

THE STATE ELECTRICITY OMBUDSMAN
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9447576208
Email:ombudsman.electricity@gmail.com

APPEAL PETITION NO. P/165/2015

(Present: V.V. Sathyarajan)

Dated: 18th January 2016

Appellant : Sri Pradeep C. Shah
President,
Atma vidya Educational Foundation,
Malakara P.O.,
Pathanamthitta

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
Kozhencherry, KSE Board Ltd,
Pathanamthitta District.

ORDER

Background of the case:

The appellant, President of Atma Vidya Educational Foundation, Malakara is a consumer with consumer No. 6019 under the Electrical Section, Aranmula. The appellant was issued with short assessment bills amounting to Rs.1,08,046.00 and Rs.14,684.00 in connection with tariff change. Aggrieved by this, the appellant approached the CGRF, Kottarakkara by filing a Complaint No. 1490/2015-16. The CGRF dismissed the petition vide order dated 16-09-2015 and granted five equal instalments without interest for making payment, if the appellant desires. Still aggrieved with the above decisions of CGRF, the appellant has approached this Authority with this appeal petition.

Arguments of the appellant:

The appellant had lodged a petition before the CGRF, Kottarakkara stating that the appellant is eligible for LT VI A tariff for his organization, since the institution is registered under Travancore Cochin Library, Scientific and Charitable Societies Registration Act, 1955 and the donations to which are exempted from payment of Income Tax. The appellant's plea was rejected by the Forum on the grounds that they had not submitted a Certificate from the Income Tax authorities to prove that the donations received by the Institution are exempted from the payment of Income Tax.

A copy of Certificate issued by the Income Tax Authorities showing exemption of Income Tax payment and a document showing that exemption need not be renewed every year is produced by the appellant. The short

assessment invoice No. SA/CN6019/14-15 dated 09.04.2015 for Rs.1,08,046.00 issued by the Electrical Section, Aranmula for excess payment may be kept in abeyance till a final verdict comes.

In connection with the above appeal petition, the appellant has pointed out the indifferent nature and deceptive methods of Kerala State Electricity Board in billing consumers. Consumer Numbers 6019, 7277 and 8183 belong to Atma Vidya Educational Foundation. However, the bills are sent in the names of President, AVEF, Headmistress, Atmananda Memorial School, Gopinatha Pillai and in other names. There is no fixity in the names given in the bills. The bills pertaining to consumer No. 6019, 7277 and 8183 need be sent in the name of President, AVEF only.

It is also strange that the consumer Nos. 7277 and 8183 were included under LT VII A tariff (Commercial Tariff) from the date of connection. This came to the notice of the appellant after getting a copy of the KSE Regulatory Commission's order which was given effect from 16-08-2014. Only in July 2015 and August 2015, the Kerala State Electricity Board changed the tariff to LT VI F after receiving a complaint from the appellant. The Regulatory Commission gave effects to its order from 16-08-2014, but the short assessment invoice (No. BB/Short Assessment/CN 6019/2015-16/1 dated 09-04-2015) from the Assistant Engineer made it effective from 04/2013, the reason for which is not clear.

In the light of the documents submitted and the documents attached with the appeal, the appellant requested to consider the following: -

1. Consumer Nos. 6019, 7277 and 8183 may be given the benefit of LT VI A tariff
2. The bills may be made in the name of the President, AVEF for consumer Nos. 6019, 7277 and 8183.
3. The bills calculated on the basis of LT VII A may be recalculated on the basis of the tariff LT VI A from the date of connection. The excess amount realized through these bills may be deducted in instalments in future bills.

Arguments of the respondent:

The consumer No. 6019 is an educational institution, coming under Electrical Section, Aranmula with LT VI A tariff. During the inspection conducted by the Regional Audit Officer, Pathanamthitta along with Sub Engineer (Revenue Wing) of the Electrical Section, Aranmula, on 31-03-2015, it is found that a Self Financial Educational Institution under ICSE syllabus is running in the premises of consumer No. 6019. The inspection team had not found any deviation in the registered connected load but they found that the tariff of the institution was assigned under LT VI A, which is the tariff of the Government or aided educational institutions and the invoices were issued under LT VI A tariff, from the date of service connection.

