

THE STATE ELECTRICITY OMBUDSMAN

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REVIEW PETITION No. R.P/009/2022

IN APPEAL PETITION No: P/059/2022

(Present: A. Chandrakumaran Nair)

Dated: 05th January, 2023

Review Appellant : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Thirurangadi, Malappuram Dist.

Review Respondent : The General Secretary
Tirurangadi Muslim Orphanage Committee,
Tirurangadi,
Malappuram Dist.

ORDER**Background of the case:**

The review appellant is the Assistant Executive Engineer, Thirurangadi Sub Division, Malappuram of the Licensee (KSEBL). The review petition No. RP-009/2022 is submitted against the order of the Ombudsman of the petition No. P-059/2022 dated 02-11-2022. The review respondent General Secretary, Thirurangadi Muslim Orphanage Committee is running an Arabic college namely KMMMO Arabic College, which is a self-financing educational institution. When APTS conducted inspection of the connection on 11th March 2019 and found that billing of this College was done under wrong tariff and a short assessment bill raised for Rs.83,045/- with penalty, which has been paid. Then another short assessment amount has been worked out to Rs.5,98,088/- and then corrected to Rs.5,55,904/-, which was raised on 09-09-2022. The principal amount of the short assessment is Rs.2,01,632.70 and the surcharge is Rs.3,54,271.29. The consumer was ready to pay the principal amount and not the surcharge as there is no delay / fault from the consumer for making the payment. They filed petition to Consumer Grievance

Redressal Forum (NR) and then appeal to the Ombudsman. The Ombudsman ordered that the consumer is not liable to pay the interest for the arrear amount and the consumer has to pay the principal amount without delay.

Aggrieved by the decision on the appeal petition, the respondent of the original petition filed the review petition to review the order issued.

Maintainability of review petition as per regulation:

The Section 27 (A) of Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulations 2005 states about the review petition procedure to be submitted to Ombudsman as follow: -

Section 27 A(1) The Electricity Ombudsman may, either on its own motion or an application of any person aggrieved by an order, review its order on the following grounds, namely: -

- (i) On the discovery of a new and important matter or evidence which, after the exercise of due diligence, was not with his knowledge or could not be produced by him.
- (ii) Mistake or error apparent on the face of the record.

Section 27 A(2) An application under clause (1) shall be filed within period of fifteen days from the date of receipt of the order.

Provided that the Electricity Ombudsman may entertain an application after the expiry of the said period of fifteen days, if it is satisfied that the applicant had sufficient cause for not preferring the review within such period.

Section 27A(3) If on a preliminary examination of the application, if the Electricity Ombudsman found that there is no sufficient ground for review, it shall reject the application after affording an opportunity of being heard to the applicant.

The original order on the petition P059/2022 has been issued on 02-11-2022 and the review petition submitted on 07-12-2022. The review appellant explained about the delay that the internal procedure to be completed in the Licensee (KSEBL) before submitting the review petition. The delay was around 10 to 15 days only and hence, the same is accepted.

As per Section 27 A (1) (i), on the discovery of new and important matters or evidence, which could not be produced at the time of hearing. Here the review appellant has produced the copy of two judgements of Hon'ble High Court related to

matters concerning to the Self-Financing Educational Institutions, which was not produced earlier. The applicability of this judgement to this case is to be examined. In view of the above two points, the review petition is accepted and continued with further proceedings.

Version of the Review Appellant:

The demand notice of Rs.5,55,904/- has been issued to the consumer as per the Hon'ble Supreme Court order in the Civil Appeal No. 8350/2009 dated 20.02.2020 as arrear short collection amount. As per the order of KSERC vide TP 23 and TP 30 of 2207 dated 26.11.2007, the Self Finance Education Institutions' tariff have been changed to LT VII Commercial Tariff and the Govt./aided educational institutions have been under the tariff of LT VIA. The said demand is the arrear bill which was served on the consumer for the period when the consumer was availed different tariff subject to pending litigation in this matter before the Hon'ble Supreme Court of India and assessed as per the final judgment of the Hon'ble Upper Court in this regard.

The Petitioner further submits that however this Authority vide its Order dated 02.11.2022 exempted the interest of the arrear bill and allowed the consumer to remit the principal amount only which is against the tenet of the decision of the Hon'ble High Court of Kerala.

Being aggrieved and dissatisfied by the Order dated 02.11.2022, the petitioner herein has filed this petition on the following grounds which are without prejudice to and in the alternative to one another.

