

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/041/2021**(Present: A.S. Dasappan)****Dated: 29th October 2021**

Appellant : Sri. Varkey George
Manager,
Brethren English Medium High School,
Kumbanad P.O.,
Thiruvalla,
Pathanamthitta Dist. 689547

Respondent : Asst. Executive Engineer,
Electrical Sub Division,
KSEB Ltd., Thiruvalla,
Pathanamthitta Dist.

ORDER**Background of the case:**

The appellant is running a Self-Financing Educational Institution (SFEI) with name "Brethren English Medium High School" in the Electrical Section area of KSEB Ltd., Kumbanad. The institution is having two electric connections with consumer numbers 1305 and 4363 and now the tariff category allotted is LT VIF. The appellant was given two meters for the above consumer numbers for Rs.88,375/- and Rs.35,736/- towards the undercharged amount for the period from 12/2007, following the judgment of Hon'ble Supreme Court. The appellant approached the officers of the Licensee and finally approached Consumer Grievance Redressal Forum, Southern Region, Kottarakkara with a petition, requesting to allow the appellant to pay the principal amount only with the facility of instalments. The Forum registered the petition vide OP No: 02/2021 and the Forum vide order dated 30-04-2021 dismissed the Petition. Not satisfied with the decision of the Forum, the appellant filed this appeal petition before this Authority.

Arguments of the appellant:

The appellant received two electricity bill Nos. 1305 and 4363 dated 01-10-2020 from the Electrical Section, Kumbanad. Immediately, the appellant contacted the Asst. Engineer, KSEBL, Kumbanad and as per advice, the appellant sent two letters to the Pathanamthitta Audit office and to the Assistant Executive Engineer, Thiruvalla on 05-10-2020. The audit office replied that they have nothing to do with the bills and that the Kumbanad Section will have to decide on it. The appellant met the Assistant Executive Engineer at Thiruvalla and the appellant was advised to send the complaint to the Kerala State Regulatory Commission at Thiruvananthapuram and subsequently sent a letter to them on 03-11-2020. After receiving the letter, the Regulatory Commission Office informed on 11-11-2020 that they will take action on it. On 16-12-2020, the Regulatory Commission Office informed that the Commission is not authorised to intervene individual complaints and that the appellant has to file petition before the Consumer Grievance Redressal Forum (CGRF), Southern Region, Kottarakkara.

As instructed, the appellant sent a letter on 24/12/2020 requesting the above said Forum to reduce the amount of the above said two bills from Rs.1,24,111 /- (including the energy charges and the surcharges Bill No.1305 energy charge is Rs.12,611.42/-, surcharge is Rs.23,124,58/- and Bill No.4363 energy charge is Rs.32,951.91/-, surcharge is Rs.55,423.09/-) to only the energy charge of Rs.45,563.33/- and that the appellant should be allowed to pay it in instalments. Consequently, the Forum said that the KSEB Ltd. had taken a decision regarding one time payment reducing the amount and that the appellant would be allowed to pay the amount in instalments.

Thereafter, the appellant met the respondent, who advised to write an application and submit that to the Assistant Engineer, Kumbanad let to know the amount supposed to pay as energy charges. Thus, a letter was sent to the Assistant Engineer on 25/03/2021 regarding this matter. Later, the Forum ordered to pay the amount which includes the energy charges and surcharges and that the Forum did not interfere in this matter.

The appellant's plea before the respondents, the Electricity Regulatory Commission and the Consumer Grievance Redressal Forum were as follows and bringing the following for the consideration of this Authority.

1. Brethren English Medium High School is an Un-Aided School recognized by the Kerala Government.
2. The School at present has a student strength of only 253 students.
3. Since the time of the lock down due to the Covid-19, the school is conducting Online classes and the appellant is not getting enough fees even to pay the salary to the employees. The fee charged is very low and it is not sufficient to pay the salaries.
4. The maintenance work of the school is done by the amount collected from the Executive Committee members of the School Society.
5. To this date, the appellant has never been informed about any short assessment bill since December 2007.
6. The appellant paid all the electricity bills given from time to time.
7. The appellant has never filed any case against the Kerala State Electricity Board nor are we party to any case regarding the Short Assessment Bill.
8. Taking into consideration the above said facts it is difficult for us to pay such a large amount Rs. 1,24,111 /- including the electricity charges and the Surcharges.
9. Since the appellant was not given any notice regarding the non-payment of any Bills, imposing a huge amount of Surcharge is not justifiable.

Since the appellant was not given any notice regarding the change of Tariff in 2007, imposing a heavy surcharge against the appellant is the denial of natural justice.

According to the last sentence of Para.18 of the Hon'ble Supreme Court Judgment "In the event the tariff fixing body, in this case, being the Commission, can distinguish the purpose of the respective categories, they would be entitled to impose different rates of tariffs for different categories of educational institutions".