The Regional Audit Officer, Pathanamthitta has directed to reassess the invoice of the appellant which was already charged under LT VI A tariff with the appropriate tariff assigned by the Hon'ble Kerala State Electricity Regulatory Commission from time to time. The fact that the institution is an unaided private school is clearly mentioned in the complaint letter dated 29th April, 2015 itself, submitted before the Hon'ble CGRF by Sri Pradeep. C. Shah, President, Atma Vidya Educational Foundation, Malakkara P.O.

The Regulation 134 (1) of the Kerala Electricity Supply Code, 2014 says. "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". Accordingly a short assessment invoice for the period from 04/2013 to 03/2015 for Rs.1,08,046.00 (Rupees One Lakh Eight Thousand and Forty Six Only) is served to the appellant.

The Regulation 152 (3) of the Kerala Electricity Supply Code, 2014 says, "The amount of electricity charges short collected for the entire period during which such anomalies persisted may be realised by the licensee without any interest. Provided also that realisation of electricity charge short collected shall be limited for maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months". Accordingly, even though the wrong assignment of tariff is happened; from the date of service connection itself, the period of reassessment is limited to 24 months only.

Here in this case, respondent had issued the short assessment invoice based on the prevailing rules and regulations. From the facts above there was no deficiency in service and the appellant has liability to pay the short assessment invoice.

Analysis and findings

The Hearing of the case was conducted on 18-12-2015, in my chamber at Edappally. Sri G. Unnikrishnan Nair, Joint Secretary, Atma Vidya Educational Foundation represented the appellant's side. Sri Mohammed Sajeed, Assistant Executive Engineer, Electrical Sub Division, Kozhencherry represented the respondent's side. On examining the petition, the argument note filed by the appellant, the statement of facts of the respondent, perusing all the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings leading to the decisions thereof.

The only question to be decided in this case is as to whether the appellant's institution is a charitable one and is exempted from payment of Income Tax thereby entitled for concessional tariff under LT VI A.

The respondent does not dispute the fact that the appellant's institution is registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. A certificate No. A378/85 dated 18-09-1985 issued by the Registrar of Societies has been produced by the appellant to prove the argument in this regard and the respondent has accepted this. Further, the appellant submitted an order no. C.No.305(R)/T/80G/(9)/CIT/KTM/2004-05 dated 30-11-2007 issued by the Commissioner of Income Tax, Kottayam. Hence the only point to be decided is whether the institution is exempted from the payment of Income Tax.

The respondent argued that the appellant's institution is an unaided private school and failed to substantiate its claim for exemption from Income Tax liability by producing certificate to this effect from the IT Department. In the certificate produced by the appellant the exemption will cover only donations made to the institution during the period from 01-04-2007 to 31-03-2010 relevant to the assessment years 2008-09 to 2010-11. Hence the respondent issued short assessment bill for Rs. 1,08,046.00 for the period from 01-04-2013 to 31-03-2015 under respective tariff applicable to ordinary private educational institutions.

On going through the connected documents submitted by the appellant, it is revealed that on receiving the short assessment bill the appellant filed an appeal before the CGRF, Kottarakkara. But the Forum observed that if the petitioner has produced the documents from the Income Tax Department to prove that the donations to which are exempted from payment of Income Tax, the petitioner shall be included in VI A tariff. As such the appellant has not produced certificate the petitioner's claim for the benefit of tariff under LT VI A cannot be admitted.

On a close perusal of the copy of Circular No. 7/2010[F. No. 197/21/2010-ITA-1] dated 27-10-2010 submitted by the appellant it can be seen that **“it appears that some doubts still prevail about the period of validity of approval under section 80G subsequent to 1-10-2009, especially in view of the fact that no corresponding change has been made Rule 11A (4). To remove any doubts in this regard, it is reiterated that any approval under Section 80G (5) on or after 01-10-2009 would be a onetime approval which would be valid till it is withdrawn”**. Here in this case it is pertinent to note that the exemption certificate dated 30-12-2007 will cover only donations made to the institution during the period from 01-04-2007 to 31-03-2010 relevant to the assessment years 2008-09 to 2010-11 and further approval under Section 80 G (5) on or after 01-10-2009 is not seen obtained by the appellant.

