

THE STATE ELECTRICITY OMBUDSMAN

Charangattu Bhavan, Building No.38/2829,
Mamangalam-Anchumana Road,
Edappally, Kochi-682 024
www.keralaeo.org Ph: 0484 2346488, Mob: 91 9539913269
Email: ombudsman.electricity@gmail.com

APPEAL PETITION No. P/056/2021**(Present: A.S. Dasappan)****Dated: 16th December 2021**

Appellant : **Sri. Vinod A. Philip,**
Secretary
Kaithakuzhy Educational Association,
Velichikala. P.O.,
Kollam Dist.-691573

Respondent : Asst. Executive Engineer,
Electrical Sub Division,
KSEB Ltd., Chathannoor,
Kollam Dist.

ORDER**Background of the case:**

The appellant filed the Appeal Petition pertains to the consumer number 1145752012702 under Electrical Section, Chathannoor. The appellant is running Self Financing Educational Institution by name Nehru Memorial School, Kaithakuzhy. On 27-10-2020, the respondent had issued short assessment bill amounting to Rs.2,98,325/- to the above mentioned consumer number as arrear energy charge following judgement of Hon'ble Supreme Court of India dated 20-02-2020. The period of short assessment was from 12/2007 to 08/2011. The appellant approached Consumer Grievance Redressal Forum (CGRF), Southern Region vide OP No. 110/2020 and the Forum vide order dated 16-04-2021 dismissed the petition. Aggrieved by the decision of the Forum, the appellant filed this appeal petition before this Authority.

Arguments of the appellant:

The appellant being aggrieved by the short assessment bill of Rs.2,98,325/- issued by the Licensee on 27.10.2020 as current charge arrear demand along with surcharge as per the Hon'ble Supreme Court order dated 20.02.2020 for the period from 12/2007 to 8/2011. The appellant had approached the Consumer Grievance Redressal Forum challenging the said assessment bill. But the Forum decided not to interfere in the case.

The CGRF failed to appreciate the fact that the amount assessed was based on the judgment of the Hon'ble Supreme Court in Civil Appeal No. 8350 of 2009 (now reported as *Kerala State Electricity Board Vs. Principal, Sir Syed Institute For Technical Studies And Others*: 2020 (2) KHC 61 in which the appellant school was not a party to aforementioned Civil Appeal or in the High Court. It is also relevant to mention herein that the appellant has never received any communication or a notice whatsoever from the year 2007 demanding a payment.

Regulation 136 of the Kerala Electricity Supply Code, 2014 deals with Recovery of arrears and its limitation, for which the easy reference is extracted below.

- (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 with the due date indicated in the demand notice.
- (3) No such sum due from any consumer 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 proceeding for the recovery of the arrears in accordance with the relevant legal provisions.

- (5) The licensee may formulate a scheme for one-time settlement of long pending arrears and implement the scheme with prior approval of the Commission. It can be seen that Regulation 136(3) of the Kerala Electricity Supply Code 2014 clearly specifies that no amount due can be collected after a period of 2 years. In the instant case, it can be seen that the assessment was made from the year 2007 onwards. This is illegal and does not have the backing of law.

The Hon'ble High Court in similar case in WP (C) 18599 of 2020 had issued an order, staying the demand notice issued by the Assistant Engineer dated 25-08 2020 on the condition that the petitioner in the writ petition St. Luigi School Thiruvatta, Kottayam deposit an amount equal to 25% of the demand notice issued by the Assistant Engineer dated 25-08 2020.

The right to establish and administer educational institutions is a fundamental right under Article 19 and 30 (1) of the Constitution of India (See TMA Pai Vs State of Karnataka and Others: 2002 (8) SCC 481 and denying the said fundamental right by charging exorbitant electricity rate on time barred assessment requires intervention.

Regulation 152 of the Kerala Electricity Supply Code, 2014 deals with anomalies attributable to the Licensee, which are detected at the premises of the consumer, for which the easy reference is extracted below.

