

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/085/2022**(Present: A. Chandrakumaran Nair)****Dated: 28th December, 2022**

Appellant : Sri. Abdul Hameed
Secretary, Ihya-U-Sunna Sangham,
Othukkungal,
Thirurangadi,
Malappuram Dist.676528

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Kottakkal, Malappuram Dist.

ORDER**Background of the case:**

The appellant Sri. Abdul Hameed is the Secretary of the Ihya-U-Sunna Sangham at Othukkungal, Thirurangadi and is the consumer of the Licensee under the Electrical Section, Othukkungal, Malappuram District. There are three service connections in the same premises (1) consumer No. 1167097000417 is for Arabic College (2) No. 1167097022009 is for "Niskarappalli" and (3) No. 1167097022102 is for water pump connection. The service connection 1167097000417 is billed under tariff VI F being a private unaided Self-Financing Educational Institution. The connection as per the agreement is 35 kW and the appellant added more load and it is now 65.107 kW. A demand note was raised to the appellant by the Licensee for Rs.4,54,990/- as the arrear bill for a period from 12/2007 to 09/2014 in accordance with the judgement of Hon'ble Supreme Court in civil appeal No. 8350/2009 dated 20-02-2020 in connection with the tariff dispute of Self-Financing Educational Institutions. Challenging this demand, appellant filed petition to Consumer Grievance Redressal Forum (NR) and CGRF (NR) issued order

stating that the appellant is liable to pay the demand raised by the Licensee. Aggrieved by the decision of CGRF(NR), the appellant filed the appeal petition to this Authority.

Arguments of the appellant:

The appellant is regularly paying the electric energy charges consumed and a religious establishment registered under the Societies Registration Act as Registration S No.4/1962 with the Registrar of Societies, Malappuram. The objects of the society are to promote religious rites and believers, to manage and improve mosques and to provide Islamic education on free of cost and to do other all acts to achieve the above objectives.

By being a religious institution, the appellant society is registered with the Kerala State Waqf Board as No. A2-2267/CR. The appellant is maintaining a mosque constructed in its property to perform prayers by the public. The same is established by obtaining permission from the District Magistrate. The appellant is a religious establishment with mosques and the amenities to impart religious education. It is purely a private institution with library and reading rooms. The second respondent issued demand notice to the appellant revising the Tariff of the electricity supply connection of the appellant by incorporating them under LT VIF stating that the appellant is liable to be assessed by non-domestic tariff.

Aggrieved by the same, the appellant filed complaint OP No.15/2022-23 before the second respondent to revise the proceedings of incorporating higher rate of tariff to the appellant. Due to rejection of the same the complainant preferred a petition before the Consumer Grievance Redressal Forum, Kozhikode seeking to revise the tariff and to refund the excess amount received.

The Forum pleased to dismiss the claim of the appellant concluding that the appellant is not a religious institution, the same is an Arabic College and is liable to be assessed by virtue of Tariff VI F by its order dated 22.9.2022 passed in OP No.15/2022-23.

Aggrieved by the impugned order this complaint is filed on the following amongst other grounds: -

a) The order passed by the CGRF (NR) is highly illegal, improper and arbitrary. The impugned order is liable to be set aside as one passed without any effective

consideration of the merits and the application of law.

b) The CGRF (NR) is failed to consider the contentions raised by the commercial establishment providing any sort of education on payment of fees. The complainant is purely a religious institution providing free religious teachings and improving amenities for prayers and performance of other religious rituals. The objects of the appellant in its memorandum, the registration of the same with the Waqf Board, the permission obtained from the District Magistrate for construction of the mosque etc., which are produced to substantiate the contention of the appellant is refused to be considered by CGRF (NR).

c) The application form for admission of students for religious studies reveals that the education is providing on free of cost. The declaration issued by the Othukkungal Grama Panchayath that the establishment of the appellant is a public prayer hall with other annexure buildings which shows that the appellant is not a concern as defined by VIF tariff which is not considered by the CGRF (NR). The same is not a training institute, tuition center or self-financing educational institution.

e) The acknowledgement made by the second respondent himself that the appellant is a religious educational institution as per the site mahzars prepared by him in the matter which is refused to be considered by CGRF (NR).

f) All the documents pertaining to the status of the appellant are produced before the second respondent as well as CGRF (NR) which are discarded by the Forum without assigning any reason. There are no findings regarding the evidences and documents produced by the appellant in the impugned order which establishes that no effective adjudication is conducted by CGRF (NR) in the matter.

g) The precedents relied by CGRF (NR) are not at all connected with the issues involved in the matter. The same are not applicable to the merits of this present matter and the reliance is placed by the Forum without any substantial grounds.

h) No effective adjudication is conducted by CGRF (NR) in deciding the status of the appellant. No reasons are assigned to conclude that the appellant maintained the status to assess the energy charges with the Tariff VI F. Hence the order passed by CGRF (NR) is a non-speaking one and one passed without considering the evidences in the proper perspective.

