

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/023/2022**(Present: A. Chandrakumaran Nair)****Dated: 22nd June, 2022**

Appellant : Sri. Abraham J. George,
Manager,
B.A.M. College,
Thuruthicadu,
Pathanamthitta Dist. 689597

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

ORDER**Background of the case:**

The appellant is the administrative head of an educational institution namely, BAM College, Thuruthicad, Pathanamthitta. The college is running aided courses and self-financing courses. They have separate block for the self-financing courses and availed two service connections, one for the academic block and another for the Hostel. The consumer numbers are 1146225015456 and 11462240155461 under the Vennikkulam Section coming under Mallappally Sub Division of KSEBL. The tariff was LT VIA. Kerala State Electricity Regulatory Commission has revised the tariff of Self-Financing Educational Institutions from LT VIA to LT VIIA with effect from 01-12-2007. Then there was a revision from VIIA to VIII during 2013 and then to VIF during 2014. The Licensee has raised the penal bill citing order of Hon'ble Supreme Court and order of the Licensee during 10/2020, effective from 01-12-2007. The Licensee was charging based on the wrong tariff till 10/2020 which was LT VIA, which was applicable for Govt./Aided institutions. The appellant has identified the wrong tariff during the

external energy audit and informed the Licensee to correct the mistake and correct tariff was applied since 09/2020. The penal bills were raised including interest during 10/2020.

The appellant has approached Consumer Grievance Redressal Forum (CGRF), Southern Region, Kottarakkara, seeking the relief to stay the disconnection notice and order to revise the original demand, excluding the interest. CGRF in its order vide No. 67/2021 dated 24-02-2022 disallows the application of the petitioner to make the payment of the short assessment bills without interest and also to exclude the interest for the period of petitions before the Forum and Hon'ble High Court of Kerala.

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

Arguments of the appellant:

The appellant's case has no relevance with the Hon'ble Supreme Court order in CA 8350/2009 dated 20/02/2020 and the subsequent Board order LA1/5243/2009/205 dated 29/02/2020. The appellant's case cannot be linked with the above orders just on a simple fact that the appellant was wrongly billed under tariff VI A. The appellant has not filed any appeals with the courts in this subject and hence, cannot be treated as a party with these cases. The appellant's case is purely on the wrong application of tariff for government aided private educational institutions by mistake or bona fide error. This can be further verified with the following submissions.

The appellant only has identified the wrong application of tariff in the external energy audit conducted and have informed KSEBL immediately when the mistakes were known. The wrongly applied tariff was corrected based on appellant's intimations and corrected bills were served in demand notices from 09/2020.

The appellant has been given bills in LT VI A category all the time. The appellant was not billed in the ruling VII A tariff till the Board order LA. 1/5243/2009 dated 07/11/2009 and the directions contained in the said order was not implemented to the appellant subsequently.

It is observed from section 4 of the CGRF order that KSERC has classified self-financing institutions under LT VIII tariff vide order dated 09/09/2013 and under LT VIF tariff vide order dated 16/08/2014. Many of the Self-Financing Educational Institutions were billed under LT VIA tariff from 01/12/2007 to 08/2013 for the reason that the matter of tariff change was under dispute and under the consideration of the Hon'ble Supreme Court. The Hon'ble High Court order in WA 1064/2209 dated 17-11-2009, which allowed self-financing institutions to be treated like falling under Tariff VI until any new notification is issued in accordance with law. From the above, it is evident that the appellant should have been billed under LT VIII and LT VIF as per the KSERC tariff orders from time to time. On the contrary, the appellant has been issued with bills under LT VIA category up to 08/2020, till the period the appellant intimated KSEBL about the mistake in wrong classification of the tariff.

The appellant has not disputed any of the regular energy bills and hence, interest cannot be levied on the short assessment or undercharged bills.

Interest on belated payments under Regulation 130(7) of the Kerala Electricity Supply Code 2014 is applicable only to the principal amount disputed under the Regulation 130(1) if the complaint was found to be incorrect and that too after the due date of payment as per the original bill.

Hon'ble High Court of Kerala in its order WP(c) 17434 of 2020 refers to non-waiver of interest for the period when the judgment of Hon'ble High Court of Kerala was in favour, till its reversal by the Hon'ble Supreme Court if not applicable to appellant's case.

Regulation 134 of Kerala Electricity Supply Code 2014 refers that 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 the interest cannot be charged for undercharged amounts.

