

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/053/2021**(Present: A.S. Dasappan)****Dated: 16th December, 2021**

Appellant : **Sri. K.M. Moosa,**
Chairman,
AL-AZHAR COLLEGE,
Perumpillichira. P.O.,
Thodupuzha,
Idukki Dist.-685605

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Thodupuzha East, Idukki Dist.

ORDER**Background of the case:**

The appeal petition pertains to the short-assessment made by KSEB Ltd. towards the tariff difference between LT VIA and LT VIIA for a specific period amounting to Rs.3,17,395/- and issued to the appellant. The appellant's premises is a Self-Financing Educational Institution having a High Tension (HT) electric connection at present. Earlier the HT premises was with a Low Tension (LT) electric connection and which was dismantled and availed HT connection. The short-assessment amount is for the period of LT connection in the premises. The respondent revised many times the short-assessed amount and issued to the appellant. As such, the appellant filed a petition before the Consumer Grievance Redressal Forum (CGRF), Central Region vide OP No. 11/2021-22 and the Forum dismissed the petition vide order dated 06-08-2021.

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

Arguments of the appellant:

On 12.03.2020 the appellant has received a notice issued by Assistant Engineer, Electrical Section No. II, Thodupuzha directing the appellant to pay an amount of Rs.1,84,894/- being the arrear balance amount of energy charges and interest thereon, on or before 30/03/2020, otherwise the service connection will be disconnected. The said notice as well as the bill was silent about the period for which the amount has been charged and basis of calculation of the same, but merely stating that the appellant has to remit an amount totaling to Rs.1,84,894/- . The notice was silent about the circumstances under which additional on energy charges arose. The appellant has been regularly remitting all the bills issued to the appellant till the disconnection of the supply on 07/09/2011. Surprised to see the notice to recover additional energy charges and interest thereon for a connection which stands disconnected 10 years back, the appellant approached the office of the Asst. Engineer, Electrical Section No. II, Thodupuzha to enquire about the same. On pointing out the above facts, it was informed from the said office that the appellant need not remit the amount then. Subsequently, after 4 months of the said notice, the appellant was issued with another notice from the same office directing to remit an amount of Rs.8,19,669/- being the arrear balance of energy charges of Rs.3,17,395/- and interest thereon Rs.5,02,278/- for the period from 01/12/2007 to 03/03/2010. In the said notice it is stated that since the Tariff Notification dated 26/11/2007 has been under challenge before various courts the bills issued at that time was charged under LT VI A tariff only and the appellant is liable to pay the balance arrear energy charges with high rate of interest. Since the said notice and bill was issued for the connection which has been disconnected and dismantled 10 years back i.e on 07/09/2011, and for the payment of an unreasonable amount and exorbitant rate of interest that too for no fault of the appellant, the appellant has approached the office of KSEBL pointing out the above and requested to exonerate the appellant from remittance of the exorbitant amount as stated in the notice and bill. The appellant has made a representation to the Hon'ble Minister for Electricity to waive of the unreasonable illegal amount charged and it was informed that due to the pandemic situation the matter has not been

taken up and the appellant will receive communication as and when the matter will be taken for consideration.

While so the appellant received another notice issued by Assistant Engineer, Electrical Section II, Thodupuzha directing to remit an amount of Rs.8,92,475/- within 15 days of receipt of the same. It is also stated in the notice that if no remittance is made within the time limit revenue recovery proceedings will be initiated against the appellant for realization of the amount. In the notice the period for which additional energy charges arose is stated as from 05/2008 to 03/2010, which is not in concurrence with the period stated in the second notice and the statement provided along with the same.

The respondent filed objection before the District Forum, stating that the appellant was a consumer under Low Tension Category with Con No. 1156207012682 under Electrical Section, No.II, Thodupuzha. Later the above L.T. service connection was disconnected and HT service connection was availed by the appellant. The tariff fixed for Self-Financing Educational Institution from 01-12-2007 to 30-04-2013 was LT VIIA commercial. The appellant refused to pay the current charges for the Con No. 1156207012682 under LT VII A tariff and paid the current charges only under LT VIA tariff for the period from 05/2008 to 03/2010.

