

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/043/2021**(Present: A.S. Dasappan)****Dated: 11th November 2021**

Appellant : Sri. S.N. Rajan Pillai,
Managing Trustee,
M.S.N. Institute of Management & Technology,
Reg. No. 4516/2001,
Chavara, Kollam Dist. 691583

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

ORDER**Background of the case:**

The appellant is the Managing Trustee of the Self-Financing Educational Institution by name "M.S.N. Institute of Management and Technology" located in Chavara in Kollam District. The electric connection with consumer number 3018 is registered in the name of Sri. Narayana Pillai, Vijaya Mandiram, Madappally, Chavara. Following the judgement of Hon'ble Supreme Court dated 20-02-2020 in Civil Appeal No: 8350/2009 filed by KSEB Ltd. against the judgement of Hon'ble High Court of Kerala in the subject of determination of tariff of Self-Financing Institution, the appellant was given a short assessment bill for Rs.3,64,951/- on 08-01-2021 towards the difference in tariff rate between LT VIA tariff and LT VIIA tariff for the period from 12/2007 to 06/2020 including surcharge. The appellant approached the respondent for a revision of the amount and later filed a petition before Consumer Grievance Redressal Forum (CGRF), Southern Region, Kottarakkara vide OP No.11/2021 and the

Forum in its order dated 31-05-2021 had taken decision in favour of the Licensee. Not satisfied with the order of the Forum, the appellant filed this appeal petition before this Authority.

Arguments of the appellant:

Prior to 01-12-2007, tariff of all educational institutions including Government, aided, private and self-financing was LT VIA. The Kerala State Electricity Regulatory Commission vide order dated 26-11-2007, changed the tariff of all Self-Financing Educational Institutions from LT VIA to LT VIIA with effect from 01.12.2007. Aggrieved by this, a group of Self-Financing Educational Institutions had filed writ petitions before the Hon'ble High Court of Kerala challenging the tariff change, which were rejected by the Hon'ble Court.

Thereafter., the licensee filed a Writ Appeal before the Hon'ble High Court of Kerala and the Hon'ble Court, vide judgment dated 17.08.2009 allowed the Appeal and ordered that the tariff of Government Educational institutions will be applicable to all educational institutions. The respondent i.e., Kerala State Electricity Board Limited filed Civil Appeal No.8350/2009 before the Hon'ble Supreme Court of India to set aside the order dated 17.08.2009 of the, Division Bench of the Hon'ble High Court of Kerala.

The Hon'ble Supreme Court of India vide judgment dated 20.02.2020 in Civil Appeal No.8350/2009 and similar civil appeals ordered that the tariff of Self-Financing Educational Institutions from 01.12.2007 is LT VIIA and not LT VIA.

As per the above judgment, Kerala State Electricity Board Limited vide Circular No.LA1/5243/2009 dated 29-02-2020, issued direction to field offices to realize the undercharged amount with interest, due to bills issued in LT VI A tariff. Hence, as per Regulation 134 (1) of the Kerala Electricity Supply Code 2014, short assessment bill for Rs.3,64,951/- dated 08.01.2021 was issued to the appellant along with surcharge and interest from December 2007 to June 2020.

The appellant submitted detailed reply averring, *inter cilia*, that the bill is exorbitant and barred by law of limitation.

The appellant further submitted a representation to the respondents requesting for expedient and personal hearing on the complaint filed by the appellant.

The appellant approached the CGRF, Southern Region, citing that the bill is exorbitant and barred by law of limitation. The complaint also stated that the billing is not in consonance with the provisions of Indian Electricity Act as well as the Kerala Electricity Supply Code 2014 and that therefore, the appellant cannot be charged for supply from 2007 onwards.

The CGRF, in holding that the assessment and bill are valid also held that the appellant is liable to pay surcharge and interest as well, for the period from December 2007 to June 2020.

The said bill is based on no valid grounds and that the calculations made in the bill are vexatious and frivolous due to the following.

The order of the CGRF is ex facie arbitrary, illegal and unsustainable in law. The Forum has erred in holding that the law of limitation and Section 136 (3) of the Kerala Electricity Supply Code, 2014 is not applicable in the instant case.

Section 136(3) of the Kerala State Electricity Supply Code, 2014 states thus:

"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 or electricity supplied".

Though the respondent is entitled under Section 134 (1) to recover the amount undercharged by the respondent, the same is restricted by the limitation under section 136(3) of the Kerala State Electricity Supply Code, 2014.