The Petitioner further submits that, had the grounds, set out herein below, been pointed out to the Hon'ble Ombudsman, the Hon'ble Ombudsman would have certainly allowed delay condonation if any occurred in filing review by considering the petitioner being the part of a public sector corporate entity bounded to obtain approval on every such matter from the corporate office concerned.

In the Tariff Notification which came into force in December 2007, a differential approach was taken by the Kerala State Electricity Regulatory Commission (KSERC), in the case of the self-financial educational institutions by placing them in LT VI/A category, whereas other education institutions were placed in LT VIA tariff. Against such re-classification, several self-financing institutions

preferred Writ Petitions, in turn lead to Writ Appeals before the Division Bench. In a batch of similar Writ appeals such as W.A.1063/2009, the Division Bench quashed the re-classification and in consequence directed to bill the self-financing institutions under the then pre-revised tariff category. Against the decision, KSEB preferred Civil Appeal Petitions (C.A.No.8350/2009 & connected cases) before the Hon'ble Supreme Court.

While so, awaiting the judicial finality over the matter by the Apex Court, the KSEB has constrained to comply with the judgment of the Hon'ble Division Bench, that is to allow self-financing educational institutions for the time being under LT VIA tariff. Since the Civil Appeals were disposed of in favour of KSEB, vide judgement dated 20.02,2020 of the Hon'ble Supreme Court, all self-Financing Educational Institutions have been brought under LT VI/A tariff retrospectively with effect from December 2007.

KSERC made changes in classification of tariff pertaining to the self-financing educational institutions during the pendency of the case. That is in 01/2013 (LT VIIA to LT VIII), in 01/2014 (LT VIII to LT VI F).

In similarly placed matter, the Hon'ble High Court in Southern College of Engineering and Technology vs. KSEBL (W.P (C) No.17434/2020) held that while in the pendency of the appeal before the Supreme Court, pursuant to a favourable judgment from the High Court, only suspended the requirement of payment of arrears, the KSEBL emerged the ultimate victor in the litigation, the consumer became *liable to pay the interest component that accrued on the arrear amount once the Supreme Court reversed the judgement of the High Court. The Court held that interest component is compensatory in nature, and one intended to compensate the KSEBL for the delay in receiving payments that are due to KSEBL. As such, KSEBL became entitled to the entire amount of arrears together with interest thereon.*"

The Petitioner states that in light of the aforesaid facts and circumstances and upon the grounds stated hereinabove, it is just and reasonable, and it would be in the interest of justice that the said Order be reviewed.

The Petitioner craves leave to add, amend, alter and/or delete any of the aforesaid grounds if required.

The Petitioner states that except this no other petition, appeal, application or review of the said Order is filed or pending either in this Hon'ble High Court or in the Hon'ble Supreme Court of India.

Therefore, it is requested to review the order dated 02.11.2022 in case No. P/059/2022 and further be pleased to modify it to the extent of setting aside the order, thereby granting permission to realize the interest portion of the arrear amount along with the principal amount.

Version of the Review Respondent:

As per the order of KSERC vide TP 23 and TP 30 of 2207 dated 26.11.2007, the Tariff of Self Finance Education Institutions have been changed to LT VII Commercial Tariff. But this order has been challenged in the Hon. Supreme Court. During the course of litigation, the billing has been done in the Tariff of the Govt./aided educational institutions ie. under the tariff of LT VIA. The Hon'ble Supreme Court order in the Civil Appeal No. 8350/2009 dated 20.02.2020 has ascertained the Tariff of the Self-financing institutions as LTVIIA and as per this order KSEBL can raise the bill since 2007 and interest shouldn't be charged. The bills for this period were raised by the KSEBL on 09.09.2021 for Rs. 2,01,632.70 together with the interest of Rs. 3,54,271.29 for the entire period of litigation. Charging of the interest since 2007 for which bills raised on 09.09.2021 is not at all reasonable and justifiable as all the bills received from 2007 to 2021 have already been paid by the appellant without any delay.

The decision of the Hon. High court of Kerala is to charge interest for the bills which are not paid within the due date. But the case is different here. The fact here is that the KSEBL had not issued any bill as per the KSERC order till the order of the Hon. Supreme Court dt. 20.02.2020. Had the KSEB Limited billed the appellant on time as per the Tariff proposed by the Hon'ble KSERC, the appellant would have paid the billed amount without any delay. Hence it is not justifiable to charge interest for the bills which are not issued to consumers. In this scenario, the appellant may please be exempted from paying the interest of the bill and may be allowed to remit the principal amount.

