

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/110/2017
(Present: A.S. Dasappan)
Dated: 08th February 2018

Appellant : Sri. Madhu Sudhan.R
NIIT, Ottapalam Centre,
11nd Floor, Ottapalam Shopping Complex,
Main Road, Ottapalam, Palakkad

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd., Shornur,
Palakkad

ORDER

Background of the case:

The appellant is conducting various Computer Training Courses under the franchisee of 'NIIT'; a Computer oriented Institution, and has availed an Electric Service Connection for the said purpose, with consumer no.19268 under Electrical Section Ottapalam. The three phase service connection was given for general purpose under LT VIIA tariff with a connected load 5880 watts for running a private computer training Institute. The respondent has stated that as per the tariff revision 7/2012 (Kerala Gazette Extraordinary Notification No 1305 dated 28/11/2012) the above mentioned purpose comes under LT VIB tariff category w.e.f 1/7/2012 and hence the tariff was changed from LT VIIA to LTVIB tariff category. As per tariff revision 5/2013 (Kerala Gazette Extraordinary Notification No. 2652 dated 9/9/2013) the tariff of the computer training institute was changed to LT VIII tariff category w.e.f. 1/05/13 and as per tariff revision 8/2014 the consumer was supposed to be billed under LTVIF tariff w.e.f 16/08/2014. But the tariff change that has to be effected on the Appellant was left out due to omission. Later, as per the remarks contained in

an Audit Report, the KSE Board initiated action and changed the Tariff of the consumer to LT VIII with retrospective effect from 1/5/2013 and under LT VI F tariff w.e.f. 16/08/2014 and raised a short assessment bill, amounting to Rs112637/-, related to the period of 12/2007 to 1/5/13 to 6/1/2017 for the misclassification of tariff, being the loss sustained by KSEB during the period. Aggrieved by the aforesaid demand, the appellant filed a complaint before the CGRF (North), Kozhikode in OP No.39/2017-18 which was disposed vide order dated 20-09-2017, as follows: a). Disallowed the petition b). Limited the period of short assessment the 24 months prior to the date of issuing of bill in correct tariff and the respondent shall revise the bill accordingly c). The respondent shall allow installment facility to the petitioner to maximum 12 numbers d). The revenue loss to the remaining period can be realized from the official concerned, if the licensee desires so. Aggrieved by the decision of CGRF, the appellant filed this appeal petition before this Authority.

Arguments of the appellant:

The appellant had pleaded his inability before the CGRF to pay the full arrear amount because of the following reasons.

- 1) It is a mistake done by the Board that they have not applied the right tariff in calculating fixed charges and energy charges from 01/05/2013 to 06/01/2017 and it took four years for them identify the mistake.
- 2) If the Board had applied right tariff then, the appellant would have paid the amount and booked the expenses which belongs to the previous financial periods and also could have gained from the tax benefit of Profit.
- 3) Presently the appellant's business is running under huge loss and there is only an added burden now and this expense will further increase their loss only.
- 4) During the CGRF meeting the appellant have conveyed this point but they have not considered the request of paying 50% of the amount that is Rs.32253/-in 3 installments (Rs.64507 /- bill dated 17 /08/2017) instead the amount is Rs.64507/- and given more installment facility to pay the amount.

The appellant prays for a favourable decision.

Arguments of the respondent:

- 1) The appellant is a consumer under the jurisdiction of office of the Assistant Engineer, Electrical Section, KSEB Ltd, Ottappalam with Consumer No 19268. The three phase service connection was given for general purpose under LT

VIIA tariff with a connected load 5880 watts for running a private computer training Institute.

2) As per the tariff revision 7/2012 (Kerala Gazette Extraordinary Notification No 1305 dated 28/11/2012) the above mentioned purpose comes under LT VIB tariff category w.e.f 1/7/2012 and hence the tariff was changed from LT VIIA to LTVIB tariff category.

