

## THE STATE ELECTRICITY OMBUDSMAN

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### **APPEAL PETITION NO. P/322/2012.**

(Present T.P. Vivekanandan)

Appellant : Rev: Fr. Lenin Fernandez,  
Manager, Viswaprakash Central School,  
Mangattukadavu, Thirumala P.O,  
Thiruvananthapuram-695 006.

Respondent : The Assistant Executive Engineer.  
Electrical Sub Division, KSEBoard,  
Poojappura, Thiruvananthapuram-695 006.

### **ORDER.**

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

The appellant is the manager of a CBSE school having 3 numbers of electric connections under Electric Section, Thirumala, Thiruvananthapuram. Based on the Audit report the tariff of Consumer Nos.12837 and 15027 were changed from LT-VI A to LT-VII A tariff, which is applicable to Self financing educational institutions. Accordingly, short assessment bills for the period from 12/2007 to 4/2012 for Rs. 152088/- and Rs. 146190/-, were issued to the said consumers respectively, to recover the differential tariff rate amount.

Aggrieved by above action, the consumer filed petition before the CGRF (south), Kottarakkara, vide OP No.799/2012. The Forum vide order dated 29.09.2012, has dismissed the petition and allowed ten interest free installments to the petitioner for clearing the bills. Still aggrieved by the decision of CGRF, the appellant has submitted the Appeal petition before this Forum.

#### **Arguments of the Appellant: -**

(1). The complainant has three consumer numbers in the premises of Viswaprakash Central School under Electrical Section, Poojappura. They are 12837, 15027 & 15710 and out of these three Nos. the complainant was served with two notices dated 28.11.2011, for tariff change effected from LT VI (A) to LT VII (A), on 30.11.2011. For consumer no: 12837, the tariff was changed from 12/2007 onwards and the Assistant Engineer wanted to remit the sum of Rs.137053/- as arrears. And for Con. No. 15027, the tariff change was effected from 10/2009 and the Assist. Engineer, wanted to remit a sum of Rs.112853/- as arrears. Both these notices are marked as Exh- P1& P2. The third Consumer No.15710 is already in LT VII A tariff from the date of connection. The Complainant had

approached the Assist. Engineer, and Assist. Executive Engineer, Poojappura, KSEB but of no use. Hence, on 19.12.2011, a representation was made to Deputy Chief Engineer (URBAN), which was forwarded to the Executive Engineer to redress the grievance of the complainant. But nothing was done and on the contrary enhanced the bill as; (i) Con.No.12837- Rs.152088/- and (ii) Con. No. 15027- Rs.146190/- and wanted to remit the bills immediately in order to avoid disconnection. Aggrieved by this, he filed petition before the CGRF (South) Kottarakkara, vide OP.No. 799/2012. But the CGRF miserably failed to consider the highly belated tariff order of the KSEB, served after four years to the party and is bad in law and hit by law of limitation as per section 56(2) of the Act. (2). The impugned order of KSEB to effect tariff change without the consent of the consumer is quite illegal. The connection is given under LT VI A tariff and not as LT VII A. First, the KSEB has to give a connection in LT VII A and change tariff with the consent of the consumer. Otherwise it is the gross violation of natural justice.

(3). The impact of two notices giving a big burden to the consumer and its retrospective effect is irregular and bad in the eye of law. The CGRF ought to have frozen the proceedings of the Assist. Executive Engineer, as the matter is subjudice pending decision by Apex court.

(4). Though CGRF noticed considerable laches and negligence on the part of the officers of the KSEB in connection with tariff change and its amount, nothing has been reflected in its order, the Forum has simply dismissed the complaint and the order is against their own findings and discussion which is in fact a funny order.

**Reliefs sought for: -**

To set aside the order of the CGRF South in OP. 799/2012 and remand the case back to the Assist. Executive Engineer, Electrical Sub Division, Poojappura, for the tariff change from LT VI-A to LTVII A as a fresh one with the consent of the consumer and set aside all the proceedings in Exh- P1 & P 2.

**Arguments of the Respondent: -**

(1). There service connection with consumer nos: 12837, 15027, 15710 were effected in the premises of Viswaprakash Central School and the details are as given below.

<u>Sl.No.</u>	<u>Con.No.</u>	<u>Name &amp;Address.</u>	<u>Existing Tariff.</u>	<u>Date of Connection.</u>	<u>Remarks.</u>
1	12837	Director, Grace jubilee memorial Boys Home.	LTVII A	16.01.2004	Tariff change from LT VIA to LT VII A on 02.05.2012.
2	15027	Director, Viswaprakash English Medium, School, Mangattukadavu.	LTVII A	26.03.2007	Tariff change from LT VI A to LT VII A on 03.11.2011
3	15710	Fr. Wilfred, TC 8/419/5 Mangattukadavu.	LTVII A	21.06.2008	