- i) All the contentions raised by the appellant are not elaborately discussed in the order which makes the order bad under law.
- j) The submissions made by the appellant before the second respondent are discarded by CGRF (NR) without assigning any reasons.
- k) There is violation of principles of natural justice as the appellant is not provided sufficient for opportunity to substantiate his case.
- l) The appellant is a highly reputed establishment among the Muslim community of the area indulged in religious and charitable activities for the last several decades. The appellant is having prayer halls with all other amenities to preach religion, to conduct seminars, debates etc. to curb social evils of the society to provide aid to maintain peace and harmony etc. The appellant never discharged any business for profit. The same do have mosques and does nothing more than imparting religious education. All the properties owned and managed by the appellant are waqf properties. All these aspects are discarded by CGRF (NR) without any cause.

Relief sought:

- a) Admit the complaint filed by the appellant.
- b) Call for the records pertaining to OP No.15/2022-23 of the Consumer Grievance Redressal Forum, Kozhikode.
- c) Grant an opportunity of hearing to the appellant permitting him to urge additional grounds at the time of hearing.
- d) Set aside the order dated 29.9.2022 passed by the Consumer Grievance Redressal Forum (NR) in OP No.15/2022-23 directing to apply Tariff VI A to the appellant and
- e) Grant such other reliefs which are deems fit and proper in the facts and circumstances of the matter.

Arguments of the respondent:

The disputed demand notice for Rs.4,54,990 was issued to the consumer number 1167097000417 as arrear bill which was prepared in accordance with the Hon'ble Supreme Court's Judgement in Civil Appeal Number 8350/2009 dated 20.02.2020 regarding the tariff dispute of private unaided educational institutions.

The said appeal was filed by KSEBL before the Hon'ble Supreme Court against the judgment of Hon'ble Kerala High Court's in respect of the dispute regarding tariff of Self-financing Educational Institutions.

As per the order No. TP 23 and TP 30 of 2007 dated 26. 11.2007, Kerala State Electricity Regulatory Commission in its tariff decision. LT VII commercial tariff was assigned to Self-financing Educational Institutions and LT VI Non-Domestic Tariff to the Government/Aided Schools and the same tariff order came into effect from December 1st 2007. Against this decision of the KSERC, Self-financing Institutions approached Hon'ble High Court, where in the Hon'ble High Court in its judgement was ratified the decision of KSERC. However, the Self Finance Institutions filed petition before the Division Bench of Hon'ble High Court and obtained stay against the said decision of the Single Bench and the tariff segregation of the KSERC. The Self Finance Educational Institutions were billed thereafter under the tariff applicable to the Govt/aided schools in VIA tariff subject to pending decision of Civil Appeal No.8350/2009 before the Hon'ble Supreme Court of India which *was* filed by KSEBL. In the final judgment in the Civil Appeal No. 8350/2009, the Hon'ble Supreme Court ratified the decision of the Single Bench of Kerala High Court by way the earlier decision of the KSERC or segregating the tariff or Self-Financing Educational Institutions and Govt/Aided Schools came in force again. Accordingly, the appellant who was billed in the tariff assigned for Govt/aided schools were re-assessed in the tariff assigned for Self-Finance Schools from 2007 till the same was revised to VIF in 2014. Hence the arrear assessment bill for the same was served against the appellant.

The appellant is the registered consumer bearing number 1167097000417 under the Electrical Section Othukkungal. The said service connection is being billed under the tariff assigned to Self-Financing Educational Institutions i.e., VIF tariff. The appellant is paying regular electricity bills having no dues. The disputed demand is the arrear bill issued to the appellant in accordance with the judgment of Hon'ble Supreme Court the ratification of tariff segregation order of KSERC of Self-Financing Educational institutions and Govt/aided Schools.

Since the appellant is billing under the tariff of private unaided educational institutions ever since the date of connection ie from 30.12.1971, the appellant has been re-assessed to the applicable tariff for the period where billed in different tariff, hence these arrear assessment bill raised.

In the tariff notification which came into force in December 2007, a differential appeal was taken by the Kerala State Electricity Regulatory Commission, in the case of self-financial educational institutions by placing them in LT V II A category, whereas other educational institutions were placed in LT VIA tariff. There upon bills were raised under LT VIIA tariff category. As per regulations in force short remittances in current arrears interest at applicable rate.

Against such re-classification, several Self-Financial Institutions preferred writ petitions, in few leads to writ appeals before Division Bench. In a batch of similar writ appeals such as W-CA 1063/2009 in the Division Bench.

