

THE STATE ELECTRICITY OMBUDSMAN

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**Appeal Petition No. P/057/2023
(Present A. Chandrakumaran Nair)
Dated: January-17-2024**

Appellant : Believers Church, St. Thomas Nagar,
Kuttippuzha P.O., Thiruvalla,
Pathanamthitta (Dist.)- 689103.

Respondent : The Chief Engineer (Distribution South),
Power house buildings,
Thiruvananthapuram.

The Special Office Revenue, Vydyuthi
Bhavanam , KSE Board Limited,
Pattom, Thiruvananthapuram-4.

The Deputy Chief Engineer,
Transmission Circle, KSE Board
Limited, Poovanthuruthu,
Kottayam- 686012.

ORDER

Background of the case

The Believers Church Hospital, Thiruvalla is an EHT consumer of the Licensee (KSEBL). The EHT agreement was executed by the appellant with the licensee on 27/11/2014 and the tariff applicable was EHT General which was the prevailing tariff as per the tariff order dated 14/08/2014 of KSERC. The KSERC by tariff order dated 17/04/2017, the EHT tariff has been categorized into EHT General A & B. The tariff applicable for the Self Financing Institution was EHT General B. The licensee billed the appellant wrongly on EHT General A and the anomaly was detected only on 06/22. In the latest tariff order dated 25/06/2022, the self financing institution were categorized into EHT General C. The licensee had raised bill for the undercharged period for an amount of Rs.9,90,74,445/-. The appellant filed the case to Hon'ble High Court of Kerala challenging the demand raised by the licensee. Hon'ble High Court of Kerala issued order permitting the appellant to remit 2 Crores in two equal or six weekly instalments and the balance amount in 36 equal monthly instalments. The licensee has charged

interest for the payment which was not paid within the due date. The appellant has filed a case to the Hon'ble High Court of Kerala and Hon'ble High Court Of Kerala directed the appellant to approach CGRF. Accordingly, the petition has been filed to the CGRF and CGRF issued order stating that the appellant is liable to pay the interest. Aggrieved by the order of CGRF, the appeal petition is filed to this authority.

Arguments of the Appellant

The petitioner is an Episcopal church established an 110kv substation to cater the energy requirement of its headquarters campus. Originally it was included in EHT General (A) category and we are paying the tariff regularly. While so, on 03.08.2022, complainant received a letter dated 27.07.2022 issued by the Special Officer (Revenue), K.S.E.Board Ltd. that complainant has been wrongly classified in the EHT General (A) category and being a self-financial institution complainant ought to have classified in EHT General (B) category. The respondents in the complaint demanded the complainant to pay 9,90,74,445/- (Rupees Nine Crore Ninety Lakhs Seventy-Four Thousand Four Hundred and Forty Five only).

Electricity Board overlooked that there are churches and other religious institutions are within the campus and electric charges were levied for the said institutions also at the rate applicable to self-financing institutions. Even the institutions run by the complainant are part of the church non- profit making. Whatever income generated from the institutions is being used for religious charitable and philanthropic purpose. It is submitted that thereafter, on 05.08.2022 complainant received a letter dated 27.06.2022 stating that complainant has been re-classified in EHT General (B) tariff category with effect from 17.04.2017 whereas complainant was wrongly billed in EHT General (A). In the meantime, complainant received a demand notice on 13.7.2022 without noticing that EHT General (B) category complainant has remitted the bill.

It may be noted that the aforementioned letter was not accompanied by any proper bills or demands as contemplated under regulation 122 and 123 of the Kerala Electricity Supply Code, 2014. Thereupon, the complainant approached the Hon'ble High Court of Kerala and the Hon'ble High Court of Kerala by judgment dated 13.01.2023 in W.A.No.1892/2022 has permitted complainant to remit the arrears in 36 equal monthly installments. Thereafter, on 22.12.22 the respondents in the complaint have issued a detailed bill for the arrears claimed by them which were mentioned in letter dated 27.06.2022 and 27.07.2022. In the bills and demands dated 22.12.2022 they have rectified their mistakes in letters dated 27.06.2022 and 27.07.2022. The demands were substantially at variance from the amount claimed in letters dated 27.06.2022 and 27.07.2022. It may also be appreciated that the demand of amounts as arrears as per bill dated 22.12.2022 are substantially different from the amounts claimed in letters dated 27.06.2022 and 27.07.2022.

