

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/059/2022**(Present: A. Chandrakumaran Nair)****Dated: 2nd November, 2022**

Appellant : The General Secretary
Tirurangadi Muslim Orphanage Committee,
Tirurangadi
Malappuram Dist.

Respondent : Assistant Executive Engineer,
Electrical Sub Division, KSEB Ltd.,
Thirurangadi, Malappuram Dist.

ORDER**Background of the case:**

The appellant is the General Secretary of the Thirurangadi Muslim Orphanage Committee in Malappuram District. This Orphanage is running an Arabic college named KMMMO Arabic College and this institution is a consumer of the Licensee under the Electrical Section, Thirurangadi with consumer No. 11657810068697. The electricity connection is given under the tariff LT VI A. The Licensee was raising the bill under this tariff and the monthly payments were made without any outstanding. The APTS of the Licensee conducted an inspection of the connection on 11th March 2019 and found that this billing was done under wrong tariff. Accordingly, a short assessment bill was raised for Rs.83,045/-. The appellant has requested to change to the actual tariff applicable on 19-03-2021. Accordingly, the tariff has been revised with retrospective effect and bill of Rs.5,98,088/- has been raised by the Licensee. An amount of Rs.3,62,113/- is only interest in the above bill where the principal amount due to tariff difference is only Rs.2,26,975/-. This has been corrected to Rs.5,55,904/-. The appellant

objected for changing interest as there is no fault from the consumer and ready to pay the principal amount.

Petition has been filed to Consumer Grievance Redressal Forum (NR) and CGRF (NR) vide their order dated 30-06-2022 ordered that the appellant is liable to pay interest except the period for which the delay happened from the Licensee. Aggrieved by the decision of CGRF(N), the appellant filed the appeal petition to this Authority.

Arguments of the appellant:

KMMMO Arabic College, running by the appellant, Thirurangadi Muslim Orphanage Committee, is a consumer of the Licensee under Electrical Section, Thirurangadi. It was under the tariff of LT VIA and used to pay regularly the electricity bills raised by KSEBL. On 11-03-2019, APTS, Malappuram conducted an inspection in this institution and informed that it is under wrong tariff. This institution is a Self-Finance Educational Institution and hence, the LT VIA tariff is not correct. They have raised a short assessment bill of Rs.83,045/-, which includes penal charges also. As KSEB only raising the bill and the consumer is regularly paying the bill, then the penalty on the consumer is not justifiable. However, the said amount has been paid and requested KSEBL on 19-03-2019 to change the present tariff to correct tariff for this institution.

On 09-09-2021, the appellant got another heavy bill for Rs.5,98,088/- and later corrected to Rs.5,55,904/-, which was a shock to the appellant. When the appellant examined the bill, it shows that actual bill amount is only Rs.2,01,632.70 and the surcharge/interest is Rs.3,54,271.29. The actual date on which the bill received by the appellant is only on 9th September 2021. The interest is payable only when the consumer is not paying the bill amount before the due date. As there is no outstanding dues on the consumer's bill whereas KSEB raising bill together with charging interest before due date is not correct.

The appellant requested KSEBL to bill actual amount as per the correct tariff and not with the interest. The appellant is ready to pay the actual bill amount and

not the interest. Charging interest for the bills before the due date is not reasonable and justifiable.

The appellant has approached Consumer Grievance Redressal Forum, Northern Region and issued order. The appellant is not happy with the CGRF order due to the following reasons: -

- 1) According to the order of Hon'ble Supreme Court, KSEBL can raise the bill since 2007 and not mentioned about charging interest.
- 2) When converted into new tariff applicable, the date in which the bill has been raised and interest charged for the bill before raising the bill is not considered by CGRF.
- 3) The period for which the interest calculated is not examined by CGRF. The date in which the Hon'ble Supreme Court order released is considered as the date to charge the interest and not the bill date.
- 4) Charging the interest since 2007 for which bills raised on 09-09-2021 is not at all reasonable and justifiable as all the bills received from 2007 to 2021 have already been paid without any delay.

CGRF ordered that the interest is not to be recovered for one month as per the order of Hon'ble Supreme Court. This is not acceptable and hence, CGRF order is to be squashed and requested to this Authority to exempt the interest component from the bill.

Arguments of the respondent:

The demand notice of Rs.5,55,904/- has been issued to the appellant as per the Hon'ble Supreme Court order in the Civil Appeal No. 8350//2009 dated 20-02-2020. As per the order of KSEERC vide TP 23 and TP 30 of 2207 dated 26-11-2007, the Self Finance Education Institutions have been changed to LT VII Commercial Tariff and the Govt. / Aided educational institutions have been under the tariff of LT VI A.