- (1) Anomalies attributable to the Licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the Licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or of Section 135 of the Act.
- (2) In such cases, the amount of electricity charges short collected by the Licensee, if any, shall only be realised from the consumer under normal tariff applicable to the period during which such anomalies persisted.

- (3) The amount of electricity charges short collected for the entire period during which such anomalies persisted may be realised by the Licensee without any interest: Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months: Provided further that while assessing the period of such short collection, the factors as specified in Sub Regulation (8) of Regulation 155 shall be considered: Provided also that realization of electricity charges short collected shall be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months.
- (4) The consumer may be given instalment facility by the Licensee for a maximum period of twelve months for the remittance of such amount of short collection with interest at the bank rate as on the date of remittance of the amount of instalment.

For these and other grounds stated above and those to be urged at the time of hearing, it is prayed that this State Electricity Ombudsman may be pleased to grant the following.

Relief Sought

- i) To call the records leading to issue short assessment bill and to quash the same.
- ii) To issue an order or direction declaring that no amount as arrears of electricity due can be claimed from the appellant.
- iii) Set aside the order issued by the CGRF.

Arguments of the respondent:

As per the tariff order vide Kerala Gazette dated 27.11.2007, Self-Financing Educational Institutions was under LT VII A tariff and in tariff Gazette dated 9.9.2013, it was included in LT VIII tariff. Based on the audit report of Regional Audit Officer, Kollam dated 28.4.2014, a short assessment bill amounting to Rs.1,20,032/-had been issued to the appellant from Electrical Section, Chathannoor towards misclassification of the tariff from

LT VIII to LT VI A for the period from 12/2007 to 8/2013. As per the tariff order vide Kerala Gazette dated 27.11.2007, Self-Financing Educational Institutions were classified under LT VII A tariff and in tariff Gazette dated 9.9.2013, these were included in LT VIII tariff. As per the order dated 27.9.2014, these were included in LT VI F tariff.

A group of Self-Financing Educational Institutions filed writ petitions before the Hon'ble High Court of Kerala challenging the fixation of tariff as LT VII A vide tariff order dated 26.11.2007 and obtained favourable judgement. Against the judgement of the Hon'ble High Court of Kerala, the Kerala State Electricity Board filed special leave petition before the Hon'ble Supreme Court of India.

Hon'ble Supreme Court of India in its judgement dated 20.2.2020 in the case no.8350/2009 have set aside the judgement of the Hon'ble High Court of Kerala and held that, all Self-Financing Educational Institutions are bound to pay the tariff rates fixed by the Kerala State Electricity Regulatory Commission vide its order dated 26.11.2007 with effect from 1.12.2017.

The Board vide its order no.LA 1/5243/2009-205 dated 29.2.2020 has directed to realise the arrears pending from all Self-Financing Educational Institutions with interest.

Based on the above Board order, a short assessment bill amounting to Rs.2,98,325/- had been issued to the consumer no. 12702 from Electrical Section, Chathannoor towards misclassification (of the tariff from LT VIII to LT VI A for the period from 12/2007 to 8/2011).

Aggrieved by this, the appellant filed petition before Hon'ble CGRF (South), Kottarakkara. After hearing the appellant and the Licensee CGRF opined that Licensee is eligible for claiming the undercharged bill with surcharge. Revised bills were prepared and issued to the consumers, as per direction of Board in the light of the judgement of Hon'ble Supreme Court of India. The verdict of the Hon'ble Supreme Court in WA No.1672/2020 is also found to be applicable which goes with the limitation period of 2 years under Section 56(2) did not preclude the Licensee from raising an additional or supplementary demand after the expiry of the limitation period under Section 56 (2) in the case of a mistake or bona fide error.

As per regulation 130 (7) of the Kerala Electricity Supply Code 2014, surcharge can be claimed by the Licensee for belated payment. The Hon'ble High Court of Kerala in its judgement dated 24.8.2020; on the writ petition (Civil) filed by the Southern College of Engineering and Technology, Luiz Nazar, Chalakkudy bearing WP(C) No.17434/2020(D) asserted that," the interest component compensatory in nature and one intended to compensate for the delay in receiving payment that are due to it.