Thereafter, the respondents in the complaint sent a letter dated 20.4.2023 claiming interest for 256 days presumably for the period from September 2021 to May 2022 and also indicate that the non-payment of arrears and interest would lead to disconnection of electricity. The notice and demand dated 20.04.2023 is unsustainable. Hence, complaint filed the above said complaint before the Consumer Grievance Redressal Forum. However, the same was dismissed without even analyzing the contentions by the learned counsel for the complainant.

The Forum failed to consider that the Hon'ble Division Bench of the Hon'ble High Court of Kerala has permitted the complainant to remit the arrears in 36 monthly installments. Hon'ble High Court of Kerala has not directed complainant to pay any interest or permitted the licensee to collect any interest from the complainant. If any interest is payable the Hon'ble Division Bench would have stated it in the judgment. Since no interest was directed to be paid or permitted to be collected it must be presumably concluded that the claim for interest was declined. As complainant is continue to obeying the direction of the Hon'ble High Court of Kerala by paying the installment in time up on the liability in which interest was also charged by the licensee then there is no question of discretion of imposing penalty and to claim 18% interest up on it.

The Forum failed to appreciate that the demand of amount as per bill dated 22.12.2022 is substantially different from the amount claimed in letters dated 27.06.2022 and 27.07.2022. The letters dated 27.06.2022 and 27.07.2022 does not accompany any proper bills or demands as contemplated under Regulation 122 and 123 of the Kerala Electricity Supply Code, 2014. Hence, proper demand was made only on 22.12.2022. The forum went wrong in holding that bills/e-mails dated 22.12.2022 is re-affirmation of bills sent on 27.06.2022 and 27.07.2022. There is nothing on record to show that any bills were sent on 27.06.2022 and 27.07.2022. Though during the course of hearing the respondents in the complaint sought for time for production of the bills they claimed to have issued on 27.06.2022 and 27.07.2022 it was never produced. The findings of the forum contrary as only with malafides.

During the course of hearing respondents in the complaint admitted that the demand which were subject matter to WA No. 1892/2022 also included interest till such time. Such admission was not found a place in the order. Since the demand which were subject matter of WA No. 1892/2022 includes interest no further interest can be claimed. The forum went wrong in holding that the Hon'ble High Court of Kerala was permitted the respondents in the complaint to penalize the complainant. Such an interpretation of judgment in WA 1892/2022 is absolutely incorrect and illegal.

If at all any interest is payable the licensee will only be able to realize interest only from the date of proper demand accompanied by detailed bills as contemplated under regulation 122 and 123 of the Kerala Electricity Supply Code, 2014. The letters dated 27.06.2022 and 27.07.2022 cannot be treated as a proper demand or bill. Only bills / demands dated 22.12.2022 can be treated as proper bill or demand. If at all any interest is chargeable that can only be from 22.12.2022. These contentions were not even properly appreciated by the Forum in its true perspective. The Forum ought to have considered that since complainant is paying the installments promptly on the date of the installment as granted by the Honourable High Court, it cannot be said that there is any delayed payment of arrears.

If at all any interest is payable, the licensee is entitled to recover the interest only at the bank rate not at any rate payable for late payment or at the rate of 18% p.a. that too in the event of granting installment facility for the maximum period of twelve months as per Regulation 152(4) of the Kerala Electricity Supply Code, 2014. The payment of arrears will fall due only on the date of instalment as prescribed by Hon'ble High Court of Kerala. The interest if at all chargeable can only be after the date on which installments prescribed by Hon'ble High Court of Kerala became due. Furthermore, the coercive steps can be taken only if complainant defaulted payment of the installments prescribed by the Hon'ble High Court of Kerala. The Forum failed to consider the above aspect. If electricity is disconnected it will amount to violation of directions contained in judgment of W.A.No.1892/2022 and will amount to Contempt of Court. These aspects have not been taken into consideration by the Forum.

Arguments of the Respondent

Averment of the complainant is not true to facts. Prior to tariff revision 17.04.2017 there was only one tariff under EHT General Category. The tariff revision dated 17.04.2017 EHT General was classified as EHT General -A and EHT General- B. The petitioner comes under the Tariff EHT General- B with effect from 17.04.2017 which was unnoticed. The said tariff further reclassified in the tariff revision order dated 25.06.2022 by incorporating EHT General - C and the petitioner's Medical College Hospital is a Self-Financing Institution falls under new EHT General - C. While review of purpose of electricity connection, with tariff assigned as per tariff revision dated 25.06.2022, the omission of billing as per tariff reclassification and consequent escape assessment was noticed.