There is no any disagreement with the KSEBL in remitting the Electricity

Charge bills issued by them. The appellant is ready to pay the charges as per the Tariff approved by the Hon'ble Supreme Court, which is the difference in tariff. But the heavy penalty charging on this arrear is not acceptable, since no payment has been delayed and no payment was outstanding from the bills. If KSEBL would have issued the bill as per the Tariff, the payment would have been made without any delay. The amount become due only when the bill is issued and the appellant is not a party to any case or litigation of any court regarding this matter. As per the Hon'ble Supreme Court order, the appellant is ready to pay the bill amount and not the interest.

Allowing tariff is not a matter of controversy between the appellant and KSEB Limited.

The Hon'ble High Court in Southern College of Engineering and Technology vs. KSEBL (WP(C) No.17434 /2020) held that the consumer became liable to pay the interest component. The consumer has been served demand note on 17.08.2012 the copy of which was submitted before the Hon'ble high court of Kerala as Exhibit (I). Hence it is mandatory to charge interest for the period from the date of issue of the demand note to the date of payment. But in this case, the appellant has not been served any such demand note or any outstanding bills exists towards the appellant. Hence the judgement in WP(C) No.17434/2020 couldn't be applied in this case.

All the grounds mentioned above does not justify charging of interest without serving the bills or demand note. The appellant's institution is a charitable institution, which is working on the contribution of public and the grant from the Govt.. Paying a huge amount as interest is a heavy burden to this institution and hence it is humbly requested that the same may be waived off.

Counter argument of the Review Appellant:

As per the provisions of the Electricity Act 2003, assigning, re- classification of consumers from time to time based on purpose, usage, connected load etc. rests with the Electricity Regulatory Commission and accordingly in exercise of powers

conferred under Electricity Act 2003, the Kerala State Electricity Regulatory Commission (KSERC) in TP 23 and TP 30 of 2007 dated 26.11.2007, assigned LT VIIA tariff to the Self Financing Educational Institutions whereas the government/aided educational institutions were placed under the LT VIA tariff. Hon'ble Supreme Court of India (Civil Appeal No. 8350/2009 dated 20.02.2020) upheld the decision of the Hon'ble KSERC in assigning LT VIIA to self-financing educational institutions in the TP 23 and TP 3 in 2007. That is, with the decision of the Hon'ble Supreme Court tariff of self-financing educational institutions during the said period shall be LT VIIA and KSEBL is fully entitled to realize the amount with interest. The arrear demand notice of Rs.5,55,904/- has been served to the consumer to remind them of the statutory liability and to clear the said statutory liability in consequence to the decision of the Hon'ble Supreme Court order in the Civil Appeal No.8350/2009 dated 20.02.2020. The said demand is the arrear bill which was served on the consumer for the period when the consumer was availed different tariff subject to pending litigation in this matter before the Hon'ble Supreme Court of India and assessed as per the final judgment of the Hon'ble Apex Court in this regard. It may be noted that while the pendency of the appeal before the Hon'ble Supreme Court, only suspended the requirement of payment of arrears, the KSEBL emerged the ultimate victor in the litigation; the consumer became liable to pay the interest component that accrued on the arrear amount once the Supreme Court reversed the judgment of the Hon'ble High Court. The interest component is compensatory in nature, and one intended to compensate KSEBL for the delay in receiving payment that are due to the KSEBL from the very inception, that is Kerala State Electricity Regulatory Commission assigned LT VII A tariff to the self-financing educational institutions.

Though as per Tariff Notification of KSERC, the tariff applicable to self-financing educational institutions are LT-VIIA, in view of the dictum of the Hon'ble High Court, the consumer was billed in the tariff assigned to Government/Aided School from 2007 to 2014. That is upon the existence of stay order; this applicant of the Review Petitioner could not issue the bills in those periods as per the notified

tariff. The KSEBL approached the Hon'ble Supreme Court to realize the current charges of self-financing educational institutions at LT VIIA tariff, the tariff notified by the KSERC from the very beginning.

This being so, after previous publication and affording public hearing, from 2014 onwards, the consumer had been billed in the VIF tariff subject to the pending dispute period of 2007 to 2014. Hence, it is humbly submitted before the Ombudsman that this Review Petitioner could only raise the bill for relevant tariff period, at the assigned tariff that existed before the disputed decision of the KSERC. Hence the petitioner was billed in the tariff assigned for Govt/Aided Schools in these periods subject to pending appeal before the Supreme Court which was filed by the Licensee against the suspension of the said tariff order for the period from 2007 to 2014.

