

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/088/2022

(Present: A. Chandrakumaran Nair)

Dated: 20th January, 2023

Appellant	:	Sr. Litty Raphel, Mother Superior, St. Paul's Convent, Kuriachira. P.O., Thrissur Dist. 680006
Respondent	:	Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Koorkkenchery, Thrissur Dist.

ORDER

Background of the case:

The appellant Sr. Litty Raphel is the Mother Superior of St. Paul's Convent, Kuriachira and this convent is running a Self-Financing Educational Institution named as St. Paul's School. The appellant availed a LT, 3 phase power connection with consumer No. 1156716003964 in the name of Mother Superior under Electrical Section, Kuriachira with connected load of 11 kW. As per the tariff order of Kerala State Electricity Regulatory Commission dated 26-11-2007, the tariff of the Self-Financing Educational Institutions was changed from LT VIA to LT VIIA. Some of the management of the Self-Financing Educational Institutions including the appellant filed the petition to Hon'ble High Court of Kerala and the Single Bench judgment was favouring the Licensee. When these institutions approached Hon'ble HC Division Bench, they got a favourable order. Then the Licensee filed appeal to Hon'ble Supreme Court of India and the final order of Apex Court was in favour of the Licensee and this order was pronounced on 20-02-2020. The Licensee has not applied the tariff change as the case was pending in the Court. A demand for Rs.46,563/- was raised by the Licensee on 09-11-2020 for a period from 01-06-2008 to 02/2010

and the consumer paid the amount. During the periodical audit conducted by the Regional Audit Office, it was found that the tariff difference with interest was not fully recovered and accordingly a bill was issued for Rs.72,606/-. The appellant contented the short-assessment claim.

The appellant filed petition to Consumer Grievance Redressal Forum (CR) and CGRF (CR) ordered that the bill is to be revised by deducting the interest from 11/2020 to 10/2021 and the petitioner is liable to pay this amount as per the revised bill. Aggrieved by the order of CGRF(CR), the appellant filed the appeal petition to this Authority.

Arguments of the appellant:

The appellant is a consumer of electricity with Consumer No.3964 to the premises of St. Paul's English Medium School, Kuriachira in the name of Mother Superior of St. Paul's Convent, Thrissur. Appellant is regular in remitting the bills issued by the respondent.

While so all on a sudden the respondent issued a demand stating that an amount of Rs.72,606/- is due to the KSEBL as arrears from 06.08.2009 to 02/2010, along with a detailed calculation was also given to the appellant. It is stated that there is under charged amount to the tune of Rs.41,193/- as arrears from 01-06-2008 to 01.02.2010 and interest up to 10/21 is Rs.36,578/-. The demand is raised for the period from 6/2009 to 2/2010. Since the demand is legally unsustainable, the appellant filed a complaint before the Dy. Chief Engineer stating that there was no demand at any point of time to Consumer No. 3964 and all the bills issued to the Consumer No. 3964 was remitted at the given time. Therefore, there is no need for the appellant to remit the alleged demand. Thereafter the Dy. Chief Engineer by letter dated 21-06-2022 informed the appellant that the issue is related with change of tariff of Self-Financing Institutions, which was decided in favour of KSEBL by the Hon'ble Supreme Court on 20-02-2020 and hence, it is stated that direction was issued to collect the difference in the charges collected. In fact, on the basis of the demand issued to Con. No. 3964 on 09.11.2020, the appellant had remitted the entire amount as alleged arrears. Perusal of the demand cum-disconnection notice would

clearly show that the demand is for the period from 01-06-2008 to 01.02.2010, which was remitted by the appellant.

The demand raised is barred by limitation under Section 56 (2) of the Electricity Act, 2003. Assume the demand is not barred by limitation (not admitted) the demand of interest raised is legally unsustainable in the light of Regulation 136 of the Kerala Electricity Supply Code 2014. Apart from that the demand raised is duplication and in fact there is no liability in the light of demand and its payment, since appellant had remitted the amount demanded for the same period.