Then the fact was intimated to the petitioner vide letter dated 27.06.2022 as per Regulation 122, Kerala Electricity Supply Code, 2014 in order to file any objections, if any, within 30 days period of that letter. Subsequently a Notice Dated 27.07.2022 as per Regulation 123, Kerala Electricity Supply Code, 2014 demanding 9,90,74,445/- with Bill Revision

report incorporating details such as 1) Invoice number of Pre- Revised bills 2) Amount in Pre- Revised bills 3) Invoice date of Pre- Revised bills 4) Invoice number of Revised bills 5) Amount of Revised Bills 6) Invoice date of Revised Bills and finally 7) the difference in amount between Revised and Pre- Revised bills etc. As a distribution licensee KSEBL has every right to claim such "escape assessment" as per Regulation 134(1), Kerala Electricity Supply Code, 2014. The legal right of the distribution licensee has categorically emphasized by the Hon'ble Supreme Court of India in its Judgment in Civil Appeal No.7235 of 2009 (M/s. Prem Cottex versus Uttar Haryana Bijli Nigam Ltd. & others). As per the schedule to the said agreement, the purpose of installation is shown as 'Supplying power to M/s. Believers Church Hospital & Campus'. In accordance with the Tariff Order dated 14.08.2014 which was prevalent at the time of the execution of the Agreement dated 27.11.2014, M/s. Believers Church Hospital & Campus had been assigned the EHT general tariff which was exclusively for EHT consumers excluding industrial and commercial EHT consumers.

But later, the Kerala State Electricity Regulatory Commission issued a new Tariff Order dated 17.4.2017 by which EHT general consumers were segregated into EHT General A & EHT General B with effect from 17.04.2017 onwards. EHT General A tariff was applicable to the consumers enumerated under LT VI (A) category, availing supply at EHT level. The consumers coming under the tariff LT VI (A) category were the following:-

(i) Government or aided educational institutions, libraries and reading rooms of Government or aided educational institutions, educational institutions run by IHRD.

(ii) Primary health centers, dispensaries and hospitals under the Central Government or State Government or Local Self Government Institutions; X-ray units, laboratories, blood banks, mortuaries and such other units attached to such primary health centers, dispensaries and hospitals; blood banks of IMA; polyclinics under Ex-servicemen Contributory Health Schemes(ECHS).

(iii) Centers for religious worship such as temples, mosques and churches; institutions imparting religious education, monasteries and convents.

On the other hand EHT General B tariff is applicable to ISRO, utility services such as Airport, Self-Financing Educational Institutions and any other EHT consumers not included under other tariff.

As per the tariff order dated 17.04.2017, the demand charge/month and energy charge/unit applicable to the EHT General A Consumers were Rs. 300/- and Rs. 5/- respectively. Whereas the demand charge/month and energy charge/unit applicable to the EHT General B consumers were Rs.370/- and Rs.5.80 respectively. Thereafter vide Tariff order dated 08.07.2019, demand charge/month and energy charge/unit applicable to EHT General B tariff were revised to Rs.410/- and Rs.5.80 respectively. But KSEBL had inadvertently billed the petitioner under EHT General A Tariff since 17.04.2017. This tariff was for Religious Institutions whereas the

petitioner institution which owned a Medical College since 2014 onwards was a Self-Financing Educational Institution as per the tariff order in vogue. Accordingly in the light of the Tariff Order dated 17.04.2017 and 08.07.2019, the petitioner institution should have been billed under EHT General B Tariff from 17.04.2017 onwards. But KSEBL continued to bill the petitioner under the EHT General A Tariff instead of EHT General B Tariff till the month of 05/2022. At present the petitioner comes under the category of the EHT General C Tariff following the Kerala State Electricity Regulatory Commission vide Tariff Order 25.06.2022 has assigned EHT General C Tariff to Utility Services, Self- Financing Educational Institutions and any other EHT consumers not listed in other tariffs with effect from 25.06.2022. As per the tariff order in vogue demand charge/month and energy charge/unit applicable to EHT General C consumers are Rs.450/- and Rs.6.30/- respectively. Later in 06/2022, while verifying records of consumers in terms of Regulation 134 of Kerala Electricity Supply Code 2014, it was found that the petitioner had been being billed under EHT General A Tariff instead of EHT General B Tariff since 17.04.2017 onwards. After realizing the mistake happened in 04/2017, KSEBL vide letter No.SOR/Billing/Tariff/ HTB 31/3416/2022-23 dated 27.06.2022 informed the petitioner about the change of tariff made by the Kerala State Electricity Regulatory Commission vide Tariff Orders dated 17.04.2017, 08.07.2019 and 25.06.2022.