The arrear bill was issued on 09.09.2021, ie after the Hon'ble Supreme Court's judgment in this matter dated 20.02.2020 in Civil Appeal No.8350/ 2009. However the interest was only incorporated in the bill up to one month of the order dated of Hon'ble Supreme Court from 2007 ie up to 20.03.2020 (as per the CGRF's direction in OP No. 103/21-22 dated 30.06.2022).It may humbly states that the disputed bill is not a mere bill issued on 09.09.2021 as stated by the respondent of this counter. Current charges became arrear when the consumer negates to pay after the due date of demand and as per regulations in force the delay in payment attracts interest. Here it is the arrear bill issued by the licensee after the decision of the Apex Court of the country. The Hon'ble High Court in similar contentions of other such consumers upon the same issue, has ordered that KSEBL is entitled to the entire amount of arrears together with interest thereon as it is the ultimate victor of the dispute in this matter.

As the tariff order was kept in abeyance as mentioned above, this licensee could only be maintaining the status quo, hence the consumer was billed under VIA tariff to the said period. The consumer is the one who availed the tariff suspension facility for this period. Hence ever since the reversal of the suspension, the consumer is liable to remit the entire arrear with surcharge as it has been later confirmed by the Hon'ble High Court of Kerala in the aforementioned cases.

The consumers of electricity are billed in accordance with the Tariff Notification issued by the Electricity Regulatory Commission from time to time. As mentioned, in the instant case KSEBL filed Special Leave Petition before the Hon'ble Supreme Court of India for reversing the suspension and to allow issuing bills to such Self-Financing Educational institutions as per the tariff order of KSEERC issued from time to time. As and when the final decision of the Supreme Court arrived, such consumers including the respondent are liable to pay the electricity charge at notified rate. The matter is general in nature, not only related to the consumer. The licensee has already issued the arrear bills to all similarly placed consumers and most of them have honoured the demand with interest. Some of them availed installment facility to clear the dues and the installment facility is subject to interest at applicable rate. In similarly placed matters, the Hon'ble High Court of Kerala has confirmed the right of the licensee to realize the entire amount of arrears together with interest thereon for the period of suspension of tariff till reversal by the Hon'ble Supreme Court.

The Kerala State Electricity Regulatory Commission is the authority to determine the tariff applicable to consumers and the consumers as well as Licensee have the opportunity to offer objections and suggestions during public hearing. Here the suspension of tariff order of KSEERC was done upon the judgment of Division Bench of Hon'ble High Court of Kerala which was reversed by the Hon'ble Supreme Court ratifying the Tariff Notification of KSEERC on self-financing educational institutions classifying under LT VII A. Hence the settled position is the self-financing educational institutions are liable to pay charges at notified tariff during the period at LT VII A.

Regarding the contention of the consumer about the judgment of Hon'ble High Court of Kerala in Southern College of Engineering and Technology Vs KSEBL, the consumer categorically agreed the matter of their liability to remit the interest portion of the arrear bill as the Hon'ble High Court has pronounced the same. In order to escape from the liability of remitting the interest, the consumer has pointed out the demand of the said case which is noted as 17.08.2012. In the said case the dispute was not against the demand but was against the demand which is dated

27.07.2020, i.e issued after the judgment of Hon'ble Supreme Court.

The arrear bill issued in such cases are for the period from 2007 to 2014. The date of arrear demand bill may differ subject to matters but will be for the disputed period. The Hon'ble High Court had never mentioned any remark regarding the date of demand in this judgment anywhere in the order. Instead the Hon'ble High court narrated as follows by confirming the demand dated 27.07.2020 which is marked as Exhibit P4. That demand dated 27.07.2020 was issued after the pronouncement of Supreme Court of India in this regard.

"While the pendency of the appeal before the Supreme Court, pursuant to a favourable judgment from the High Court, only suspended the requirement of payment of arrears to the respondent, who emerged the ultimate victor in the litigation, the petitioner became liable to pay the interest component that accrued on the arrear amount once the Supreme Court reversed the judgment of the High Court. This is more so because the interest component is compensatory in nature, and one intended to compensate the respondent for the delay in receiving payment that are due to it. On the judgment of the Supreme Court reversing the judgment of the High Court, the respondent Board became entitled to the entire amount of arrears together with interest thereon".

Therefore, the review appellant is requested to review the order dated 02.11.2022 in case No'. P/059/2022 and further be pleased to modify it to the extent of setting aside the order, thereby granting permission to realize the interest portion of the arrear amount along with the principal amount. The licensee is ready to grant instalment facility with applicable rate of interest to the consumer in accordance with the decision of this Authority.

Analysis and findings:

The hearing of the review petition was conducted on 29-12-2022 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. The review petitioner Sri. Raihanath. O., Assistant Executive Engineer, Electrical Sub Division, Thirurangadi along with Sri. Anil Kumar. P.K., Nodal Officer (Litigation), Electrical Circle, Tirur were attended the hearing and Sri. L.