The appellant agitated the matter before Hon'ble High Court of Kerala by filing WP (C) No. 15356/2011 and by Judgment dated 12-07-2016 of the Hon'ble High Court of Kerala, which is self-explanatory. The Judgment clearly permits KSEB Ltd. to realize the arrears subject to the final decision of SLP No. 8350/2009 filed by KSEB Ltd. before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India in the Judgment dated 20-02-2020 allowed the appeal in favour of KSEB Ltd. in Civil Appeal No. 8350 of 2009. Therefore, KSEB Ltd is bound to realize the undercharged amount due to difference in LT VIIA and LT VIA from the appellant.

The respondent contented further that the detailed calculation statement of undercharged amounts due to the payment of current charges under LT VIA tariff, while the actual amount payable is under LT VIIA tariff with respect to Con.

No.1156207012682. The difference in tariff thus, payable by the appellant is Rs.3,17,395.44.

The respondent further contented that regarding the question of fee for belated payment from the appellant, the Hon'ble High Court of Kerala in judgment dated 24-08-2020 in WP (C) No. 17434/2020 filed by M/s Southern College of Engineering and Technology, Chalakkudy Vs KSEB Ltd. laid down a strong dictum on upholding the right of KSEB Ltd. in charging interest. Therefore, the arrears demanded from the appellant is legitimate, further there is an unequivocal assertion of right to charge interest stands sanctified by the Hon'ble High Court of Kerala. So, the maximum leniency which can be provided to the appellant is to permit him to pay the arrears demanded under installment scheme based on request. In case the appellant is to be submitting a written request in this regard, the appropriate authority of KSEB Ltd. is willing to consider the same.

The order of the Consumer Grievance Redressal Forum, Ernakulam is contrary to law, facts, probabilities and circumstances of the case and the order is passed without properly analyzing the facts and circumstances of the case.

The lower Forum ought to have found that the Asst. Engineer, Thodupuzha has neither any authority nor any manner of right to issue the third notice to realize such an amount as additional balance and interest thereon for an electric connection which has been disconnected before 10 years. The said consumer number has been disconnected and the service connection has been dismantled on 07/09/2011 and at the time of disconnection the entire liability in respect of the said connection has been cleared by the appellant and after clearing the entire dues, the service connection has been dismantled by KSEB.

The lower Forum erred in construing the provisions of Regulations 134 and 131 of Kerala Electricity Supply Code as the said provisions are applicable only to consumers under KSEB. The appellant, on dismantling of the service connection for which demand notice is issued now, is not a consumer as laid down in Regulation 131 and 134 and hence, the respondent is not entitled to recover the short assessment bill and interest thereon. Moreover, as per Regulation 145 (6) and

(7) the Licensee is not entitled to raise any bill after dismantling of the service connection. This fact is not considered by the lower Forum in its real perspective.

The lower Forum failed to find that the attempt on the part of Asst. Engineer, Thodupuzha to realize huge amount from the appellant is illegal and arbitrary and without any basis. The reasoning in third notice that the attempt for realization of huge amount from the appellant is as part of compliance of Hon'ble Supreme Court order is irrational and against real facts. Recovery of huge amount as interest more than that of the principal amount is against law.

The lower Forum failed to decide the case in its real perspective because of the reason that if the appellant ought to have to pay any additional balance that should have to be collected before the disconnection and KSEB is not entitled to recover the same after ten years of disconnection which is against the provisions of Regulation 145(6) and (7) of the Kerala Electricity Supply Code. Also, it is pertinent to note that the disconnection of the appellant's consumer number has sanctioned after clearing of the entire dues pertaining to that connection.

The lower forum did not consider the serious irregularities from the side of the respondent that the appellant has received different notices in different occasions, that too for different amounts which itself shows that the action on the side of KSEB is to recover huge amounts from the appellant without any basis. The calculation made by the KSEB with regard to energy charges in the first three notices are incorrect and without any basis which is evident from the fact that different amounts has been claimed in the said notices.