It is submitted that Section 130(7) of the KSFSC, 2014 is not applicable in the instant case.

The Forum has erred in applying the Kerala Electricity Supply Code, 2014 retrospectively. The matter at hand has been in dispute since 2007. However, the regulations based on which surcharge is proposed to be levied came into

force in the year 2014. The order of the Consumer Grievance Redressal forum therefore effectively applies onerous conditions on the consumer retrospectively. More retrospectivity is not to be given than what can be gathered from expressed or clearly implied intention of the legislature, as stated by Lord Selborne in *Main v. Stark*, it is an established rule is that unless a contrary intention appears, a legislation is presumed not to be intended. to have a retrospective operation and therefore, the levy of surcharge for a period when such regulation was not in 'force is arbitrary and illegal.

The Forum has erred in imposing levy of bills, interest and surcharge as they have not abided by the principles of natural justice.

Without prejudice to the above mentioned grounds, it is further submitted that as per the order issued on 11-02-2021 and the guidelines issued by the Kerala State Electricity Regulatory Commission in the matter of petition for approval of 'One Time Settlement Scheme 2021 filed by KSEBL as OP 40 of 2020, the appellant herein is entitled to the benefit or the One Time Settlement 2021 Scheme, whereby the appellant shall he liable to clear arrears under reduced rates or interest and penalty with clear parameters for the determination of the same.

For these and other reasons to be urged at the time of hearing, it is prayed that this Authority be pleased to:

- (i) Call for records leading to issuance of order dated 31-05-2021 of CGRF and set aside the same as arbitrary, illegal and unsustainable in law;
- (ii) To declare that the demand made by the respondent is arbitrary, illegal, exorbitant., barred by limitation, without jurisdiction and unsustainable in law;
- (iii) To direct the respondent to re-determine the dues, if any from the appellant strictly in accordance with the principles of law, as applicable to the case at hand in the name of equity, justice and fair-play.
- (iv) allow this appeal with consequential reliefs to the appellant.

Arguments of the respondent:

Prior to 01-12-2007, tariff of electric connections of all educational Institutions including Government, Government Aided and Private and Self Financing was LT VI. The Kerala State Electricity Regulatory Commission vide order dated 26-11-2007 changed the tariff of electric connections of all self-financing educational institutions from LT VI to LT VIIA w.e.f 01-12-2007. Some self-financing educational institution consumers had filed Writ Petitions before Hon'ble High Court of Kerala challenging above tariff change and the Hon'ble Court rejected these petitions. Then they had filed Writ Appeal before Hon'ble High Court of Kerala and the Hon'ble Court vide Judgment dated 17-08-2009 allowed the Appeal and ordered that the tariff of Government educational institutions will be applicable to all educational institutions. Kerala State Electricity Board Limited filed Civil Appeal No.8350/2009 before Hon'ble Supreme Court of India to set aside the order dated 17-08-2009 of the Division Bench of Hon'ble High Court of Kerala. The Hon'ble Supreme Court of India vide Judgment dated 20-02-2020 in Civil Appeal No.8350/2009 and similar Civil Appeals ordered that the tariff of self-financing educational institutions from 01-12-2007 is LT 7A and not LT VI.

As per the above Judgment, Kerala State Electricity Board Limited vide Circular No. LA1/5243/2009 DATED 29-02-2020, issued direction to field offices to realise the under charged amount due to bill issued in LT 6 tariff with interest. Hence, as per Regulation 134(1) of Kerala Electricity Supply Code 2014, under Charged Bill for Rs.3,64,951/- dated 08-01-2021 issued to the appellant. The appellant, Sri. N Rajan Pillai, Managing Trustee of the institution, raised objection against the bill and requested to withdraw the same. The above complaint was considered by the Licensee and disallowed and intimated to the appellant.

The main contention of the appellant is that the bill is against the law of limitation and Section 136(3) of Kerala Electricity Supply Code 2014. The tariff of self-financing educational institutions from 01-12-2007 was under the

consideration of Hon'ble High Court of Kerala from 2007 to 2009 and from 2009 to 2020 the matter was before Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India vide judgment dated 20-02-2020 ordered that the tariff of self-financing educational institutions from 01-12-2007 is LT 7A and not LT6. The educational institutions were not fully functional from 03/2020 to 12/2020 due to Covid 19 and Lock Down. Hence the under charged bill was issued on 01/2021. Since the subject was under the consideration of the Hon'ble Courts, the law of limitation and Section 136(3) Electricity Supply Code is not applicable in this case.