Since the Civil appeals were disposed of in favour of KSEB all self-financing educational institutions have been brought under LT VII A tariff respectively with effect from 1st December 2007. In compliance to the judgment of Supreme Court notices were issued to consumers reminding them about their liability and directed to clear the arrear current charges. The Hon'ble High Court of Kerala in Southern Collage of Engineering and Technology vs KSEBL in the matter of arrear current charge of self-financing educational institutions High Court of Kerala held that pursuant to a favourable judgment, court only suspended the requirement of payment of arrears. The KSEBL emerged the ultimate victor in the litigation, the consumer become liable to pay the interest component that accrued on the arrear amount Once the Supreme Court reversed the judgment of Hon'ble High Court. The Court held that interest component is compensatory in matter, and one intend to compensate the KSEBL for the delay in receiving payments that are due to KSEBL. As such KSEBL became entitled to the entire current arrears of together with interest there on. As such the petition may be dismissed in the light of decision of the Hon'ble Court.

Upon the judgment of the Hon'ble Supreme Court reversing the judgment of the High Court of Kerala in this regard, the respondents became entitled to the entire amount of arrears together with interest thereon.

The respective electricity connection bearing number 1167097000417/VIF has been registered in the section under the name Sri. Abdul Hameed, Manager, Ihya-Sunna Sangham on 30.12.1971, and the premises was using for the functioning of Ihaya-U-Sunna Arabic College.

In addition to this connection, there are two other service connections are also there in the same premises, one is under the assigned tariff of Mosque and the other one is for water supply, all of these connections were registered in the same address ie in the name of Ihya-U -Sunna Sangam, Othukkungal.

The short assessment bill issued is against the service connection number 1167097000417/VIF which was affected for functioning Ihya Sunna Arabic College with effect from 30.12.1971. This connection is having a connected load of 65.107KW with such infrastructure having billed under. the category of Self-Financing Educational Institutions ever since the registration.

These contentions of the appellant had also been heard and verified by the Hon'ble Consumer Grievance Redressal Forum and opined in the order as "In the bylaw of the Ihya-Sunna Sangam which was signed and issued by the District Registrar, it has been noted repeatedly the premises as Arabic College, connected Mosque".

In the letter issued dated 30.08.2022 of Othukkungal Grama Panchayath Secretary, it has also been stated that the premises is in the name of Ihya-U-Sunna Sangam where the Ihya-U-Sunna Arabic College is functioning.

As per tariff order VIA tariff is assigned for "Centres for religious worship such as temples, mosques and churches: institutions imparting religious education, monasteries and convents"-hence the Sangam has a connection in the same tariff for the religious purpose in the same premises which has been affected with effect from 27.11.2004 as 1167097022009/VIA. In the respective tariff order it has been clearly imparted as " Mosques and Churches: institutions imparting religious education". The colon sign ie " emphasis that the religious institutions shall be attached to the mosque/church purely meant for religious in study.

The Arabic College, is in a separate building having connected load 65.107KW bearing consumer number 1167097000417/VIF availed tariff of self-financing educational institution from the date of connection itself. The Arabic College is run by the society are come under the tariff category of self-financing educational institutions.

Regarding the contention of the complaint, it is evident that in the premises of the appellant, there have two separate connections for religious purpose and private institution. Both are being availed tariff as per the tariff order concerned time to time.

The appellant's self-financing Educational institution service connection number 1167097000417 was being billed in such a manner from the date of connection itself (private unaided educational institution) and was being afforded the tariff revision order of KSERC time to time and billed in VIF tariff w.e.f 2014 and had been availed the benefit of billing VIA tariff (Govt/aided schools) for the period from 12/07 subject to pending Civil Appeal before the Hon 'ble Supreme Court of India. Hence it is evident that the contention of the petitioner that the respondent incorporated the VIF tariff afresh is wrong and incorrect. The short assessment bill issued in this regard is purely based on the final judgment of the Hon'ble Supreme Court of India in the aforementioned Civil Appeal.

The contention of the appellant regarding higher tariff afforded to their premises is absolutely wrong. It is also not (OP No.15/2022-23) one such filed before the second respondent. OP No. 15/2022-23 is one which is filed by the petitioner before the Hon'ble Consumer Grievance Redressal Forum(N)Kozhikode. However, it is true that the petitioner while received the bill to their VIF connection No.116709700041 7 in accordance with the Hon'ble Supreme Court's Judgment in this regard, filed a petition before the second respondent. In the petition, the consumer had requested to change their tariff from VIF to VIA, which was verified in accordance with facts and records, then served a reply showing the fact.

Aggrieved by the reply, the petitioner filed appeal OP No.15/2022-23 before the CGRF (N) Kozhikode. After adducing the evidence and conducting hearings, the Forum ordered as follows: -

a) The disputed bills are issued as per the order of Hon'ble Supreme Court.

b) In the bylaw of the Ihya Sunna Sabngam which was signed and issued by the District Registrar, it has been noted repeatedly the premises as Arabic College, connected Mosque.

c) In the letter issued dated 30-08-2022 of Othukkungal Panchayath Secretary, it has been stated that the premises is in the name Ihya U Sunna Sangam where the Ihya U Sunna Arabic College is functioning.

