

**THE STATE ELECTRICITY OMBUDSMAN**

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APPEAL PETITION No. P/006/2018

(Present: A.S. Dasappan)

Dated: 30<sup>th</sup> April 2018

Appellant : Sri. C.P. Paul  
Proprietor, Paulson Park Hotel,  
Carrier Station Road,  
Ernakulam

Respondent : The Assistant Executive Engineer,  
KSE Board Limited,  
Electrical Sub Division, College,  
Ernakulam.

**ORDER****Background of the case:**

The appellant is running a hotel in the name and style 'Paulson Park Hotel' having consumer number 5481 under the jurisdiction of College Section, Ernakulam. Based on a Government policy of giving more facilities to promote Tourism in Kerala, Tourism was given equal status of industry and as such the electricity tariff of those hotels that got approval was assigned LT IV- industrial tariff since 6/1987. The appellant's hotel was classified as a star hotel by the tourism department with effect from 01-08-988 for a period of 3 years and a certificate was issued by the competent authority to that effect and the power supply to the appellant's hotel was being charged under LT-IV category. The concessional tariff under LT IV claimed subsequently was not supported by any certificate issued by the Tourism Department for availing concessional tariff applicable to the industries in the hotel business. The tariff assigned to the appellant's hotel was changed to LT VII A Tariff retrospectively for the period during which eligibility certificate was not tendered.

The appellant aggrieved by the action on the part of the respondent in classifying them under LT VII A Tariff, approached Hon'ble High Court vide OP No. 5980 of 1998 which was finally disposed of by the Hon'ble Court vide judgment dated 18-03-2005, directing the appellant to produce eligibility certificate from the Tourism Department within one month. Thereafter the

eligibility certificate for the period from 22-08-1996 to 22-08-1999 was produced. In pursuance of the judgment in OP No. 5980/1998 a bill for Rs. 1,15,86,310/- dated 18-06-2005 was issued to the appellant for the period from 8/1991 to 8/1996 and from 15-05-1999 to 4/2005 under LT VII A Tariff. Later, the Govt. reversed the order and withdrew the concession of low rate industrial tariff granted to hotels with effect from 15-05-1999, vide GO.(MS) No.537/200/GAD dated 26-09-2000.

The appellant has filed a complaint dated 25/2/2007 before the CGRF, Central Region, Ernakulum challenging the demand dated 3/4/2007 issued by the respondent for a sum of Rs. 1,60,15,422/- including surcharge till date, which was dismissed on the ground that since a WP(C) 21918/05 filed by the appellant on the same subject is pending before the Hon. High Court of Kerala.

Aggrieved by the order passed by the CGRF the appellant had filed appeal petition dated 31-08-2007 before this Authority. The appeal was disposed of by ordering that the disputed tariff revision is not justified and hence considered as arbitrary and also held that there is no justification for levy of any penal interest on arrears for which consumer is not responsible; vide order No. 22/2007 of 17-10-2007. The KSEB filed WP(C) 22232/2008 before the Hon'ble High Court challenging the findings rendered by the Ombudsman. The Hon'ble High Court, in its judgment dated 27-11-2013, remanded the matter to this Authority for fresh disposal of the case after affording fresh opportunity of personal hearing to the parties concerned. Accordingly the respondent has produced a copy of the judgment on 22-01-2018.

### **Arguments of the appellant:**

The appellant's hotel was classified as a star hotel by the tourism department with effect from 01-08-1988 for a period of 3 years and a certificate was issued by the competent authority to that effect. On production of such Certificate, the power supply to the appellant's hotel was being charged under LT-IV category. While so, the appellant received a communication dated 20-08-1996 from the Assistant Executive Engineer, KSEB, requesting him to produce certificate issued by the Tourism Department, Government of India regarding the star status of the appellant's hotel. The appellant as per his reply dated 21-08-1996 informed the respondent that the star classification assigned to the hotel is in the process of renewal. The appellant also informed the respondent that as per letter dated 10-11-1991 of the Director of Tourism; the appellant is entitled to reclassification upon remittance of the prescribed fees and production of necessary certificates. Accordingly, the appellant had submitted his application for reclassification along with the prescribed fees and necessary certificates. However, the Tourism department neither inspected the hotel for giving reclassification nor rejected the application. Upon receiving the communication dated 20-08-1996 from the respondent Board, the appellant

