

## STATE ELECTRICITY OMBUDSMAN

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### REPRESENTATION NO: P/173/2010.

(Present: T.P. VIVEKANANDAN)

**Appellant** : Smt.T.M.Bindhu,  
Centre Head & Director, NIIT, Irinjalakuda Centre,  
Blaze Court, Irinjalakuda-680 121.

**Respondent** : The Assistant Executive Engineer,  
Electrical Sub Division, KSEB, Kattoor, THRISSUR (DT).

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### ORDER

#### **Background of the Case:-**

The petitioner is conducting various Computer Training Courses under the franchisee of 'NIIT'; a Computer oriented Institution, and has availed an Electric Service Connection for the said purpose, with consumer no.11081 under Electrical Section No1, Irinjalakuda. The present tariff of the unit was LT VI B, obtained treating it as a Computer Institute. While so, the tariff was changed to LTVIIA in Feb: 2010 as per the remarks contained in an Audit Report. The centre of the dispute is whether the consumer is running a Computer Training Institute (as argued by the consumer) or a Self Financing Educational Institution (as alleged by the Respondent), and the applicable Tariff there of, since the tariff varies with the purpose for which the electrical energy is being used. If it is a Computer Training Institute, the Tariff shall be LT VI B and if it is a Self Financing Educational Institution (SFEI), the tariff will be the commercial one i.e. LT VII A, which has a higher rate for the energy consumed than the former one.

It is stated by the Respondent that, with the Tariff revision brought out in 12/07 with the approval of Kerala State Electricity Regulatory Commission (KSERC) the Self Financing Educational Institutions were brought under LT VII A Tariff category. But the tariff change that has to be effected on the Appellant was left out due to omission. Later, as per the remarks contained in an Audit Report, the KSEBoard initiated action and changed the Tariff of the consumer to LT VII A in 2/2010 with retrospective effect from 12/2007 and raised a short assessment bill, amounting to Rs114448/-, related to the period of 12/2007 to 2/2010. It is also noted that the respondent have inspected the site on 28.8.2010 and prepared a site mahazar detailing the present nature of activities and connected load of the consumer's premises.

#### **Argument of the Petitioner:-**

She is conducting a Computer Training Institute and the Electric Service Connection for the same was given under LT VI B Tariff. While so, the consumer was served with an invoice dated 19-04-2010 for Rs.1, 14,448/- as additional amount. The reason cited was, the tariff was changed to LT VII A from 01-11-

2007, treating the Institute as a self financing institution and the amount pertains to the arrears due from that date. She lodged complaint with the Respondent, the main point being that she is running a Computer Training Institute and not a self financial institution and hence the tariff change is wrong. But the same was not accepted by the Respondent.

Aggrieved by the same, the consumer filed complaint before CGRF, Central region, Ernakulam and the Forum (CGRF), without properly considering the contentions raised by her, dismissed the petition, as per order dated 23-10-2010. Being deeply aggrieved by the same, the petitioner filed the representation before this Authority, on the following grounds;

1). The Institution run by the complainant is neither a self financing Institution nor an Engineering institute for the purpose of tariff fixation, as alleged by the respondent. As a matter of fact, the courses offered by the Institute do not have the affiliation or approval of any of the Universities or AICTE (All India Council for Technical Education) or any other Technical Board. Instead, NIIT is a private institution offering various training programs in various computer applications/ Operations / Soft wares and the certificate issued by them are their own. There fore it cannot be treated at par with Self Financing Institutions included in the LT VII A category.

2).Moreover, merely because of the fact that it is offering modern techniques and facilities to its students, it cannot be said that, it is not a computer training institute. Further in the Tariff order 2007, there is nothing to indicate there in that, an institute which is using modern technology and facilities for computer training cannot be treated as a Computer Institute and there is still provision in the Tariff Order, 2007, to give LT VI B for a Computer Training Institute. The KSEB has no authority to exclude a Computer Training Institute from LT VI B list for their own reasons, once the KSERC has framed the rules and regulations for the Tariff fixation.

3). Since there is specific entry called 'Computer Training Institutes' under LT VI B Category in the Tariff order, 2007, it is sure that KSERC wanted to give special and separate treatment to the Computer Training Institutes. Hence the present classification made by the respondent is not correct and has to be set aside.

4). The Forum has erred in observing that the petitioner has raised a contention that only LT VI A consumers can be changed into LT VII A. No such contention was raised by us since there is specific classification of tariff for computer institutes as LT VI B, and our contention was to allocate LT VI B Tariff to all Computer Institutes, irrespective of the fact, whether it is self financing or not.

5). The Forum has erred in observing that when the fees are high, the institutions have to be treated as a self financing institution. The fee structure is immaterial for the purpose of tariff classification as it is not contemplated in tariff order, 2007.

