

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/060/2021

(Present: A.S. Dasappan)

Dated: 30th December, 2021

Appellant	:	The General Secretary, Sirajul Huda Educational Complex, Kuttiyadi. P.O., Kozhikode Dist. – 673508
Respondent	:	Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Kuttiyadi, Kozhikode Dist.

ORDER

Background of the case:

The appellant is the General Secretary of Sirajul Huda Educational Complex, Kuttiyadi and is running the school “Sirajul Huda English Medium School” at Kuttiyadi. An electric connection has been given to the school with consumer number 11166299009227 from Electrical Section, Kuttiyadi. The appellant’s institution is a Self-Financing Educational Institution. Following the judgement of Hon’ble Supreme Court of India in Civil Appeal No. 8350 of 2009 filed by KSEB Ltd. pertains to the tariff category, the appellant was given a short-assessment bill for Rs.1,57,901/- (Energy charge Rs.49,267/- + Surcharge Rs.1,08634/-) on 22-01-2021 being the difference in tariff between LT VIA and LT VIIA for the period from 09/2008 to -6/2010. The appellant approached the Consumer Grievance Redressal Forum (CGRF), Northern Region for the exemption of surcharge from the electricity bill, filing OP No. 137/2020-21 and the Forum in its order dated 13-08-2021 dismissed the petition allowing 12 monthly instalments.

Aggrieved by the decision of the Forum, the appellant filed this appeal petition before this Authority.

Arguments of the appellant:

The appellant has been obeying all the rules and regulations of KSEB Ltd. and remitting electricity charges regularly based on the tariff assigned by the Licensee. Appellant has not filed any petitions independently or jointly before the Hon'ble High Court of Kerala against the tariff category change made by the KSERC from 01-12-2007 onwards. The appellant decided to file petition before Consumer Grievance Redressal Forum against the short-assessment bill as per Regulation 130 (8) of Kerala Electricity Supply Code 2014.

The appellant has been managing the activities of the school by accepting donations from the public, who are willing to donate. The appellant provides free education to the poor students and realizing education fee from other students subject to the requirement of the institution. Hon'ble Supreme Court allowed KSEB Ltd. to assign the tariff category under LT VIIA to Self-Financing Educational Institution from 01-12-2007 vide judgement dated 20-02-20230 in Civil Appeal No. 8350 of 2009 filed by KSEB Ltd. Though KSEB Ltd. had issued direction to the officials for the realization of difference in tariff between LT VIA and LT VIIA on 29-02-2020, the respondent issued such a demand notice only on 22-01-2021, including the surcharge up to the date of demand notice.

As per the tariff order issued by the KSERC vide OP2 of 2013 dated 30-04-2013, OP No. 9 of 2014 dated 14-08-2014, order No. 1007/F&T/2010/KSERC dated 17-04-2017 and OA No. 15/2018 dated 08-07-2019, the appellant had remitted the bill amount prepared with higher tariff.

KSEB Ltd. is trying to collect the difference in tariff rate as "energy charges", but the amount is "short collected amount". The Licensee cannot issue bills in higher rate or a consumer cannot remit the amount in higher rate before the judgement of Hon'ble Supreme Court. If the bill is issued after the judgement of Hon'ble Supreme Court and the amount is not remitted by the consumer within the time limit, then only the amount became "arrear charge" and Regulation 136 (1) and 136 (3) are applicable. The appellant had not received the calculation sheet of the short-assessment.

The appellant had remitted the electricity bill amount then and there itself. The appellant is ready to remit the difference in tariff rate of LT VIA and LT VIIA as per Regulation 152 of Kerala Electricity Supply Code of 2014. The Licensee cannot realize the short-assessment amount for the entire period from 17-08-2009 to 01-05-2013, but only for 24 months without any interest or surcharge.

The appellant requested for order permitting the appellant for remitting the short-assessment towards the difference in tariff rate of LT VIA and LT VIIA for a maximum period of two years from 05/2011 to 04/2013 without any surcharge or interest.

Arguments of the respondent:

The institution is a Self-Financing Educational Institution and was being billed under VIA tariff up to 30-11-2007. Subsequent to the revision of tariff of such Self-Financing Educational Institution to LT VIIA by Kerala State Electricity Regulatory Commission, the appellant too was billed accordingly with effect from 1.12.2007. The bill issued under LT VII A tariff and the interest thereon was disputed by the appellant.