Kunchahammed, Administrative Officer, Thirurangadi Muslim Orphanage Committee was attended the hearing on behalf of the review respondent General Secretary, Thirurangadi Muslim Orphanage Committee. On examining the review petition, the arguments filed by the review appellant, the statement of facts of the review 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 determination in the State of Kerala for various consumers are entrusted to the Kerala State Electricity Regulatory Commission as per the Section 86 of the Indian Electricity Act 2003. While determining the tariff effective 01-12-2007 onwards, the KSERC has included the Self-Financing Educational Institutions in a separate tariff other than that of Govt. / Govt. aided institutions. Following are the tariffs applicable to Self-Financing Institutions at various periods:-

- w.e.f. 12/2007 - 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

The Self-Financing Educational Institutions filed petition to Hon'ble High Court of Kerala against the order of the tariff revision of KSERC. The Single Bench issued order in favour of KSERC, but on appeal order of Division Bench was in favour of the Self-Financing Educational Institutions. KSEBL has finally approached Hon'ble Supreme Court and the judgment was in favour of the Licensee i.e. KSEBL. According to the order of Apex Court dated 20-02-2020, the Licensee has raised bill to all Self-Financing Institutions according to the tariff determined by the KSERC.

In the case in hand, on 11-03-2019, APTS of Licensee has conducted an inspection and found that this consumer was charged on wrong tariff and accordingly short assessment bill was raised on the consumer for 24 months i.e. from 04/2017 to 03/2019.

The bill raised as per Section 126 of Indian Electricity Act 2003 for Rs.83,045/-, which includes penal charges also. The consumer has paid the said amount. Hon'ble Supreme Court has pronounced the order on 20-02-2020 and

accordingly Licensee issued the circular on 29-02-2020 to raise the bills to the Self-Financing Institutions, as per the tariff determined by KSERC.

In the case in hand, the Licensee has raised bill on 09-09-2021 i.e. after 19 months stating that the bills raised as per the Hon'ble Supreme Court order. This bill cannot be considered as per the Hon'ble Supreme Court order and this could be treated as the bill raised as per Section 152 of the Kerala Electricity Supply Code 2014.

Further, the review appellant submitted the reference of 3 judgements of the Hon'ble High Court of Kerala in W.P (C) No.17434/2020 in Southern College of Engineering and Technology vs. KSEBL in which the petitioners' prayer was to exempt the interest for the period from the Division Bench order to the Hon'ble Supreme Court order which was not exempted by the Hon'ble High Court. W.P (C) No.13857/2020 in MPM English Medium School Vs. KSEB, in which the prayer of the petitioner was to exempt to pay the demand notice raised from a period from 12/2007 to 07/2011 with surcharge thereon. The Hon'ble Court is not agreed to this prayer also. The third case W.P (C) No.14019/2021 is Educare Charitable Trust Vs. KSEB in which the prayer of the petitioner was to exempt interest which has not been agreed to.

All the above cases, the bills were raised immediately after the order of Apex Court and hence, the context is entirely different.

As per Section 152 of Kerala Electricity Supply Code 2014 on "Anomalies attributable to the licensee which are detected at the premises of the consumer" states as follow: -

- 152 (1) Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or of Section 135 of the Act.
- 152 (2) In such cases, the amount of electricity charges short collected by the licensee, if any, shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted.

152 (3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realized by the licensee without any interest:

Provided also that realization of electricity charges short collected shall be limited for a maximum period of twenty-four months, even if the period during which such anomaly persisted is found to be more than twenty-four months.

Here the period of limitation 24 months is not applicable as per the Hon'ble Supreme Court judgement on civil appeal No. 7235 of 2009 (M/s. Prem Cottex Vs. Uttar Haryana Bijili Vitaran Nigam Ltd. The circular of KSEBL dated 29-02-2020 also states that the consumers for whom arrears were there, which are to be recovered with interest. According to the order of Hon'ble Apex Court as mentioned above (72350/2009), the amount is become due only when the bill is raised. Till the bill is raised, the amount is not due and hence, there is no arrears and hence, interest cannot be charged.

Decision: -

- (1) There is no justification to revise the original order issued vide No. P-059/2022.
- (2) The review petition is dismissed.

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

ELECTRICITY OMBUDSMAN

RP/009/2022/ _____ dated _____.

Delivered to:

1. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Thirurangadi, Malappuram Dist.
2. The General Secretary, Tirurangadi Muslim Orphanage Committee, Tirurangadi, 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.