

## **THE STATE ELECTRICITY OMBUDSMAN**

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### **APPEAL PETITION No. P/025/2022**

**(Present: A. Chandrakumaran Nair)**

**Dated: 08<sup>th</sup> August, 2022**

Appellant	:	Sr. M. Prasanthi. A.C., Manager & Mother Superior, Fathimagiri English School, Nilambur. R.S., Malappuram 679330
Respondent	:	Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Nilambur, Malappuram Dist.

### **ORDER**

#### **Background of the case:**

The appellant is the Manager of the Fathimagiri English School, Nilambur, which a private Self-Financing Educational Institution. They are the consumer of the Licensee with consumer number 1165431000572 under Electrical Section, Nilambur. The tariff applicable for them was LT VIA till 31-12-2007. The appellant was regularly paying the electrical charges and there was nothing as arrears. The Kerala State Electricity Regulatory Commission has changed the tariff of Self-Financing Institutions as follows:

w.e.f. 01/2008	-	LT VI A to LT VII A
“ 01/2013	-	LT VII A to LT VIII
“ 01/2014	-	LT VIII to LT VI F

The Fathimagiri English School was billed under tariff LT VIA up to 09/2013. The Assistant Engineer, Nilambur Section issued a demand notice to the appellant stating that there is an under payment of charges amounting to

Rs.4,59,364/- in which Rs.1,62,708/- was the difference in tariff change and Rs.2,96,656/- was the interest. The appellant questioned the demand of interest on them for no fault from the appellant. The appellant approached the Consumer Grievance Redressal Forum (CGRF), Northern Region, Kozhikode and CGRF in its order vide OP No. 44/2021-22 dated 31-01-2022 has disposed the petition mentioning that the exemption of payment of surcharge is not admissible and hence, it is to be paid.

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

**Arguments of the appellant:**

The appellant has been regular in making payment of electricity charges up to date. There are no instances of default from the part of the appellant towards the payment of electricity charges and no notice of any arrears was issued to the appellant till today other than the above mentioned one.

The demand and the bill issued to the appellant are illegal. The Tariff of electricity consumption is being fixed by Kerala State Electricity Board itself. This appellant was under LT VI A Tariff. The Tariff is now changed as LT VII A without notice to the appellant and without inviting objections. The appellant already installed Solar Panel as per the norms and regulation of KSEB.

The appellant is now called upon to pay huge amount which is not because of any fault of the appellant. The bill shows that the Energy Charge is Rs.1,02,596/-. The rest of the amount of Rs.3,56,768/- constitutes additional fixed charge of Rs.48,897/-, & Electricity Duty of Rs.11,215/- for the period of assessment from 01/2000 till 09/2013 and interest (surcharge of Rs.2,96,656/- at the rate of 18%).

The claim including that of surcharge is not because of any fault of the appellant. The period of the assessment is from 1/2000 to 9/2013, ie., for a continuous period of 13 years. The interest calculated by the KSEB is at the rate of 18 % up to 06/2021. This interest is required to be paid by the appellant because of no reason or fault from the side of the appellant.

The claim of Energy Charge, Fixed Charge & Electricity Duty is hopelessly barred by limitation. Therefore, there is no justification in claiming interest/surcharge also based on a time barred claim, that too at the rate of 18%, especially when the appellant is not at fault on any account.

The respondents ought to have borne in mind that Regulation 136(3) of the Kerala Electricity Supply Code 2014 is specific that the licensee cannot claim arrear after two years.

The appellant is not a party either before the Hon'ble Supreme Court or before the Hon'ble High Court in the proceedings relating to the change of Tariff and demand of additional charges as regards the Self-Financing Educational Institutions and the appellant was not at all instrumental for the delay in demand of the alleged balance amounts. The appellant never filed any petition in that regard either before the Hon'ble Supreme Court or before the Hon'ble High Court or any other Forum except the above mentioned complaint before the CGRF.

It is also submitted that the appellant cannot be classified as Self-financing or profit motivated institution. The appellant's school is not functioning under the State Government and is under the CBSC. Therefore, the Tariff of the electricity connection of the appellant is not liable to be changed and the claim for balance charges based on such change is liable to be interfered with.

The bill issued by KSEB to the appellant is arbitrary, illegal, baseless, without any merits, and against the principles of natural justice; and liable to be quashed.

The CGRF did not consider any of the above mentioned aspects while passing the order dated 31.01.2022 in O.P. No. 44/2021-22 and as such the CGRF order is arbitrary, illegal and liable to be set aside.