Since there was threat of disconnection, the appellant filed a complaint before Consumer Grievance Redressal Forum(Central Region) vide OP No.40/2022-23 praying to set aside the demand-cum-detailed calculation by issuing appropriate orders and declare that the demand raised is barred by limitation under Section 56 (2) of the Electricity Act, 2003 and further to declare that the demand of interest raised is contrary to regulation 136 of the Kerala Electricity Supply Code 2014. But the Forum as per the order dated 30.09.2022 disallowed the complaint. However, a small relief was granted by reducing the interest up to 10/2020. The complaint is filed on the following among other: -

The order passed by CGRF, Central Region in O.P No.40/2022-23 dated 30.09.2022 is without considering the grievances highlighted in the complaint and hence liable to be set aside.

The one of the main issues raised by the appellant was regarding the liability to pay interest and according to the appellant the interest starts only from the date of demand. As long as there is no demand it is legally untenable to demand interest retrospectively and the Forum failed to appreciate the above legal aspect.

Forum is failed to consider the fact that the present demand is mere duplication since the entire amount is already remitted.

While allowing the SLP and passing the judgment, the Hon'ble Supreme Court never permitted to demand interest. There was no stay against the collection of the amount from the consumers. Therefore, the interest can be charged only from the date of demand in the light of the Supreme Court judgment and as far as the present demand is concerned, the licensee cannot

demand interest based on the Board circular dated 29.02.2020 which is inapplicable in the case on hand.

The question of limitation is also not considered by the Forum in its correct perspective. Hence for that reason also the impugned demand is liable to be set aside to the extent it is challenged.

For these and other grounds to be urged at the time of hearing, it is requested by the appellant that:

- i) To set aside the arrear bills and CGF order by issuing appropriate orders.
- ii) To declare that the demand raised as per arrear bills is barred by limitation under Section 56(2) of the Electricity Act, 2003 and Regulation 136(3) of the Supply Code 2014.
- iii) To declare that the liability to pay interest starts only from the date of demand.
- iv) To award cost for these proceedings;
- v) To grant such other reliefs that may be deemed just and proper.

Arguments of the respondent:

The subject matter of the petition is issuance of arrears bill for Rs.72,606/- as per internal audit by RAO in connection with the tariff re-categorization of the Self-financing Educational Institutions subsequent to the disposal of the long pending dispute by the Hon'ble Supreme Court of India.

The appellant is running a Self-Financing School in the name St. Paul's School having three-phase service connections with Consumer No. 3964 registered in the name of Mother Superior, St. Paul's School, Kuriachira, in LT VIA tariff for Educational Institution purpose under Electrical Section Kuriachira, with a connected Load 11000 Watts.

As per the Tariff order dated 26.11.2007 issued by the KSERC, with effect from 01.12.2007, the tariff of Self-Financing Educational Institutions including hostels were assigned with LT VII A. The appellant's School along with a group of other Self-financing Educational Institutions approached the Hon'ble High Court of Kerala against the said tariff re-classification as WP(C) 6692/2008 & WP(C) 20245/2009. Even though the Writ Petitions were

dismissed by the Single Bench, the Petitioners subsequently succeeded in appeal. The appellant also filed Appeal as WA 1573/2009 in WP(C) 6692/2008. As per the judgment of Hon'ble High Court of Kerala dtd 17.08.2009 in WA 1063/2009 and connected cases, the Hon'ble Court set aside the tariff classification of LT VII A for the Self-Financing Educational institutions, which was followed in other similar cases including the WP© 20245/2009 filed by the appellant.

KSE Board Ltd. filed Special Leave Petitions before the Hon'ble Supreme Court against the said judgments of Hon'ble High Court of Kerala. In the meantime, it was also decided to issue bills to the consumers concerned in LT VIA Tariff as directed in the judgments of the Hon'ble High Court subject to the decision of the Hon'ble Supreme court in the SLPs to be filed. Civil Appeal No. 4652 /2010 in WA 1573/2009 & Civil Appeal No. 4653/2010 in WP© 20245/2009 were filed against the judgment in the matters of the appellant's School. The Hon'ble Supreme court allowed the Appeals as per judgment dated 20.02.2020 in Civil Appeal No. 8350/2009 and connected appeals, quashed the orders of Hon'ble High Court of Kerala.

The tariff applicable to Self-financing Educational institution including Hostels as LT VIIA as per the tariff order dated 26/ 11/2007 was continued up to 30/04/2013 and changed to LT VIII General (vide order in OP No.2 of 2013 dated 30.04.2013) wef 01/05/2013. The tariff was subsequently changed to LT VIF wef 16/08/2014 (Vide order dated 14-08-2014 in OP No. 9 of 2014) and continues in LT VIF till date.