3) As per tariff revision 5/2013 (Kerala Gazette Extraordinary Notification No. 2652 dated 9/9/2013) the tariff of the computer training institute was changed to LT VIII tariff category w.e.f. 1/05/13.

4) An audit was conducted at Electrical Section Ottappalam by the Regional Audit Officer, KSEB Ltd, Shornur and detected wrong applications of tariff against the above consumer which is as follows.

The tariff applied was LT VIIB. But as per tariff revision 5/2013 the consumer was supposed to be billed under LTVIII tariff w.e.f 1/5/13. Similarly as per tariff revision 8/2014 the consumer was supposed to be billed under LTVIF tariff w.e.f 16/08/2014. Thus the audit team noticed the wrong application of tariff w.e.f 1/05/13. Thus the board has sustained revenue loss for an amount of Rs 112637/- due to wrong application of tariff.

The audit report is as follows

Computer Training Institute (private). This consumer should have been billed under LT VIII tariff w.e.f 1/5/13 (Tariff revision 5/2013) and LT VIF tariff from 16/08/14 onwards (tariff revision 8/2014). The loss sustained due to wrong application of tariff is worked out below. The tariff may be changed urgently.

FC -1/05/13 to 6/1/17

Due -Rs 120 /month x 6 kw x 32 months	=	23040
Less FC billed -Rs 70 x 6 kw x 32 m	=	13440
Balance FC	=	9600

Energy charge from 1/05/13 to 15/08/14

Consumption (147698-133340- (readings)	=	14358 units
Due(LT VIII) -14358 X 8.50 + Duty	=	134247
Less Energy Charge + Duty billed under VIB		
7750 units x 5.85 +6608 units x 7 + duty	=	100753

BALANCE = 33494

Energy charge from 16/08/14 to 6/1/17

Consumption (174321 -147698- Readings) - 26623 units
 Due - (LTVIF) - 26623 X 9 + duty = 263568
 Less Energy Charge+ duty billed under LT VIB
 14250 units x 6.30+ 12373 units x 7 + duty = 194025
 Balance = 69543

Grand Total= 9600+33494+69543 = 112637

On verification of the audit report; it was noticed that some clerical errors has been occurred in calculating the final reading on 15/08/2014. Hence a revised short assessment invoice has been prepared which is as follows

FIXED CHARGE

From 1/05/13 to 6/1/17 - LT VIII & LT VIF Tariff

The fixed charge under LT VIII & LT VIF tariff for three phase service connection is Rs 120/- per kilowatt per month

= Rs 120 x 6 kw x 44 months = 31680

Less amount remitted under LT VIB Tariff

= Rs 70 x 6 KW x 44 Months = 18480

Balance FC to be remitted = 31680-18480

= 13200----- (1)

ENERGY CHARGE

From 1/05/13 to 15/8/14 under LT VIII tariff

Recorded reading on 6/5/13 - 133340

Reading up to 15/08/14

Recorded reading on 4/7/14 -146169

Recorded reading on 11/09/14 -148470

Consumption from 4/7/14 to 11/09/14 = 148470-146169

= 2301 units

Total number of days from 4/7/14 to 11/09/14 = 69 Days
 Consumption per day = 2301/69

= 33.35 units.

Total Number of days from 04-07-2014 to 15-08-2014 = 42 Days

Consumption from 04-07-2014 to 15-08-2014 = 33.35units x42 days

= 1400.7

Say 1401 units

Reading to be recorded on 15.08.2014 = reading on 4.7.14+consumption
 from 4.7.14 to 15.8.14

= 146169+1401

= 147570

Total units consumed from 1.05.13 to 15.8.14 = 147570-133340

= 14230 units

Energy charge = (Total units x Rate/unit under LT VIII Tariff) +10% duty
 = 14230 x Rs 8.50+10% duty
 = 133050.5

Say Rs = 133051/-

Less Energy charge already remitted under VIB Tariff

(7750 units x Rs 5.85 /- + 6480 units x Rs 7/-) +10 % duty= 99767.25

Say Rs = 99767/-

Balance energy charge to be remitted = 133051-99767

= 33284/----- (2)

The split up of units taken above is as follows.

