

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION NO. P / 310 / 2012. (Present T.P. Vivekanandan)

Appellant : Sri. R. Shaji.
Managing Trustee, M/S.S.R.Educational & Charitable Trust,
S.R. Building, Varkala, Valiamala PO, Thiruvananthapuram-695318.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division, KSEB, Varkala, Thiruvananthapuram Dt.

ORDER.

Background of the Case: -

The petitioner is the managing trustee of S.R. Educational & Charitable Trust, which is running the educational Institution of 'Sri.Sankara Dental College' at Akathumuri, Varkala. The Electrical Section, Varkala, has given electric connection to the Institution with Con.No :14499 and the party was being billed under LT-VI A tariff all these period. While being so, on 23.02.2012, an inspection was conducted at the consumer premises by the KSEB and the Sub Engineer of Electrical Section, Varkala, prepared a site mahazar, noting anomaly on the tariff allotted to the consumer. Based on the site mahazar, the appellant has been served with an arrear Bill dated 03.04.2012, for Rs.6, 46,587/-, towards the differential rate of charges between the old and new tariff. The respondent states that electricity charges for energy consumed for the period from 12/2007 to 3/2012 was revised under LTVII-A tariff (from LTVI-A) which is the applicable tariff for Self financial educational institutions, from 12/2007 onwards.

Later based on the inspection conducted on 22.3.2012, the respondent issued another provisional bill dated 3.04.2012, demanding a sum of Rs.459296/- towards penalty on fixed charges and current charges for the additional connected load of 126 KW, alleged to have been detected in the site inspection. The appellant submitted objection on 9.4.2012 before the respondent which was disposed of after hearing, upholding the provisional demands in

both the bills. Challenging the order, the appellant approached the Hon High Court in WP (C) No.12724 of 2012 and after hearing both sides the Hon Court directed the petitioner to file a complaint before the CGRF with regard to the issue relating to the change of tariff and to file appeal before the Appellate Authority as regard to the imposition of penalty. Accordingly, the petitioner filed a complaint before the CGRF, Kottarakkara, which was dismissed vide order impugned. Aggrieved by the decision of CGRF in order OP No. 792/2012 dated 25/8/2012, the appellant has submitted the Appeal petition before this Forum.

Arguments of the Appellant : -

(1.1).The appellant has filed objection dated 09.04.2012 before the respondent contenting, that the amount, demanded in exhibit P-2 provisional Bill is not legally due and the demand for arrears is barred by limitation. Categorizing the Self Financing Educational Institutions (SFEI) as 'Commercial', differentiating from other educational Institutions and classifying them along with freezing plants, cold storage, Bakeries etc as LT VIIA tariff with effect from 01.12.2007, is patently illegal. The criteria in differentiating one consumer from the other must be the factors specified in section 62 (3) to of the Electricity Act, 2003. The decision to include SFEI under commercial category is not supported by valid materials or legally sustainable reasoning.

(1.2). On 18.04.2012, the respondent has conducted a personal hearing and the appellant reiterated the contentions raised in the objections. But without adverting to the contentions raised in the objections, the respondent has issued a common order dated 04.05.2012, upholding the provisional demands made in both bills and a copy of the said order was produced as Ext P-6 before the CGRF.

(1.3). The demand made by the respondent in Exhibit P-2 bill, for the period from 12/2007 to 3/2012, is absolutely without any authority of law, in view of its order dated 18.03.2009 of the KSERC (Kerala State Electricity Regulatory Commission) in petition No.TP-59/2008. In then said order, the Regulatory Commission held as follows:

"Till 11/2003 the respondent was invoiced under industrial tariff by the licensee and the respondent is not responsible for the wrong application of the tariff category by licensee. Moreover the consumer has no role or say in assigning the tariff. So any loss incurred to the licensee on the application of industrial tariff, instead of commercial by the officers of licensee, the concerned officers of licensee alone are responsible and not the consumer. Hence the Commission order that the respondent is liable to pay the arrears from the date

of inspection only i.e. from 11/2003. Invoice issued to the respondent may be revised under commercial tariff from 11/2003 onwards only and the arrear invoice already issued to the respondent withdrawn”.

A true copy of the order dated 18.3.2009 of the KSERC in petition No.TP-59/2008 (Ext-P-7) is produced and marked. In the above circumstances, petitioner is submitting this representation on the following points among other.

(1.4). The demand made by the respondent in Exhibit P-2 bill, for the period from 12/2007 to 3/2012 and finalized by Ext P-6 order is absolutely without any authority of law, patently illegal and liable to be set aside. The amount demanded in Exhibit P2 provisional Bill is not legally due and the demand for arrears is also barred by limitation in view of section 56 (2) of the Electricity Act, 2003. As per the said provision, no amount can be recovered after a period of two years from the date on which the amount have become first due. In this case, the amount became due when the monthly bills were issued for the respective months and therefore no revision or the reassessment of the said bills can be made after expiry of the period mentioned under section 56 (2).