submitted a fresh application dated 22-08-1996 before the Tourism department seeking renewal/reclassification of his hotel. The appellant also filed O.P No. 15219/1996 before the Hon'ble High Court of Kerala seeking a direction to the Regional Director, Govt. of India Tourism department to dispose of the said application filed by the appellant for renewal/reclassification of his hotel. The Hon'ble High Court, by judgment dated 10-10-1996, disposed of the Original Petition directing the Regional Director, Tourism department to consider and pass orders on the appellant's application within a period of 3 months. While the application was pending before the Tourism Department, the respondent issued bill dated 09-03-1998 charging the appellant's hotel at a higher tariff under LT-VII category instead of the applicable LT-1V category, for the month of February. 1998. The appellant challenged the said bill before the Hon'ble High Court of Kerala and the Hon'ble High Court directed the Board not to disconnect the power supply to the appellant's hotel on payment of tariff under LT-IV category, pending disposal of the Original Petition.

During the pendency of the said Original Petition, the appellant produced the certificate issued by the competent authority certifying his entitlement to receive power supply at industrial tariff for the month in question i.e., February 1998. The policy of the Government in this regard changed with effect from May, 1999 and tariff under LT-VII was made applicable to all hotels. Thereafter, the said Original Petition was disposed of by the Hon'ble High Court by Judgment dated 18-03-2005 directing the appellant to once again produce eligibility certificate before the Board for the month in question.

Aggrieved by the direction issued by the learned single judge to produce the certificate once again, the appellant filed Writ Appeal before the Hon'ble High Court. While the Writ Appeal was pending, the Board issued bill dated 18-06-2005 demanding alleged arrears and surcharge to the tune of Rs. 1,15,86,310/- covering the period from 01-08-1991 to 4/2005. The appellant filed W.P (C) No. 21918 of 2005 before the Hon'ble High Court challenging the said bill. After receiving notice in the case and after filing counter affidavit in the case on 22.07.2005, the respondents proceeded to disconnect the power supply to the appellant's premises on 25-07-2005 and later dismantled the connection on 16-05-2006 for non-payment of the amounts demanded under the bill dated 18-06-2005. Meanwhile, the Writ Appeal filed by the appellant was disposed of by the Division bench of the Hon'ble High Court by judgment dated 16-01-2006 modifying the order of the learned single judge and declaring that the appellant is entitled to get the benefit of industrial tariff for the month of February 1998. Accordingly, the Board was directed to issue fresh bill for the said month.

Misinterpreting the judgment dated 16-01-2006 of the Division bench of the Hon'ble High Court, the Board again issued a bill dated 07-02-2007 for an amount of Rs. 1,62,33,570/- claiming alleged arrears of electricity charges

together with surcharge. By this time, the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005 (hereinafter referred to as 'the Regulations', for short) came into force and any grievance of a consumer on errors in billing was to be redressed in accordance with the said Regulations. Accordingly, the appellant challenged the legality of the said demand before the Consumer Grievance Redressal Forum. The said Forum abdicated its statutory function and declined to entertain the appellant's complaint. The appellant filed appeal before the Electricity Ombudsman. Meanwhile, the bill dated 18.06.2005 was cancelled as per invoice dated 02-04-2007 which, in turn, was also cancelled by the final invoice dated 03-04-2007. The Ombudsman by Order dated 07-11-2007 declared that the final demand raised by the Board against the appellant, dated 03-04-2007 for Rs. 1,60,15,422/- is unenforceable.

Since the Board had cancelled the demand dated 18-06-2005 as per invoice dated 02-04-2007, which was also cancelled as per invoice dated 03-04-2007, which came to be declared as unenforceable by the Electricity Ombudsman WP(C) No. 21918 of 2005 which was pending before this Hon'ble High Court became infructuous and therefore the appellant got the said Writ Petition dismissed as withdrawn.

The respondents filed a Writ Petition before the Hon'ble High Court challenging the order of the Ombudsman dated 07-11-2007 contending that the said order was in the nature of an ex-parte order- The Hon'ble High Court issued notice to the appellant and remanded the matter to the Ombudsman, thus giving the Board an opportunity to contest the matter on merits- It was also directed that the amount covered under the disputed bill shall not be realized until a decision is taken by the Ombudsman-

There is no merit in the respondent's contention in the additional statement that the appellant, whose connection has been dismantled, will not come within the purview of the term "consumer". It is submitted that after entering appearance before the Hon'ble High Court both in Writ Appeal No-2348 of 2005 and W-P(C) No. 21918 of 2005, the respondent proceeded to disconnect the power supply to the appellant's premises on 25-07-2005 for non- payment of the alleged arrears and surcharge which was in dispute and pending before the Hon'ble High Court. The said action was in clear violation of Section 56(1) of the Electricity Act, 2003. The respondent did not stop there and proceeded to dismantle the power connection given to the appellant on 16-05-2006. Having disconnected and dismantled the power connection given to the appellant in blatantly illegal and arbitrary manner, the respondent is not entitled to contend that the appellant is no longer a "consumer" by reason of dismantlement of connection.

