

**THE STATE ELECTRICITY OMBUDSMAN**

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**APPEAL PETITION No. P/001/2022****(Present: A.S. Dasappan)****Dated: 13<sup>th</sup> April, 2022**

Appellant : Smt. Nazeeth Banu,  
Jamal Manzil, Main Road,  
Olavakkode,  
Palakkad Dist. 678 002

Respondent : Assistant Executive Engineer,  
Electrical Sub Division, KSEB Ltd.,  
Kalpathy, Palakkad Dist.

**ORDER****Background of the case:**

The appellant is a consumer of Electrical Section, KSEB Ltd., Kalpathy with consumer number 116531107801 and the connected load is 1800 watts. At present the tariff allotted to the three-phase category premises is LT VIF. The appellant was given a short assessment bill for Rs.67,064/- towards energy charge and Rs.1,15,361/- towards the surcharge, reassigning the tariff under LT VIIA, Self-Financing Educational Institution for the period of consumption from 02/2008 to 04/2013 as per the judgement of Hon'ble Supreme Court of India in a Special Leave Petition filed by KSEB Ltd. For an exemption from the payment of the bill amount, the appellant approached the Consumer Grievance Redressal Forum (CGRF), Northern Region, Kozhikode vide OP No. 10/2020-21 and the Forum in its order dated 08-12-2021 decided to dismiss the petition, allowing 10 numbers equal monthly instalments.

Aggrieved by the decision of the Forum, the appellant filed this appeal petition before this Authority.

**Arguments of the appellant:**

The specific case of the appellant is that the institution run by the appellant was closed and has not used the electricity for the institution from 1998 onwards. The aforesaid point was not considered by the CGRF at any point of time. The bill dated 16.03.2021 issued by the KSEBL, Kalpathy is the subject matter of the above appeal. In the aforesaid bill the reading of the meter is not shown and without any calculation charged the appellant with an exorbitant amount as usage charges. The KSEBL, Kalpathy has not issued any bill to the appellant showing the meter reading. The aforesaid matter was not considered by the Forum at any point of time. It is pertinent to note that without recording the meter reading, the bill was issued stating that the appellant has used electrical energy for an amount of Rs. 67,064/- and added an amount of Rs. 1,15,361/- under the head of "other". It is pertinent to note that there is no adjudication was made by the Forum at this point and without considering the actual grievance of the appellant, disposed the petition.

The statement of facts filed by the respondents also don't have the clarity regarding the errors in the bill. The bill in question of the above appeal is an erroneous bill and there is no justification from the side of the respondent regarding grounds under which they have raised the above bill.

Under these circumstances, the appellant requests the Ombudsman to allow the appeal as prayed for.

**Arguments of the respondent:**

The subject matter of this appeal has already been decided by the Hon'ble Supreme Court of India in Civil Appeal No. 8350/2009 and other connected cases which are binding on all Courts/Fora. Hence, the complaint is barred by *res judicata* and hence, the appeal is not maintainable before this Authority. Hence, the appeal may be dismissed.

The appellant has got ample opportunity to change the tariff to domestic purpose if the appellant is not using the connection for "self-financing educational" purpose. The Statement of the appellant that the tenant "Palakkad Computer Centre" had stopped operation way back in 1998 itself shows that

either the averment is wrong or if true, the appellant is not interested in converting the tariff to any lower one and hence, prepared to remit current charges at higher rate. It is not a mistake of this Licensee and hence, the averment of the appellant that this Licensee is taxing the consumer for working of a self-financing institution is absolutely false, frivolous and fabricated. During all these 23 years, this licensee is issuing bills in the VI F tariff (previously different tariff) for Self-Financial Educational Institutions and the appellant is paying bills without any reluctance itself shows that the purpose of usage is educational purpose and not domestic. Reduced consumption or nil consumption does not indicate any lower tariff.

The appellant is coming under the category "Self-financing Educational Institution (SFEI). As per the prevalent Tariff, all educational institutions, whether Government, Govt-aided or self-financing were categorised under a single tariff. In the tariff order formulated by the KSERC and effective from 1.12.2007, the SFEIs were categorized under LT VIIA based on the purpose of usage of electricity.