(1.5). Categorizing SFEI as ‘Commercial’ differentiating them from other educational institutions with effect from 01.12.2007, is patently illegal. The criteria in differentiating one consumer from the other must be the factors specified in sub-section (3) to section 62 of the Electricity Act, 2003. The decision to include SFEI under commercial category is not legally sustainable. It is pertinent to note in this regard that the decision of the Hon High Court of Kerala reported in 2009 (3) KLT 1022 (Bro Joseph Antony Vs KSEB), it was held that the SFEI would come under LT-VI-A. Admittedly the institution run by petitioner is SFEI and therefore the above judgment is applicable to them.

(1.6). Even if the party has to be invoiced under tariff LT-VII A, he is no way responsible for the wrong application of tariff by the respondent. Moreover, the complainant has no role or say in assigning the tariff. In such circumstances, as held by the KSERC in Exht P-7 order, the complainant is liable to pay arrears only from the date of inspection being conducted by the Assessing Officer, and not from 12/2007.

(1.7). The meter reading and preparation of the invoices were being made by the officers of the Board. There is no allegation that the complainant had committed any malpractice in this regard. Therefore, if at all there are any latches on the part of any of the same, at any rate there is no justification, in demanding the said amount from the complainant.

(1.8).The complainant had already remitted all the charges demanded from him as per the bills issued from time to time. Therefore, unless there are any latches on the part of the complainant, no further amounts can be demanded from him.

During the hearing the appellant pleaded that since the issue of Commercial Tariff assigned to Self Financing Educational Institution is challenged at the Apex Court and is pending for decision, the verdict on this appeal petition may also be deferred till the judgment is pronounced on the same SLP's filed before the Hon Supreme Court.

Argument of the Respondent: -

All averments in the petition are denied except those which are specifically admitted here.

(1). It is submitted that the Kerala Electricity Supply Code 2005 regulation 24 (5) clearly states that, if the licensee establishes that it has under charged the consumer either by review of otherwise, licensee may recover the amount under charged from the consumer by issuing a bill and in such cases at least 30 days shall be given for consumer to make payment against the bill. While issuing the bill the licensee shall specify the amount to be recovered as separate item in the subsequent bill or as a separate bill with an explanation on this account. The tariff of Self financing educational institution is assigned by the Hon KSERC as per gazette no: 2148 dated 27.11.2007 and hence the tariff assigned to the consumer is legal and proper.

(2). The short assessment bill issued is as per law and hence it is legal and proper. Since the bill issued is as per Kerala Supply Code 2005, the appellant is liable to pay the same. The bill issued is only for short assessment for the period 12/2007 to 3/2012 and without including any surcharge for the bill amount. This is not a penal bill, based on inspection.

During the Hearing the Respondent's position was that the SLP's filed before the Hon Supreme Court is applicable to the Parties involved in those Cases only and pointed out that there is no Court ruling in favour of the appellant as of now and hence the respondent may be allowed to claim the legitimate arrears of the consumer.

Analysis and Findings: -

The Hearing of the case was conducted in my chamber at Edappally, Kochi on 10.5. 2013. The learned Advocate, Sri. Ziyad Rehman, represented for the appellant and Sri. V. Vijayakumar, AEE, KSEB, Varkala represented for the respondent's side.

On perusing the Appeal Petition, the counter statement of the Respondent, documents attached and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

(A.1). The main contention of the Appellant is based on the Limitation or Time Bar under Section 56(2) of Indian Electricity Act, 2003, which reads “The licensee shall not recover any arrears after a period of two years from the date when such sum become first due unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied”. Hence *the question to be decided is on the point ‘when the electricity charges become due for payment’ i.e. the date from which the electricity charges are ‘liable to pay’ by the consumer, which is also termed as the ‘due date’.* This ‘due date’ is an important date as far as both consumer and KSEB (Licensee) is concerned. This is because after a period of 2 years from the ‘due date’ the bills are time barred and hence the consumer is not liable to pay the amount even if it is a legitimate claim otherwise.

(A.2). The Judgment in a Petition filed before the Hon: High Court, Bombay, vide case No: 3784/ 2007, which has dealt the ‘due date’ issue in detail and pronounced its considered opinion. The same judgment is referred in this context and reproducing the relevant portion of the main point spelt by Hon: Judge as follows;

‘In construing the expression “due” the interpretation that is to be placed must be harmonized so as to be applicable both in the context of Sub section (1)& (2) of Section 56. A sum cannot be said to be due from the consumer unless a bill for the electricity charges is served upon the consumer. Any other construction would give rise to a rather anomalous or absurd result that a disconnection of supply would be contemplated even without the service of bill. Though the liability of consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the service of a bill. Thus for the purpose of sub section (1) & (2) of section 56, a sum can be regarded as due from the consumer only after a bill on account of the electricity charges is served upon him’.