The letter dated 27.06.2022 and letter dated 27.07.2022 accompanied with bill revision report is in accordance with Regulation 122 and Regulation 123 and it is in order. The Judgment Dated 13.01.2023 in W.A. No.1892/2022 the Honorable High Court is reproduced hereunder.

"(1) At the first instance deposits 2 crore in two equal/ six weekly instalments i.e., on or before 28.02.2023 and 11.04.2023. (2) The balance of the demanded amount deposited in 36 equal monthly instalments. The instalments facilitated by this court through the instant order is in addition to the regular consumption charges payable by the appellant. **The appellant commits two continuous defaults in any of the instalments, the Board is given liberty to recover the amount and initiate such other step or action as is permissible in law including disconnection. The first of 36 monthly instalments granted by this Judgment is paid on or before 10.05.2023.**" The petitioner's argument is illogical, factually and legally unsustainable since the bill revision report provided to the petitioner is very much clear about period of revision of bills, bill details of both pre revised and revised bills. The difference in amount of pre revised and revised bills is shown as Rs. 9,90,74,445/- shown in the Demand Dated 27.07.2022. Moreover demand notices were issued in accordance with Regulation 134 of Kerala Electricity Supply Code 2014, revising bills already issued for the period from 04/2017 to 05/2022.

Prior to issuance's of notice dated 27.07.2022, the fact of wrong classification was duly intimated the consumer vide letter dated 27.06.2022

so as to file objections, if any, within 30 days and the same was in accordance with Regulation 122 of Kerala Electricity Supply Code 2014. The consumer is legally bound to remit the under charged amount due to the application of wrong tariff. The undercharged amount was calculated and assessed as Rs. 9,90,74,445/-, which was done strictly in accordance with Regulation 134 of Kerala Electricity Supply Code 2014. Separate monthly invoices due to bill revisions for the period from 17.04.2017 to 05/2022 are served (e mail) to the petitioner prior to the issuance of letter No.SOR/Billing/Tariff/HTB 31/3416/2022-23 dated 27.07.2022. Whenever an original bill has revised the same has forwarded to the consumer via e-mail automatically. In the instant case also after bill revision process the difference in amount Rs. 9,90,74,445/- of the original bill and the revised bill is demanded vide letter dated 27.07.2022, which specifically shows all the particulars such as Original (old) invoice number, Original (old) invoice amount, Revised (New) invoice number, Revised (new) bill amount, Revised (New) Invoice date and difference in amount (old and new) etc. Therefore the argument of the petitioner that the revised individual bills were not received by him is totally false and meaningless. The hard copies of the revised bills were later given to the petitioner based on their request. KSEBL has stopped serving hard copies of the normal and revised bills to its HT/EHT consumers from 2020 onwards. Hence the argument of the petitioner to impose penalty only from the date of serving hard copy of each revised bills is not acceptable.

It may also please be noted that M/s. Believers Church Hospital is an EHT consumer being under billed for the period 04/2017 to 01.06.2022. This was noticed only during the latest Tariff Revision Order dated 25.06.2022. After issuing the short assessment bill with all the relevant details on 27.07.2022 to the consumer, the Special Officer (Revenue) and Superintendent of this office as per direction of Director (Finance) visited Believers Church Hospital on 04.08.2022. The circumstances that lead to the bill revision and the details were clarified and convinced to Manager, Technical Head of M/s. Believers Church Hospital. M/s. Believers Church Hospital is a bonafide High Stake Consumer of KSEBL, this office has taken all earnest effort to resolve the problem. It may also please be noted that the decision of Consumer Grievance Redressal Forum, Kottarakkara related to O.P. No.39/2023, the Forum disposed the case with the following directions.

1. The assessment based on the anomalies attributable to the licensee which are detected at the premises of the consumer under Regulation 152 uphold the right of the licensee to collect the short assessment amount for the entire period during which the anomaly persisted. The consumer may be given facility for maximum period of 12 monthly installments without imposing penalty. Since the Hon'ble High Court has directed to remit the amount in 36 installments, the licensee shall have discretionary powers to impose penalty.
2. As per the assessment, the claim of 18% interest by the Licensee is found to be sustainable.

