish, loading the finished product in to the cold storage maintained at -10° C for preservation.

11. The following documentary evidences have also been produced.

- (a) Valid SSI registration certificate – Another Certificate of the G.M, DIC; showing NIC Code in 1512 which is for processing & preserving of fish and fish products.
- (b) License issued by Department of factories and boilers.
- (c) Copy of the latest sales tax returns
- (d) Copy of license issued by the Corporation.
- (e) Labour Register being maintained in the establishment.

12. The petitioner submitted that 99% of similar seafood processing units in the area are working under LT IV tariff. Only a few units similar to the premises had leased out their service because of financial problem. However, all these units are in effect carrying out the same industrial activities in the establishment. The petitioner requested that the Commission may view the matter objectively in tune with section 15(iv), section 22(g) and (h) of the Electricity Regulatory Commission Act, 1998 and allow the unit to run under LT IV tariff itself.

Discussion and decisions

13. The Commission has carefully examined the averments in writing, the documents and the oral submissions of both the petitioner and the respondent. In view of the facts, circumstances, documents and the relevant legal provisions, the following points arise for consideration.

Point No. 1:- Whether or not the petition submitted by the petitioner is an appeal under Section 127 of the Electricity Act, 2003, against the order issued by the

Assessing Officer under Section 126 of the Act, and whether or not the Commission has jurisdiction and competence to examine this petition.

Point No. 2:- Whether or not sea food processing is an industrial activity eligible for LT IV A Industry Tariff.

Point No. 3:- Whether or not all the activities of freezing sea food can be classified as commercial activity.

Point No. 4:- Whether or not there are necessary and sufficient reasons for the change of tariff of the petitioner from LT IV A Industry to LT VII A Commercial.

Point No. 5:- Whether or not there is a violation of regulation 97 (2) and 149 (2) of Kerala Electricity Supply Code, 2014.

14. Regarding point No. 1, it can easily be found from the contents of the petition that, it is a petition for penalizing the Assistant Engineer, Thoppumpady, Electrical Section, KSEB Ltd, for non-compliance of regulation 97 (2) and 149 (2) of Kerala Electricity Supply Code, 2014 and for consequential benefits. An inspection conducted jointly by APTS of KSEB Ltd and the second respondent and consequent proceedings of the second respondent in the capacity of the Assessing Officer under Section 126 of the Act, are the causative factors for submitting this petition before the Commission. But the petition is not an appeal from the final assessment order of the second respondent in the capacity of the Assessing Officer. From the records submitted and submissions made before the Commission, it is seen that the mahazer prepared in the inspection dated 23.03.2015 resulted in the following two consequences to the petitioner;

- (1) A provisional assessment bill dated 24.03.2015 for Rs.30,47,015/- was issued the Assistant Engineer, Electrical Section, Thoppumpady in the capacity of the Assessing Officer, which was confirmed by the order dated 24.4.2015 under Section 126 of the Act.
- (2) The Assistant Engineer has also changed the tariff category of the sea food processing unit of the petitioner from LT IV A Industry and reclassified the sea food processing unit under the tariff category LT VII A Commercial.

15. The findings and order of the Assessing Officer in his order dated 24.04.2015 is quoted here under.

Findings

1. *The inspection was conducted on the request of the consumer as to realize the tariff in accordance with the mode of use. The usage was proven as freezing of fish, which is under the classification of commercial tariff (VIIA).*

2. *The firm is registered with the Marine Product export Development Authority Rules, 1972. But the firm is given on rent. So the second party*

is the authority in deciding the mode of work. Naturally the consumer is not aware of the mode of use hence his arguments are imaginary.

3. *Of course, labours were there in the firm even at the time of inspection, but they were never confined to any kind of jobs related to fish processing.*

4. *The interpretation of the Regulation 152 (1) by the consumer is not right, as it comes on light while there is no change in the mode of use, here the case itself is 'change in mode of use'.*

5. *Regarding the statement of the consumer about the ignorance of mode of classification in tariff, is recommendable to higher authorities, but can never taken to consideration while dealing an individual case of miss use of tariff.*

6. *As the inspection is originated as per the request of this consumer, the genuine of the consumer has to be honoured. But the consumer has not yet admitted the mode of usage, which is coming under commercial tariff and was arguing about to justify his consumption is coming under industrial tariff. In this circumstances the assessing officer is not in a position to review the provisional assessment in accordance with any further evidences to find out the reckoning date of the miss use of tariff as to cut reduce the penal period.*

7. *However the diction in this level is never a final ones the consumer can approach the appellate authority for further relief with the same or a different pray if any.*

Order

Having considering the facts, the Assessing Officer is in the view as, not to intervene the provisional assessment of Rs.3047015/- and hereby confirming the same. The consumer can file appeal if any within 30 days from the date of this order by remitting 50% of the amount at this office.

