

**THE STATE ELECTRICITY OMBUDSMAN**  
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**APPEAL PETITION No. P/031/2021**  
**(Present: A.S. Dasappan)**  
**Dated: 21<sup>st</sup> October 2021**

Appellant : Sr. Smitha,  
Mother Superior,  
Nirmal Bhavan Convent  
Nenmara,  
Palakkad Dist.

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

**ORDER**

**Background of the case:**

The appellant is a three-phase consumer of Electrical Section, Nenmara with consumer number 1165138006403. The electric connection was effected on 24-01-1992 and the connected load is 6820 watts. The premises is a self-financing institution and billing of energy charges was done under LT VIA tariff till 30-11-2007. Afterwards the tariff category of the self-financing institution was changed to LT VIIA tariff category and in continuation the subject went to litigation. The appellant was given a short assessment bill for Rs.23,764/- dated 12-10-2020 and hence, the appellant filed a petition in Consumer Grievance Redressal Forum (CGRF), Northern Region, Kozhikode vide OP No. 130/2020-21 and as per the order of the Forum order dated 26-03-2021, the respondent issued revised bill for Rs.20,159/- on 22-04-2021. Also, the Forum found the respondent's action based on the direction of the Secretary, KSEB Ltd. vide dated 29-02-2020 is in order. Not satisfied with the decision of the Forum, the appellant filed this appeal petition before this Authority.

**Arguments of the appellant:**

The appellant's case is not related with the order No. LAI/5243/2009/205 dated 29-02-2020 of KSEB Ltd. and the appellant had not filed any petition against KSEB Ltd. There is no direction in the above order to realize such an amount from the appellant. The respondent had to bill the appellant under LT VII A tariff as per the tariff order dated 01-12-2007. Besides, KSEB Ltd. had directed the Section Officers on 05-01-2020 to bill the self-financing institution under LT VII A tariff. This direction was also disobeyed by the section authorities. The KSEB Ltd. had not directed the section officials to generate bills based on an arrear amount, which said to be done before 12 years. Moreover, for realizing excess amount from the appellant, the energy consumption in 11/2008 and 01/2009 are seen furnished higher than the actual units (actual 325 units and 205 units) consumption. The appellant was given a revised bill on 22-04-2021 as directed by Consumer Grievance Redressal Forum. The request of the appellant is to quash the bill.

Earlier a bill for Rs.26,100/- dated 08-09-2015 had been quashed by Electricity Ombudsman and the respondent filed a writ petition before the Hon'ble High Court of Kerala and hence, the amount is kept under "Dispute Status". But the respondent collected Rs.99/- towards surcharge for the disputed amount and issued notice for remitting the disputed amount.

The interest on Cash Deposit is not seen credited and adjusted in the regular bimonthly bill, but which is adjusted in the "disputed arrear amount". The appellant had requested to credit the interest of Cash Deposit to the bimonthly bill, but the respondent did not take any action for the same. Even after the direction of Consumer Grievance Redressal Forum, no action was taken for the interest adjustment. In this case, the request of the appellant is to credit and adjust the Cash Deposit interest in the regular bimonthly electricity bill.

**Arguments of the respondent:**

The subject matter of this complaint has already been decided by the Hon'ble Supreme Court in Civil Appeal No. 8350/2009 and other connected

cases which are binding on all Courts/Forum. Hence, the appeal is barred by *res judicata* and hence, the appeal is not maintainable before this Authority. Hence, it is submitted that the appeal may be dismissed.

The appellant's institution namely "Nirmala Bhavan" coming under the category "Self-Financing Educational Institution (SFEI). The contention of the appellant that the billing was done in LT VI A tariff till 30.11.2007 is true. This is because as per the prevalent tariff, all educational institutions, whether Government, Govt-aided or self-financing were categorized under a single tariff. In the tariff order formulated by the Kerala State Electricity Regulatory Commission (KSERC) with effect from 1.12.2007, the SFEIs were categorized under LT VII-A 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 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 which is reproduced below:

(1) Section 62. (Determination of tariff): --- (1)The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –

- (a) supply of electricity by a generating company to a distribution licensee: Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;
- (b) transmission of electricity ;
- (c) wheeling of electricity;
- (d) retail sale of electricity: Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity.

(2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

(4) No tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.

(5) The Commission may require a licensee or a generating company to comply with such procedures as may be specified for calculating the expected revenues from the tariff and charges which he or it is permitted to recover.

(6) If any Licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the Licensee.

From the above statute [Section 62(3)], State Electricity Regulatory 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 appellant is praying on retrospectivity of the Tariff Order. There is no retrospectivity in the Tariff Order, Tariff order has its effect from 01.12.2007. The demand is the outcome of the Judgment of the Hon'ble Supreme Court of India. The Hon'ble Supreme Court found that no error was committed in fixing the higher tariff for the SFEIs categorizing them as commercial entities.

During 9/2008 to 7/2009 (6 bimonthly bills), the appellant was being charged under LT VI A tariff instead of VII A. The averment of the appellant that those who were remitting current charges in LT VI A tariff instead of LT VII A tariff, difference between LT VII A rate and LT VI A rate are not bound to remit the arrears as per the judgment of Supreme Court of India, is false. This amount

is available in Orumanet in disputed status. Hence the bill issued is legal and binding on the appellant.