As per the tariff revision 5/2013; the energy charge is

Up to 500 units = Rs 5.85/-
above 500 units = Rs 7/-

Consumption statement

Month	IR Date	IR Reading	FR Date	FR Reading	Consumption in units
07/13	6.5.13	133340	8.7.13	135325	1985
09/13	8.7.13	135325	7.9.13	136866	1541
11/13	7.9.13	136866	7.11.13	138463	1597
01/14	7.11.13	138463	6.1.14	140094	1631
03/14	6.1.14	140094	5.3.14	141903	1809
05/14	5.3.14	141903	6.5.14	144077	2174
07/14	6.5.14	144077	4.7.14	146169	2092
09/14	4.7.14	146169	11.9.14	148470	2301

The period to be considered is only up to 15/08/14

The number of spot bills up to 7/2014- 7 Nos

As per the above tariff revision the unit rate Rs 5.85/- to be applied for bimonthly spot bill is for 1000 units.

Hence up to 15/8/14 the unit = $\frac{1000 \text{ units} \times 45 \text{ days}}{60 \text{ days}}$
= 749.99 units
Say = 750/- units.

Hence the total units to be charged

@Rs 5.85/- 7750 units

@Rs 7/- 6480 units

Energy charge from 16/8/14 to 6/1/17 under LT VIF tariff

Initial reading on 16/08/14	- 147570
Final Reading on 06/01/17	- 174321
Consumption	- 174321-147570
	=26751 units
Energy Charge	=26751unit x Rs9/-+duty@10%
	=240759+24075.9
	=264834.9
Say Rs	=264835/-

Less amount already remitted under VIB tariff

As per the tariff revision 8/14, the unit rate is

Up to 500 unit	Rs-6.30/-
Above 500 unit	Rs-7/-

Since the consumption is above 500 units the total consumption has to be splitted.

Months	Consumption
16.8.14 to 11.9.14	900
11/14	2242
01/15	1760
03/15	1382
05/15	1527
07/15	1722
09/15	1744
11/15	1871
01/16	1776
03/16	2006
05/16	2410
07/16	2056
09/16	1679
11/16	1854
1/17(6/1/17)	1822
Total	26751 units

The total units to be charged @ Rs 6.30 for the period from 16/8/14 to 11/9/14

$$\frac{1000 \text{ units} \times 15 \text{ days}}{60 \text{ days}} = 249.99$$

	Say 250 units.
No of spot bills	14 Nos
Total units	14x1000+250
	14250 units

Total units to be charged@ Rs 7/-

(Total units for the period from 16/8/14 to 6/1/17) - (Total units to be charged@ Rs 6.30 /-)

$$= 26751-14250= 12501 \text{ units}$$

Energy charge = (14250 units x 6.30+12501units x Rs 7/-)+10% duty
= 195010/-

Balance energy charge to be remitted = 264835 – 195010
= 69825

Total amount to be remitted = Total balance FC + Total energy charge
= 9600 +41481 +69825
= 120906

The amount claimed is only a short assessment due to wrong application of tariff in connection with tariff revision in 5/2013 and 8/2014.

As per the regulation 134 (1) of 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 a cases at least thirty days shall be given to the consumer for making payment of the bill.

As per the above regulation the Licensee is eligible to recover the amount undercharged from the consumer and the bill was issued accordingly.

Here, the invoice issued by the Respondent as per Regulation 134 (1) of the Kerala Electricity Board Supply Code 2014 is to recover the undercharged

portion only. Thus, demanding of undercharged portion cannot said to be illegal and the respondents have acted strictly in accordance with rules and regulations. Kerala Electricity Supply Code, 2014 Regulation 152 (3) states that "The amount of electricity charge short collected for the entire period during which such anomalies persisted may be realized by the licensee without any interest". Provided that if the period of such of short collection due to the anomalies is not known or cannot be reliably assessed the period of assessment of such short collection of electricity charge shall be limited to twelve months.