The invoices were revised for the period from 04/2017 to 05/2022 amounting to ₹9,90,74,445/-. Since there was no stay orders the invoices were not disputed and hence subsequent collections (after the due date) were posted to the arrears and hence the latest invoice (here as on 10/2022) was left open as arrear. Also as per the 17 rules (Income Tax) TDS as per 194 Q is being deducted and remitted by the petitioner since the details of the same was not received from the consumer, this was also shown as arrears and hence arrear notice was issued. Later the TDS details were furnished by the consumer. The petitioner had revised complaint in this regard vide e-mail dated 10.03.2023 and the same was clarified vide reply mail dated 27.03.2023. Though the Judgment in W.A. No.1892/2022 mentioned nothing about interest on belated payment, it was also not denied of levying interest on belated payment as per item No.12 of "Schedule of Miscellaneous Charges" covered under Regulation 131(2) of Kerala Electricity Supply Code 2014.

In petition No.RP 3/2021 Dated 15.11.2021 between KSEBL and M/s. Bennett Coleman & Co. Ltd., Kochi the Hon'ble KSERC has reviewed the Order of the Hon'ble Supreme Court in the Judgment dated 5th October 2021 in Civil Appeal No.7235 of 2009 (M/s. Prem Cottex versus Uttar Haryana Bijli Vitaran Nigam Ltd. & others) and ordered that;

".....(2) The Arrear Bill issued to the consumer vide the Demand Notice Dated 29.04.2020 is in order and the same is to be paid by the consumer within 30 days' time. (3) Interest as per rules will be applicable for the amount due from the date of issuance of the demand notice dated 29.04.2020....."

KSERC also viewed that "**Electricity charges would become first due only after the bill is issued to the consumer, even though the liability to pay may arise on the consumption of electricity.**" In the instant case interest on belated payment charges has claimed only from the due date(28.08.2022) of the demand notice dated 27.07.2022 and further interest on instalments were taken up to the due date of each instalment.

Though the Honourable Division Bench of this Honourable Court has permitted the petitioner to remit the arrears in 36 monthly installments the Honourable Court has not denied levy of interest on belated payment as per prevailing statutory orders. Though the Judgment in WA. No.1892/2022 mentioned nothing about interest on belated payment, it was also not denied of levying interest on belated payment as per item No.12 of "Schedule of Miscellaneous Charges" under Regulation 131(2) of Kerala Electricity Supply Code 2014. Bill revision for the period 04/2017 to 05/2022 and subsequent demand Dated 27.07.2022 was issued as per Regulations 134(1) after observing the formalities as insisted under Regulations 122 & 123 and hence the allegation of the petitioner is not withstanding. Why it is not withstanding is clearly mentioned under para 6 to 10 specifying with the details were included in the bill revision report. Moreover each and every revised bill was also issued to the petitioner.

The letter dated 27.06.2022 and letter dated 27.07.2022 accompanied with bill revision report is in accordance with Regulation 122 and Regulation 123 and it is in order. Interest on belated payment charges has been claimed only from the due date(28.08.2022) of the demand notice dated 27.07.2022 and further interest on instalments were taken up to the due date of each instalment. The Hon'ble KSERC in Petition No.RP 3/2021 dated 15.11.2021 between KSEBL and M/s. Bennett Coleman & Company Limited, Kochi after reviewing a Supreme Court Judgment dated 5th October 2021 in Civil Appeal No.7235 of 2009 (M/s. Prem Cottex verses Uttar Haryana Bijli Vitaran Nigam Limited & others) and ordered that "..... (2) The Arrear Bill issued to the consumer vide the Demand Notice Dated 29.04.2020 is in order and the same is to be paid by the consumer within 30 days' time.....". KSEBL cannot determine the rate of interest on belated payment as the same was approved by the Hon'ble KSERC after due deliberations considering the factors like PLR rate, rate of interest bear by KSEBL for the delayed payment made to generating companies etc. Therefore, any change (hike or deduction) in rate of interest on belated payment, KSEBL suo motto cannot take a decision. Moreover, the receivables of arrear current charges with due interest on belated payment is also a factor considering by the KSERC while determining tariff for different categories of consumers. The date from which the bill/any demand became first due is called **due date** specified clearly under Regulation 131(1) and the same is shown in the demand notice/each revised bills for the said period issued due to bill revision as per Regulation 123 and it cannot alter according to whims and fancies of the petitioner consumer.