The invoice dated 03-04-2007 was found to be unenforceable by the State Electricity Ombudsman as per Order dated 17-10-2007. The respondent

issued a letter dated 17-01-2017 to the appellant demanding Rs. 4,46,97,799/- towards alleged arrears and surcharge thereon and threatening that coercive steps will be taken in the event of failure to remit within 30 days there from. The Ombudsman had only declared the bill dated 03-04-2007 unenforceable and did not interdict the Board from raising any lawful demand against the appellant, if there be any. The Hon'ble High Court also, while admitting the Writ Petition filed by the respondent challenging the order of the Ombudsman, did not pass any interim order in the matter which means that the respondent was free to raise fresh demand against the appellant, if there be any. Having not done that for a period of 10 years from the date of the last demand i.e. 03-04-2007, any claim for arrears and surcharge thereon stand barred by limitation by virtue of Section 56(2) of the Electricity Act, 2003. Even after the remand made by the Hon'ble High Court as per judgment dated 27-11-2013, the respondent did not take any step for more than 4 years which conduct clearly bars any further claim towards any arrears of electricity charges from the appellant.

**Arguments of the respondent:**

Production of eligibility certificates is mandatory for the grant of industrial tariff to the hotels. The appellant produced eligibility certificate covering the period from 01-08-1989 to 01-08-1991 and the KSEB granted concessional tariff under LT IV to the appellant. The period of certificate expired on 01-08-1991. However, the petitioner was billed under LT 4 tariff- The appellant had not produced certificate for the period subsequent to 1-8-91. Under such circumstances, the Assistant Executive Engineer, College Section, KSEB, Ernakulam sent the communication dated 20-8-1996 requesting the Appellant to produce sanction order from the Government of India, Tourism Department assigning star status to the appellant's hotel for which the appellant submitted the reply dated 21-08-1996 to the Assistant Executive Engineer, College Section, KSEB, Ernakulam stating that the star classification assigned to the Hotel is in the process of renewal and the renewal order will be produced at the earliest- The appellant also sent a further communication dated 04-09-1996 to the Assistant Executive Engineer, College Section, KSEB, Ernakulam to the effect that application has been forwarded to the Director of tourism and renewal certificate is awaited. It was further stated in the said communication that as per letter dated 10-11-91 of the Director of Tourism, the appellant is entitled to the reclassification but for the remittance of the fees and that the appellant is entitled to the facilities envisaged for the classified hotels.

Thereafter the appellant filed OP No. 15219 of 1996 before the Honourable High Court of Kerala inter alia for a direction to the first and second respondents (Tourism Department) therein to inspect and grant star classification to the appellant expeditiously. The appellant also had sought for an order directing the fifth respondent therein namely the Assistant Executive

Engineer, College Section, KSEB, Ernakulam not to enforce 'the commercial tariff proposed as per communication dated 20-8-1996. The appellant had also sought for a direction to the Assistant Executive Engineer, College Section, KSEB, Ernakulam to maintain status quo by continuing to levy power tariff under industrial category. The appellant contended that the appellant is expecting the renewal/reclassification of the hotel in the single star category- The said original petition was disposed of by the Honourable Court by judgment dated 10-10-1996 directing the first respondent therein to consider Exhibit P 11 within a period of three months recording the submission of the counsel for the appellant that he would be satisfied with the direction to the first respondent therein to consider Exhibit P 11 and pass appropriate orders in accordance with law.

Subsequently the Assistant Executive Engineer, College Section, KSEB, Ernakulam issued communication dated 20-2-1998 to the appellant seeking details of the renewal and true copies of the documents- It is stated in the said communication that if documents are not received within the period of seven days it will be presumed that appellant's star classification assigned was cancelled and invoicing will be done at LT VII A tariff. The Bill dated 09-03-1998 was also issued to the appellant. The appellant filed OP No. 5980/1998 challenging the Bill dated 09-03-1998 as well as for a direction to the respondents not to disconnect electric connection to the appellant- In the said original petition the appellant contended that the appellant is expecting the renewal/classification of the Hotel in star category without much delay since all the formalities for it had been completed. It is further contended in the original petition that the appellant has not been able to produce the star classification certificate due to delay in disposing of the appellant's application for renewal/reclassification and Contempt of Court Case No 123/98 filed by the appellant is pending before the Hon'ble Court. A detailed counter affidavit was filed by the Assistant Executive Engineer, College Section, KSEB, Ernakulam inter alia pointing out that the Board had sustained heavy loss to the tune of Rs. 18-63 lakhs by way of energy charges from 8/91 till the date of filing of the counter affidavit namely 10-1-2000. It was further contended in the counter affidavit that as per the documents submitted by the appellant the star classification assigned expired on 1-8-1991 and that the appellant had not produced certificate of renewal beyond 1-8-1991. In the said original petition the appellant had also filed CMP No 10650/98 and the Hon- Court was pleased to pass an interim order dated 26-3-1998 directing the respondents not to disconnect the electric connection on payment of tariff under industrial classification pending disposal of the original petition-