6). The Forum has erred in deciding the issue, by taking note of the affordability of the consumer to pay the charges. This is not a criteria, which is relevant for determination of tariff and what is relevant is only the activity being done in the premises of the consumer. The Section 62 (3) of Electricity Act 2003, lists the relevant considerations for tariff fixation and the criteria of affordability to pay, income Tax and turnover are not included in this. The KSEBoard can not import new concepts for classifications.

7). There are superior court rulings that" if a special provision is made on a certain matter, that matter is excluded from the general provisions. That is to say, it is one of the cardinal principles of interpretation of Law, that when the wording of one entry is general and another particular, effect should be given to both entries by reading general as including only the residue after excluding the

particular. Here, the expression 'self financing educational institutions as contained in LT VII A category, is a general expression where as the expression 'Computer training institute' is a special entry in LT VI B category, relating only to computer training institutes. Hence in the light of settled legal principles as mentioned above, the only tariff that can be assigned to the institution of the complainant is LT VI B and not LT VII A.

8). Hon: CGRF found that the appellant is running, an IT based advanced computer training institute, relating to advanced computer courses and hence it is a self financing educational institution and confirmed LT VII A tariff. As a matter of fact all the educational institutions which are managed by private funds are self financing educational institutions. In that sense ours also belong to it and the question is whether all self financing institutions will come under commercial tariff? Merely because it is managed by private funds it does not mean that it is not a computer training institute. But as per the Tariff order, there is a specific entry for Computer institutes irrespective of whether it is run by Govt or by a private management and the applicable tariff shall be LT VI B.

9).The forum's finding that if the consumer is doing business in two or more categories, the consumer has to be billed at the highest tariff rate is not true. The consumer is carrying out only one activity and that is computer training. Even the respondent has a case that she is doing any other activity. Hence the finding is not correct.

10). It is stated that the tariff change was effected based on an Audit Report. As a matter of fact, Audit Report can not be a reason for revising the invoices already issued. As per section 24(5) of the supply code, the Licensee has to establish that the consumer was under charged for raising a short assessment bill. The Licensee has not established the under charging and there fore the change of tariff was effected merely on assumptions. The Audit report is based on entries in the records/registers of respondent only. No action can be taken under Regulation 24(5) on the basis of Audit Reports.

For the above reasons, the forum may set aside the order of CGRF and the impugned bill.

**Argument of the Respondent:-**

(1) The petitioner is a consumer vides No: 11108/IJK No: 1 and is having a connected load of 17 KW under LT VI B tariff. The average monthly energy usage is around 849 units. The petitioner is running an advanced Educational Institution in Information Technology with all modern facilities and teaching aids and collect substantial amount towards course fees from the students. It is not a computer training institutes but an advanced IT institute.

(2)The institution of the consumer comes under the category of self financial educational institution and the tariff applicable is LTVIIA from 12/07 onwards. But due to omission, the appellant continued in LT VI B tariff and in the month of 2/10,the appellant's tariff was changed to LT VII A with retrospective effect from 12/07 and a short assessment bill dated 19-04-2010 for Rs.1,14,448/- was served on the consumer, as per Regulations 24 (5) of KSERC.

(3) The CGRF has dismissed the petition filed by the consumer and the order of forum is sustainable.

(4) The consumer conducts a number of Degree level courses in IT in her institution. It is equipped with, as per the "New Era Engineering Colleges" level. There are separate class rooms, machine rooms, lecture rooms, office room, student rooms etc. with A/C fitting in class rooms in the said premises. The non recognition of institute or non validity of the degree course is not the criteria for a self financing institution, but only the large amount collected, for the courses, as fees from the students determine it. The petitioner is conducting GNIIT course, a degree level IT course which has its own validity in the IT

filed. It is not a Computer Training Centre. Hence applicable tariff is LT VII A, since KSERC has fixed LT VII A tariff for the self financing Educational institutions.

(5) Originally, the Electric Service connection was given to the consumer under LT IV- Industrial tariff, for running a software development unit. Later in 2004, the Anti Power Theft Squad (APTS) conducted an inspection of the unit and found that the premise is being used for running an educational institution and a clear case of misuse of energy was detected. The Tariff was changed to LT VI B category consequent to this inspection.

(6) Based on the tariff order in 12/07, all other similar institutions were changed to LT VII A. But this consumer was left out and continued to remain in LT VI B tariff till 2/10. The audit wing of the office of the Accountant General (AG), Kerala, pointed out in their report in 2/10, this discrepancy in tariff fixation of the consumer. The Board subsequently changed the tariff to LT VII A with retrospective effect from 12/07 and decided to realize the lost amount due to wrong tariff fixation.

(7) The KSEB officials inspected the premises on 28<sup>th</sup> August 2010 and prepared a site mahazar. The institute has 10 rooms with modern equipments and facilities. As per Regulation 24(5) of Kerala Electricity Supply Code, 2005, the Licensee can recover the under charged amount from the consumer by issuing a notice. Thus an invoice for Rs.1, 14,448/- dated 19-04-2010 was issued to the consumer and he is liable to remit the same.