Here in this case the short collected period was reliably assessed and the bill was issued accordingly. More over in several cases the Hon'ble High Court has established the right of the licensee to demand and realize the short assessment amount actually due from the consumer. In the judgment of OP No. 5930/1985 which was filed by Mr. V.A. Balakrishnan, the Hon'ble court held that "If there is a mistake or there is an under billing, it is always open to the respondents to rectify their mistakes and to demand the proper charges due from the consumer". Also in judgment dated 09/02/2012 of WA No. 211/2012 in WP(C) No. 34768/2011, the Hon'ble High court of Kerala held that "the question of normal period of limitation is not applicable both, towards electricity and water charges". Hence the bill issued to the consumer in accordance with the law of the land to realize the undercharged amount for the unaccounted portion without any penal charges is legal.

The regulations authorize the respondent to set right the omission occurred while assessing the consumer and to prefer the correct demand. It cannot be ignored that the consumer has actually used the energy and hence liable to pay the correct charges for the energy he has consumed.

Hence it is respectfully submitted that the appellant is not entitled for any relief as sought for in the above petition and prayed before this Ombudsman to declare that the action of the respondents are well within the purview of the prevailing rules and regulations and is in order and prayed to dismiss the petition with cost.

Analysis and Findings:-

Both parties were heard on 26-12-2017, in my chamber at Edappally, Kochi. The appellant was represented by Sri. Madhu Sudhan.R and Sri. K.Prasad, Assistant Executive Engineer, KSEB Ltd., Shornur Sub Division appeared for

the respondent and they have argued the case, mainly on the lines stated above. On perusal of the Appeal petition of the complainant, the statement of facts submitted by the respondent, the averments made during the hearing and the argument notes presented by both parties and on an analysis of the case with the documents submitted, I come to the following conclusions and decisions thereof.

The three phase service connection was given to the appellant w.e.f 16-08-1999 for general purpose under LT VIIA tariff with a connected load 5880 watts for running a private computer training Institute. An audit was conducted at Electrical Section, Ottappalam by the Regional Audit Officer, KSEB Ltd, Shornur and detected wrong applications of tariff against the above consumer. As per the tariff revision 7/2012 (Kerala Gazette Extraordinary Notification No 1305 dated 28/11/2012) the above mentioned purpose comes under LT VIB tariff category w.e.f 1/7/2012 and hence the tariff was changed from LT VIIA to LTVIB tariff category. As per tariff revision 5/2013 (Kerala Gazette Extraordinary Notification No. 2652 dated 9/9/2013) the tariff of the computer training institute was changed to LT VIII tariff category w.e.f. 1/05/13. Similarly as per tariff revision 8/2014 the consumer was supposed to be billed under LTVIF tariff w.e.f 16/08/2014.

According to the respondent the tariff assigned to the appellant was found incorrect with regard to the activities and purpose of energy used in the premises. The appellant's argument is that fixing appropriate tariff rests on the respondent's side and the appellant has no role in it. On a perusal of the documents it can be seen that the respondent assigned the commercial tariff while effecting the service connection to the appellant without conducting proper verification regarding the purpose of supply. The respondent could reclassify the tariff only after the inspection by the Audit Wing. The appellant has not disputed the fact that he is running a computer institute.

As per the Schedule of Tariff and Terms & Conditions for Retail Supply by KSEB, specific and separate tariff applicable for a Computer Institute. When there is a specific entry of tariff for computer institute as LT VIB it shall be made applicable. The Institution 'NIIT' is imparting only computer education and its training, which comes under the term 'institute.' On a perusal of the short assessment it can be seen that the respondent reclassified the appellant under appropriate tariff and assessment was made from 1/5/2013 to 6/1/2017 for a period of 44 months. The CGRF while disposing the petition on 20/9/2017 directed the respondent to limit the period of assessment to 24 months based on the Regulation 152 of Kerala Electricity Supply Code, 2014.