The said original petition was disposed of by the Hon'ble Court by judgment dated 18-03-2005. A perusal of the said judgment would go to show that the only contention raised by the appellant is that appellant being a star hotel is entitled to industrial tariff under LT IV as against LT VII A tariff claimed by the KSEB. The Hon'ble Court took note of the fact that the

appellant had produced only certificate of eligibility only for three years i.e. from 01-08-1988 to 01-08-1991 and the same was granted by the Kerala State Electricity Board. It was further found by the Hon'ble Court that the concessional tariff claimed subsequently is not supported by any certificate issued by the Tourism Department in terms of the Board's circular relied on by the appellant for availing concessional tariff- Since it was not on record as to the period up to which LT IV tariff was available to Hotel industries based on certificate produced by the appellant, the appellant was given one month's time to produce eligibility certificate for reduced tariff to the satisfaction of the Board to revise the demand or make payment of the demand with interest failing which the Board was granted liberty to disconnect supply and proceed for recovery. The appellant did not produce eligibility certificate for the period subsequent to 01-08-1991 within the time limit stipulated in the judgment dated 18-03-2005. Accordingly demand dated 18-06-2005 was issued to the appellant for a sum of Rs- 1,15,86,310/- being the difference payable by the appellant for the periods during which the appellant did not have certificate of eligibility and the period subsequent to discontinuance of the concessional tariff in 2000 with surcharge. Incidentally it is submitted that the appellant was granted concessional tariff for a period of three years with effect from 22-8-1996 in the demand dated 18-06-2005 for which the appellant had produced eligibility certificate dated 16-04-1998 issued by the Regional Director, Tourist Office, Chennai- There is absolutely no illegality in the demand dated 18-06-2005.

Aggrieved by the judgment dated 8-3-2005 in O-P No 5980/1998 the appellant filed Writ Appeal No 2348/2005 before a Division Bench of the honourable High Court of-Kerala producing star classification orders dated 24-5-2000 as well as 16-4-1998 as Annexure I and II respectively contending inter alia that the learned Single Judge ought to have held that the Board can only revise the Bill dated 09-03-1998 and recover the amount in respect of the revised demand of the amount due for February, 1998 only. The Writ Appeal was disposed of declaring that the appellant is entitled to the benefits of star classification for a period of three years with effect from 22-8-1996 referring to the Exhibit P 11 namely the demand dated 22-08-1996. The Counsel for the appellant submitted that demand dated 18-06-2005 was challenged in Writ Petition(C) No. 21918 of 2005. Accordingly the writ appeal was disposed of without prejudice to the contentions raised in Writ Petition(C) No. 21918 of 2005 and the judgment of the learned Single Judge was modified to a limited extent. The judgment of the learned Single Judge dated 18-03-2005 in O.P. No. 5980 of 1998 was not set aside as contented by the appellant. In Writ Petition (C) No. 21918 of 2005 the appellant had challenged demand dated 18-06-2005- The appellant had also sought for other reliefs as well contending that classification of star category order issued by the Director, Tourism Department, Government of India was ignored by the respondents therein- No stay was granted by the Hon'ble Court despite a prayer for stay of the demand dated 18-06-2005. Subsequently the appellant withdrew the said Writ Petition

(C) No. 21918 of 2005 and accordingly the writ petition was dismissed as withdrawn by judgment dated 17-01-2008 allowing the demand dated 18-06-2005 to attain finality.