The appellant used to remit the monthly bills till the period of disconnection for the amounts stated in the bills issued by KSEB to him and there was no arrear pending at the time of disconnection on 07/09/2011. It is not a fault on the part of the appellant that the bills issued by the KSEB at that time to the appellant was not prepared based on the actual rate in which the appellant had to pay during that period. Hence, there is no laches on the part of the appellant in payment of the bills in time.

Whereas in the statement attached along with the second notice, the period is shown as from 05/2008 to 04/2011. But it is surprising to note that as per the

third notice issued by the same office, the period is shown as from 05/2008 to 3/2010. Hence, it is crystal clear that the second and the third notices are issued without any basis and the office issued the said notices is not sure about the period for which the additional amount become due and hence, they are not entitled to recover such an amount from the appellant. Moreover, KSEBL has not having any correct and accurate statement of account with them to charge any arrear balance from the appellant as the same is evident from the discrepancies in the various notices issued to the appellant as pointed out above. The Forum did not consider these matters while deciding the case.

The Ombudsman may be pleased to allow this appeal, set aside the order of the CGRF, Central Region, Ernakulam in CGRF-CR/OP No. 11/2021-22/116 dated 06/08/2021 by quashing the notices issued by Assistant Engineer, Electrical Section II, Thodupuzha and appropriate order may be passed to exonerate the appellant from payment the amount claimed in third and fourth notices of the Assistant Engineer, Electrical Section II, Thodupuzha.

Arguments of the respondent:

The appellant is bound to pay electricity charges under appropriate tariff fixed by Hon'ble Kerala State Electricity Regulatory Commission. The tariff fixed for self-financing educational institutions from 01.12.2007 to 30.04.2013 was LT VIIA Commercial. The appellant refused to pay the current charges for the Con. No. 1156207012682 under LT VIIA tariff and paid the current charges only under LT VIA tariff for the period from 05/2008 to 03/2010.

The appellant agitated the matter before the Hon'ble High Court of Kerala, by filing WP (C) No. 15356/2011 and the Judgment dated 12.07.2016 of the Hon'ble High Court of Kerala, which is self-explanatory. There is no appeal filed by the appellant against the above judgment. Therefore, the above judgment is final with respect to the grievances raised by the appellant.

The above judgment clearly permits KSEB Ltd. to realize the arrears, subject to the final decision of SLP No. 8350/2009, filed by KSEB Ltd. before the Hon'ble Supreme Court of India.

The Hon'ble Supreme Court of India in the judgment dated. 20.02.2020, allowed the appeal in favour of KSEB Ltd. in Civil Appeal No. 8350 of 2009. Therefore KSEB Ltd. is bound to realize the undercharged amount due to difference in LT VIIA and LT VIA, from the appellant. The difference in tariff thus, payable by the appellant is Rs.3,17,395.44.

Regarding the question of fee for belated payment from the appellant, the Hon'ble High Court of Kerala in Judgment dated.24.08.2020 in WP (C) No. 17434/2020, filed by M/s. Southern College of Engineering and Technology, Chalakkudy Vs KSEB Ltd. laid down a strong dictum on upholding the right of KSEB Ltd. in charging interest.

Therefore, the arrears demanded from the appellant is legitimate, further there is an unequivocal assertion of right to charge interest stands sanctified by the Hon'ble High Court of Kerala.

Under the circumstances narrated above, the maximum leniency which can be provided to the appellant is to permit him to pay the arrears under installment scheme based on request. In case the appellant submits a written request in this regard, the appropriate authorities of KSEB Ltd. is willing to consider the same.

