

**THE STATE ELECTRICITY OMBUDSMAN**

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**APPEAL PETITION No. P/034/2021****(Present: A.S. Dasappan)****Dated: 30<sup>th</sup> December 2021**

Appellant : The Executive Director,  
AMOS Centre,  
Kerala Social Service Forum,  
Adichira, Thellakom. P.O.,  
Kottayam Dist. 686630

Respondent : Asst. Executive Engineer,  
Electrical Sub Division,  
KSEB Ltd., Gandhinagar,  
Kottayam Dist.

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

The appellant is a consumer of Electrical Section, Gandhinagar with consumer No. 8539. The appeal petition pertains to the bill issued to the appellant on 20-11-2020 for a period of more than 4 years from 08/2008 to 05/2013 for Rs.4,94,278/- towards the difference in tariff category, stating the institution run by the appellant is a self-financing institution. The appellant challenged the bill before the Licensee, then before Consumer Grievance Redressal Forum, Southern Region, Kottarakkara vide OP No.113/2020 and the Forum in its order dated 16-04-2021, decided not to interfere the subject since the same subject was analyzed and reviewed by various eminent legal authorities including Hon'ble Supreme Court of India and there are various Regulations such as Regulation 134 (1), 130 (7) etc. of the Kerala Electricity Supply Code 2014 which made the Licensee eligible for claiming the undercharged bill under dispute with surcharge.

Not satisfied with the decision of the Forum, the appellant filed this appeal petition before this Authority.

**Arguments of the appellant:**

By way of an undated demand notice having number B.B. No.: SELF/20-21/30, the Assistant Engineer, Electrical Section, Gandhi Nagar of the Kerala State Electricity Board Limited demanded an amount of Rs.1,84,772/- towards Principal bill amount and an amount of Rs. 3,09,506/- towards interest amount, which cumulates to a total amount of Rs.4,94,278/-. This undated demand notice was received by the appellant on 21.10.2020 only. It is stated that, this amount is for the period on and from August 2008 to May 2013. The reasoning put forth in the demand notice is that, all Self-Financing Educational Institutions on and from 01.12.2007 is liable to pay electricity charges on the category of "LT - VI F". The appellant was charged under the category of "LT-VI B", prior to the issuance of this demand notice. Thus, regardless of the appellant not having committed any default in payment of bill and that the appellant as having paid all its dues, the appellant was called upon to pay the aforementioned amount of Rs. 4,94,278/-. The appellant submitted an objection to this demand notice on 23.10.2020.

The appellant's Society registered under the TC Act of 1955 and that appellant has taken all the efforts to prove the same. Moreover, the registration certificate is having the presumption under Section 90 of the Indian Evidence Act 1872. The appellant is not a Self-Financing Institution and is a Charitable Institution under the TCLSCSR Act 1955.

**Arguments of the respondent:**

In the appeal the appellant claims that the centre functions as a charitable society and undertaken training without collecting any fees and will not come under the purview of Self-Financing Institute. The Centre failed to produce any documentary evidence to substantiate their claims. According to KSEBL records the centre is a self-financing institution undertaking trainings and educational courses.

In several cases the Hon'ble High Court have established the right of the licensee to demand and realize the short assessment amount actually due from the consumer. The sum claimed by the Board became first due when the Board issued the demand bill for the first time. Moreover, all the dues towards KSEB Limited is secured and charged upon the immovable property of the consumer by virtue of the agreement executed in between the consumer and the Board and therefore by virtue of Article 62 of the Limitation Act, 1963 the period of limitation is 12 years from the date on which the money fell due. So, the allegation regarding the period of limitation is not sustainable. In judgment dated 9-2-2012 of WA No: 211/2012 in WPC No:34768/2011 the Hon'ble High Court of Kerala held that *"the question of normal period of limitation is not applicable both, towards electricity and water charges"*. Moreover, in this case the tariff related to self-financing institutions were under the consideration of the Hon'ble Supreme Court and the Hon'ble Supreme Court's judgement was on 20<sup>th</sup> February 2020, hence the limitation will not be applicable to this case.