(2).Based on the report of the Audit party and as per Board order dated 28.05.2009, the tariff of consumer No.12837 and 15027 were changed from LT VI A to VII A, which is applicable to Self Financing Educational Institutions (SFEI). Accordingly a short assessment bill for the period from 12/2007 to 9/09 amounting to Rs.69241/- was issued to the Con. No.12837 and Rs.102718/- to Con. No.15027. The consumer remitted the amount of Rs.102718/- against consumer No.15027 on 27.10.2009 and did not remit the other amount. The audit conducted during 09/2011 has detected that both the consumers are still billed under LT VI-A tariff and accordingly, a short assessment bill for the balance period from 10/2009 to 10/2011, amounting to Rs.146190/- was issued to Con. No. 15027 and for the period from 10/2009 to 04/2012 amounting to Rs.81047/-, to Con. No.12837. The consumer has not remitted the above bills.

(3). While issuing the bill, the consumer was informed that the short assessment was done due to the re-fixation of tariff applicable to self financing educational institutions. Copy of the Board order was also issued to the consumer and is marked as document A.

(4). On 28.11.2011 two notices were issued to the consumer (No.12837 and 15027) intimating the change of tariff as per Board order dated 28.05.2009 and the details of short assessment made and requested to report grievances, if any, with in a week. The Manager of Viswapraksash Central School lodged a request to change the tariff back to LT VI A and copies are marked as document B, C and D respectively. The reply to the representation filed before the Deputy Chief Engineer was issued directly to the Manager. Copy of the letter is marked as -E.

(5). Since the demand raised against the consumer is as per rules, no exemption can be given and the Assistant Engineer vide letter dated 26.07.2012 has informed the consumer to remit the bill. The copy of the letter is marked as document- G. The Manager has filed two representation dated 08.06.2012 and 19.06.2012 to the Asst. Engineer requesting further time for remitting the amount. The consumer was also informed vide letter dated 01.03.2012 regarding the facility of settling the arrears under one time settlement scheme offered by the Board.

(6). The tariff change was made as per BO (FM) No.1404/2009 (KSEBoard/TRAC/Comp/09/06), dated 28.05.2009. There is no negligence or lapse from the part of Officials. The official has acted only as per the rules in force. The consumer is liable to remit the short assessment amount made under LT VII A tariff; since the tariff applicable to SFEI is LT VII A.

**Analysis and Findings: -**

The Hearing of the case was conducted in my chamber at Edappally, Kochi on 14.05.2013. The learned Advocate, Sri. Jose Varghese, represented for the appellant and Sri. R R Biju, the Asst. Exe. Engineer, Poojappura, appeared for the respondent. On perusing the Petition, counter statement of the Respondent, documents attached and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

**(i).** The main contention of the Appellant is based on the Limitation or time bar under Sec. 56(2) of Electricity Act, 2003, which implies as; 'The licensee shall not recover any arrears after a period of two years from the date when such sum become first due unless such sum has been shown continuously in the bill as recoverable as arrears of the charges of electricity supplied'. Hence *the point is*; 'when will the electricity charges become due for payment i.e. date from which the electricity charges are 'liable to pay' by the consumer, which is also termed as the 'due date'. This 'due date' is an important date as far as both consumer and KSEB (Licensee) is concerned.

**(ii).** The Judgment in a Petition filed before the Hon High Court, Bombay, vide case No: 3784/2007, has dealt with the 'due date' issue in detail and pronounced its considered opinion. The same judgment is referred in this context and is reproduced herewith the relevant portion as;

*'In construing the expression "due" the interpretation that is to be placed must be harmonized so as to be applicable both in the context of Sub section (1)& (2) of Section 56. A sum cannot be said to be due from the consumer unless a bill for the electricity charges is served upon the consumer. Any other construction would give rise to a rather anomalous or absurd result that a disconnection of supply would be contemplated even without the service of bill. Though the liability of consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the service of a bill. Thus for the purpose of sub section (1) & (2) of section 56, a sum can be regarded as due from the consumer only after a bill on account of the electricity charges is served upon him'.*

**(iii).** Based on the above judgment, the period of two years as covered in Sec. 56 (2) of Electricity Act 2003, would run from the date when such a Bill is raised by the Board and have become due for payment only after that demand has been raised. In the said case, it has been further clarified by Hon: High Court that; "Amount of charges would become due and payable only with 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 the consumer", (Brihatmumbai Municipal Corporation Vs Yatish Sharma and others-2007 KHC 3784:2007 (3) KLTSN-11 (Bom)). As such, the period of two years would run from the date when such a Bill is raised by the Board and have become due for payment only after that demand has been raised. Hence, the bar of limitation under Sec. 56(2) is not admissible in this case, as the disputed bill was seen raised only in 11/2011.

**(iv).** Further, the Regulation 24(5) of the Electricity Supply Code, 2005, reads as; "If the Licensee establishes that it has under charged the consumer either by review or otherwise, the licensee may recover the amount under charged from the consumer by issuing a Bill....". This regulation empowers the Licensee to correct a mistake or error that has occurred due to oversight or for genuine reasons.