The tariff of the connections with Con. No. 3964 was changed to LT VIIA applicable to Self-Financing Educational Schools wef 06/ 02/2010 upon getting the High Court order stayed in the interim order by the Hon'ble Supreme Court earlier. The arrears towards the difference in demand for the period was remained as unclaimed since the dispute was pending before the Hon'ble Supreme Court in which the appellant's School was also a party. The Petitioner without any objections remitted the bills issued to them till then in the correct tariff as per the prevailing tariff orders.

As per the common judgment dated 20/02/2020 in the Civil Appeals filed by KSEB, the re-categorization of Self-Financing Educational Institutions to a

separate Tariff distinct from the Government and Government aided Educational Institutions by the KSERC Tariff Order with effect from 1/12/2007 was upheld by the Hon'ble Supreme Court of India. In the light of this decision, the Petitioners are liable to remit the charges in the applicable tariff from 01/12/2007 along with the consequent surcharge prevailed during the period as per rules for the difference amount.

In compliance of the above judgment, the Secretary, KSEB Ltd. vide Circular No. A1/5243/2009/205/dated, 29.02.2020 directed to take actions for collecting the arrears with interest due to the difference in Tariff from the self-financing Educational Institutions concerned.

Accordingly, a demand for Rs.46,653/- was issued to the consumer on 09/ 11/2020 for the period where billing was continued in LT VIA tariff as per the available billing records from 01/06/2008 to 02/2010 and the consumer paid that amount.

The mistakes in the calculation of the arrear demand issued as above and non-collection of the applicable surcharge along with the demand were noticed in the periodical audit by the Regional Audit Office Thrissur and accordingly appropriating the remitted amount as per Regulation 133 of the Supply Code, a short payment of Rs. 72,606/- was arrived to be collected from the consumer as per the audit report. A bill dated 09/05/2022 amounting to Rs.72,606/- with calculation details and relevant page of the audit report was served to the appellant. The bill amount includes the arrears towards the surcharge as calculated as per the prevailed rules in force during the respective period.

The appellant had given complaints regarding this arrear bill to the Assistant Engineer, Electrical Section, Kuriachira and also to the Deputy Chief Engineer, Electrical Circle, Thrissur. The Deputy Chief Engineer had rightly given the reply to the appellant on 08.07.2022.

The complaint filed by the appellant as complaint 40/2022-23 was considered in detail by the CGRF which was disposed as per order dated 30/09/2022 by restricting the interest up to 09/11/2020 i.e., the date of remittance of the arrears bill issued earlier in this regard by the appellant. KSEBL accorded sanction vide order (DD, SCM & IT) No. 1455/2022(LDII)/

8216/2022 dated Tvpm 01/11/2022 for the compliance of the CGRF order. Accordingly, the bill was revised to Rs.66,022/- and was served to the appellant on 09/11/2022. Respondents are having every legal right to recover the revised arrear amount from the consumer towards the balance amount due to the change in applied tariff, which is issued in accordance with law and is liable to be remitted by the appellant.

The difference in demand for the period was remain unclaimed since the dispute was pending before the Hon'ble Supreme Court in which the appellant's school was also a party. As per the judgement of the Supreme Court reversing the judgment of the High Court, the respondent became entitled to the entire amount of arrears together with interest thereon.

The demand raised by the licensee is legal and not barred by section 56 (2) of the Electricity Act 2003 as alleged. The amount is liable to be remitted as per regulations 134 and 136 of Electricity Supply Code 2014 in the light of the Hon'ble Supreme Court judgement. The complaint filed by the appellant as Comp 40/2022-23 was considered in detail by the CGRF which was disposed as per order dated 30/09/2022 by restricting the interest up to 09/ 11/2020 ie the date of remittance of the arrears bill issued earlier in this regard by the appellant.

Kerala State Electricity Board, have the legal right to collect the arrear amount with interest as per regulation 134 and 136 of Electricity Supply code 2014 and the Hon'ble Supreme Court on its judgement dtd. 20.02.2020 enables KSE Board Ltd to collect the arrear amount with interest. Therefore, this demand is sustainable and the consumer is bound to pay this arrear amount as per the bill issued to them.