Since the appellant had been engaged in academic activities and management of the school, including conduct of examinations, this appeal could not be presented till now, and there is no willful negligence in this regard. As per

the directions of the Hon'ble Supreme Court in SMW(C). No. 3 of 2020 excluding the period from 20.03.2020 till 28.02.2022 in computing the period of limitation, this appeal is to be treated as filed within the prescribed period. This Authority may entertain this appeal and decide the same on merits.

Nature of relief sought from the Ombudsman

- i. Set aside the order dated 31.01.2022 of the Consumer Grievance Redressal Forum Northern Region, Kozhikode in O.P. No. 44/2021-22;
- ii. Set aside the change of Tariff of the appellant's electricity connection from LT VIA to LT VIIA;
- iii. Quash the Assessment Bill/order No. 1-6/2021 dated 25.06.2021 of the Electrical Section, Nilambur; and the recovery proceedings pursuant thereto;
- iv. Stay the recover proceedings based on Assessment Bill/order No. 1-6/2021 dated 25.06.2021 of the Electrical Section, Nilambur until the disposal of this Representation/ Appeal; and
- v. Allow this appeal accordingly.

**Arguments of the respondent:**

The Kerala State Electricity Regulatory Commission has changed the tariff of Self-Financing Educational Institutions from LT VI A to LT VII A w.e.f 1-12-2007. A group of Self-Financing Educational Institutions filed petition against the tariff change before the Hon'ble High Court of Kerala and the court rejected their petition. Following this, they filed appeal before the Division Bench of the Hon'ble High Court and the court had given favourable order to the petitioners. However, the KSEBL approached the Hon'ble Supreme Court of India by filing a Civil Appeal No.8350/2009 and the Hon'ble Supreme Court vide order dated 20/02/2020 approved the tariff of Self-Financing Institutions as LT VII A. In the meanwhile, vide tariff order of the KSERC dated 16/8/2014 the tariff of the Self-Financing Educational Institutions was changed to LT VI F.

As the issue was pending under litigation, KSEB charged all Self-Financing Educational Institutions under VIA tariff w.e.f 01-12-2007. With the

final order dated 20/02/2020 in CA No. 8350/2009 by the Hon'ble Supreme Court, the claim of the KSEB Ltd. to bill in LT VII A tariff during the period from 01-12-2007 to 16-08-2014 has been established. Further, the Secretary (Administration) of KSEB Ltd. vide Circular No.LA I /5243/2009 dt 29/2/2020 instructed all Section Offices to take urgent action to collect the short fall of current charges from the Self-Financing Educational Institutions including surcharge.

Fathima Giri English School, Nilambur, being a private Self-Financing Educational Institution was being billed under VI A tariff up to 9/2013 and the tariff had subsequently changed to VII A on 10/2013. Hence, reassessment of electricity bill was done under VII A tariff for the period from 1/2008 to 9/2013 in the light of the judgment in CA 8350/2009 of Hon'ble Supreme Court and an invoice for short current charges for Rs.1,62,708/- and interest of Rs.2,96,656/- with total amount of Rs.4,59,364/- was served to the appellant on 02/08/2021 as per Regulation 130(7), 134 and 136(1) of Kerala Electricity Supply Code 2014.

The appellant was benefited by the LT VI A tariff during the period from 1/2008 to 9/2013. Now as per the final verdict of the Hon'ble Supreme Court of India, KSEB Ltd. has got the right to claim its undercharged amount during the disputed period from 1/2008 to 9/2013 with up-to-date interest.

The appellant was promptly paying current charges during the said period. In this short assessment invoice, KSEB Ltd has issued the difference amount between the LT VII A and LTVIA for the litigation period of 1/2008 to 9/2013. The principal tariff difference amount is Rs.1,62,708/- and Rs.2,96,656/- was claimed as interest amount for the pending principal amount as per the rules and regulations of KSEB Ltd. No penalties have been charged against the appellant and 30 days of time has allowed to the appellant for making payment.

The re-assessment of electricity bill for the litigation period from 1/2008 to 9/2013 was done as per the verdict of Hon'ble Supreme Court of India and as per rules and regulations in force. The Schedule of Tariff and Terms and

Conditions for supply of electricity in Kerala is being determined by the KSERC. Hence, the allegation of the appellant is totally false.

The electricity duty and interest charges were calculated based on tariff rules in force in the State and other rules and regulations.

The period of assessment is from 1/2008 to 9/2013 and not from 1/2000 to 9/2013 as stated by the appellant. The interest payable on the amount outstanding after the due date has been assessed, as per rules and regulations in force.

As per clause 136.1 of Kerala Electricity Supply code 2014, *'The licensee shall be entitled to recover arrears of charges or any other amount due from the consumer along with interest at the rates applicable for belated payments from the date on which such payments became due.'* As such, the applicable interest rate @18% is levied.

