

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION No. P/115/2017  
(Present: A.S. Dasappan)  
Dated: 09<sup>th</sup> February 2018

Appellant : Sri. Prince P Pathrose  
Pokkattu House, Opp. Nadamel Church,  
Main Road, Thripunithura,  
Ernakulam

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd., Thripunithura,  
Ernakulam

### **ORDER**

#### **Background of the case:**

The appellant is conducting private clinical laboratory with consumer no.8257 under Electrical Section Thripunithura. The three phase service connection was given under LT VIA tariff with a connected load 11733 watts. The Regional Audit Wing of KSEBL during their audit conducted at Electrical Section, Thripunithura, had noticed that the connection given to the appellant's laboratory was classified under LT VI A tariff instead of LT VI F tariff. As per the above audit report, the respondent changed the tariff of the appellant and a short assessment bill was issued to him, directing to remit an amount of Rs. 116040.00 being the difference in the tariff for the period from 28-11-2015 to 18-04-2017. Aggrieved by the aforesaid demand, the appellant filed a complaint before the CGRF, Ernakulam, in OP No.35/2017-18 which was dismissed vide order dated 12-10-2017. Aggrieved by the decision of CGRF, the appellant filed this appeal petition before this Authority.

**Arguments of the appellant:**

Appellant is a commercial consumer of Electrical Section, Thripunithura which is utilized for running a private medical laboratory. Appellant was assigned tariff VIA and was billed accordingly. In fact there has not been any complaint regarding the functioning of the unit or non payment of bills. On 29/7/17 appellant was given a short assessment bill for Rs.1,16,040/- due to misclassification of tariff w.e.f. 28/ 11 /2015 instead of the actual tariff as stated by the respondents, which according to them is LT VIF /VIG. On 2/8/17 appellant submitted a written complaint to the licensee for cancelling the bill. Without hearing the appellant on 1 /8/2017 he was served with monthly bill with due date 11 /8/2017 for Rs.11,374/- along with Rs.1,16,037 /- totaling to Rs.1,27,411 /-. The same was challenged before the Forum which was dismissed, against which the present appeal is filed.

Appellant has been conducting operations in the premises with the consumer number referred to above for quite some time now. There has not been a single occasion where there has arisen any dispute regarding the meter or non payment of electricity dues. He has been prompt in remitting the amounts incurred on account of consumption of electricity and there has not been any default from his part in performing his part of the agreement. The meter has been placed as required by the provisions of the Code and in compliance with the requisitions by the Board and the same is being inspected on a regular basis. In fact the meter reading is being regularly done by the officials of the board and bills raised as per the consumption. There has not been any dispute raised regarding the non functioning of the meter or non working of the same by the officials of the board who conduct the reading of the meter. In fact the meter has been showing the reading accurately and there has not been any significant variation in the same revealing any defects therein. Had there been any such significant difference, the officials who come to effect reading of the meter would have pointed out the same.

As regards the tariff is concerned, the same was allotted after being satisfied of the requirements and the same was being used from the date of grant of electricity connection till the date of detection. In fact the appellant cannot in any manner be held responsible for the difference in tariff if any since there cannot be any fault attributed to his part. In fact as regards the present bill, the appellant is not able to effect payment as there has not been any irregularity detected in the premises nor any anomaly attributable to the appellant. Regulation 152 also cannot be pressed into effect since the anomaly if any is not attributable to the appellant. It has been held in a catena of

decisions of the Hon'ble Supreme Court of India as well as the Hon'ble High Court that the consumer cannot be penalized for the wrong committed by the Board and taking recourse to recovery proceedings have been strongly deprecated. Therefore it is prayed that the order may be set aside.

**Arguments of the respondent:**

The appellant in this appeal is a consumer under Electrical Section, Thripunithura. The electric supply given to the consumer is being used for running a private clinical laboratory.

Under Sections 62 to 64 of the Electricity Act 2003, the State Electricity Regulatory Commissions concerned are the authority to determine the tariff of the electricity supplied by distribution licensees in that State. The Kerala State Electricity Regulatory Commission (KSERC) has determined the tariff of electricity supplied by the Kerala State Electricity Board Limited for the period from 16.08.2014 to 31.03.2015 by its order dated 14.08.2014 in OP No.9 of 2014 and published in the Extra Ordinary Gazette, Volume 3 No.2379 dated 27.09.2014.

As per the above notification Kerala State Electricity Regulatory Commission published the scheduled of tariff for the period from 16.08.2014 to 31.03.2015. As per the above schedule of tariff, the tariff applicable to the appellant was LT VI F with effect from 16.08.2014 onwards. By mistake the appellant was billed under LT VI A tariff applicable to Government clinical laboratories. Kerala State Electricity Regulatory Commission re-determined the schedule of tariff of supply made by Kerala State Electricity Board Limited with effect from 18.04.2017 to 31.03.2018 by its order dated 17 .04.2017 published in Extra Ordinary Gazette, Volume 6 number 782 dated 21.04.2017, as per which the tariff applicable to the appellant consumer is LT VI G with effect from 14.08.2017.