On going through the records, it is found that the Regional Audit Officer has directed the respondent to revise the wrong application of tariff wef 1/5/2013 to 6/1/2017, which is beneficial to the licensee only. But during back period from 1/5/2013 onwards the respondent charged higher tariff of LT VII A instead of the specific and separate tariff applicable to computer training institutes that is LT VI B.

It is the bounden duty and the responsibility of the licensee to reclassify the consumer under appropriate category consequent to a revision of Schedule of Tariff and Terms and Conditions of Retail Supply of Electricity. As per Regulation 97(1) of Kerala Electricity Supply Code, 2014, which was in force with effect from 01-04-2014, the licensee has to reclassify the consumer under appropriate category consequent to a revision of tariff. Further, as per Regulation 152(2) and (3) of Supply Code, 2014, the amount of electricity short collected by the licensee, if any, can be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted, without any interest. In the above circumstances, the issuance of short assessment bill due to wrong classification is found in order and the appellant is liable for making the payment. At the same dogma applied, the consumer is also eligible to get the excess amount collected to be adjusted in the future bills. As per Regulation 97(4) of Kerala Electricity Supply Code, 2014, “ Arrear or excess charges shall be determined based on the actual period of wrong classification and the account of the consumer shall be adjusted.”

As per the tariff orders applicable up to 01-05-2013, the tariff of a computer institute comes under LT VI B. It is not specified by the respondent that the tariff of the appellant was reclassified from the date of functioning the premises as ‘computer oriented institution’ to 01-05-2013 and the amount was remitted/refunded accordingly. If not, the respondent shall revise the bill for the entire period from the date of functioning the premises as a ‘computer oriented institution’ to 06-01-2017 for appropriate tariff and generate bill for the excess to be remitted or to refund the excess amount remitted by the appellant being the amount of difference of the tariff rates. If the appellant is liable to remit such amount and which exceeds the period limited as per the order of CGRF, Northern Region in OP No.39/2017-18, the respondent shall limit it in accordance with the order of CGRF.

Decision:

From the analysis done above and the findings and conclusions arrived at, I take the following decision.

It is strange to see that the appellant paid the bills, which carried a substantially higher tariff rate, without any objection till 1/7/2012. Even then, the change of tariff of the consumer was effected (from the commercial to non domestic), without observing the rules in force in the KSEB T&C of Supply, 2005. The audit inspection has found that the consumer was having a wrong tariff and based on it, the respondent has raised the disputed Bill. But the respondent has failed to establish the date of occurrence of wrong tariff before 1/7/2012. Initially the tariff was LT-VIIA commercial and the change of activity could occur any time after getting the connection. It is also made clear that the consumer No. 19268 will continue to remain under the appropriate tariff assigned for computer training institutes after 7/2012, as both parties no case of tariff misclassification after that date.

The respondent is directed to revise the bill for the entire period from the date of functioning the premises as a 'computer oriented institution' to 06-01-2017 for appropriate tariff and generate bill for arrear or excess charges based on the actual period of wrong classification and the account of the consumer shall be adjusted within two months of this order with details of calculation for his information, as per the provision of Regulation 97(4) of Kerala Electricity Supply Code, 2014. The respondent shall refund/adjust the excess amount, if any, remitted by the appellant being the amount of difference of the tariff rates. Having concluded and decided as above, it is ordered accordingly. The order of CGRF, Kozhikode in OP No.39/2017-18 is set aside. In view of what is stated above, the aforesaid Appeal Petition filed by Madhu Sudhan.R, stands disposed of.

ELECTRICITY OMBUDSMAN

Appeal Petition P/110/2017/ _____ /Dated: _____

Delivered to:

1. Sri. Madhu Sudhan.R, NIIT, Ottapalam Centre,11nd Floor, Ottapalam Shopping Complex, Main Road, Ottapalam, Palakkad
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Shornur, Palakkad

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, CGRF, Vydhyuthibhavanam, KSEB Ltd, Gandhi Road, Kozhikode