From the findings and decisions quoted above it can be seen that the following facts are not disputed.

- (i) The inspection was conducted on the request of the consumer.
- (ii) The impugned industrial unit was registered under the Marine Product Export Development Authority Rules, 1972.
- (iii) There were labourers at the time of inspection.
- (iv) The genuine intention of the consumer has to be honoured.
- (v) The impugned order does only confirm the provisional assessment and there is no mention about tariff change.

16. The reclassification of the sea food processing unit into LT VII A Commercial is a process different from the proceedings under Section 126 of the Act. Reclassification of consumer category can be done only under regulation 97 or

regulation 98 of Kerala Electricity Supply Code, 2014. The present petition is against the reclassification of the sea food processing unit into LT VII A Commercial. If any consumer is found using electricity for any purpose other than for which the electric connection was given, the licensee can reclassify the consumer into the applicable category following the procedure specified in regulation 97 of Kerala Electricity Supply Code, 2014, which is quoted hereunder,-

97. Suo motu reclassification of consumer category by the licensee.-

(1) If it is found that a consumer has been wrongly classified in a particular category or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category as per the tariff order of the Commission or the category has changed consequent to a revision of tariff order, the licensee may suo motu reclassify the consumer under appropriate category.

(2) The consumer shall be informed of the proposed reclassification through a notice with a notice period of thirty days to file objections, if any.

(3) The licensee after due consideration of the reply of the consumer, if any, may reclassify the consumer appropriately.

(4) Arrear or excess charges shall be determined based on the actual period of wrong classification and the account of the consumer shall be suitably adjusted.

(5) If the actual period of wrong classification cannot be ascertained reasonably, the period shall be limited to a period of twelve months or a period from the date of last inspection of the installation of the consumer by the licensee whichever is shorter:

Provided that in the case of reclassification consequent to change of the purpose of supply by the consumer without due authorisation, the licensee may examine each case and initiate proceedings under Section 126 of the Act if found necessary.

Such a proceedings under regulation 97 of Kerala Electricity Supply Code, 2014 is not seen taken or orders issued by the Assistant Engineer, Electrical Section, Thoppumpady. As rightly pointed out by the counsel for the respondent licensee, and by the licensee in their submissions and written statement of defence, the Commission is not the appellate authority to entertain any appeal under Section 127 of the Electricity Act, 2003. It has been decided by the Hon'ble Supreme Court that Section 126 and Section 127 of the Electricity Act, 2003, are codes in themselves and no authority other than those stipulated as per the said Sections can initiate and complete the proceedings under Sections 126 and 127 of the Act. The appeal under Section 127 is against the assessment order issued by the Assessing Officer under Section 126 of the Act. From the provisions of Section 126, it can be seen that the Assessing Officer can assess to the best of his judgment the quantum of electricity misused by any person, and assess the penal charges by multiplying such quantum of misused electricity by double the tariff

applicable to the relevant category. Such penal assessment under Section 126 need not necessarily result in reclassification of the consumer into a different category. If the electricity from an agriculture connection is unauthorisedly used for industrial purpose or commercial purpose or such other purposes for which the applicable tariff is higher than the agricultural tariff, the quantum of misused electricity can be assessed to the best of the judgment of the Assessing Officer, for the period as stipulated in sub-section (5) of Section 126 and penal assessment can be made as per sub-section (6) for the misused electricity. Such a proceedings under Section 126 will not result in re-categorization of agriculture connection into industrial or commercial or any other consumer category. Appeal under Section 127 may be preferred on the method of assessment of the quantum of electricity misused or the period of assessment or the tariff applied or on the failure to comply with procedures or such other aspects. In this case the impugned petition submitted by the petitioner is not an appeal under Section 127 of the Act. The proceedings under Sections 126 and 127 of the Act essentially pertains to the unauthorized use of a portion or full of the electricity supplied to the consumer on or before the date of detection of such irregularity. Tariff change is a process which has only prospective effect with effect from the date of order unless such tariff change has been given retrospective effect for valid reasons. The petition is basically against the re-classification of the category of the seafood processing unit of the petitioner to the commercial category. When a consumer submits a petition alleging non-compliance of regulations 97 (2) and 149 (2) by a licensee, the Commission has a duty to examine, such petition and to take appropriate decisions thereon. Therefore it is found that, the impugned petition is not an appeal under Section 127 of the Electricity Act, 2003 and that the Commission has jurisdiction and competence to examine this petition.