The only conclusion one can arrive from the above discussion is that though the appellant has obtained approval under Section 80G (5) (vi) of Income Tax Act, 1961 vide order No. C. No. 305(R)/T/80G/(9)/CIT/KTM/2004-05 dated 30-11-2007, the returns for tax exemption of the income has been allowed by the IT Department for a period of 3 assessment years subject to the limits and conditions prescribed therein. Hence it is clear that the appellant's Institution is exempted from Income Tax liability

corresponding to the assessment years 2008-09 to 2010-11 thereby satisfying the eligibility of concessional tariff for the above period. In this certificate itself, a direction was seen issued to the Income Tax Officer, Ward 1, Thiruvalla that to verify the annual statements that will be submitted by the Institution that satisfy himself it continues to fulfill the conditions laid down in Section 80G (5), he shall send a report if it applies for renewal. The appellant has not submitted any documents to show that the above approval has been extended further.

The Section 62 of the Electricity Act, 2003, enabling the provision for determination of tariff and is read as follows: ***The appropriate Commission shall determine the tariff in accordance with the provisions of this Act.*** As per tariff notification issued by the Hon'ble KSEERC, the eligibility for concessional tariff under LT VI A is applicable to Government or aided educational institutions and charitable institutions registered under Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955, the donations to which are exempted from payment of Income Tax. In the case on hand, the short assessment bill amounting to Rs. 1,08,046 issued on 09-04-2015 by the Assistant Engineer, Electrical Section, Aranmula consequent on change of tariff with effect from 01-04-2013 to 31-03-2015.

The Hon'ble KSEERC had issued tariff notification vide order dated: 14-08-2014 in OP No. 09/2014 with effect from 16-08-2014 to 31-03-2015. As per tariff notifications issued by KSEERC, respective tariffs applicable to private educational institutions in various periods were taken for preparation of short assessment bill by the respondent. But the respondent failed to issue timely bills in appropriate tariff to the appellant as per the above notification. The delay in issuing timely bills will cause financial burden on the appellant and there is no justification for issuing such a consolidated bill for a previous period of 2 years. In this case if at all any loss sustained to the licensee it is only because of the malfunctioning of the responsible officers of the licensee. Hence it is advisable to conduct an enquiry to find out the reason and the persons responsible for the issue.

The respondent contented that as per Regulation 134 (1) of the Kerala Electricity Supply Code, 2014, 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, this short assessment bill was issued for the period from 04/2013 to 03/2015 for Rs. 1,08,046.00 (Rupees One Lakh Eight Thousand and Forty Six Only) to the appellant. Here in this case, though the Hon'ble Commission revised the tariff from time to time, the appellant remitted the electricity charges at the concessional rate i.e. VI A tariff only. Due to the wrong classification of tariff the licensee sustained loss which has to be realized from the appellant. In the above circumstances the short assessment bill issued to the appellant is found in order.

Another issue raised by the appellant is regarding the issue of electricity bills in different names for the same institution of the appellant. This issue can be settled only after verification of ownership of individual service connections. Hence the respondent is directed to verify the ownership of the individual service connections and if found genuine, take steps to issue bills in favour of the registered owner as requested by the appellant.

Decision

In view of the above discussions it can be concluded that the appellant failed to produce any documents to show that one time approval is obtained under Section 80 G (5) (vi) of Income Tax Act, 1961 and the same is valid till it is withdrawn hence the appellant is not eligible for concessional tariff (VI A). The short assessment bill for Rs. 1,08,046.00 issued by the respondent is found in order. The respondent is directed to grant suitable instalments to the appellant for remitting the short assessment bill, if desires so.

The appellant is free to approach the respondent for reclassification of tariff as per Regulation 98 of the Kerala Electricity Supply Code, 2014 with relevant exemption certificate obtained from Income Tax Department. The order of CGRF in OP No. 1490/2015 dated 16-09-2015 is modified. The appeal is allowed to the extent as ordered. No order as to costs.

ELECTRICITY OMBUDSMAN

P/165/2015/_____ Dated:_____

1. Sri Pradeep C. Shah, President, Atma vidya Educational Foundation, Malakara P.O., Pathanamthitta
2. The Assistant Executive Engineer, Electrical Sub Division, Kozhencherry, KSE Board Ltd, Pathanamthitta District.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.