The different Self Finance Education Institutions and other organizations has approached the High Court of Kerala against the order of KSEERC. The Single Bench

of High Court of Kerala has accepted the order of KSERC. Then these organizations filed the appeal to the Division Bench of High Court of Kerala and the Division Bench has stayed the award of Single Bench. KSEBL has approached the Hon'ble Supreme Court challenging the order of Division Bench of Kerala High Court. Then, Supreme Court accepted the decision of KSERC vide Appeal No. 8350/2009 dated 20-02-2020. Accordingly, the order of KSERC is came into effect w.e.f. 01-12-2007.

In between, KSERC has conducted hearing and changed tariff of Self Finance Educational Institutions from VII A to VIF and Govt./Aided institutions is continued under the tariff LT VIA.

During the stay of Division Bench of High Court of Kerala, the bill raised to the appellant as per the tariff LT VIA and the arrears are to be settled as per the order of Hon'ble Supreme Court and accordingly KSEBL has sent circular dated 29-02-2020. During the pendency of case in the Court, the appellant has utilized the tariff of Govt./Aided institutions and when the Hon'ble Supreme Court taken final decision, the bill has been raised with retrospective effect and these proceedings are only as per the order of the Hon'ble Supreme Court. The bill has been revised as per the order of CGRF in OP No.103/21-22 in which the interest has been exempted for one month.

Until the inspection of APTS, the appellant has been billed as per the tariff LT VIA and accordingly appellant was enjoying the reduced tariff applicable to Govt./Aided institutions. The bill has been raised as per the final verdict of Hon'ble Supreme Court. The difference in tariff was under dispute during the litigation period and hence the surcharge has been applied.

As the Self Finance Educational Institutions obtained the stay order from the Division Bench of Hon'ble High Court of Kerala, these types of institutions are billed under VI A tariff instead of VII A. During the litigation continuing in the Hon'ble High Court in Kerala, the KSERC has conducted special hearing and decided a special tariff LT VIF for the Self Finance Educational Institutions. The consumers are aware of the tariff change and the appellant was regularly paying bills as per the wrong tariff. During the inspection of APTS, a short assessment bill has been

raised and the same has been paid by the appellant. The appellant has not raised any complaint against the short assessment bill after the inspection of APTS.

The bills were raised to these Self Finance Educational Institutions as per the tariff LT VIA during the pendency of litigation and the correct tariff has been applied after the verdict of Hon'ble Supreme Court. This period was under litigation and hence, the time limitation is not applicable. As the bill has been raised as per the provisions of Hon'ble High Court & Supreme Court, the interest cannot be waived off.

Normally, the surcharge is applicable for the bills, which are not paid within the due date. But, in this subject, as the Supreme Court has been accepted the tariff determination of KSERC with effect from 12-01-2007. KSEBL directed all institutions to be billed with interest for the arrears accrued from the difference in tariff. There are cases of charging the bill amount with interest in the similar cases as per the order of Hon'ble Supreme Court and the right of KSEBL to charge the interest also agreed by Hon'ble High Court of Kerala.

This bill is only for charging the arrears due to the litigations in High Court of Kerala and Supreme Court and not the bill raised on taking the meter reading or otherwise. The arrears have been charged as difference in tariff, which being approved and accepted by the Hon'ble Supreme Court. The bill has been revised as per the order of CGRF-NR to reduce the interest of one month and accordingly Rs.52,601/- has been reduced from the payment raised by KSEBL.

In view of the above, the respondent requested this Authority to permit the Licensee to recover the amount as per the revised bill.

Comments of the appellant on the response of respondent

When KSERC has been revised the tariff, it is the responsibility of KSEBL to bill as per the applicable tariff, which is not done by KSEBL. This is a major failure from KSEBL and charging penalty for the failure happened from the Licensee is not justifiable. Whatever the penal charges recovered from the appellant has to be refunded. The appellant is regular in making payment without any delay.

The appellant is ready to pay the charges as per the tariff approved by the Supreme Court, which is the difference in tariff and the heavy penalty charging on this arrear is not acceptable and requested to this Authority not to accept the claim of KSEBL as no payment has been delayed and no payment was outstanding from the bills. Respondent cannot charge the penalty on this arrear. CGRF has not considered the argument of the appellant while releasing the order. Appellant requested this Authority to waive off the unreasonable interest charged by the Licensee with effect from 2007.

If the Licensee would have issued the bill as per the tariff, the payment would have been paid without any delay. How can KSEBL charge interest for the bills which are not issued to the consumers? The amount become due only when the bill is issued and the appellant is not a party to any case or litigation of any Court regarding this matter. As per the Hon'ble Supreme Court order, the appellant is ready to pay the bill amount and not the interest. This institution is a charitable institution, which is working on the contribution of public and the grant from the Govt. Paying of huge amount as interest is a heavy burden to this institution and hence, the same may be waived off.