17.Regarding point No.2, it can be seen that seafood processing is an industrial activity which has been specifically included under LT IV A Industry tariff category. The petitioner has submitted copies of the following records.

- (1) Copy of the deed of agreement dated 01.01.2014 between the petitioner and Shri. J.S. Ubaid.
- (2) Copy of the leave and licence agreement dated 01.01.2015 between the petitioner and Shri. J.S.Ubaid.
- (3) Copy of the duplicate acknowledgment issued by the General Manager, District Industry Centre, Ernakulam.
- (4) Copy of the Muster Roll of M/s Harbour Fisheries.
- (5) Copy of the licence issued by Cochin Corporation under Section 299 of the Kerala Municipalities Act, 1961.
- (6) Copy of the licence issued by the Joint Director, Department of Factories and Boilers.
- (7) Copy of the registration certificate issued by the Joint Director, Marine Products Development and Export Authority under the MPDEA Rules, 1972.

- (8) Copy of the plan layout of the Harbour Fisheries in plot No.4 of Cochin Fisheries Harbour.
- (9) Copy of the final bill issued by the Assistant Engineer, Electrical Section, Thoppumpady.

All such document prove that the Government authorities such as Marine Products Development and Export Authority (MPDEA) under Government of India, the Joint Director of Factories and Boilers Department and the General Manager of District Industries Centre have approved M/s Harbour Fisheries as an Industrial Unit for seafood processing. There cannot be any doubt that sea food processing is an industrial activity eligible for the tariff category of LT IV A Industry, as per the tariff notification issued by the Commission on 14.08.2014 in OP No. 9/2014.

18. Regarding Point No.3, it can easily be seen that the process of freezing can be a part of an industrial activity or of a commercial activity or of a health care activity or of a domestic activity. The process of freezing in ice plants and in ice cream manufacturing units is classified under LT IVA Industrial category. But the process of freezing in an ice cream parlour, where ice cream is sold, is classified under commercial category and the electricity used for freezers in residential houses are categorized under domestic category. When any industrial product or agriculture product is kept in cold storage for the purpose of sale, the process of freezing involved is a part of commercial activity. The use of electricity by refrigerator or air conditioner is classified according to the purpose for which such equipment are used. Therefore, the purpose for which the process of freezing is used is the essential criterion for assigning the tariff category. In view of the above facts it can be seen that seafood processing including the process of freezing therein, is an industrial activity eligible for LT IV A Industry tariff and that freezing of seafood in a seafood processing unit cannot be classified as a commercial activity unless it is proved that the process of freezing is misused for commercial activity.

19. The relevant facts relating to point No. 4, are as follows. Admittedly by the petitioner and the second respondent, the petitioner himself had, on 16.03.2015, written to the Assistant Engineer, Thoppumpady, requesting him to confirm his tariff category in LT IV A Industry. Consequently the APTS of the KSEB Ltd, along with the Assistant Engineer, Electrical Section, Thoppumpady had, on 23.03.2015, inspected the premises of the consumer and had prepared a mahazar. As per the mahazar, the inspection was done between 11 AM and 12.30 PM on 23.03.2015. The said mahazar confirmed that the connected load was 77 kW and the tariff category assigned was LT IV A Industry. The security seals of meter was seen intact and the meter was functioning properly. It is seen recorded in the mahazar as follows,-

"hii Zamb] cifti m[\യിൽ, Harbour fish എന്ന ഈ കൺസ്യൂമർ മത്സ്യങ്ങൾ ശീതിലി വില്പന സൗകര്യമുള്ള Xit\ുള്ള കോർഡ് സ്റ്റോറേജ് ആണ്. ഇവിടെ

ചല സ്ഥലങ്ങളിൽ \ന്നു കൊണ്ടുവരുന്ന മത്സ്യങ്ങൾ ശീതിപ്പിച്ച് സൂക്ഷിക്കുക -
 b p w, B h i y m \ p k c W w h i X രണം ചെയ്യുകയും ചെയ്യുന്നു. മത്സ്യങ്ങൾ
 സംസ്കരിക്കുന്നതിനുള്ള യാതൊരു സജ്ജീകരണങ്ങളും ഉപയോഗിക്കുന്നതും
 ഇവിടെ കണ്ടില്ല."