As per clause 136.2 of Kerala Electricity Supply code 2014, *'No such sum due from any consumer, on account of default in payment shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied.'*

This clause clearly relates to recovery of current charges from a defaulter. As the subject appellant is not a defaulted consumer, this clause cannot be made applicable.

The re-assessment of electricity bill for the litigation period from 1/2008 to 9/2013 was done as per the verdict of Hon'ble Supreme Court of India and as per rules and regulations in force, which is binding to all concerned.

The institution is neither Government owned nor Govt. aided and hence, comes under the category of Self-Financing Institutions.

The bill issued by KSEBL is in line with the verdict in Case No. CA No. 8350/2009 by the Hon'ble Supreme Court on 20-02-2020 and as per Regulation 130(7), 134 and 136(1) of Electricity Supply Code 2014.

The order of CGRF is in line with the verdict in Case No. CA No. 8350 I 2009 by the Hon'ble Supreme Court on 20-02-2020.

Hence, it is respectfully submitted that the appellant is not entitled for any relief as sought for in the above petition and requested to declare that the action of the respondents is well within the purview of the prevailing rules and regulations and is in order and prayed to dismiss the petition with cost.

**Analysis and findings:**

The hearing of the case was conducted on 03-08-2022 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. Sri. Krishna Kumar. J., Advocate was attended the hearing on behalf of the appellant and Smt. Asa T.V., Assistant Executive Engineer, Electrical Sub Division, KSEBL, Nilambur was attended the hearing from the respondent's side. 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 appellant Fathimagiri English School is neither a Govt. institution nor a Govt. aided institution. It is a CBSE affiliated institution established in the year 1971 and hence, a Self-Financing Institution.

The Section 86 (1) (a) of Indian Electricity Act clearly spelt about the power of State Regulatory Commission to fix the tariff of supply of electricity. Accordingly , during the tariff fixation by the KSEERC, the tariff of the Self-Financing Institutions was included in the category of VII A from VI A since 01/2008 and then changed to VIII during 2013 and then to VI F during 2014. All the consumers in the State are bound to pay the energy charges fixed by the KSEERC.

Section 134 (1) of Kerala Electricity Supply Code 2014 "Under charged bills and over charged bills" states, "If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill."

Section 136 (1) of Kerala Electricity Supply Code 2014, states “The licensee shall be entitled to recover arrears of charges or any other amount due from the consumer along with interest at the rates applicable for belated payments from the date on which such payments became due”.

As per this Regulation, the Licensee is entitled to charge the arrears with the interest for the belated payments from the date in which such payments became due. Hence, the question is when the payment became due? In this matter it is very pertinent to refer the order of Hon’ble Supreme Court of India in the Civil Appeal No. 7235 of 2009 M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Others. The scope and ambit of Section 56 of Indian Electricity Act 2003 was interpreted by the Apex Court in the aforesaid decisions and in the later it was conclusively held that what is covered by Section 56 (1), is the negligence on the part of a person to pay for electricity and not anything else nor any negligence on the part of the Licensee. Para 11 & 12 of the said order clearly spelt out that electricity charges could become “first due” only after the bill is issued, even though the liability would have arisen on consumption. Then the period of limitation of two years would commence from the date on which the electricity charges become first due under Section 56(2). This Hon’ble Court also held that Section 56(2) does not preclude the Licensee from rising an additional or supplementary demand after the expiry of period of limitation in the case of a mistake or bona fide error.

Here, it is clearly mentioned the amount is due only when the bill or demand is raised to the consumer. As such, in this case, there is no amount due from the appellant till the bill is raised. Further, the circular of KSEBL dated 29/07/2020 is very clear that the KSEBL was billing all the Self-Financing Institutions under the revised tariff since 01/2008 and they were paying only as per tariff VIA and this was questioned in the Court. When the order of Hon’ble Supreme Court was against these institutions, they were asked to pay the differences of billed amount and amount is to be paid with interest. This circular is stated that the arrears from the consumers are to be recovered with interest.



In the case in hand, there was no arrears from the appellant and hence, interest is not applicable.

In the hearing, it was mentioned that the amount without interest has already been remitted.

**Decision: -**

From the analysis of the arguments of appellant and respondent and the hearing, the decision is taken as follows:

- (1) The order of CGRF, Northern Region in OP No. 44/2021-22 dated 31-01-2022 is set aside.
- (2) The appellant is not liable to pay the interest.

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

**ELECTRICITY OMBUDSMAN**

P/025/2022/\_\_\_\_\_ dated \_\_\_\_\_.

Delivered to:

1. Sr. M. Prasanthi. A.C., Manager & Mother Superior, Fathimagiri English School, Nilambur. R.S., Malappuram 679330
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Nilambur, Malappuram 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