Challenging the new tariff order introduced by KSERC, classifying all self-financing institutions in LT VII A Commercial Tariff, a batch of Writ Petitions were filed including WP(C) 16137/2008. All the Writ Petitions were dismissed by the Hon'ble High Court. Aggrieved by this, a series of Writ, Appeals arose. In a common judgment dated 17/08/2009 in WA 1064/2009 and connected cases, the Hon'ble High Court of Kerala allowed the Writ Appeals. The Respondents therein decided to challenge the orders of the Hon'ble High Court of Kerala in the above cases by filing Special Leave Petition before the Hon'ble Supreme Court of India vide letter dated 07/11/2009 of the Secretary, KSEBL. It was also decided to issue bills to the consumers concerned at the rate given in LT VI-A subject to the decision of the Hon'ble Supreme Court of India in Special Leave Petitions. The field officers were directed to issue bills at LT VI-A tariff to the Self-financing Educational Institutions.

The Tariff determination is a power conferred under the State Electricity Regulatory Commissions (SERC) by Section 62 of Electricity Act 2003 and the Commission (SERC) may classify consumers and assign different tariff to them

based on purpose for which supply is required, among other things. The classification/differentiation which the SERC made were based on different fee structure, different wage structure, employee welfare measures, larger social purpose, profit motive and the facilities provided by the Self-Financing Educational Institutions when compared to Government and aided educational institutions. The Hon'ble Supreme Court found that no error was committed by the SERC in categorizing the Self-Financing Educational Institutions (SFEIs) as commercial entities. So also, no undue preference has been given to the State run and State aided institutions. Hence, the classification is upheld by the Hon'ble Supreme Court of India. The contents of the petition are barred by Res judicata. The judgment of the Hon'ble Supreme Court is final and no longer subject to appeal. A re-litigation on minor facts is barred. The Hon'ble Supreme Court found that no error was committed in fixing the higher tariff for the SFEIs categorizing them as commercial entities.

There is no bar in collecting this arrear as well as interest on this arrear. This amount is no longer a disputed arrear after the judgment of the Hon'ble Apex Court. No case was filed by the Complainant before the Hon'ble Supreme Court of India regarding the tariff issue. But when similarly situated persons conducting Self-Financing Institutions got a favourable order from the Hon'ble High Court of Kerala in WA 1206/2009 and connected cases on 25.8.2009, this Licensee decided to challenge the same before the Hon'ble Supreme Court of India by filing Special Leave Petition (SLP). At this juncture, KSEBL issued direction to all field officers to issue bills to the consumers coming under the category of SFEIs at the rate given LT VI A tariff as directed in the above judgment subject to the decision of the SLP. Hence, the appellant and the similarly situated consumers were billed in LT VI A tariff till the outcome of the SLP before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court actually set aside the decision of the Division Bench and restoring the decision of the single bench. The case was filed before the Hon'ble Supreme Court of India in 2009 and decided on 20.2.2020. The judgment of the Apex Court is applicable equally to all SFEIs including the appellant herein. Therefore, the appellant is bound to remit the assessed amount with interest.

The CGRF found that the appellant failed to declare before the Section Office that they were using the premises for domestic purpose. Even after 23 years, the appellant is ignorant of paying in higher tariff is not believable. The appellant is paying the bimonthly bills in VI F tariff and hence, the appellant is aware of the tariff classification and had ample time to change the tariff to domestic purpose, if required. Hence, the CGRF dismissed the petition.

The repeated contention of the appellant that the appellant was not issued any bill "showing the meter reading" is misleading. The bill issued is a short assessment bill of already issued bills showing the exact meter readings. Moreover, at the time of issuing short assessment bill, the appellant was issued a detailed calculation statement, which showed month wise consumption, split up of charges in both the tariff and the calculation of the bill.

Hence, this Authority may be pleased to accept the contentions of this respondent and the petition may be dismissed.

**Analysis and findings:**

An online hearing of the case was conducted on 03-03-2022 with prior intimation to both the appellant and the respondent. Sri. Sebin Thomas, Advocate attended the hearing for the appellant and Sri. V. Selvaraj, Assistant Executive Engineer, Electrical Subdivision, KSEB Ltd., Pinarayi from the respondent's side attended the hearing. On examining the appeal petition, the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

The argument of the appellant is that, the premises remains closed from 1998 onwards and there is no consumption in the premises. There is no clarity in the bill issued by the respondent and meter reading details were not furnished. As such, the appellant wants cancellation of the disputed bill amount.