The grievances in the complaint filed by the appellant as Comp. 40/2022-23 was considered in detail by the CGRF which was disposed as per order dated 30/09/2022 by restricting the interest up to 09/11/2020 i.e., the date of remittance of the arrears bill issued earlier in this regard by the appellant. The demand raised by licensee is legal and not barred by section 56 (2) of the Electricity Act 2003 which is liable to be remitted as per regulations 134 and 136 of Electricity Supply Code 2014 in the light of the Hon'ble Supreme Court judgement.

Regulation 136 sub clause (1) of the supply code 2014 allows the licensee to collect the arrear amount with interest from the due date of arrear. Here the due date of arrear starts from 08/2009 and consequent to the Hon'ble Supreme Court on its judgement dated 20.02.2020 enables KSE Board to collect arrear amount with interest from due date. Hence, the arrear bill issued by the licensee is legal and the consumer is bound to pay the arrear amount with interest. The Kerala State Electricity Board Ltd had issued this bill based on the final disposal of the long pending dispute in the matter of tariff categorization of the self-financing educational institutions by the Hon'ble Supreme Court which enables KSE Board Ltd. to collect the arrear amount with interest. This has been upheld by Hon'ble High Court in various judgments.

The plea of the Complainant regarding the bar of limitation for the demand is without noticing the settled legal position in the matter. The difference in demand for the period was remained as unclaimed since the dispute was pending before the Hon'ble Supreme Court in which the Petitioners School was also a party. As per 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.

There are no merits in any of the grounds raised in the petition and is liable to be dismissed as such. The CGRF has rightly disposed the complaint filed by the appellant. For the foregoing reasons, it is requested by the respondent that this Authority may be pleased to dismiss the petition and to direct the appellant to pay the amount due to the KSE Board Ltd.

View of the appellant against arguments of respondent

The Ass. Engineer issued a bill dated 09.05.2022 for Rs.72,606/- for the period from 01-06-2009 to 01.02.2010 out of which it is stated that Rs.36,578/- is the undercharged amount and balance amount of Rs.36,028/- is the interest up to 10/2021. The above demand was challenged by way of filing complaint before CORF, Central Region, Ernakulam as OP No.40/2022-23 by taking legally sustainable grounds. However, the CGRF, Central Region, Ernakulam declined to interfere with the assessment and granted a limited relief of payment

of interest only up to 10/2021. Being aggrieved the complainant filed the above numbered petition before this Hon'ble Forum. The main grounds taken are:

- a) The arrear bill was issued admittedly based on audit. The undercharged amount was raised for the first time only on 09.05.2022. It is the settled legal proposition that the electricity charges would become 'first due' only after the bill is issued to the consumer, even though the liability to pay may arise on the consumption of the electricity. The above position is settled in Rahamatullah Khan's case (2020) 4 SCC 650.
- b) The respondent have demanded the undercharged amount of Rs.46,563/- as per demand dated 09.11.2020 in the light of the decision of the Hon'ble Supreme Court and the consumer remitted the amount. The respondents shall not be permitted to issue demands at their whims and fancies and are estopped from demanding the arrears in the light of the original assessment dated 09.11.2020.
- c) The demand is already raised and remitted then and there. Therefore, the present demand is duplication.
- d) The entire demand is legally unenforceable.

Analysis and findings:

The hearing of the case was conducted on 21-12-2022 & 09-01-2023 in the office of the State Electricity Ombudsman, Near Gandhi Square/BTH, Ernakulam South. Advocate Sri. Julian Xavier. J. was attended the hearing on behalf of the appellant and Sri. Rajesh. M.R., Assistant Executive Engineer, Electrical Sub Division, Koorkkenchery and Sri. James. T. Paul, Nodal Officer (Litigation), Electrical Circle, Thrissur and Sri. Sandeep. M.P., Assistant Engineer, Electrical Section, KSEBL, Kuriachira were 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 appellant is the Mother Superior of St. Paul's Convent, Thrissur and the convent is running an English Medium School and availed a three-phase