The appellant has requested to set aside CGRF order and direct the Licensee to revise the bills for the undercharged amount due to wrong classification of tariff.

Arguments of the respondent:

Averment that the KSEB Ltd. has raised a penal bill is false and is vehemently objected and denied. The Assistant Engineer, KSEB Ltd., Electrical Section, Vennikulam issued two bills, for Rs.13,00,489/- and for Rs.12,24,480/- to the appellant on 22-10-2020 and 28-10-2021 respectively. The bill dated 22.10.2020 was later revised to Rs.11,62,858/- on 15/04/2021. The appellant was not penalised. The bills were issued as per Regulation 134 of the Kerala Electricity Supply Code 2014, solely towards the recovery of the amount actually undercharged over the period wherein the service connection continued under the preferential tariff of LT VIA.

The issuance of these bills is corollary to the emergence of Order of the Hon'ble Supreme Court in case no. CA8350/2009 and the subsequent KSE Board Ltd. Order No.LAI/5243/2009/205. Therefore, the averment that the case of the appellant has no relevance with the Order of the Hon'ble Supreme Court in civil appeal No. CA 8350/2009 and, is totally false and objected. The mere fact that this appellant was not party to the case no. CA 8350/2009 or the catena of similar cases, does not exempt the appellant from compliance of the order of the Hon'ble Supreme Court. The cases having a representative nature, the doctrine of privity is not applicable.

Clarification as to the tariff of Unaided/Self-Financing Educational Institutions is corollary to the emergence of the judgment dated 20.02.2020 in the catena of Civil Appeals preferred in this connection before the Hon'ble Supreme Court. The averments that arrear bills were issued by the KSEB Ltd. in pursuance of voluntary notification made by the appellant is false and objected.

The averment that wrong tariff was applied to the appellant is fallacious and is objected. The KSEBL tariffs are governed by the regulations of the Hon'ble Kerala State Regulatory Commission as per Section 62 of The Electricity Act, 2003. The tariff Regulations of the Hon'ble KSERC are binding and the KSEB Ltd. cannot discern the tariffs of any consumer according to any whims and fancies.

The service connections being availed exclusively for the purpose running Unaided/Self-Financing Educational Institutions and with the catena of Civil

Appeals preferred in this connection before the Hon'ble Supreme Court, the only tariff applicable to the consumers was VI A.

The tariff applicable to self-financing institutions was reclassified under VIII and later under the current tariff of VIF vide tariff revision orders of the Hon'ble KSERC dated 09/09/2013 and 16/08/2014 respectively. The billing was continued to be done under VI A tariff, subject to a catena of cases pending before the Hon'ble Supreme Court, maintaining status quo.

The appellant had preferred petition No. OP No: 67/2021 before the CGRF (South), Kottarakkara, after hearing both the sides and reasonably evidencing the aforementioned factual position, and finding that the consumer was undercharged from December 2007 and that the amount being originally due from December 2007 and that the interest on amount is also due, as the concept of interest is directly correlated to time value of money, disallowed the application of the appellant vide order dated 24th of February 2022. The Forum also observed that regulation 134(1) and 130(7) of Kerala Electricity Supply Code 2014 make the licensee eligible for claiming the impugned undercharged bills with surcharge.

After filing the petition before the CGRF-South, the appellant had preferred writ petition (civil) No. 26639/2021 before the Hon'ble High Court of Kerala, and after hearing both the sides and reasonably evidencing the factual position, and finding that the consumers were undercharged, the Hon'ble High Court pronounced orders on 6th January 2022, wherein the petitioner was ordered to pay the undercharged amount in 8 equated instalments commencing from 31/01/2022.

This plaint is solely an attempt at filibustering so as to avoid paying the under charged amount and surcharge that is long due to the KSEB Ltd., by presenting fallacious averments before the Electricity Ombudsman when the Apex Curt has already pronounced orders in such matter.

The Regulation 134 of the Kerala Electricity Supply Code 2014 states "on undercharged bills and over charged bills stipulates that 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. Here in this case, the Licensee has undercharged the appellant

over the respective period. Therefore, the appellant is legally bound to remit the bill for actual consumption of electricity.

There is no infirmity in the findings and orders of the CGRF (South) in OP No: 67/2021 and the respondent requests to confirm the Orders of the CGRF (South), and thereby to dismiss appellant's representation.