According to the respondent, the bill was issued as per the judgment of Hon'ble Supreme Court in Appeal No.8350/2009 filed by KSEB Ltd. relating to

the tariff category of Self-Financing Educational Institution. The appellant had to convert the tariff applicable to the purpose for which the premises was used. The appellant was paying the energy charge under LT VIF tariff category. Since the appellant used energy for running a Self-Financing Educational Institution the appellant is liable to remit the short assessment bill.

On perusing the document file, it is seen that the appellant was issued a short assessment bill on 16-03-2021 for Rs.1,82,425/-, comprising of Rs.67,064/- towards energy charge and Rs.1,15,361/- towards other charge. The period of short assessment is from 03/2008 to 05/2003 and the nature of short assessment is the difference between the tariff under LT VIA and LT VIIA. But in the letter dated 07-06-2021 of the Assistant Engineer, the LT VIB tariff category is seen furnished instead of LT VIA.

On examining the calculation sheet prepared for computing the short-assessed amount, the following facts are revealed:

Connected Load	Period of consumption	Energy consumption (kwh)	Remarks
13 kW	03/2008 to 01/2010	Zero unit or one unit in each month	Fixed Charge Rs.780/- in each month.
13 kW	02/2010 to 05/2013	Varies between 9 units and 1230 units	Energy consumption is not consistent.

The meter reading history for the short assessment period was not produced by the respondent. Only with the meter reading details, the consumption recorded in the calculation sheet can be verified. In the hearing conducted on 03-03-2022, it was revealed that the service connection was effected in the year 1957 and from the year 1990 a computer centre started functioning and the functioning was only up to 1998. The present tariff allotted is LT VIF. As per the schedule of tariff and terms and conditions for retail supply of electricity by Kerala State Electricity Board Limited and all other Licensees with effect from 18-04-2017, notified vide order dated 17-04-2017 of Kerala State Electricity Regulatory Commission, LT VI (F) tariff is applicable to computer training institutes, private coaching or tuition centres, Self-Financing Educational Institutions including hostels run by them.

In this case, the respondent issued the short assessment bill as per the judgement of the Hon'ble Supreme Court of India that LT VIIA tariff is applicable to Self-Financing Educational Institutions. As such, Self-Financing Educational Institutions are liable to remit the tariff under LT VIIA. But here, the appellant argued that the premises was not used for functioning a Self-Financing Educational Institution and the respondent argued that the appellant is liable to remit the energy charge under LT VIIA tariff applicable to Self-Financing Educational Institutions.

As per 'The Kerala State Electricity Board Low Tension (other than public lighting) Tariff order 2002, which comes into force from 01-10-2002, the tariff applicable to private educational institution is LT VIA. As per the Schedule of Tariff and Terms & Conditions for Retain Supply by KSEB with effect from 01-12-2007, Govt. or aided private educational institutions were categorized under the tariff LT VIA. Also, the Self-Financing Educational Institutions were assigned LT VIIA tariff and the computer training institutes were retained under LT VIB tariff.

The appellant argued that there was no functioning of Computer Centre after the year 1998. The respondent has not produced any material show that a Self-Financing Educational Institution was functioning of in the period of short assessment. This Authority views that the respondent had only changed the tariff from LT VIA to LT VIIA soon after the judgement of the Hon'ble Supreme Court of India without conducting any inspection of premises for ascertaining the purpose for which electricity was used. As such, the short assessment bill issued by the respondent is not sustainable. It is pertinent to note that Self-Financing Institutions and Computer Training Institutes were categorized separately in the tariff order with effect from 01-12-2007 under LT VIIA tariff and LT VIB tariff respectively, but both were grouped in the same tariff LT VIF from 16-08-2014 onwards.

**Decision: -**

On the discussions and conclusions arrived at, which are detailed above, I take the following decision:

The short assessment bill for Rs.1,82,425/- issued to the appellant is quashed. The respondent is directed to inspect the premises and assign the tariff within 30 days from the date of this order and issue the electricity bills accordingly.

The order of CGRF, Northern Region in OP No.10/2021-22 dated 08-12-2021 is set aside.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

## **ELECTRICITY OMBUDSMAN**

P/011/2022/ \_\_\_\_\_ dated \_\_\_\_\_.

### Delivered to:

1. Smt. Nazeeth Banu, Jamal Manzil, Main Road, Olavakkode, Palakkad Dist. 678 002
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Kalpathy, Palakkad Dist.

### Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthi Bhavanam, KSE Board Ltd, Gandhi Road, Kozhikode