Since the appellant's school is running at a loss, it is requested not to equate appellant with other financially sound self-financing institutions. Making use of the above observation of the Hon'ble Supreme Court, the appellant requested to treat

appellant's case as a special one and reduce the amount which the appellant supposed to pay. Otherwise, the very existence of the school will be in danger.

Finally, the request of the appellant is for instalments in energy charge for Rs.45,563/-.

According to the Regulation 130(7) of the Kerala Electricity Supply Code 2014, if the complaint was found to be incorrect, the consumer shall immediately be notified and directed to make payment as per the original bill and the consumer shall be liable to pay late payment penalty if the payment is made after the due date of payment as per the original bill. Hence, even if the appellant has to pay the surcharge, it is applicable from the date the appellant was given the two bill Nos.1305 and No.4363 that is 30/10/2020.

Arguments of the respondent:

This appeal petition is one which challenging short assessment invoices on account of reclassification of tariff by the Kerala State Electricity Regulatory Commission over a specific period, that too served on them pursuant to the verdict of the Honourable Apex Court sanctifying such a reclassification of tariff of the Self-Financing Colleges. When the issuance of the invoices in question were pursuant to the arrival of judicial finality over the question of such reclassification of Self-Financing Educational Institutions, and the tariff applied is in strict sense in line with the verdict of the Hon'ble Supreme Court of India in Civil Appeal No: 8350/ 2009 and in batch of similar appeals, this appeal petition is not maintainable before this State Electricity Ombudsman, and thus it is humbly prayed to dismiss this appeal in limine.

1. All the educational institutions were continuing under the classification of LT VI A Tariff up to November 2007 in common, till a differential approach to the Self-Financing educational institutions adopted by the KSERC. In consideration of several aspects and parameters, the Hon'ble Kerala State Electricity Regulatory Commission (KSERC) had implemented a reclassification, and thereof all the Self-Financing educational institutions were brought under the LT VII A (Commercial) tariff, since December 2007, vide the tariff order notified through due processes mandated by the law, in November 2007. As such, all

the service connections belong to the Self-Financing Institutions including that of appellant herein are liable to be billed under the tariff category LT VII A from that month onwards.

2. Whereas, aggrieved by the aforementioned reclassification of such self financing educational institutions, several of them had preferred Writ Petitions before the Hon'ble High Court of Kerala, challenging such reclassification by the KSERC, which in turn lead to Writ Appeals before the Division Bench of the Hon'ble High Court, and thereon finally the Division Bench of the Hon'ble High Court in WA 1063/ 2009, and in a batch of similar Writ Appeals, preferred to quash the reclassification and in consequence directed to bill the Self-Financing institutions under the pre-revised tariff category of LT VI A.
3. Aggrieved by such a decision of the Division Bench of the Honourable High Court of Kerala, the Kerala State Electricity Board Ltd has preferred Civil Appeal Petitions (CIVIL APPEAL NO. 8350 OF 2009 and connected cases) before the Hon'ble Supreme Court, challenging the aforementioned decision to quash the lawful tariff classification of self-financing educational institutions under the category LT VII A, made by the Hon'ble KSERC.
4. While so, awaiting judicial finality over the matter by the Apex Court in this regard, the Kerala State Electricity Board has constrained to comply with the judgements by the Hon'ble Division Bench of High Court of Kerala prevailed then, quashing the reclassification and restoring LT VI A tariff to self financing educational institutions, for the time being and thereof it was afforded to allow such self-financing educational institutions to continue under LT VIA tariff. As the Civil Appeals filed by KSEB were pending decision before the Hon'ble Supreme Court then, these bills were obviously subject to revision if the impugned judgement, at the instance when these Civil Appeals result in reversion of the decisions of the Hon'ble High Court of Kerala.
5. At this stage, the Civil Appeals preferred in this connection before the Honourable Supreme Court stand decided and disposed of in favour of the Kerala State Electricity Board Ltd, vide its judgment dated 20.02.2020, upholding and validating the lawful reclassification of self-financing educational institutions to LT VII A made by the Hon'ble KSERC in the tariff order of

November 2007. Thus, on implementation of the decision of the Apex Court in this regard, all those Self-Financing Educational Institutions have been brought under LT VII A tariff during the period in question, retrospectively with effect from December 2007. Accordingly, invoices amounting to Rs: 35736/- and Rs: 88375/- were severed on this appellant, towards realisation of the amount actually undercharged over the period from the respective consumer, caused by tariff revision/ reclassification by the KSERC covering the period.