The misclassification in tariff was noticed by the Regional Audit Officer, Kerala State Electricity Board Limited. Regulation 152 of the Kerala Electricity Supply Code, 2014 empowers distribution licensees of the state to make good the amounts undercharged due to incorrect application of tariff from a consumer. The appellant consumer was undercharged by the licensee for the period from 28.11.2015 to 7/2017 in LT VI A tariff.

As per the agreement entered into between the appellant consumer and the KSE Board Limited, the appellant is liable and bound to remit the charges of electricity consumed by him under the tariff rate fixed by the Regulatory

Commission. Undercharged amount from the appellant consumer during 28.11.2015 to 7 /2017 comes to Rs.1.16,040. In compliance of regulation 152 a short assessment demand for 1.16.040/- was issued to the appellant on 29.07.2017.

KSE Board Limited has acted according to the provisions of the Kerala Electricity Supply Code, 2014. Aggrieved by the short assessment bill the appellant filed a Complaint No.35/2017-18 before the Hon'ble Consumer Grievance Redressal Forum (Central Region). The Hon'ble Forum found the short assessment in order as per Regulation 152 and observed that, "the bill issued by the respondent is genuine and sustainable and the appellant is liable to pay the amount". Accordingly the Forum was pleased to dismiss the complaint by its order dated 12.10.2017.

The appellant in this appeal has not raised any illegality against the findings and decision of the Hon'ble Consumer Grievance Redressal Forum (Central Region). Moreover any ground for this appeal or any violation of the provisions of the Regulation or any law in vogue has been pointed by the appellant against the short assessment bill issued. Hence the appeal is liable to be dismissed with cost.

**Analysis and findings:**

A hearing of the case was conducted in my chamber at Edappally, Ernakulam, on 21-12-2017. Sri. Prince P Pathrose appeared for the appellant's side and Sri. Sudev Kumar M.K., Assistant Executive Engineer, Electrical Sub Division, Thripunithura represented the respondent's side. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

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 respondent argued that the tariff applicable to the premises of the appellant comes only under LT VI F but not LT VI A. 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 LT VI A 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.

As per the Schedule of Tariff and Terms & Conditions for Retail Supply by KSEB with effect from 16-08-2014, tariff applicable to private clinical laboratory is LT VI F. The appellant was billed under LT VI A tariff applicable to Government clinical laboratories erroneously by the respondent. Hence the action of the respondent to reclassify the appellant's category under appropriate tariff from time to time is found in order based on the tariff notification.

The argument raised by the appellant is that as regards the present short assessment bill, the appellant is not able to effect payment as there has not been any irregularity detected in the premises nor any anomaly attributable to the appellant. Regulation 152 also cannot be pressed into effect since the anomaly if any is not attributable to the appellant. It has been held in a catena of decisions of the Hon'ble Supreme Court of India as well as the Hon'ble High Court that the consumer cannot be penalized for the wrong committed by the Board and taking recourse to recovery proceedings have been strongly deprecated. But any relevant judgments in this regard are not produced by the appellant.

As per Regulation 134 of Electricity Supply Code, 2014; "(1) 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 Schedule of Tariff and Terms & Conditions for Retail Supply by KSEB, specific and separate tariff applicable for a private clinical laboratory. 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. 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.”

The consumer does not dispute the fact, that his eligible tariff was LT VIF, during the disputed period of 28-11-2015 to 07/2017. It was a mistake from the side of KSEB which is also agreed by the appellant. If it was proved that there was a genuine case of ‘under charging’ of the consumer, the Licensee is empowered to claim the same as per Clause 134 of Electricity Supply Code, 2014. It seems to me as reasonable and justifiable to allow the appellant to pay the bill in installments, as he is a small business man. The action of the respondent to raise the short assessment bill for Rs. 116040/-, pertaining to the period 28-11-2015 to 07/2017, towards the undercharged amount from the consumer owing to wrong fixation of tariff, is decided as maintainable and hence payable by the consumer. Hence it is clear that, there is nothing illegal or arbitrary, in the action of respondent in claiming an ‘undercharged’ amount from a consumer, by preferring a short assessment bill to recover the same. Here in this case the respondent issued the short assessment as a separate bill along with calculation statement and other details. On a perusal of the short assessment it can be seen that the assessment was made from 28-11-2015 to 07/2017 for a period of 20 months. This Authority finds no scope for further intervention in the matter.

### **Decision**

In view of the above discussions, the instant appeal fails and is hereby dismissed. The impugned order of CGRF in OP No. 35/2017-18 dated 12-10-2017 is hereby confirmed. The Party shall be allowed 20 installments to pay the disputed bill amount. No interest or surcharge is payable by the consumer during the Petition pending period before the CGRF and this Forum and up to 30th day of this order, which is taken as the revised ‘Due date’ of the bill. The respondent is directed to issue, an installment allotment proceedings to the appellant, specifying the revised due date and the installment dates, as per this order. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/115/2017/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Sri. Prince P Pathrose, Pokkattu House, Opp. Nadamel Church, Main Road, Thripunithura, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSEBL, Thripunithura, Ernakulam

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, Central Region, 220 KV Substation Compound, HMT Colony P.O., Kalamassery 683 503