Another contention of the appellant is that the assessment is not in conformity Section 126 of Electricity Act. This is an under charged bill and hence the assessment is not as per Section 126 of Electricity Act. The petitioner at last objected the interest claimed in this bill but Hon'ble Supreme Court of India in the final order of the subject case has not barred claiming the interest. Hence there is no mistake in claiming the interest. It is reported that in a similar case (WP(C)No.4584 of 2021), Hon'ble High Court of Kerala in the interim order dated 05-03-2021, directed the petitioner to remit the amount assessed by KSEB Ltd.

Hence, it is submitted that the appellant is not entitled for any relief as sought for in the above petition and requested to the State Electricity Ombudsman to declare that the action of the Respondents are well within the purview of the prevailing rules and regulations and is in order and prayed to dismiss the petition with cost.

Analysis and findings:

An online hearing was conducted at 11-30 AM on 18-10-2021 with prior intimation to both the appellant and the respondent. Sri. Harikumar. G. Nair attended the hearing for the appellant and Sri. P.S. Pradeep, Assistant Executive Engineer, Electrical Subdivision, Karunagappally South attended 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 appellant was given a short assessment bill for Rs.3,64,951/- dated 08-01-2021 for the period of assessment from 12/2007 to 06/2020 as per the judgement dated 20-02-2020 of Hon'ble Supreme Court in Civil Appeal No. 8350/2009 filed by KSEB Ltd. The energy charge portion of the bill is Rs.1,53,997/- and surcharge portion Rs.2,10,954/-.

In the instant appeal, the appellant requests to set aside the order of CGRF, Southern Region dated 31-05-2021 in OP No. 11/2021 filed by the appellant and declare the demand of Rs.3,64,951/- is not sustainable in law and to direct the respondent to re-determine the dues, if any, strictly in accordance with the principles of law.

The argument of the appellant is as follows:

Though the respondent is entitled under Section 134 (1) of Kerala Electricity Supply Code 2014 to recover the amount undercharged by the respondent, the same is restricted by the "Limitation" under Section 136 (3) of the Kerala Electricity Supply Code 2014. Regulation 130 (7) of Kerala Electricity Supply Code 2014 is not applicable in the instant case. The levy of surcharge for a period prior to 2014, the year on which Kerala Electricity Supply Code 2014 came into force, is arbitrary and illegal. The appellant was not given an opportunity for a hearing by the respondent. Without prejudice to the above mentioned grounds, the appellant wants to get the benefit of "One Time Settlement" Scheme announced by KSEB Ltd.

But the respondent argued the case as follows: -

The short assessment bill was issued as per the order of Hon'ble Supreme Court and hence, no valid reason to withdraw the amount. The law of limitation under Regulation 136 (3) of Kerala Electricity Supply Code 2014 is not applicable in this case. The claiming of interest was not barred by Hon'ble Supreme Court in the judgment.

Another question is whether the claim of the KSE Board is barred by limitation under Section 56 (2) of the Electricity Act, 2003 read with Regulation

136 (4) of the Kerala Electricity Supply Code, 2014. Section 56 (2) Electricity Act 2003, which reads as under;

“Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the license shall not cut off the supply of the electricity”.

The Apex Court have interpreted this Section in detail in the reported decisions in Tata Steel Ltd Vs Jharkhand State Electricity Board (2008 KHC7794 AIR 2008 Jha 99) and other and Brihanmumbai Municipal Corporation Vs Yathish Sharma and others (2007 KHC 3784: 2007 (3) KLTSN 11(Bom) where it was held as follows respectively.

“The period of two years as mentioned in Section 56 (2) of the Electricity Act 2003 would run from the date when such demand is made by the Board, raising the bills against consumption of Electrical energy”. “Amount of charges would become due and payable only with the submission of the bill and not earlier. Word “due” in this context must mean due and payable after a valid bill has been sent to consumer”.

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

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-043/2021 filed by the appellant stands dismissed. The order dated 31-05-2021 in OP No:11/2021 of CGRF, Southern Region is upheld.

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

ELECTRICITY OMBUDSMAN

P/043/2021/ _____ dated _____ .

Delivered to:

1. Sri. S.N. Rajan Pillai, Managing Trustee, M.S.N. Institute of Management & Technology, Reg. No. 4516/2001, Chavara, Kollam Dist. 691583
2. Asst. Executive Engineer, Electrical Sub Division, KSEB Ltd., Karunagappally South, 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.