Order dated 06.08.2021 of the CGRF-Central Region in OP No.11/2021-22 is in full verification of the facts and circumstances of the case. It is also submitted before the State Electricity Ombudsman that the LT Service connection in the same premises was converted to HT service connection on 04.03.2011 on request of the appellant. The LT service connection was dismantled on 01.04.2011, after giving HT connection on 04.03.2011. Also, an HT agreement was executed by the appellant with the licensee while effecting the HT connection, which provides by clause 9(a) (ii),

"the consumer shall pay for all electrical energy supplied to him by the Board under this agreement and ascertained as herein before provided, at an amount calculated in accordance with the terms given in the schedule to this agreement. Nothing in this agreement shall affect the liability of the consumers to discharge the due to the Board on account of supply of energy during the term prior to 16.02.2011 as per prior agreements, if any, and or as per rules, terms and conditions of supply prevalent from time to time the date of service connection." Also, as per condition 22, the

appellant agreed "the *liability and the assets of the consumer under the prior agreement shall continue under this agreement also*".

Based on the above factual position, it is prayed before the Electricity Ombudsman that the petition may be dismissed with costs to KSEBL as the same is filed without merit.

Analysis and findings:

The hearing of the case was conducted on 08-12-2021 in the office of the Electricity Ombudsman, Edappally, Kochi. Sri. S.S. Thajudeen attended the hearing from the appellant's side and Sri. M.R. Manoj, Assistant Executive Engineer, Electrical Subdivision, KSEB Ltd., Thodupuzha (East) and Sri. Baiju Sebastian, Nodal Officer, Electrical Circle, Pala 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 comprising of the difference in tariff rate under LT VIA and LT VIIA/LT VIF tariff since the appellant is at present a High Tension (HT) consumer and the subject case relates to the period of LT connection. The LT connection was dismantled on 01-04-2011. After dismantling of a service connection, the Licensee cannot make a demand of previous amounts and all bills issued by the Licensee were already settled by the appellant at the time of dismantling.

The respondent argued that the appellant's premises is a Self-Financing Educational Institution and as per the judgement of Hon'ble Supreme Court in Civil Appeal No.8350/2009 filed by KSEB Ltd. The appellant is liable to remit the short-assessed amount. Moreover, the appellant had filed a writ petition vide WP (C) No. 15356 of 2011 before Hon'ble High Court of Kerala regarding the tariff category change from LT VIA to LT VIIA, and the Hon'ble Court disposed the petition with a view that the demand for arrears can be kept in abeyance until a final decision is taken by the Apex Court in the pending Special Leave Petition.

In the hearing on 08-12-2021, the respondent revealed that the total principal amount is Rs.3,17,395/- and surcharge for the period from 05/2008 to 05/2021 is Rs.5,75,080/-. The period of assessment is from 05/2008 to 04/2011. The appellant had been billed under LT VIA tariff from 05/2008 to 04/2011 and the short assessment made from 05/2008 to 03/2011 under LT VIIA tariff and for 04/2011 under LT VIF tariff.

The LT connection in the premises was dismantled on 01-04-2011 following the conversion of the connection to HT on 04-03-2011. The main argument of the appellant is that, it is not proper to realize the short-assessment bill amount after the dismantling of the LT electric connection on 01-04-2011. The appellant had filed a writ petition vide WP (C) No. 15356 of 2011 (T) before the Hon'ble High Court of Kerala and the Hon'ble Court disposed of the petition as below with a view :

- (i) that the demand for arrears can be kept in abeyance until a final decision is taken by the Apex Court in the pending Special Leave Petition;
- (ii) until such time, the petitioner shall pay the present tariff, as applicable in terms with the tariff order issued.

It is to be noted that while dismantling the LT service connection, the SLP No.8350/2009 was before the Hon'ble Supreme Court.

Vide circular dated 29-02-2020, KSEB Ltd. directed all the field officers of the Licensee to implement the tariff rate fixed by KSEB 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.

Decision: -

For the reasons detailed above, the appeal petition No. P-053/2021 filed by the appellant stands dismissed. The order of CGRF, Central Region in OP No. 11/2021-22 dated 06-08-2021 is upheld.

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

ELECTRICITY OMBUDSMAN

P/053/2021/_____ dated _____.

Delivered to:

1. Sri. K.M. Moosa, Chairman, AL-AZHAR COLLEGE, Perumpillichira. P.O., Thodupuzha, Idukki Dist.-685605
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Thodupuzha East, Idukki 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, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.