(8) The NIIT is just like any other IT related Institution and not a computer training centre. The computer training institutes offer, basic level courses of computers, so as to spread the computer literacy among common people. But the NIIT has its own curriculum and syllabus. They are conducting Degree and PG level courses, which have validity all over the world, and such type of institutions does not come under the category of computer institute.

Hence the appeal petition may be dismissed with a direction to remit the short assessment bill amount issued to the Petitioner.

#### **Analysis and Findings:-**

Both parties were heard on 15.03.2011, in my chamber at Edappalli, Kochi. On perusal of the Appeal petition of the complainant, the statement of facts submitted by the respondent, the averments made during the hearing and the argument notes presented by both parties and on an analysis of the case with the documents submitted, I come to the following conclusions and decisions there of.

The main contention in the Appeal case is regarding the relevant tariff applicable to the petitioner, who is running a franchisee of NIIT, a renowned computer training institution. The respondent alleges that it is a Self Financing Educational Institution (SFEI) and there fore the applicable tariff is LTVIIA commercial, where as the petitioner insists that it is a Computer Institute, imparting computer training to students and there fore the tariff applicable is LT VI B only.

On verification of the brochure of NIIT, it is seen given in it the following information/details about the Institution, the gist of which is as follows;

**- In 1981, NIIT ushered a revolution in India by pioneering computer education. Over the years it has emerged as the number one IT Education provider in India and across Asia, with our own curricula and syllabus, and set global standards. A leader in IT training and education in India, it aspires to become the world number one in the IT Education Market and has expanded from a single centre entity to a global IT corporation.**

From the above statements, it appears that NIIT is running a Computer related educational institution in a big way. They also claim to be the No 1 IT (Information Technology) Education provider in India, with its own curricula and syllabus set at global standards. These statements portray it as having the status of a Self Financing Educational Institution.

The Respondent's main contention is that, NIIT conducts a number of degree level courses and is an advanced educational institution with modern facilities and teaching aids. It is equipped as per 'New era Engineering College Level' and collects substantial amount as course fee from students and therefore falls under the category of a SFEI and the applicable tariff as LT VIIA, argues the opposite party. I don't think this is a correct interpretation of SFEI merely on the fact that it conducts advanced IT degree level courses with modern facilities and collects higher fees from student.

The term Self Financing Educational Institution (SFEI) as it appears today is an Educational Institution under Private Management using its own funds but supposed to share, a certain percentage of its seats (say 50%) to Government selected students admitted under nominal fees while other students selected by the Management/ Govt will have a higher fee structure and these fees structures shall be decided by a Govt appointed committee. But these are not the cases prevailing with the NIIT institutions, working in Kerala, I presume. More over, I have no document before me to prove or even suggest that the NIIT is a Self financing Educational (SFEI) Institution, other than the argument of the Respondent as stated above. The NIIT itself is boasting them as a prestigious Educational world Institution. But neither the claim of NIIT nor the argument of the Respondent will fit into the concept of a 'Self financing Educational Institution' as it appears today from the Media Reports or apprehended from the statements of Govt Authorities.

The literary meaning for Institute (n) is given as the Institution for education, research etc. Hence the word meaning for computer institute implies it as an institution for computer education and research which includes the Theory, Experiments and Practice of its usage. In that sense, a computer institute is the one which provides, computer education and its practical training, and hence even though NIIT provides IT education with its own curricula and syllabus in a big way at world standards, it seems to fall under the category of 'institute' only and hence NIIT can be termed as a computer institute rather than a Self Financing Educational Institution.

As argued by the counsel for the Petitioner, the Tariff order, 2007, contains specific and separate tariff applicable for a Computer Institute and for a Self Financing Educational Institution. In the absence of a clear and well defined definition for a SFEI and moreover the Institution 'NIIT' is imparting only computer education and its training, which comes under the term 'institute' as well, I am inclined to accept the argument of the counsel that when there is a specific entry of tariff for computer institute as LT VIB it shall be made applicable.

#### **Decision:-**

Based on the analysis of the case and its findings done as above, I come to the conclusion and decision as follows. The consumer NIIT is to be treated as a Computer Institute and there fore the applicable tariff is LT VIB only. The Respondent's action in having changed the tariff of the consumer from LT VIB to LT VIIA is found to be not in order. Hence the short assessment bill, raised against the

consumer on this account, for Rs114448/- dated 19.4.2010 has to be cancelled. Having decided and ordered on 23<sup>rd</sup> June, 2011, the Appeal Petition stands disposed of accordingly. No order on costs.

**ELECTRICITY OMBUDSMAN.**

**NO: P/173/10/ 894 /Dated 24.06.2011.**

Forwarded to:

1. Smt.T.M.Bindu,  
Centre Head & Director, NIIT, Blaze Court, Irinjalakuda,  
Thrissur Dt- Pin: 680 121.
2. The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard, Kattoor, Thrissur (DT).

Copy to:

1. The Secretary.  
Kerala State Electricity Regulatory Commission,  
KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-695 010.
2. The Secretary,  
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3. The Chair person,  
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