The CGRF found that as per Regulation 134 of the Supply Code 2014, the bill issued by this licensee to recover the undercharged portion is legally sustainable. It was also found that the action of this licensee to charge interest on the under charged bill based on the direction of the Secretary, KSEBL dated 29.02.2020 is also in order. The Forum also directed this respondent to revise the bill based on the actual recorded energy consumption. The respondent has already revised the bill as directed by the Forum by issuing a revised bill for ₹ 20,159/- on 22.4.2021. The error in bill pointed out by the Forum was for the months of 11/2008 and 1/2009 only. Since the premises is used for two different purposes, the highest of the two will be used for billing purposes unless the premises is segregated and separate connection is availed for the lower tariff.

The contention of the appellant that this case has no relevance with the circular dated 29.02.2020 of the Secretary, KSEBL is false and misleading. It is true that no case was filed by the Appellant 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 filling Special Leave Petition. 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 WP(C) 23929/2016 filed by this respondent against the orders of the Electricity Ombudsman in P/009/2016 is an entirely different matter. The cause of action in that dispute is a short assessment bill issued for loss sustained to this licensee while calculating the connected load. The matter was already heard and decided by this Authority vide Appeal No. P/009/2016 which was allowed. The WP was filed by the licensee aggrieved by the decision of the Ombudsman. The cause of the dispute is mistakenly recording the connected

load as 3820W instead of 6820W and nowhere related to the tariff of Self-Financing Educational Institutions.

There is no bar in collecting the arrears as well as interest on the arrears. This amount is no longer a disputed arrear after the judgment of the Hon'ble Apex Court. The amount of ₹ 26,100/- is the short assessment bill as a result of the mistake in connected load which is still under litigation before the Hon'ble High Court of Kerala in WP(C) 23929/2016. Hence the claim of the respondent claiming interest for this amount is illegal. There is no amount due to appellant towards interest on Security Deposit.

The respondent requested to dismiss the appeal petition.

**Analysis and findings:**

An online hearing of the case was conducted at 12 Noon on 02-09-2021 with prior intimation to both the appellant and the respondent. Sr. Molphy attended the hearing for the appellant and Sri. Premraj. C.V., Assistant Executive Engineer, Electrical Subdivision, KSEB Ltd., Vadakkancherry 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 main contention of the appellant is that they are not liable to remit the bill amount originally issued by the appellant on 12-10-2020 for Rs.23,764/- and later revised for Rs.20,159/- dated 22-04-2021, following the judgment of Hon'ble Supreme Court. The main reason for the argument of the appellant is that the appellant had not filed any petitions before Hon'ble Courts, on the subject of tariff category assignment. If the respondent had issued bills on the right tariff, the appellant could have remitted the amount then and there itself.

The respondent argued that the appellant's institution is a Self-Financing Educational Institution and as per the judgment of Hon'ble Supreme Court

regarding the assignment of tariff category, the appellant was given bill for Rs.23,764/- and later revised to Rs.20,159/- towards the difference in energy charges under LT VI A tariff and LT VII A tariff.

The revised bill issued by the respondent to the appellant on 22-04-2021, as per the judgment dated 20-02-2020 of Hon'ble Supreme Court, is the difference between the electricity bill prepared under LTVI A tariff and LTVII A tariff for the period from 03-07-2008 to 09-07-2009. The bill amount is Rs.20,159/- comprising of principle amount Rs.6,719/- and surcharge of Rs.13,440/-.

Vide circular dated 29-02-2020, KSEB Ltd. directed all the field officers of the Licensee to implement the tariff rate fixed by KSEERC for the Self-Financing Educational Institution with effect from 01-12-2007 and issue arrear bills with surcharge accordingly. The circular was given by the Licensee as per the judgment of Hon'ble Supreme Court in Civil Appeal No.8350/2009 filed by KSEB Ltd.

Another direction on the same subject had been given by KSEB Ltd. on 05-01-2020 to all the field officers of the Licensee to issue demand to all Self-Financing Educational Institutions under the LT VIIA, effect from 01-12-2007, except those who obtained favourable orders from Hon'ble High Court of Kerala on the ground that Hon'ble Supreme Court stayed the operations of judgments of Hon'ble High Court of Kerala.

The argument of the appellant is that if the bill had been issued under LTVIIA tariff in the reassessment period, it could have been remitted in the respective period itself is not sustainable. In a period of certain petitions and appeal petitions filed by similar institutions were being considered by the Hon'ble Courts, the Licensee cannot issue such bills on the same subject to the appellant. Only on 05-01-2020, KSEB Ltd. decided to issue bills under higher tariff rate to the Self-Financing Educational Institutions except those who availed favourable orders from Hon'ble High Court of Kerala.



On the above circumstances, this appellant is liable to remit the amount.

Regarding the other grievances of the appellant, the respondent revealed that the bill for Rs.26,100/- dated 08-07-2015 is not related with present subject of tariff category. The interest on Cash Deposit shall be adjusted in the regular bills by the respondent.

**Decision: -**

For the reasons detailed above, the appeal petition No: P031/2021 filed by the appellant stands dismissed. The order No. 130/2020-21 dated 26-03-2021 of Consumer Grievance Redressal Forum, Northern Region, Kozhikode is upheld.

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

**ELECTRICITY OMBUDSMAN**

P/031/2021/\_\_\_\_\_ dated \_\_\_\_\_.

Delivered to:

1. Sr. Smitha, Mother Superior, Nirmal Bhavan Convent, Nenmara, Palakkad Dist.
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Vadakkancherry, 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