The appeal is filed misusing the due process of law to intentionally drag the matter for long periods so as to escape from the legal liability of the appellant to remit the amount due to these respondents.

Hon'ble High Court of Kerala vide its judgment in W.P.[C] No. 13857/2020 and in W P (C) No 17434/2020 filed by Self-Financing Educational Institutions, established the right of the respondent KSEBL to collect the arrears, both principal and interest, in line with the Apex Court decision in C.A. No. 8350/2009 and connected cases. Accordingly, a detailed circular was issued (vide No. LAI/5243/2009 dated 29.02.2020 of the Secretary [Administration]) by the KSEBL as per the above Apex Court decision to realise the arrears due from the consumers.

In the judgment rendered by the Apex Court in Kerala State Electricity Board and another Vs. MRF Ltd 1996 (1) SCC 597 (1996 KHC 1401) wherein the Apex Court has clearly held that the Board had to suffer financial loss.

The Hon'ble High Court in its judgment in W.P(C) No. 17434/2020 has clearly held that grant of waiver of interest for the period during which the Hon'ble High Court has passed the judgment in his favour, till its reversal by the Hon'ble Supreme Court is not permissible. It has been held that the pendency of the appeal before the Hon'ble Supreme Court pursuant to a favourable judgment from the Hon'ble High Court, only suspended the requirement of payment of arrears to be Board who emerged the ultimate victor in the litigation, the appellant became liable to pay the interest component that occurred on the arrear amount once the Hon'ble Supreme Court reversed the judgment of the Hon'ble High Court. It was further held that this is more so because the interest component is compensatory in nature and one intended to compensate the respondent Board for the delay in receiving payments that are due to it. On the judgment of the Hon'ble Supreme Court reversing the judgment of the High Court, the respondent Board became entitled to the entire amount of arrears together with interest thereon. Thus, the issues raised by the appellant in the appeal petition is covered against him as held in the aforementioned two judgments and no relief can be claimed by the appellant through this appeal petition. Virtually this appeal petition is an abuse of process of the Forum and is liable to be dismissed.

The statutes provide for levying for belated interest against the default committed by the consumer up to the date of payment of the arrears by the consumers. Arrears are to be recovered in terms with Regulation 131 r/w Schedule 1 of the Kerala Electricity Supply Code, 2014. Statutorily payable charges by the consumer cannot be waived by the licensee as the same would affect the revenue of the licensee. Belated payments are to be necessarily accepted upon receiving interest on the amount of bill and is to be appropriated as provided under Regulation 133 of the Supply Code which clearly provides that;

- (1) Interest of electricity duty arrears
- (2) Electricity duty arrears
- (3) Interest on electricity charge arrears
- (4) Electricity charge arrears
- (5) Dues of current month

Hence, the attempt of the appellant before this Authority for challenging huge arrears due to KSEBL is against Regulation 133 of Kerala Electricity Supply

Code framed as per the powers conferred by Section 50 of the Electricity Act, 2003 read with Section 181. As such, the appeal is not maintainable and allowable.

The subject matter of the dispute in the appeal petition originated consequent to the change of tariff of Self-Financing Educational Institution from LT VI A to VII A based on the tariff order of Kerala State Electricity Regulatory Commission dtd. 26/11/2007. The stake holders had approached the Hon'ble High Court for a reversion of tariff from VIIA to VIA and though the Single Bench of the Hon'ble High court rejected the petition they obtained favourable orders from the Division Bench of the Hon'ble High Court. However subsequent to a judgment of the Hon'ble High Court of Kerala regarding the tariff, the petitioner had remitted the current charge-in LT VI A tariff for the period from 09/2008 to 06/2013. Kerala State Electricity Board Ltd. appeal petition before the Hon'ble Supreme Court of India against the aforesaid order of the Hon'ble High Court. On 20/2/2020, Hon'ble Supreme Court of India was pleased to order in Civil Appeal No. 8350 of 2009 and in connected Appeals, restoring the judgment of the Single Judge of the Hon'ble High Court, wherein the Hon'ble High Court found that the notification issued by Kerala State Electricity Regulatory Commission on 26' November 2007 bearing Order No TP 23 and TP 30 of 2007 to be valid. In the above stated notification SFEIs were categorized under the head Low Tension VII (A) commercial category with effect from 1/12/2007. As a result, all SFEIs are required to remit the current charges in accordance with the tariff order of KSERC with effect from 1.12.2007. The appellant being a Self-Financial Educational Institution, was under the realm of VIIA tariff since 1.12.2007 till 01.05.2013.