6. As the disputes over tariff classification of the Self-Financing Educational Institutions came to a conclusion and the issues thereof attained judicial finality, the tariff applicable to such institutions settled as LT VII A from December 2007 onwards, the KSEB Ltd is absolutely rightful in claiming the amount undercharged owing to the period in which the service connection continued under billing in the category LT VI A, in compliance of the judgment of the Division Bench of the Hon'ble High Court of Kerala.
7. Regulation 134 (1) of the Kerala Electricity Supply Code provides for recovery of amounts actually undercharged. In this instant case, admittedly the service connection of the appellant belong to an Unaided/ Self-financing educational institution. As such, the tariff applicable to the electricity connections bearing consumer numbers 1305 & 4363 respectively of the institution ever be LT VII A since December 2007. As the consumers had been allowed to continue under LT VI A tariff forced by the judgement of the Hon'ble High Court of Kerala, which was in turn reversed by the Hon'ble Supreme Court, the KSEB Ltd is absolutely rightful in claiming the difference in amounts when billed in LT VII A as amount actually undercharged, from the respective consumers. For the aforementioned reasons and facts, the limitation clause under Section 56 (2) is in now-way applicable to this instant case. As the invoice in question is issued in strict compliance of the rates and propositions of the final orders of the Apex Court in the Civil Appeals, and this appellant could not evade from the remittance of the same.
8. The tariff is decided on the basis of the purpose for which the energy is consumed at the premises, and connected load at the premises also do have relevance in determining the tariff. Admittedly when the service connections were availed solely for running Self-Financed Educational Institution, no matter what may be

the student strength or other parameters of the institution, the tariff applicable to such an institution over the respective period was undoubtedly LT VII A, as settled ultimately by the Apex Court. Therefore, be the contentions of the appellant in this regard is having no relevance.

9. The amount in the bill now issued were originally due from December 2007 onwards, therefore be the interest/ surcharge on the amount is also due, as the concept of interest is directly correlated to time value for money coupled with inflation. The Hon'ble High Court of Kerala, considering a similar case in WP (C) 17434 of 2020 has categorically held that interest/ surcharge is due in such cases. The Hon'ble Court was of the inference that interest component is compensatory in nature, and one intended to compensate the respondent for the delay in receiving payments that are due to it.

For the aforementioned facts and circumstances, the invoices amounting to Rs: 35736/- and Rs: 88375/- are accurate and legally sustainable. This Appellant is liable to remit the same.

Hence, it is prayed before State Electricity Ombudsman to dismiss this appeal with costs to this respondent.

Analysis and findings:

An online hearing was conducted at 3-30 PM on 25-09-2021 in Appeal Petition No. P041/2021 with prior intimation to both the appellant and the respondent. Dr. K.V. Thomas attended the hearing for the appellant and Sri. R. Shaji, Assistant Executive Engineer, Electrical Subdivision, Thiruvalla attended the hearing from the respondent's side. On examining the petition, the counterstatement of the respondent, the documents attached and the arguments made during the hearing 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 ready to remit the short-assessed amount issued for the two consumer numbers and requested exemption from paying surcharge for the reassessed amount. The respondent issued bills for Rs.88,375/- comprising of the principal amount for the period from

12/2007 to 08/2013 and its surcharge up to 31-10-2020 in respect of consumer number 4363. The reassessed amount in respect of consumer number 1305 is Rs.35,736/- comprising of principal amount for the period from 12/2007 to 08/2013 and its surcharge up to 30-10-2020. Both bills were issued as per the order of Hon'ble Supreme Court in Civil Appeal No. 8350/2009 dated 20-02-2020.

The argument of the appellant is that they had not filed any petition against the Licensee and the appellant is not a party to any case regarding the short-assessment bill. Also, the appellant had never been informed about any short assessment bill since 12/2007.

The respondent agreed 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.1,24,111/- including surcharge for consumer numbers towards the difference in energy charge under LT VIA tariff and LT VIIA tariff.

Vide circular dated 29-02-2020, KSEB Ltd. directed all the field officers of the Licensee to implement the tariff rate fixed by KSERC 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 that, the appellant has never been informed about any short assessment bill since 2007 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, the appellant is liable to remit the amount. In the hearing, the respondent revealed that the benefit of "one time settlement" can be given to the appellant.

Decision: -

For the reasons detailed above, the appeal petition No: P-041/2021 filed by the appellant stands dismissed. The order dated 30-04-2021 in OP No. 02/2021 of CGRF, Southern Region is upheld.

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

ELECTRICITY OMBUDSMAN

P/041/2021/_____ dated _____.

Delivered to:

1. Sri. Varkey George, Manager, Brethern English Medium High School, Kumbanad P.O., Thiruvalla, Pathanamthitta Dist. 689547
2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Thiruvalla, Pathanamthitta 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, Kottarakkara - 691 506.