In terms of judgment dated 16-01-2006 in Writ Appeal No 2348 of 2005, Bill dated 02-04-2007 for a sum of Rs- 65,44,111/- was issued. But, due to oversight, surcharge portion was not included in the said Bill- Hence including the surcharge, Bill dated 03-04-2007 was issued for Rs- 1,60,15,422 with covering letter and calculation details. The benefit of demand dated 18-06-2005 was also granted to the appellant. The Bill dated 03-04-2007 covers the period up to 4/2005. Bills were issued to the appellant for the subsequent periods as well which were also not paid. Accordingly LT service of the petitioner was dismantled on 16-05-2006 due to pending arrears- Communication dated 25-05-2006 was also issued to the appellant to remit the pending arrears on or before 12-06-2006 failing which revenue recovery steps would be initiated without further notice. Further demand dated 07-02-2007 was also issued to the appellant.

The appellant has raised a contention collecting and issue regarding conversion of LT supply to HT category- The said case has no connection with the tariff change or the demands. The appellant applied for conversion of his LT service to HT category and obtained power allocation of 180 kVA with contract demand 150 kVA on 09-08-2002 from the Executive Engineer, Electrical Division, Ernakulum- The conversion of LT to HT work was prevented due to the OS No 888/2003 filed by a neighbouring landowner against the erection of 11 KV poles and lines. Ultimately, the Additional District Magistrate passed an order on 05-02-2007. As per the said order, the appellant had been intimated by the KSEB to submit application for laying UG cable under HDD methods- But the appellant did not turn up to accept the proposal and purposefully raised unnecessary doubts regarding the feasibility of HDD method- The KSEB cannot be held responsible for loss, if any, sustained by the appellant. As regards this issue Writ Petition (C) No. 17870/2017 has been filed by the Executive Engineer, Electrical Division, KSEB Ltd, Ernakulam challenging the order passed by this Authority before the Hon'ble High Court of Kerala and the same is pending disposal before the Hon'ble Court.

It is submitted that copies of the judgment were sent by the Liaison office of the KSEB situate at Ernakulam to the KSEB Ltd as well as the respondent- But, copies of the judgment did not reach the office of the KSEB or the respondent- The KSEB Ltd as well as the respondent came to know of the judgment after initiating revenue recovery proceedings when the fact was brought to the notice by the appellant as well as his counsel. Accordingly the same was brought to the notice of this Authority. It is submitted that in the judgment dated 27-11-2013 in Writ Petition (C) No. 22232 of 2008 the Hon'ble Court was pleased to order that the amount covered under the disputed bill shall not be realized until a decision is taken by this Authority. The appellant



also did not communicate or bring to the notice of this honourable Authority the judgment dated 27-11-2013 in Writ Petition (C) No. 22232 of 2008 possibly because the appellant was enjoying the benefit of the interdiction of recovery steps contained in the said judgment till a decision is taken by this Authority. There is no reason why the KSEB Ltd or the respondent deliberately refused to bring to the notice of this Authority the judgment dated 27-11-2013 in Writ Petition (C) No. 22232 of 2008.

It is further submitted that the complaint dated 25-02-2007 itself may not be maintainable before the Hon'ble CGRF in view of Regulation 2 (g) of the Kerala State Electricity Regulatory Commission (CGRF and EO) Regulations, 2005 only a person whose electric supply is disconnected has been brought within the purview of the term 'consumer' whereas a person whose electric supply has been dismantled will not come within the purview of the term "consumer".

### **Analysis and findings:**

The Hon'ble High Court of Kerala in the judgment dated 27-11-2013 in WP (C) Nos. 22232 of 2008 have directed this Authority to dispose of Appeal Petition No P/22/2007 afresh within 3 months of receipt of a copy of the judgment, after affording fresh opportunity of personal hearing to the parties concerned. The Assistant Engineer, Electrical Section, College, Ernakulam has forwarded a copy of the judgment dated 27-11-2013 to this Authority on 19-01-2018 and the same received in this office on 22-01-2018- Accordingly, the hearings of the case were conducted on 23-02-2018, 23-03-2018 and 06-04-2018, in my chamber at Edappally. Advocate Sri Sudhir, and Sri. C.P. Paul represented the appellant's side and Advocate Sri T.R. Rajan, Sri Emerson P.A., Assistant Executive Engineer, Electrical Sub Division, College, Sri. Anil Kumar V, Assistant Engineer, Electrical Section, College and Sri Raju P.I., Senior Superintendent, Electrical Section, College 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 respondent has challenged the maintainability of the petition stating that the appellant has no manner of rights to file above complaint before the Ombudsman, as the appellant is not a consumer of electricity- One of the main arguments of the respondent is that the complaint dated 25-02-2007 itself may not be maintainable before the Hon'ble CGRF in view of Regulation 2 (g) of the Kerala State Electricity Regulatory Commission (CGRF and EO) Regulations, 2005, only a person whose electric supply is disconnected has been brought within the purview of the term 'consumer' whereas a person whose electric supply has been dismantled will not come within the purview of the term "consumer".