The Circular from the Secretary (Administration) clearly directs the revenue wing of Kerala State Electricity Board Ltd. to realize arrears along with interest applicable (surcharge). This indicates that the notice issued to the appellant was quite in order and in tune with the direction contained in the official communication.

The issue of notice to the appellant was delayed due to the Covid-19 pandemic situation during which period notices could not be served and generally consumers were allowed deferring of payment of dues and later Kerala State Electricity Board Ltd decided to grant installment facility for remittance of dues.

The appellant was billed under LT VI A Tariff from 09/2008 till 06/2013 which was assigned for Government and aided educational institutions. Hence the difference in energy charge is calculated accordingly and claimed. Thus, it is very clear that the respondent acted only with the law laid by Hon'ble Supreme Court. The judgement of Hon'ble Supreme Court is binding on the appellant since he is representing a Self-Financing Educational institution.

In the above circumstances, it is prayed that this Authority may be pleased to accept the version submitted by this respondent and dismiss the representation.

Analysis and findings:

An online hearing was conducted at 12 Noon on 20-12-2021 with prior intimation to both the appellant and the respondent. Sri. Mohammed Ashraf attended the hearing from the appellant's side and Sri. Babu, Assistant Executive Engineer, Electrical Subdivision, KSEB Ltd., Kuttiyadi from the respondent's side. On examining the appeal petition, the arguments filed by the appellant, the statement of facts of the respondent, perusing the documents attached 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 had not filed any petition before the Hon'ble High Court of Kerala independently or jointly against the tariff category change made by the KSERC from 01-12-2007. Though KSEB Ltd. had issued direction to the officials of the Licensee for the realization of difference in tariff between LT VIA and LT VIIA on 29-09-2020, the respondent issued such bills only on 22-01-2021 along with the up-to-date surcharge. As per appellant, the amount assessed is not an arrear amount, but only a short-assessed amount. The appellant is ready to remit the tariff difference as per Regulation 152 of Kerala Electricity Supply Code 2014.

The respondent argued that the appellant's institution is a Self-Financing Educational Institution and hence the appellant is liable to remit the difference in tariff between LT VIA and LT VIIA with surcharge.

The appellant was given a bill for Rs.1,57,901/- (Energy charge Rs.49,267/- and surcharge Rs.1,08,634/-) vide notice dated 22-01-2021, towards the difference in tariff LT VIA and LT VIIA for the period from 09/2008 to 06/2010. The period of the bill is seen revised from 08/2008 to 06/2013 for the same bill amount of Rs.1,57,901/- with variation of balance Energy Charge of Rs.56,647/- and surcharge of Rs.1,01,161/-. The respondent shall verify the correctness of the bill and make clarity in the bill.

Vide circular dated 29-02-2020, KSEB Ltd. directed all the field officers of the Licensee to implement the tariff rate fixed by KSERC 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 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 LTVIIA, 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.

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.

The short-assessment bill was issued by the respondent as per the judgement of Hon'ble Supreme Court of India in in Appeal No.8350/2009 filed by KSEB Ltd. There was occurred a delay in issuing the short-assessment bill from the part of respondent to the appellant and the reason for which was explained by the respondent.

Decision: -

Since the appellant was given the short-assessment bill as per the judgement of Hon'ble Supreme Court of India and for the reasons detailed above, the appeal petition No. P060/2021 filed by the appellant stands dismissed. The order dated 13-08-2021 in OP No. 137/2020-21 of CGRF, Northern Region is upheld.

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

ELECTRICITY OMBUDSMAN

P/060/2021/ _____ dated _____.

Delivered to:

1. The General Secretary, Sirajul Huda Educational Complex, Kuttiyadi. P.O., Kozhikode Dist. – 673508
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Kuttiyadi, Kozhikode 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, Gandhi Road, Kozhikode