**(v).** The provisions in Section 61 and 62 of the Electricity Act, 2003, read as;

61. Tariff regulations: *The Appropriate Commission shall subject to the provisions of the Act specify the terms and conditions for the determination of tariff and in doing so shall be guided by the following, namely: .....(d) safeguarding of consumers interest and at the same time recovery of the cost of electricity in a reasonable manner.....*

62. Determination of tariff. *The appropriate Commission shall determine the tariff in accordance with the provisions of this Act.*

As such, the Hon KSERC which is the empowered statutory body, as per Electricity Act, 2003, to frame the Power tariff rules and rates, do so after conducting the hearings of the general Public and the versions of interested stakeholders in the field, on the new tariff proposals notified. No specific direction, under Sec. 108 of the Act, was seen issued by the Govt. to the Commission, before notification of Power tariff categorization and formulation of connected rules in 11/2007, on the fixation of tariff applicable for Self Financing Educational Institutions exclusively.

**(vi).** As per the schedule of tariff and rules notified by KSERC in 11/2007, only Govt. or aided private educational institutions come under the LT-VI-A (non-domestic) tariff. The consumer has not a contention that his Institution does not belong to a self financing educational institution and being so, there is specific tariff earmarked for such purpose of activity or use of electricity for a Self Financing Educational Institution by the Hon (KSERC) in the Tariff rules.

**(vii).** The appellant is of the view that, if at all the tariff has to be changed and payable, it can be assessed from the date of inspection. This is because, fixation of wrong tariff assignment to him was not due to his fault, as he has no role in the fixation of tariff and also there is no allegation of any misdoing or malpractice being done by the consumer, from the KSEB's side. This argument is not correct because any genuine error or omission occurred on either side has to be rectified. The consumer is also bound to pay the charges of electricity, he has consumed, at the eligible tariff fixed by Hon KSERC.

**(viii).** The appellant's another contention is that the consent of the consumer is required for the tariff change. The new power tariff rules are finalized by the Hon Regulatory Commission after conducting hearings of the general public and the interested stake holders in the field. Individual consent of consumers is not mandatory for the revision of the tariff. Once the rules are notified it is applicable to all consumers. The Licensee has to intimate the consumer its proposal of tariff change and the party is free to file his version. The decision of the Licensee can also be challenged, by the consumer, at the Forum established or he can pursue other suitable legal proceedings.

**(ix).** The Hon: High Court of Kerala has disposed a WP (C) No. 26041/2012 filed by St. Mary's Educational & Cultural Society with a direction to the respondents (KSEB) to keep in abeyance the recovery of arrears till decision is rendered by the Hon. Supreme Court in the related Bro. Joseph Antony's case, which is pending before the Apex Court.

**DECISION: -**

From the analysis done and the Findings arrived at, I take the decisions as;

(1). Exactly following the decision of the Hon High Court stated above, the appellant shall pay the monthly bills under LT VII-A tariff from the date of detection of the wrong tariff fixed to the party i.e. from the month of 11/2011 onwards in case of Consumer Nos.12837 and 15027 and the bills raised for the arrears of the period prior to that month (11/2011) shall be kept pending. But the same will be subject to the result of the judgment in the batch of SLP's pending before the Hon: Supreme Court on the issue of electricity tariff applicable to Self Financing Educational Institutions and the respondent shall act as per the verdict, on its pronouncement.

(2). It is clarified that the disputed short assessment bill with notices dated 28.11.2011, issued to the appellant shall be kept pending, till the decision in the referred SLPs filed before the Hon Supreme Court on the same issue (eligible tariff applicable to Self Financing Educational Institutions) is decided by the Hon Court and the respondent shall act accordingly.

(3). The order in OP No. 799/2012 dated 29<sup>th</sup> September, 2012 of CGRF (South), Kottarakkara, stands set aside.

Having decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant is disposed of with the said decisions taken and issued. No order on costs.

Dated the 13<sup>th</sup> of September 2013.

Electricity Ombudsman.

Ref. No. P / 322 / 2012/ 1976/ Dated 13.09.2013.

Forwarded to : 1). Rev: Fr. Lenin Fernandez,  
Manager, Viswaprakash Central School,  
Mangattukadavu, ThirumalaP.O,  
Thiruvananthapuram-695 006.

2). The Assistant Executive Engineer,  
Electrical Sub Division, KSE Board,  
Poojappura, Thiruvananthapuram.

Copy to: - (1). The Secretary, Kerala State Electricity Regulatory Commission,  
KPFChavanam, Vellayambalam, Thiruvananthapuram-10.

(2). The Secretary, KSEBoard,  
Vydyuthibhavanam, Pattom, Thiruvananthapura-4  
(3). The Chairperson, Consumer Grievance Redressal Forum,  
KSEBoard, Vydyuthibhavanam, Kottarakkara.