This is also a known fact to the petitioner, as the Judgment Dated 13.01.2023 of the Division Bench of the Honourable High court pronounced that "the appellant (petitioner of the present case) commits two continuous defaults in any of the instalments, the Board is given liberty to recover the amount and initiate such other step or action as is permissible in law including disconnection". Moreover, the W.P.(C) No.17613/2023 filed by the consumer before the Hon'ble High Court of Kerala for waiver of interest was declined by Hon'ble High Court of Kerala, vide judgment dated 30.06.2023. Hon'ble High Court of Kerala directed the petitioner to approach Hon'ble CGRF in this regard, if he desires so. The Judgment Dated 30.06.2023 in W.P.(C) No.17613/2023 of the Honorable High Court is reproduced hereunder. **"On an appreciation of the rival submissions, I am definitely of the view that the petitioner's prayer for an interim relief cannot be entertained. Hence, I decline the petitioner's prayer to stay all further proceedings pursuant to Ext. P16 demand notice till the disposal of Ext. 18 complaint pending before the third respondent. It would be up to the petitioner either to move a stay petition before the third respondent or seek for a clarification in Ext.15 judgment as regards its liability to pay the interest."** The CGRF, Kottarakkara vide it order dated 26.10.2023 in OP No.39/2023. In view of the Judgment of the Hon'ble High

Court of Kerala mentioned supra, KSEBL may be allowed to realize the short assessment of 9,90,74,445/- from M/s. Believers Church Hospital & Campus along with interest and the No.P 057/ 2023 may be dismissed with cost.

Counter arguments of the Appellant

All the averments and allegations contained in the statements filed by the above said respondent is false other than which is admitted hereunder, hence denied. It is submitted that the proceedings now initiated at the instance of the complainant before this forum is independent of the all other litigations. It is true that the Hon'ble High Court of Kerala by an order directed the CGRF, Kottarakkara to dispose of the petition filed by the complainant interalia seeking to declare that the licensee shall not have any discretionary powers to impose penalty, without giving due notice to consumer of the additional charges imposed, including detailed bills for which such revised charges are being applied. However, the CGRF dismissed the complaint hence complainant approached this hon'ble authority challenging the same.

It is submitted that the contention that the prayer of waiver of penal interest imposed upon the complainant by the respondent was declined by the Hon'ble High Court of Kerala is nothing to do with the statutory exercise of power by this Hon'ble Forum as such an order was passed upon the anticipation of the complainant that statutory remedies will not be easily available and the writ petition was filed after filing the OP before the CGRF.. Hence the interim order was passed in that event directing the petitioner to approach the CGRF. Thus the specific case of the complainant is that the demand of amount as per bill dated 22.12.2022 is substantially different from the amount claimed in the letters dated 27.06.2022 and 27.07.2022. The letters dated 27.06.2022 and 27.07.2022 does not accompany any proper bills or demands as contemplated under regulation 122 and 123 of the Kerala Electricity Supply Code, 2014. Thus no proper demand was made by the respondent. The e-mails dated 22.12.2022 is not a re-affirmation of bills sent on 27.06.2022 and 27.07.2022. Thus nothing on record to show that any bills were sent on 27.06.2022 and 27.07.2022. At the time of hearing before the CGRF respondent sought for time for production of the bills they claimed to have issued on 27.06.2022 and 27.07.2022. However, it was never produced. Nothing was noted in the order of the forum regarding the above said aspect also.

It is submitted that moreover during the course of hearing before the CGRF respondent admitted that demand which were subject matter of WA No. 1892/2022 also included interest till such time. Thus demand which were subject matter of WA No. 1892/2022 includes interest no further interest can be claimed. Interestingly, this also was not found a place in the

order of the CGRF. It is submitted that the attempt of the respondent is to illegally claim the interest and the contention of the respondent that the claimant is a high stake consumer and all earnest efforts were made to resolve the issue is false. It is submitted that thus in order to resolve the real issue petition filed by the complainant under regulation 24(1) of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum And Electricity Ombudsman) Regulations, 2005 wherein the prayer is to direct the respondents in the complaint to furnish the information evidencing the service of proper bills demand to the complainant either through post or through e-mail any date prior to the bills received by the complainant on 22.12.2022 if any, which is non-est according to the complainant.

The contention of the respondent that the right of charging interest upon the due amount has already been upheld by the hon'ble apex court is nothing to do with the facts of the present case as no proper demand was given to the complainant. Hence it is most humbly prayed that this hon'ble forum may be pleased to allow the complaint. All the facts stated above are true and correct to the best of my knowledge, information and belief.

Analysis and findings

The hearing of the case was conducted on 04/01/2024 at 11:30 a.m. in the office of the State Electricity Ombudsman, D.H. Road & Foreshore Road Jn., near Gandhi Square/BTH, Ernakulam South. The hearing was attended by the appellant's representative Adv. Sri. P.C. Shijin and the respondents Sri. Justin R., Superintend, O/o Distribution (Finance), KSEBL, Vydyuthi bhavanam, TVPM, Sri. Anoop Mathew, Superintend, O/o PF Section, KSEBL, Vydyuthi Bhavanam, TVPM, Sri. Justin Joseph, Executive Engineer, Transmission Circle, Poovanthuruthu.