KSEBL issued a short assessment bill for Rs.4,94,278/- to the appellant's institute, but it may please be noted that the bill issued was strictly in accordance with the Hon'ble Supreme Court's judgement in CIVIL APPEAL NO. 8350 of 2009 dated 20<sup>th</sup> February 2020. The Hon'ble Supreme Court of India in its judgement dated 20<sup>th</sup> February 2020 allowed the legality of tariff notification issued by the Kerala State Electricity Regulatory Commission on 26<sup>th</sup> November 2007 segregating Self-Financing Educational Institutions from Government run and Government Aided Private Educational Institutions. Against the segregation, Self-Financing Institutions filed appeal before the Hon'ble High Court of Kerala. Finally, the Apex Court on 20<sup>th</sup> February 2020 upheld the rights of Regulatory Commission and ordered in favour of KSEBL. Hence, in accordance with the order of Hon'ble Supreme Court of India, short assessment bill for realizing the loss sustained to KSEBL from the date of tariff order was issued to the appellant and is strictly as per law of the land. Hon'ble High Court in WP (C) No. 13857/20 and in 17434/20 have dealt with similar prayers for similar petitioner running SFIS and disposed the cases allowing both principal and interest in line with Apex Court Decision.

Tariff to any consumer is decided based on actual purpose and as per Government Orders; here in this case the purpose of the appellant was for undertaking Self Financing Institution. According to Regulation 64(1), of Kerala Electricity Supply Code 2014 *"If the consumer at any time, after the supply of electricity has been commenced, proposes to extend, alter or renovate his installations on a temporary or permanent basis or in way alter the position of his wiring therein, he shall request the licensee and obtain approval of the scheme"*. The above regulation made it clear that the consumer is duty bound to obtain prior approvals from licensee before altering his purpose. Even during CGRF hearing the appellant raised the same point and the CGRF asked the appellant to approach KSEBL with relevant records for changing tariff if there is any change in purpose, but till date appellant failed to submit any such application at KSEBL for changing their tariff. Hence the appellant's statement may be rejected. It is requested to dismiss the appeal petition on the grounds above.

**Analysis and findings:**

An online hearing was conducted at 3 PM on 15-09-2021 with prior intimation to both the appellant and the respondent. Adv. Sri. Luke. J. Chirayil attended the hearing for the appellant and Sri. Viji Prabhakar, Assistant Executive Engineer, Electrical Subdivision, Gandhinagar from the respondent's side attended the hearing. 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 appeal petition is referred to the tariff assigned to the appellant's premises. The appellant was given a short-assessment bill for Rs.4,94,278/- on 21-10-2020 for the period from 08/2008 to 06/2013 being the difference in tariff LT VIB and LT VIIA, as per the judgement of Hon'ble Supreme Court of India regarding the Self-Financing Educational Institutions.

The appellant argued that the institution is not a Self-Financing Education Institution, but an institution registered under 'The Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act 1955 (12 of 1955). Also, argued that prior to the issuance of the demand notice for Rs.4,94,278/-, the appellant was charged under LT VIB.

The respondent argued that the short-assessment bill was issued as per the judgement of Hon'ble Supreme Court of India in Civil Appeal No. 8350 of 2009 dated 20-02-2020. The appellant's institution is a Self-Financing Educational Institution and the appellant had not submitted application for tariff change to the Licensee.

On going through the connected documents submitted by the appellant, it is revealed that the appellant filed a petition before the CGRF, Ernakulam. But the Forum comes to the decision for not interfering in the matter.

As per the statement filed by the respondent additionally, the three-phase electric connection was provided in the premises of the appellant on 05-02-2002 with a connected load of 14361 watts. The tariff category allotted to the premises while effecting the electric connection was LT VIB, the tariff category applicable to private institution/private hospital. The present tariff of the premises is LT VIF, having remarks of the respondent, private hospital/private institution. The respondent reported that no inspection was conducted by the Licensee in the premises while changing the tariff/reassigning the tariff. As per the meter reading history submitted by the respondent, the premises is seen categorized as private hospital and the monthly consumption varying from 144 units to 753 units on analyzing the consumption for the period from 01/2020 to 08/2021.

As per "The Kerala State Electricity Board Low Tension (other than public lighting) Tariff Order 2002", which came into force from 01-10-2002, the tariff applicable to private hospital is LT VIB and private educational institution is LT VIA. Moreover, LT VIB tariff can be given to the premises rented out for students, who are paying guests subject to certain conditions (Circular number

Plg.Con 4304/2001 dated 21-12-2001) as per the tariff order 2002.

As per the Schedule of Tariff and Terms and Conditions for Retail Supply by KSEB with effect from 01-12-2007, private hospitals were retained in the category of LT VIB and Government or Aided private educational institutions were categorized under the tariff LT VIA. Also, the Self-Financing Educational Institutions were assigned LT VIIA tariff.