The judgement of Hon'ble Supreme Court of India in case No. WA 1672/2020, regulation 134 (1) relating to undercharged bills and Regulation 130 (7) of the Kerala Electricity Supply Code 2014 and the judgement of the Hon'ble High Court of Kerala in WP (C) No.17434/2020(D) relating to surcharge are also relevant in this case.

The issue of tariff change relating to Self-Financing Educational Institutions were analysed by various legal forums including Hon'ble Supreme Court of India and there are various Regulations such as Regulation 134 (1), 130(7) of the Kerala Electricity Supply Code 2014, which makes the Licensee eligible for claiming the undercharged bill under dispute with surcharge.

For the reasons stated above, it is prayed that this Authority may be pleased to dismiss the petition upholding the facts and circumstances of the case.

Analysis and findings:

An online hearing was conducted at 12 Noon on 13-12-2021 with prior intimation to both the appellant and the respondent. Sri. Adityan Ezhapilly attended the hearing for the appellant and Smt. S.B. Jayasmitha, Assistant Executive Engineer, Electrical Subdivision, KSEB Ltd., Chathannoor attended the hearing from the respondent's side. On examining the petition, the counterstatement of the respondent, the documents attached and the arguments made during the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decision thereof.

The main contention of the appellant is that the appellant was not a party to aforementioned Civil Appeal or in the Hon'ble High Court. The appellant has

never received any communication or a notice whatsoever from the year 2007 demanding a payment.

The respondent argued that the revised bill was issued as per the judgement of Hon'ble Supreme Court in the tariff assignment of Self-Financing Educational Institution and hence, the appellant is liable to remit the amount with interest.

The revised bill issued by the respondent to the appellant on 27-10-2020 as per the judgement of Hon'ble Supreme Court, is the difference between the electricity bill prepared under LT VIA tariff and the previous tariff, which comes to Rs.2,98,325/- including surcharge for the period from 12/2007 to 08/2011.

Vide circular dated 29-02-2020, KSEB Ltd. directed all the field officers of the Licensee to implement the tariff rate fixed by KSEB for the Self-Financing Educational Institution with effect from 01-12-2007 and issue arrear bills with surcharge accordingly. The circular was given by the Licensee as per the judgment of Hon'ble Supreme Court in Civil Appeal No.8350/2009 filed by KSEB Ltd.

Another direction on the same subject had been given by KSEB Ltd. on 05-01-2020 to all the field officers of the Licensee to issue demand to all Self-Financing Educational Institutions under the LT VIIA, effect from 01-12-2007, except those who obtained favourable orders from Hon'ble High Court of Kerala on the ground that Hon'ble Supreme Court stayed the operations of judgments of Hon'ble High Court of Kerala.

The appellant argued that, the appellant had never received a bill or notice from the year 2007 onwards. In a period of certain petitions and appeal petitions filed by similar institutions were being considered by the Hon'ble Courts, the Licensee cannot issue such bills on the same subject to the appellant. Only on 05-01-2020, KSEB Ltd. decided to issue bills under higher tariff rate to the Self-Financing Educational Institutions except those who availed favourable orders from Hon'ble High Court of Kerala.

On the above circumstances, the appellant is liable to remit the amount.

Decision: -

For the reasons detailed above, the appeal petition No: P-056/2021 filed by the appellant stands dismissed. The order dated 16-04-2021 in OP No.110/2020 of CGRF, Southern Region is upheld.

Having concluded and decided as above, it is ordered accordingly. No order on costs.

ELECTRICITY OMBUDSMAN

P/056/2021/_____ dated _____.

Delivered to:

1. Sri. Vinod A. Philip, Secretary Kaithakuzhy Educational Association, Velichikala. P.O., Kollam Dist.-691573
2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Chathannoor, Kollam Dist.

Copy to:

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