The appellant Believer Church is a religious organization, running a medical college and hospital in Tiruvalla. The appellant has availed power supply in 110kV(EHT) through an 110kV substation established by them. The consumer of electricity has to pay the power charges as per the tariff decided by the Kerala State Electricity Regulatory Commission according to the Electricity Act -2003, Section 86.

86(1) *“The State Commission shall discharge the following functions, namely:- (a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be within the State:*

Provided that where open access has been permitted to a category of consumers under Section 42, the State Commission shall determine only the

wheeling charges and surcharges thereon, if any, for the said category of consumers”.

The KSERC categorized the EHT consumers of similar native into EHT General in the tariff order dated 14/08/2014. In the tariff order dated 17/04/2017, the self financing institution were included in another categories which in EH General B. In the latest tariff which is published 25/06/2022, the self financing institution were again changed to another category which is EHT General C. The licensee wrongly billed the appellant in the category EHT General A and the mistake was identified during 06/2022. The undercharged amount was calculated as Rs. 9,90,74,445/- and the bill has been raised issued vide letter dated 27/07/2022 as per Section 134 of Kerala Electricity Supply Code 2014.

Section 134(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”.

(2) “If, after payment of any bill, it is established that the licensee has overcharged the consumer, the excess amount shall be refunded to the consumer with interest at bank rate as on the date of remittance of such excess amount”.

(3) “The licensee may refund such overcharged amount along with interest at bank rate as on the date of remittance of such overcharged amount, by way of adjustment in the three subsequent bills and if the adjustment is not possible in the next three bills, the licensee shall refund the balance amount in full by cheque”.

The appellant filed petition to the Hon’ble High Court of Kerala Single bench and then Appeal to Division bench. The Division bench of Hon’ble High Court of Kerala order dated 13/01/2023 states that

“the appellant is liable to pay the demand raised by the licensee and granted the following schedule of payment

- i. At the first instance deposit Rupees two Crores in two equal /six weekly instalments i.e., on or before 28/02/2023 and 11/04/2023.*
- ii. The balance of the demanded amount is to be deposited in 36 equal monthly instalments. The instalments facilitated by this court through the instant order is in addition to the regular consumption charges payable by the appellant. The appellant commits two continuous defaults in any of the instalments, the Board is given liberty to recover the amount and initiate such other steps or action as is permissible in/ and including disconnection. The first monthly instalments granted by the judgement is to be paid on or before 10/01/2023.”*

The licensee as per their letter dated 20/04/2023 intimated the appellant that the total amount arrears as on 10/05/2023 is Rs. 8,89,90,074/- which includes interest of Rs.99,75,340/- and also the detailed breakup of 36 monthly instalments. The amount payable from 10/05/2023 to 06/04/2026 (36 instalments) is as below.

The electricity charges	= 7,90,14,734/-
The interest	= 3,12,50,883/-
Total Amount	= 11,02,65,617/-

The appellant has challenged the demand of interest in the Hon'ble High Court of Kerala and Hon'ble High Court has pronounced the order on 30/06/2023, which is as below.

(1) *“The learned counsel appearing for the respondents 1 and 4 to 7, on instructions, submitted that the petitioner has already moved the Consumer Grievance Redressal Forum (in short 'CGRF') against the demand of interest made by the respondents 1 and 4 to 7. Challenging the order passed by the respondents, the petitioner was permitted by the Division Bench of this Court in judgment to pay the amount in 36 instalments. The petitioner also undertook to withdraw the appeal filed before the CGRF. Now, the petitioner cannot turn around and contend that respondents 1 and 4 to 7 have no legal right to demand penal interest, which is permissible under Regulation 136 of the Electricity Supply Code”.*

(2) *“On an appreciation of the rival submissions, I am definitely of the view that the petitioner's prayer for an interim relief cannot be entertained. Hence, I decline the petitioner's prayer to stay all further proceedings pursuant to demand notice till the disposal of complaint pending before the third respondent. It would be up to the petitioner either to move a stay petition before the third respondent or seek for a clarification in judgment as regards its liability to pay the interest”.*

The appellant has been directed to approach CGRF or seek clarification in judgement of Hon'ble High Court of Kerala regards its liability to pay interests.

The Section 136 (1) states that the licensee shall be entitled to recover arrears along with interest.