In the case of appellant, the respondent prepared the short-assessment bill taking the difference between the LT VIB tariff and LT VIIA tariff. It is to be noted that private education institutions under LT VIA tariff in tariff order came into force from 01-10-2002 were categorized as aided private educational institutions under LT VIA tariff and Self-Financing Educational Institutions under LT VII A tariff in the tariff order from 01-12-2007. From the above, it is found in the case of the appellant that a premises categorized under LT VIB tariff, applicable to private hospital in both tariff orders, was changed into LT VIIA tariff, applicable to Self-Financing Educational Institutions, from 01-12-2007. From the statement of short-assessment made by the respondent from 08/2008 onwards, it can be observed that the appellant had been billed under LT VIB tariff during the short-assessment period.

The appellant revealed that social service is the main activities of the Kerala Social Service Forum and the Forum emphasize the following activities:

1. Community Managed Disaster Risk Reduction (CMDRR).
2. Integrated development through empowerment and action.
3. Integral planning and capacity building for partners.
4. Gender mainstreaming.
5. Campaign on Food Security/Safety.
6. Agricultural Regeneration Measures.
7. Training the partners on research documentation and dissemination.

This Authority observe that the activities being going on in the premises is entirely different from the tariff allotted.

The respondent reported that no inspection was conducted in the premises

while changing the tariff from LT VIB to LT VIIA, whenever the appellant filed petition before the respondent, even after the filing of petition before CGRF and appeal petition before this Authority. As such, I inspected the premises with the presence of the appellant and respondent.

There are two buildings in the premises, one with a name "AMOS Centre" and the other very near to the Centre, which is functioning as the office of the Centre. Most of the rooms in the Centre were seen in closed position. Amos Centre is the name of the building. During the inspection, the appellant stated that the appellant is not collecting any fee from the participants. The appellant is running the institution with the annual subscription received from the "Rupatha (Christian Formation) members" and the amount received from the projects conducted in the Centre. As such, as per appellant, it is not proper to consider the Centre as Self-Financing Educational Institution. There is no continuous course in the institution and no syllabus or other activities required for a Self-Financing Educational Institution.

As per tariff order dated 17-04-2017 and 08-07-2019 of KSERC, hostels run by institutions registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act 1955 (12 of 1955) or under the Societies Registration Act 1860 (21 of 1860) or under Indian Trust Act 1882, the donations to which are exempted from payment of Income Tax comes under LT VI General (B) tariff. Also, offices of social organization will come under LT VIB tariff. Any other LT categories not included anywhere in the Schedule of Tariff Order will come under LT VIC tariff. Charitable hospital guidance centers registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act 1955 (12 of 1955) or under the Societies Registration Act 1860 (21 of 1860) or under Indian Trust Act 1882, donations to which are exempted from payment of Income Tax will come under LT VI (D) tariff. Since the appellant's premises is not a hostel or a charitable hospital guidance center, the appellant is not eligible for LT VIB or LT VID tariff as per the tariff order dated 17-04-2017 and 08-07-2019. The tariff category of the private hospital in the above tariff order is LT VI (G).

**Decision: -**

From the analysis done and the discussions as detailed above, this Authority take the following decision:

The tariff allotted at the time of providing electric connection to the premises on 05-02-2002 was LT VIB under the remark's private institution / private hospital and the present tariff being billed under LT VIF tariff with remarks private hospital. In the inspection, it is found that the institution is not a hospital, but training centre for certain field having no continuous in nature. As such, I decide to quash the short assessment bill issued to the appellant for Rs.4,94,278/-. The respondent shall reassign the tariff of the institution under LT VIC tariff from the date of this order and issue the bill accordingly. The respondent shall inspect the premises and look into the possibility of providing two separate electric connections for the Amos Centre and the nearby office under appropriate tariff, till then LT VIC tariff shall be continued.

Having concluded and decided as above, it is ordered accordingly. The order of CGRF dated 16-04-2021 in OP No.113/2020 is set aside. No order on costs.

**ELECTRICITY OMBUDSMAN**

P/034/2021/ \_\_\_\_\_ dated \_\_\_\_\_.

**Delivered to:**

1. The Executive Director, AMOS Centre, Kerala Social Service Forum, Adichira, Thellakom. P.O., Kottayam Dist. 686630
2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Gandhinagar, Kottayam 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.