Based on the above judgment, the period of two years as mentioned in section 56 (2) of Electricity Act 2003, would run from the date when such a Bill is raised by the Board and have become due for payment only after that demand has been raised. In the above said case it has been further clarified by Hon: High Court that;

“Amount of charges would become due and payable only with the submission of the bill and not earlier. Word ‘due’ in this context must mean due and payable after a valid bill has been sent to the consumer”, (Brihatmumbai Municipal Corporation Vs Yatish Sharma and others-2007 KHC 3784:2007 (3) KLTSN-11 (Bom)). As such, the period of two years as mentioned in section 56 (2) of Electricity Act 2003 would run from the date when such a Bill is raised by the Board and have become due for payment only after that demand has been raised. Hence, the bar of limitation under Sec. 56(2) is not admissible in this case, as the disputed bill was raised only in 4/2012.

(A.3). Further, the Regulation 24(5) of the Electricity Supply Code, 2005, reads as;

“If the Licensee establishes that it has under charged the consumer either by review or otherwise, the licensee may recover the amount under charged from the consumer by issuing a Bill....”. This regulation empowers the Licensee to correct a mistake or error that has occurred due to oversight or for genuine reasons.

(A.4). The provisions in Section 61 and 62 of the IE Act, 2003, read as;

61. Tariff regulations: The Appropriate Commission shall subject to the provisions of the Act specify the terms and conditions for the determination of tariff and in doing so shall be guided by the following, namely:(d) safeguarding of consumers interest and at the same time recovery of the cost of electricity in a reasonable manner.....

62. Determination of tariff. The appropriate Commission shall determine the tariff in accordance with the provisions of this Act.

(A.5). The Hon KSERC which is the empowered statutory body, as per Electricity Act, 2003, to frame the Power tariff rules and rates, do so after conducting hearings of the general Public and the versions of interested stakeholders in the field, on the new tariff proposals notified. No specific direction, under Section 108 of the IE Act, 2003, was seen issued by the State Govt. to the Commission, before notification of Power tariff categorization and formulation of connected rules in 11/2007, on the fixation of tariff applicable for Self Financing Educational Institutions exclusively. As per the schedule of tariff and rules notified by KSERC in 11/2007, only Govt. or aided private educational institutions come under the category of LT-VI- non-domestic tariff. It is undisputed fact that the appellant is a self financing educational institution and being so, there is specific tariff earmarked for

such purpose of activity or use of electricity. Further, the appellant not being aided by the Govt., he is not entitled to claim the tariff under LT-VI B category.

(A.6). The appellant has produced two judgements on similar issues ordered by the Hon. High Court of Kerala in WA No. 660/2010 and Hon. Permanent Lok Adalat (For Public Utility Services) in OP No. 173/2012. The Hon. High Court held that;

“The question raised in the Writ Appeal is whether self financing educational institutions are liable to pay commercial tariff as prescribed by the Electricity Regulatory Commission. Even though similar parties succeeded in this Court to get the tariff cancelled, the Hon Supreme Court admitted SLP No. 30968/09 and granted stay against operation of the Division Bench Judgment of this Court. When the order of the Division Bench is stayed by the Hon Supreme Court, tariff revives and the KSEB is free to collect commercial tariff from self-financing educational institutions” and the Court disposed of the Writ Appeal with the following direction.

“(1) KSEB is authorised to collect tariff in terms of the Regulatory Commission but the same will be subject to the result of the judgment of the Supreme Court in the batch of SLPs pending before the Supreme Court.

(2) However, no arrears will be recovered until the Supreme Court decides the matter and thereafter recovery of arrears will be based on judgment of the Supreme Court, which will be applicable in appellant’s case also.”

(A.7). Also, the Appellant does not seriously question the change of tariff or the calculation of the bill assessed against him. He is of the view that, if at all the tariff has to be changed and payable, it can be assessed from the date of inspection as per the KSERC order in the order (Exhibit P-7). This is because, fixation of wrong tariff assignment to him was not due to his fault, as he has no role in the fixation of tariff and also there is no allegation of any misdoing or malpractice being done by the consumer, from the KSEB’s side.

DECISION: -

From the analysis done and the Findings arrived at, I take the decisions as;

(1). Exactly following the decision of the Hon High Court stated above, the appellant shall pay the monthly bills under LT- VII A tariff from the date of inspection and detection of the wrong tariff fixed to the consumer i.e. from the month of 4/2012 onwards. But the same will be subject to the result of the judgment in the batch of SLPs pending before Hon Supreme