Analysis and findings:

The hearing of the case was conducted on 14-06-2022 in the office of the State Electricity Ombudsman, Edappally, Kochi. Sri. Abraham J George and Sri. C. Cherian were attended the hearing from the appellant's side and Smt. Swapna. S., Assistant Executive Engineer, Electrical Sub Division, Mallapply, Pathanamthitta of Licensee 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 tariff for electricity supply is fixed by KSERC. Indian Electricity Act 2003, Section 62 (1) states that "The appropriate Commission shall determine the tariff in accordance with the provision of this Act for retail sale of electricity".

Kerala Electricity Supply Code 2014 Regulation 31(1) states "Recovery of charges for supply of electricity - Subject to the provisions of this Code, the charges to be levied on the consumer by the distribution licensee for the supply of electricity in pursuance of the provisions of the Act, shall be in accordance with the tariff fixed by the Commission from time to time and the conditions of the licence".

As per above provisions, it is clear that KSERC have the right to fix the tariff and Licensee has billed the electricity charges as per the tariff fixed by KSERC. In the case on hand, it is to be noted that the Licensee has not billed the appellant since 09/2020 as per the tariff fixed by KSERC and wrongly applied tariff LT VIA.

The self-financing colleges challenges the tariff fixed by KSERC in the Hon'ble Hgh Court Single Bench, Division Bench and in the Hon'ble Supreme Court of India. The Hon'ble Supreme Court agreed with the decision of KSERC. The appellant filed a Writ Petition to the Hon'ble High Court of Kerala for a direction to permit the payment of arrears without interest portion in 12 monthly instalments. The Hon'ble High Court ordered to pay the arrears in 8 equated monthly instalments commencing 31-01-2022. The dispute regarding the interest was not considered as this was pending consideration before the CGRF(South).

As per Regulation 134(1) of Kerala Electricity Supply Code 2014 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."

As per the above regulation, Licensee have the right to raise the short assessment bill.

Section 56 (2) of Indian Electricity Act 2003 states "(Disconnection of supply in default of payment) - Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity".

Here the issue is that when the amount became due for the consumers, the Licensee was not billing this appellant by oversight when other consumers of similar category was billed since 12/2007. In the case of Civil Appeal No. 7235 of 2009 M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Others, the Hon'ble Supreme Court of India decided that "the electricity charges would become 'first due' only after the bill is issued". Accordingly, the amount was due since raising of the penal bill. The interest is applicable only on the amount due. As the amount was not due since 12/2007, the interest is also not applicable

since 12/2007. The interest is applicable only from the date of raising the bill which is 10/2020.

Hon'ble Supreme Court of India issued order on 20-02-2020 stating that the Self-Financing Educational Institutions have to be charged as per the tariff. The Licensee issued the order dated 24-02-2022, directing the officials to implement the order on an urgent manner. In the order of Licensee, it is clearly mentioned the self-financing colleges were charged based on the revised tariff, but as per the order of Hon'ble High Court of Kerala, they were paid the charges as per the tariff applicable to Govt./Aided institutions. According to the order of the Hon'ble Supreme Court of India, these institutions were start remitting as per the revised tariff.

In other institutions, there was a difference in amount between the billed amount and amount paid and hence, there was a due from the consumers. The order of Licensee is clearly mentioned that the institutions, which are having amount due are to be collected with interest from consumers.

In the case in hand, no amount was due from the appellant as they were not billed as per revised tariff and hence, the interest with effect from 01-12-2007 is not applicable.

Decision: -

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

- (1) The bills raised by the Licensee dated 22-10-2020 and 28-10-2020 and the subsequent revision vide letter dated 15-07-2021 (two letters) are squashed herewith and directed to prepare the revised bill with effect from 01-12-2007 without interest till 10/2020 and the balance with interest
- (2) The appellant is liable to pay the principal amount since 01-12-2007 as per the revised tariff without interest till 10/2020 and the balance bill amount with interest.

- (3) The respondent shall grant 08 numbers of equated monthly instalments for making the payment.
- (4) Respondent is hereby directed to avoid charging interest for the period of petitions before CGRF (South), Hon'ble High Court of Kerala and with this Authority.
- (5) The order of CGRF, Southern Region in OP No.67/2021 dated 24-02-2021 is modified accordingly.

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

ELECTRICITY OMBUDSMAN

P/023/2022/ _____ dated _____.

Delivered to:

1. Sri. Abraham J. George, Manager, B.A.M. College, Thuruthicadu, Pathanamthitta Dist. 689597
2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Mallappally, 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.