connection with consumer number 3964. The connection is in the name of Mother Superior and the connected load is 11000 Watts. The tariff applicable was LT VIA up to 30-11-2007. As per the tariff of Kerala State Electricity Regulatory Commission dated 26-11-2007, the Self-Financing Educational Institutions were brought under the tariff LT VIIA. The appellant along with other group of Self-Financing Educational Institutions approached Hon'ble High Court of Kerala against the tariff order of KSERC. Even though the petitions were dismissed by the HC Single Bench, they got a favourable order from the Hon'ble HC Division Bench. Then the Licensee, KSEBL filed the case to Hon'ble Supreme Court and the judgment of the Hon'ble Apex Court was in favour of the Licensee. According to the order of Hon'ble Apex Court dated 20-02-2020, the Licensee had issued circular dated 29-02-2020 to all Section Officers to recover the tariff difference since 01-12-2007 with interest.

The various tariff decided by KSERC for the Self-Financing Educational Institutions are as follows: -

<u>Effective date</u>		<u>Tariff change</u>
Up to 30/11/2007	-	LT VI A
w.e.f. 01/12/2007	-	from LT VI A to LT VII A
w.e.f. 01/05/2013	-	from LT VIIA to LT VIII
w.e.f. 16/08/2014	-	from LT VIII to LT VI F

As per the interim order of the Hon'ble Supreme Court, the tariff of appellant's school was changed to VIIA w.e.f. 06-02-2010. On getting the final order from the Apex Court, demand notice has been sent to appellant for the arrear amount for the period where the billing was continued in LTVIA. An arrear demand for Rs.46,653/- was issued on 09-11-2020 to the appellant and the same has been paid. During the periodical audit conducted by the Regional Audit Office, Thrissur, it is found that the arrear amount calculated for the period from 06/08/2009 to 05/02/2010 was not correct and accordingly a short assessment bill for Rs. 72,606/- has been raised to the appellant on 09-05-2022.

In the case in hand, there is an abnormal delay happened from the respondent in raising the arrear bill though the final order was pronounced on 20-02-2020. The above said demand notice was issued after 27 months of the

final order. The Licensee cannot charge the interest for the period when the delay in raising the bill was happened from the Licensee. Accordingly, CGRF ordered that the Licensee has to recover the interest only up to 10/2020.

Section 134 (1) of Kerala Electricity Supply Code 2014 that “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.”

The Section 136 of Kerala Electricity Supply Code 2014 deals with the recovery of arrear and its limitations as follow:-

Section 136 (1) 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.

Section 136 (2) The licensee may prefer a claim for such arrears by issuance of a demand notice and the consumer shall remit the arrear amount within the due date indicated in the demand notice.

Section 136 (3) 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 for electricity supplied.

The above Sections are very clear about the right of Licensee to recover the arrears with interest.

The contention of the appellant that the demand notice is barred by limitation under Section 56 (2) of Indian Electricity Act 2003. There is judgment on the limitation period as per Section 56 (2) of Indian Electricity Act 2003 in the case of Civil Appeal No. 7235 of 2009 of Hon'ble Supreme Court in the case between M/s. Prem Cottex Vs. Uttar Haryana Bijli Vitran Nigam Ltd. & Others. This is not applicable in this case as the delay in issuing the bill was due to the case pending in the Court.

In the case in hand, the appellant is well aware that the tariff applicable for this institution w.e.f. 01-12-2007. The delay in raising the demand notice was only because of the cases pending in the Court and the appellant was also a party to this. The interest is a compensatory in nature to cover the financial

losses suffered by the Licensee due to delay in raising the bills due to the Court case.

It is also pertinent to note the order of the Hon'ble HC of Kerala in the case WP(C) No.2403 of 2022 between Kaithakkuzhy Educational Association Vs. KSEBL, in which the Hon'ble High Court of Kerala upheld the decision of this Authority in the petition No. P055/2021. The decision of this Authority in this case is that the Consumer is liable to pay the arrears with interest. This is also similar to that of this case and hence, the appellant is liable to pay the arrears with interest up to 10/2020.

Decision: -

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

- 1) Agree with the order vide OP No.40/2022-23 dated 30.09.2022 of Consumer Grievance Redressal Forum (CR).

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

ELECTRICITY OMBUDSMAN

P/088/2022/_____ dated _____.

Delivered to:

1. Sr. Litty Raphel, Mother Superior, St. Paul's Convent, Kuriachira. P.O., Thrissur Dist. 680006
2. Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Koorkkenchery, Thrissur 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, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.