136(1) *“The licensee shall be entitled to recover arrears of charges or any other amount due from the consumer along with interest at the rates applicable for belated payments from the date on which such payments became due”.*

(2) *“The licensee may prefer a claim for such arrears by issuance of a demand notice and the consumer shall remit the arrear amount within the due*

date indicated in the demand notice”.

(3) “No such sum due from any customer, on account of default in payment shall be recoverable after a period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable arrear of charges for electricity supplied”.

(4) “If the consumer fails to remit the amount of arrears with interest on or before the due date indicated in the bill or in the demand notice, the licensee may disconnect the supply of electricity after giving notice and initiate proceedings for the recovery of the arrears in accordance with the relevant legal provisions”.

As per the Section 136(3), the licensee shall not recover the amount on account of default in payment after a period of two years from the date when such sum become first due. Accordingly, the order of Hon’ble Supreme Court in case no. 7325/2009, order dated 05/10/2021 in M/s Prem Cottex Vs Uttar Haryana Bijili Vitaran Nigum Ltd. and others that *“though the liability to pay arises on the consumption of electricity, the obligation to pay would arise only when the bill is raised by the licensee and that therefore the electricity charges would become ‘first due’ only after the bill is issued, even though the liability would have arises on consumption”.* Accordingly, the amount is first due only when the bill is issue, i.e., on 27/07/2022. Then the limitation period of two years also applicable only from 27/07/2022.

Then the appellant made an argument that the demand was not raised as per Section 123 of Supply Code. Respondents have confirmed that the detailed bill was sent on mail to the appellant and also confirmed that the bill hard copy for the HT/EHT consumers were discontinued since 2020. Then the second contention was that the initial amount Rs. 9.9 Crore was inclusive of interest. The licensee confirmed that no interest is included in the amount. The third point raised in the rate of interest is very high which is 18%. The rate of interest for the default payment is decided by the KSERC and licensee have charged the rate as per KSERC approval.

The fourth objection raised by the appellant is that as per the Hon’ble High Court of Kerala Order. The payment is to be made in 36 instalments and not mentioned about interests.

The licensee’s version is that in another similar case which is between M/s Bennett Coleman & Co Ltd. and KSEBL in RP 3/2021, the Kerala State Electricity Regulatory Commission ordered that the consumer is liable to pay the interest.

Order of Commission

“After due consideration of the review petition filed by KSEB Ltd, counter affidavit dated 26-10-2021 filed by M/s Bennet Coleman & Co Ltd, the deliberations during the hearing, Judgement dated 05-

10-2021 of the Hon'ble Supreme Court in Civil Appeal No 7235 of 2009, together with the Judgement dated 18-02-2020 of the Hon'ble Supreme Court in Civil Appeal No. 1672 of 2020, the provisions of Electricity Act, 2003 and the related rules/regulations in force, the Commission hereby orders as follows:

1. The review petition filed by KSEB Ltd against the Order dated 08-07-2021 in OP No 21/2021 is allowed.
2. The Arrear bill issued to the Consumer vide the demand notice dated 29-04-2020 is in order and the same is to be paid by the consumer within 30 days time.
3. Interest as per rules will be applicable for the amount due from the date of issuance of the demand notice dated 29.04-2020.
4. If the Consumer request for instalment facility to remit the amount, KSEB Ltd may consider the same on usual applicable terms and conditions.

The review petition is disposed off as ordered above”.

Decision

On verifying the documents submitted and hearing both the petitioner and respondent and also from the analysis as mentioned above, the following decision are hereby taken.

1. The appellant is liable to pay the interest as per rules for the amount due from the date of issuance of demand notice.
2. The arrear bill issued by the licensee is in order.
3. The detailed bill/statements are to be issued to the consumer, if not issued earlier.
4. The licensee shall take action against of the officials who are failed to apply the tariff revision in time.
5. No order on cost.

ELECTRICITY OMBUDSMAN

No. P/057/2023/ dated: 17/01/2024.

Delivered to:

1. Believers Church, St. Thomas Nagar, Kuttippuzha P.O., Thiruvalla, Pathanamthitta (Dist.)- 689103.
2. The Chief Engineer (Distribution South), Power house buildings, Thiruvananthapuram.
3. The Special Office Revenue, Vydyuthi Bhavanam , KSE Board Limited, Pattom, Thiruvananthapuram-4.
4. The Deputy Chief Engineer, Transmission Circle, KSE Board Limited, Poovanthuruthu, Kottayam- 686012.

Copy to:

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