Analysis and findings:

The hearing of the case was conducted on 11-10-2022 in the conference room in the office of the Dy. Chief Engineer, KSEBL, Manjery, Malappuram Dist. Sri. L. Kunchahammed, Administrative Officer, Thirurangadi Muslim Orphanage Committee was attended the hearing on behalf of the appellant and Sri. Raihanath. O., Assistant Executive Engineer, Electrical Sub Division, KSEBL, Thirurangadi attended the hearing 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 KMMMO Arabic College at Thirurangadi is owned by the Thirurangadi Muslim Orphanage Committee, a Self-Financing Educational Institution. The tariff

applicable for Self-Financing Educational Institution was under LT VIA along with aided and Govt. institutions.

This institution was billed under tariff LT VIA till the revision has been done by the Licensee as per the request of the appellant dated 19-03-2011. The appellant was regular in making payment and no amount outstanding towards the bill amount.

The Section 86 (1) of Indian Electricity Act clearly spelt out the power of State Electricity Regulatory Commission to fix the tariff of supply of electricity. Accordingly, during the tariff fixation, Kerala State Electricity Regulatory Commission has changed the tariff of Self-Financing Educational Institutions as follows: -

- w.e.f. 01/2008 - from LT VI A to LT VII A
- w.e.f. 01/2013 - from LT VIIA to LT VIII
- w.e.f. 01/2014 - from LT VIII to LT VI F

All the consumers in the State are bound to pay the energy charges fixed by the KSERC.

Some of the Self-Financing Educational Institutions approached the Hon'ble High Court of Kerala against this tariff revision and Single Bench ordered in favour of KSERC/KSEBL. In the appeal filed to the Division Bench of the Hon'ble High Court of Kerala, the order was in favour of the Self-Financing Educational Institutions. Then the KSEBL filed appeal to Hon'ble Supreme Court and the verdict was against the Self-Financing Educational Institutions. The Hon'ble Supreme Court quashed the Division Bench order and agreed with the Single Bench order. Though these institutions were billed under the revised tariff, they were paid the amount only as per the tariff LT VIA. There were arrears to the organizations who had approached Court. This institution has not filed the case or not approached the Court in this matter.

Section 134 (1) of Kerala Electricity Supply Code 2014 "Under charged bills and over charged bills" states, "If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the

amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill.”

Section 136 (1) of Kerala Electricity Supply Code 2014 states on “Recovery of arrears and its limitation” as “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”.

As per the Regulations, the Licensee is entitled to charge the arrears with the interest for the belated payments from the date in which such payments became due. Here the question is when the payment became due. It is very pertinent to refer the order of Hon’ble Supreme Court of India in the Civil Appeal No. 7235 of 2009 M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Others. The scope and ambit of Section 56 of Indian Electricity Act 2003 was interpreted by the Apex Court in the aforesaid decision and in the later it was conclusively held that what is covered by Section 56 (1) is the negligence of the part of the person to pay for the electricity and nothing else nor any negligence on the part of the Licensee. Para 11 & 12 of the said order is clearly spelt out that the electricity charges could become “first due” only after the bill is issued even though the liability would have arisen on consumption. Then the period of limitations of two years would commence from the date on which the electricity charges became first due under Section 56 (2). This Hon’ble Court also held that Section 56 (2) does not preclude the Licensee from rising an additional or supplementary demand after the expiry of period of limitation in the case of a mistake or bona fide error.

Here it is clearly mentioned that the amount is due only when the bill or demand is raised to the consumer. As such in this case, there is no amount due from the appellant till the bill is raised. Further, the circular dated 29-02-2020 is very clear that the KSEBL was billing all the Self-Financing Educational Institutions under the revised tariff since 01/2008 and they were paying only as per the tariff of LT VIA as this was questioned in the Court.

The statement of the respondent that the bills were not raised as per the revised tariff because the case pending in the Court is not factually correct. When

the order of Hon'ble Supreme Court was against these institutions, they were asked to pay the difference of billed amount and the amount paid with the interest. The circular is stated that the arrears from the consumers which was the difference from the billed amount is to be recovered with interest.

In the case in hand, whatever the amount billed was paid regularly and there were no arrears and hence, interest is not applicable. In the hearing, it was mentioned that the appellant is ready to pay the principal amount, but not the interest.

Decision: -

From the analysis of the arguments of appellant and respondent and the hearing, the decision is taken as follows:

- 1) The order of Consumer Grievance Redressal Forum (NR) is set aside.
- 2) The appellant is not liable to pay the interest for the arrear amount.
- 3) The appellant has to pay the principal amount without any delay.

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

ELECTRICITY OMBUDSMAN

P/059/2022/ _____ dated _____.

Delivered to:

1. The General Secretary, Tirurangadi Muslim Orphanage Committee, Tirurangadi, Malappuram Dist.
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Thirurangadi, Malappuram 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