According to the appellant, the respondent proceeded to disconnect the power supply to the appellant's premises on 25-07-2005 and proceeded to dismantle the power connection given to the appellant on 16-05-2006 for non-payment of the alleged arrears and surcharge which was in dispute and pending before the Hon'ble High Court. The appellant argues that the said action was in clear violation of Section 56(1) of the Electricity Act, 2003.

As per Regulation 2.1 (e) of Kerala State Regulatory Commission (CGRF and Electricity Ombudsman) Regulations, 2005, a complainant is defined as

- (i) any consumer of electricity supplied by the licensee including applicants for new connections;
- (ii) a voluntary electricity consumer association/forum or other body corporate or group of electricity consumers;
- (iii) the Central Government or State Government - who or which makes the complaint
- (iv) in case of death of a consumer, his legal heirs or representatives

In the Act a consumer is defined as “any person who is supplied with electricity for his own use by a licensee or the government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of the licensee, the government or such other person, as the case may be”. Considering the above definition it is clear that petitioner is a consumer. Moreover the Hon. High Court of Kerala have directed this Authority to dispose of Appeal Petition No P/22/2007 afresh within 3 months of receipt of a copy of the judgment, after affording fresh opportunity of personal hearing to the parties concerned. Hence, the argument of the respondent that the appellant is not a ‘consumer’ is found as not sustainable.

The production of eligibility certificate from the Tourism department is mandatory for the grant of industrial tariff to the hotels. The KSEB had granted concessional tariff under LT 4 to the appellant, since the appellant produced eligibility certificate covering the period from 01-08-1988 to 01-08-1991 and from 12-08-1996 for 3 years. After the expiry of eligibility of star classification on 01-08-1991, the appellant was billed under LT IV tariff wrongly, though the appellant was not produced the eligibility certificate. On realizing the mistake, the respondent had issued notice dated 20-08-1996 and directed the appellant to submit the eligibility certificate so as to regularize the tariff assigned under LT IV for the period subsequent to 1-8-1991. Since no certificate of eligibility was produced by the appellant, the respondent issued bill dated 09-03-1998 charging the appellant under LT VIIA commercial category for 02/1998. Against this, the appellant approached the Hon'ble High Court of Kerala by

filing OP No. 5980 of 1998 and the Court directed the respondent not to disconnect the power supply on payment of bills under LT IV, pending disposal of the OP. During the pendency of the OP, the appellant produced the eligibility certificate for the period from 22-08-1996 to 22-08-1999. The Hon. High Court finally disposed of the petition on 18-03-2005 by directing the appellant to produce the eligibility certificate from the Tourism Department once again and on failure of such production of certificate, the respondent is free to disconnect supply and proceed for recovery of arrears. The appellant had filed a writ appeal WA 2348/05 against the judgment in 5980/98 aggrieved by the direction issued to produce the eligibility certificate once again. The respondent had issued bill dated 18-06-2005 demanding arrears and surcharge to the tune of Rs- 1,15,86,310/- covering the period from 01-08-1991 to 4/2005. The appellant filed W.P (C) No. 21918 of 2005 before the Hon'ble High Court challenging the said bill. The Writ Appeal filed by the appellant was disposed of by the Division bench of the Hon'ble High Court by judgment dated 16-01-2006 declaring that the appellant is entitled to get the benefit of industrial tariff for the period of three years with effect from 22-08-1996. Accordingly the respondent had issued a fresh bill dated 03-04-2007 for Rs-1,60,15,422/- to the appellant. The respondent proceeded to disconnect the power supply to the appellant's premises on 25-07-2005 and later dismantled the connection on 16-05-2006 for non-payment of the amounts demanded under the bill dated 18-06-2005. Subsequently the appellant withdrew the said Writ Petition(C) No. 21918 of 2005 and accordingly the writ petition was dismissed as withdrawn by judgment dated 17-01-2008.

On going through the records and documents the following facts are revealed-

1. A certificate of eligibility from the Tourism Department is mandatory for classification under industrial tariff for the hotels.
2. The appellant had produced the certificate of eligibility for the period from 01-08-1988 to 01-08-1991, 22-08-1996 to 22-08-1999 and from 12-08-1999. The respondent had charged the appellant under industrial tariff during the above periods. Government withdrew the concession of low rate industrial tariff granted to Hotels with effect from 15-10-1999, vide GO. (MS) No. 537/200/GAD dated 26-09-2000.
3. The respondent had failed to take timely action to obtain the eligibility certificate since 01-08-1991 and mistakenly charged the appellant the industrial tariff. A communication to produce the eligibility certificate was sent only on 20-08-1996 by the respondent.
4. The respondent had issued a bill dated 09-03-1998 charging the appellant under LT VII A tariff. At that time also, no arrear bill for collecting the difference of tariff from 01-08-1991 was issued.

