

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/061/2021**(Present: A.S. Dasappan)****Dated: 30th December, 2021**

Appellant : The Manager,
Sirajul Huda English Medium School,
Peringathoor,
Kannur Dist. – 670 675

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Panoor, Kannur 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 Peringathoor. An electric connection has been given to the school with consumer number 11168171004460 from Electrical Section, Peringathoor. 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.1,43,509/- (Energy charge Rs.67,386/- + Surcharge Rs.76,123/-) on 12-01-2021 being the difference in tariff between LT VIA and LT VIIA for the period from 12/2009 to 31-01-2021 towards the difference in tariff between LT VIA and LT VIIA. The appellant approached the Consumer Grievance Redressal Forum (CGRF), Northern Region for the exemption of surcharge from the electricity bill, filing OP No. 136/2020-21 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 12-01-2021, 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 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 demand notice dated 12-01-2021 was issued to the appellant as per the direction received from the Secretary (Administration), KSEB Limited vide Circular No. LAI/5243/2009/205 dated 29-02-2020. The Circular was based on the verdict of Hon'ble Supreme Court dated 20-02-2020 in the Civil Appeal No.8350/2009 and other appeals attached to the case.

The Circular from the Secretary, (Administration) clearly directs the revenue wing of KSEB Limited to realise arrears along with interest applicable (Surcharge). Later the Chief Internal Auditor, KSEB Ltd., vide letter No.CIA/RAOM Cell 111/32/2020-21/2325 dated 22-06-2020, had directed the Regional Audit Officers to verify and report whether the arrears receivable from Self-Financing Institutions, along with interest applicable, were recovered as envisaged in the Circular of the Secretary (Administration). This indicates that the notice issued to the appellant was quite in order and in tune with the directions contained in the official communications under reference.

Issue of notice to the appellant was delayed due to the Covid pandemic situation during which period notices could not be served and generally consumers were allowed deferring of payment of dues. And later the KSEB Ltd. decided to grant installment facility for remittance of dues.

Demand notice amounting to Rs. 67386/- as arrear and Rs. 84165/- as surcharge was issued to the appellant on 26.08.2021 after receiving Order in OP No. 136/2020-21 of CGRF, Kozhikkode. The Appellant is legally bound to pay the electricity charges and interest for belated payment of arrears.

The appellant was billed under LT VI A Tariff from 12/2009 to 03/2017 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 judgment of Hon'ble Supreme Court is binding on the appellant since he is representing a Self-Financing Educational Institution.

It is submitted that any comment on any delimiting factor to the Circular and other directions on behalf of the Board will be *ultra vires* from the part of this office. The Subdivision Officers are not entitled to issue remarks on the decisions of the KSEB Limited. Only KSEB Limited can decide on policy matters and modification of directions once issued by the Secretary (Administration) on behalf of the KSEB Limited.

In these circumstances detailed above, I request the Authority to accept this version filed by this respondent and dismiss the petition.

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 Smt. I.M. Sujatha, Assistant Executive Engineer, Electrical Subdivision, KSEB Ltd., Panoor 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.1,43,509/- (Energy charge Rs.67,386/- and surcharge Rs.76,123/-) for the period from 12/2009 to 31-01-2021 towards the difference in tariff LT VIA and LT VIIA.

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 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. P061/2021 filed by the appellant stands dismissed. The order dated 13-08-2021 in OP No. 136/2020-21 of CGRF, Northern Region is upheld.

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

ELECTRICITY OMBUDSMAN

P/061/2021/ _____ dated _____.

Delivered to:

1. The Manager, Sirajul Huda English Medium School, Peringathur, Kannur Dist. – 670 675
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Panoor, Kannur 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