Analysis and findings:

The hearing was conducted on 06-12-2022 in the meeting room of PWD Rest House, Kozhikode. The appellant Sri. Abdul Hameed, Secretary, Ihya-U-Sunna Sangham, Othukkungal along with Smt. Moideen. P.C., Advocate were attended the hearing and Smt. C.S. Rathy, Assistant Executive Engineer, Electrical Sub Division, KSEBL, Kottakkal and Sri. N. Anvar, Asst. Engineer, Electrical Section, Othukkungal and Sri. Anilkumar, Nodal Officer, Electrical Circle, Tirur were 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 is the Secretary of the Ihya-U-Sunna Sangham at Othukkungal, Thirurangadi, Malappuram. This organization owns a "Niskara Palli" and an Arabic College, which is registered under Waqf Board. There are three connections in the premises as follows:

Sl.No.	Consumer No.	Purpose	Tariff	Connected Load
1.	1167097006417	Arabic College	VIF	35 kW
2.	1167097022009	Niskara Palli	VIA	20 kW
3.	1167097022010	Drinking Water	VIF	7 kW

As per Section 86 of Indian Electricity Act 2003, the State Regulatory Commission is entrusted with the tariff determination within the State. Accordingly, Kerala State Electricity Regulatory Commission while determining the tariff with effect from 01-12-2007, the Self-Financing Educational Institutions have been included in a tariff category other than that of Govt. and Aided Institutions. Then the tariff applicable for the Self-Financing Educational Institutions at different periods are as follows:

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

All the consumers in the State are bound to pay the energy charges fixed by the KSERC.

Some of the Self-Financing Educational Institutions were approached the Hon'ble High Court of Kerala against this tariff revision and the Single Bench issued the order agreeing the KSERC order and on appeal, the Division Bench set aside the judgement of Single Bench. Then the KSEBL filed appeal to Hon'ble Supreme Court and the judgment of Hon'ble Supreme Court was in favour of KSEBL. All the Self-Financing Educational Institutions were liable to pay the charges as per the tariff fixed by the KSERC.

Whether this Institute (Arabic College) is a Self-Financing Educational Institution or otherwise? The definition of Self-Financing Educational Institution is: "This is one which does not receive any financial aid from the Central Government of India or from the State Government where it is located. They also do not get any financial grants from the UGC nor do they get any benefits from UGC." As this Arabic College is not getting any financial assistance or aid from State or Central Governments or UGC, this has to be considered under the category of Self-Financing Educational Institutions.

Another contention of the appellant is that why this is not considered as an institution, improving religious trainings? There is a "Niskara Palli" along with a "Madrassa" for improving religious education. The service connection for this is coming under the tariff VIA and the connected load is 20 kW. This tariff regulation is already availed by the appellant.

The letter from the Othukkungal Panchayath Secretary states that the building No. IX/476 is in the name of President, Ihya-U-Sunna Sangham and is for functioning an Arabic College. The objective of the memorandum submitted to the Registrar of Societies "(e) to conduct and manage the "Arabic College" and "Niskara Palli" and other connected institution activities according to the objectives and principles of the persons who has given Wakf of the properties and spent money for the above two institutions" and "(d) to manage and improve the Arabic College

and 'Niskara Palli' at Othukkungal which has been funded by Janab Al-haj Odakkal Zainudheen Kutty Musliyar and named as Ihya-U-Sunna Sangham."

In the Wakf Board registration also the classification is as "Niskara Palli & Arabic College." The Wakf Board is not categorized this in the category of Mosque. The 'Niskara Palli' is for the daily prayers except 'Friday Juma'.

Another question is whether the order of Hon'ble Supreme Court is applicable or not? This institution is not a Govt./Govt. Aided institution and then this should be a Self-Financing Educational Institution. The mode of financing, the syllabus, and courses, etc. were not a concern as per the tariff determination is concerned. This is not categorized under the institution inspiring religious training because there is another "Madrasa" along with "Niskara Palli" for the religious education. As this is clearly a Self-Financing Educational Institution, the judgment is applicable to this institution also.

Decision: -

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

- 1) Agree with the order vide OP No.15/2022-23 dated 22.9.2022 of Consumer Grievance Redressal Forum (NR).

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

ELECTRICITY OMBUDSMAN

P/085/2022/ _____ dated _____.

Delivered to:

1. Sri. Abdul Hameed, Secretary, Ihya-U-Sunna Sangham, Othukkungal, Thirurangadi, Malappuram Dist.676528
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Kottakkal, 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