5. The appellant had filed OP No- 5980/98 against the bill dated 09-03-1998 and the Hon. Court disposed of the OP on 08-03-2005.
6. The appellant filed Writ Appeal No- 2348/2005 against judgment in OP 5980/1998.
7. While the writ appeal was pending, the respondent issued bill dated 18-06-2005 demanding arrears and surcharge amounting to Rs. 1,15,86,310/- (Covering the period from 01-08-1991 to 04/2005)
8. The appellant challenged the above said bill by filing WP (C) No.21918/2005.
9. The power supply to the appellant's premises disconnected on 25-07-2005 for non payment of the bill amount.
10. The Writ Appeal No- 2348/2005 was disposed of by judgment dated 16-01-2006 by declaring that the appellant is entitled to get the benefit of industrial tariff for the period from 22-08-1996 to 22-08-1999.
11. The respondent dismantled the connection on 16-05-2006 for non payment of the amount demanded vide bill dated 18-06-2005.
12. A fresh bill dated 03-04-2007 including arrears and surcharge for Rs. 1,60,15,422/- issued to the appellant.
13. The appellant has filed a complaint dated 25-2-2007 before the CGRF, Central Region, Ernakulam challenging the demand dated 3-4-2007 issued by the respondent for a sum of Rs. 1,60,15,422/- including surcharge till date, which was dismissed on the ground that since a WP( C ) 21918/05 filed by the appellant on the same subject is pending before the Hon. High Court of Kerala.
14. Aggrieved by the order passed by the CGRF the appellant had filed appeal petition dated 31-08-2007 before Electricity Ombudsman which was disposed of by ordering that the disputed tariff revision is not justified and hence considered as arbitrary and also held that there is no justification for levy of any penal interest on arrears for which consumer is not responsible, vide order No- 22/2007 of 17-10-2007.
15. Writ Petition(C) No. 21918 of 2005 was dismissed as withdrawn by judgment dated 17-1-2008.
16. The respondents filed WP(C) 22232/2008 before the Hon'ble High Court challenging the findings rendered by the Ombudsman.

17. The Hon'ble High Court, in its judgment dated 27-11-2013, remanded the matter to this Authority for fresh disposal of the case after affording fresh opportunity of personal hearing to the parties concerned.

The appellant has the complaint that he lost an opportunity at the lower Forum CGRF, as the Forum dismissed the Petition stating as not maintainable- The CGRF heard the petition and delivered the judgment holding that, since WP (C) 21918/05 filed by the appellant is pending before the Hon High Court on the subject matter, it would be inappropriate for the Forum to make a decision on the same. The CGRF was of the view that, Complaint filed by the party is not maintainable under Section 22 of KSERC (CGRF & Electricity Ombudsman) Regulations 2005, which restricts the intervention of CGRF, in cases where a decision has already been issued by another Forum or Judicial Authority, on the same matter. The CGRF has heard the parties and pronounced an order, which it considers, is as per Law- As per Reg- 22 (b) of the KSERC (CGRF and Ombudsman) Regulations, 2005, the consumer can approach the Ombudsman, even if the dispute is not decided within the time frame (2months) fixed and the manner specified in the Regulations. Being so, the appellant's argument that it lost an opportunity at the lower Forum, even if the Forum failed to answer all the questions raised, does not have much significance in this case. Moreover, the CGRF's order stands challenged at the upper Forum (Ombudsman). Any decision of the lower court, if aggrieved, can be challenged at the upper Forum, which is the natural course of action as envisaged in Law.

One of the main contentions of the appellant is that the respondent has no authority or competence to issue any fresh bill under the guise of the judgment in WA 2348/2005, since the Hon. Court had directed to issue fresh bill thereby quashing the impugned demand dated 09-03-1998 i.e., fresh bill for the month of February 1998 and this direction did not authorize the Board to issue any fresh bill covering periods which was not subject matter of the writ appeal. It is found that the appellant had challenged the demand dated 18-06-2005 for Rs. 1,15,86,310/- in WP( C ) No. 21918/2005 and later the writ petition was dismissed as withdrawn by judgment dated 17-01-2008.