20. Proceedings under Section 126 of the Electricity Act, 2003, were initiated and the tariff category was changed based on the above findings of the inspecting team, as recorded in the mahazar. The mahazar does not give any description of the scene of the alleged irregularity of unauthorized use of electricity. The consumer has submitted the plan and lay out of his sea food processing unit, which shows that there are (1) processing hall (2) packing area (3) cold storage (4) plant room (5) generator room (6) ladies change room (7) gents change room (8) meat receiving room (9) production manager's room (10) office room and (11) room for micro biology and quality control. Such facts are corroborated by the documents submitted by the petitioner. The availability of such facilities are not seen refuted by the Assessing Officer or any Inspecting Officer. In the absence of any evidence, the conclusion made by APTS and Assistant Engineer to the effect that there were no facilities or equipment for processing fish in the said seafood processing unit, is found to be unsubstantiated and hence unsustainable. Fish processing involves cleaning, cutting, glistening, grading etc. Neither the APTS nor the Assistant Engineer has explained the facility and equipment which they expect in such a seafood processing unit, in addition to those which were available at the site at the time of inspection. No evidence or statement is seen recorded by the APTS and the Assistant Engineer, which indicates that the impugned sea food processing unit was used for commercial purpose. There is no mention in the mahazar about the sources or places where from fish for storage was received or about the nature or items of such marine products, or about the persons or institutions to which such products were distributed. No evidence is seen adduced on such vital issue before tariff category of the petitioner is changed.
21. It is only a matter of common knowledge that sea food processing is dependent on the time of the catch of fish and the season of the catch of fish. The catch of fish depends on weather, season, migration of fish, restrictive orders issued by the Government on trawling, demands for export etc. Admittedly by the second respondent there were labourers in the impugned seafood processing unit at the time of inspection. Just because seafood processing was not going on at the time of inspection by the APTS and the second respondent it cannot be concluded that the unit was a commercial unit. Further when the Junior Consultant inspected the unit on 05.08.2015, processing of fish was in progress.
22. Admittedly by the petitioner, the seafood processing unit was leased out to one Shri. J.S. Ubaid with effect from 01.01.2014. The lease deed shows that the premises was leased out only for seafood processing. The second respondent has not cited or relied upon any evidence to substantiate that the seafood

processing unit of the petitioner was indulging in commercial activity. In the absence of proper evidence, it cannot be concluded that, the seafood processing unit of the petitioner was being used for commercial activities. APTS is not an authority which can assume unlawful powers to arrive at conclusions at its wish, without proper evidences. In fact the statutory provisions in Electricity Act, 2003, neither recognize such a squad nor do they confer any special powers on such squad.

23. Regarding point No.5 the Commission has considered the following facts. The Commission is aware of certain incidents where the facilities for freezing in industrial units are misused for commercial purposes. Such a probability cannot be ruled out. But it is for the inspecting officers and the officer authorized by the licensee for the purpose of reclassification of consumer category to adduce evidences, follow the principles of natural justice and issue speaking orders, in accordance with the relevant provisions in regulation 97 of Kerala Electricity Supply Code, 2014. If any consumer has grievance against such order issued under regulation 97, he can approach Consume Grievances Redressal Forum or the Electricity Ombudsman for the redressal of his grievances. In the absence of evidences for such proceedings under regulation 97, it is found that there is non-compliance with the provisions of regulation 97 of Kerala Electricity Supply Code, 2014.

Order of the Commission

24. Therefore the impugned tariff change effected by the Assistant Engineer, Electrical Section, Thoppumpady in respect of the petitioner without complying with the provisions of regulation 97 of Kerala Electricity Supply Code, 2014 cannot be approved and therefore it is quashed. It is also made clear that this order pertains only to the impugned change of tariff and it is not an order in appeal under Section 127 of the Electricity Act, 2003. The Assessing Officer under Section 126 and the Appellate Authority under Section 127 of the Act may deal with the irregularity of unauthorized use of electricity committed if any, by the consumer in exercise of the powers vested in them.

Sd/-
K. Vikraman Nair
Member

Sd/-
S. Venugopal
Member

Sd/-
T.M.Manoharan
Chairman

Approved for Issue

Sd/-

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Santhosh Kumar. K.B
Secretary