The Regulation 24(5) of the Electricity Supply Code, 2005, reads as; *"If the Licensee establishes that it has undercharged the consumer either by review or otherwise, the licensee may recover the amount undercharged from the consumer by issuing a Bill."*

The appellant argues that raising of supplementary bill is restricted to escaped charges or escaped billing. He contents that since the bill was already issued in each month and paid by the consumer, there is no room for escaped billing- This is not correct as the consumer was challenging the KSEB through litigation after litigation and was barred by issuing the bill under the eligible tariff (commercial rate) but was forced to raise the monthly bills under a lower

tariff (industrial rate). So it is clear that there existed a real and legitimate cause for the preparation of a bill, for the escaped charges or escaped billing by the Licensee, KSEB. This 'difference in charges' bill can be raised only as a supplementary bill as already a bill has been raised under the lower (industrial) tariff. The appellant had produced the certificate of eligibility for the period from 01-08-1988 to 01-08-1991, 22-08-1996 to 22-08-1999 and from 12-08-1999. The respondent had charged the appellant under industrial tariff during the above periods and the appellant is liable to pay the charges under the commercial tariff for the remaining periods.

A sum cannot be said to be due from the consumer unless and until a bill is raised for the electrical energy consumed, at the appropriate tariff and is served upon the party. Otherwise a disconnection of electric supply would be possible even without the serving of a bill and may lead to chaos. The decision in OP 5930 of 1985 P of Hon. High Court of Kerala, (Balakrishnan VA Vs KSEB), dated 5-8-1987, is an identical case, where the tariff was changed from LT IV - industrial to LT VI - non domestic and the differential charges were claimed. The Hon'ble Court held that the party has consumed the electricity with liability for payment of such charges as are due in law and if there is a mistake in categorization or there is an under billing, it is always open to the KSEB to rectify the mistake and to demand the proper charges due from the consumer. Here, it is specifically stated that, even in case of a mistake in categorization of tariff, it is possible to rectify the same and demand the electricity charges due. Being so, the party's argument against it, is not sustainable.

I feel that since the Appeal Petition was filed by the appellant before the Hon. Division Bench of the High Court of Kerala in WA No.2348/2005 and the Court has pronounced its verdict and as such, the Order is primarily binding on him to make the electricity charge payment owed by him. Accordingly, the respondent issued bill dated 03-04-2007 for Rs.1,60,15,422/- which covers the period up to 04/2005.

The respondent has issued the differential tariff bills on 18-06-2005 for Rs. 1,15,86,310/- including surcharge which was challenged by the appellant in WP(C) No. 21918/2005. Thereafter the bill dated 03-04-2007 for Rs. 1,60,15,422/- was issued. Since the respondent had not demanded the charges under commercial tariff previously, the inclusion of surcharge for the previous periods up to 18-06-2005 is not justifiable and hence can not be sustainable. Further the Hon. High Court directed the respondent not to disconnect the power supply on payment of bills under LT IV, pending disposal of the OP 5980 of 1998. In this case, serious lapses occurred on the part of KSEB in claiming the commercial tariff as the appellant failed to submit the eligibility certificate after 01-08-1991. Though the respondent had issued a bill dated 09-03-1998 charging the appellant under LT VII A tariff for a month, he had not demanded the arrears under commercial tariff with effect from 01-08-

1991. The issue was under litigation from 1998 onwards and the Hon'ble High Court of Kerala remanded the matter to this Authority for fresh disposal vide judgment dated 27-11-2013 in WP (C) No. 22232/2008. The respondent kept this judgment unattended till 22-01-2018, till he produced a copy of the judgment before this Authority for further action.

**Decision:**

From the findings and conclusions arrived at as detailed above, I decide to quash the short assessment bill amounting to Rs. 1,60,15,422/- issued to the appellant claiming arrears of electricity charges together with surcharges. The respondent is directed to revise the short assessment bill by deducting the surcharge from the calculation statement and issue the revised bill to the consumer within fifteen days. No interest is payable by the consumer up to the due date of the revised bill as ordered now. The consumer may be allowed suitable installments if requested for, but will carry interest for installments from the due date of payment of installments.

Having concluded and decided as above it is ordered accordingly. The Appeal Petition filed by the Consumer is allowed as ordered and stands disposed of as such. No order on costs.

**ELECTRICITY OMBUDSMAN**

P/006/2018/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Sri C.P. Paul, Proprietor, Paulson Park Hotel, Carrier Station Road, Ernakulam
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, College, Ernakulam.
3. The Assistant Engineer, KSE Board Limited, Electrical Section, College, 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, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.