

THE STATE ELECTRICITY OMBUDSMAN

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APPEAL PETITION No. P/004/2022

(Present: A.S. Dasappan)

Dated: 31st March, 2022

Appellant	:	The Secretary Daya Rehabilitation Trust, Kakkavayal P.O., Vallithode, Wayanad Dist. 673122
Respondent	:	Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Kalpetta, Wayanad Dist.

ORDER

Background of the case:

The appellant filed the Appeal Petition for retaining the tariff under LT VID for the Dialysis Centre by name “Thanal” under the Electrical Section area of Muttill, KSEB Ltd. The consumer number to the premises is 1167928010423 with a connected load of 27 kW in three-phase category. The Licensee changed the tariff from LT VID to LT VIG and issued a short assessment bill for Rs.22,620/- for the period from 09/2020 to 01/2021. The appellant approached the Consumer Grievance Redressal Forum (CGRF), Northern Region with a request to retain to tariff under LT VID and the Forum registered the petition vide OP No. 14/2021-22 and issued order on 18-12-2021 as follows:

“The tariff category grouping of each type of consumer is finalized by the Hon’ble KSERC. When the tariff category claimed by the petitioner is not clear to be included in a particular tariff grouping, the petitioner has to approach the Hon’ble Kerala State Electricity Regulatory Commission that definition to include that category in that particular grouping”.

Aggrieved by the decision of the Forum, the appellant filed this appeal petition before this Authority.

Arguments of the appellant:

The Dialysis Centre "Thanal" formed by Daya Rehabilitation Trust at Kakkavayal is intended to do dialysis to the poor patients in Wayanad District without collecting any fee from them and conducting at an average of 300 numbers of dialysis per month. The tariff allotted to the Dialysis Centre was LT VID from 29-09-2020, the date on which the Centre started functioning, to 02/2021. The appellant received a demand notice on 31-01-2021 for Rs.22,620/- towards the difference in the tariff category LT VID and LT VIG for the above period and change in category intimated the appellant by the Assistant Engineer. Though a petition is filed before the Consumer Grievance Redressal Forum against the reassignment of tariff category, the Forum denied the request of the appellant. In the tariff order vide OA No. 15/2018, Charitable Centre for cancer care pain and palliative care are included under VID tariff category. It is requested to retain the tariff under LT VID as per the tariff order OA No. 15/2018.

Arguments of the respondent:

The connection is registered in the name of Sri. T.I. Nassar, Daya Rehabilitation Trust, Kakkavayal P.O., Vallithode Road, Wayanad under Electrical Section, Muttill. The tariff of the premises was changed to VID on 29-09-2020. The tariff was initially fixed by the Licensee as per the available information and data furnished by the appellant.

As per Section 61 the Electricity Act 2003, the Hon'ble State Electricity Regulatory Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff. Going by the provision of this Act, the State Commission vide Tariff order dated 08-07-2019 in OA No.15/2018 released the new tariff structure for the period 2018-22.

A scrutiny by the officials of the respondent afterwards revealed that the connection is being used for running a Dialysis centre and accordingly the appellant was served with a demand notice dated 22-02-2021 for Rs.22,620/-, which followed a decision to change the VID tariff already assigned, to VIG with

retrospective effect. Now, the appellant is being billed under VIG tariff. The Licensee has raised a bill for the differential amount during the relevant period. As per Regulations 134 & 152, the Licensee is empowered to realize the legally valid sum due from the appellant.

The Hon'ble Commission, vide the Schedule of Terms & Conditions of Tariff notified from time-to-time specifies the class of consumers to be charged at each tariff.

Low Tension -VI-General D [LT-VI(D)]

The tariff under LT-VI (D) category is applicable to

- (i) Orphanages;
- (ii) Anganwadis, schools and hostels for differently abled or physically challenged persons (including mentally retarded students, deaf/dumb/blind persons),
- (iii) Old age homes where no charges are levied for the boarding and lodging of inmates.
- (iv) Cheshire home ; polio homes SoS Children's Villages,
- (v) Charitable centres for cancer care, pain and palliative care and HIV rehabilitation.
- (vi) Charitable hospital guidance centres registered under the Travancore Cochin; Literary, Scientific and Charitable Societies Registration Act, 1955 (12 of 1955) or under the Societies Registration Act, 1860 (21 of 1860) or under Indian Trust Act 1882 donation to which are exempted from payment of Income Tax.
- (vii) Charitable institutions recognized by the Government for the care and maintenance of the destitute and differently abled or physically challenged persons including mentally retarded persons and deaf dumb/blind persons,
- (viii) Shelters exclusively for orphaned animals and birds run by charitable institutions registered under the Travancore - Cochin Literary, Scientific and Charitable Registration Act, 1955 (12 of 1955) or under the Societies Registration 1860(21 of 1860) or under Indian Trust Act 1882.
- (ix) Libraries and reading come with connected load of and below 2000 watts and monthly consumption of and below 100 units,
- (x) e-toilets and public comfort stations where no charges are levied for the use.

Unfortunately, the appellant's claim for inclusion in tariff VID cannot be entertained as the said service connection is not qualified be accommodated in any of the items mentioned in the said category. The appellant's claim is that the institution is qualified as per the description in item (v) and (vi).

However, the claim is not rationale and justifiable and hence, inadmissible as well. The registration by Indian Trust Act and eligibility for exemption from Income Tax payment together form the qualifying criteria applicable for Charitable Hospital Centres only. The appellant has not put forth any claim as being working as such Centres. On the contrary, the classes of consumers narrated in the VI G tariff provides ample and justifiable space to accommodate the appellant in that tariff. The Hon'ble Commission's order in respect of VIG category is extracted.

LT-VI- GENERAL (G)

The tariff under this category is applicable to all the private hospitals, private clinical laboratories private X-ray units, private mortuaries, private blood banks and private scanning centers and such other private institutions in health care sector.

After analyzing the facts and circumstances of the case mentioned afore, the licensee decided that the appellant's connection had to be placed in VI G tariff retrospectively from 29-09-202'0, by revoking the earlier decision to include the service connection in the VI D tariff. The licensee also took steps to make good the revenue loss by appropriate methods. All these action on the licensee's part was by virtue of powers conferred under Regulation 134 & 152 of the Supply Code 2014.

The CGRF rejected the appellant's claim after meticulously examining the claims and counter claims. The appellant is at liberty to approach appropriate Forum for a decision on the issue of classification of consumer category. If the appellant has any apprehensions over the classification of this connection, he has to approach the appropriate Forum. The Hon'ble Regulatory Commission while issuing the tariff order for 2018-22 has also endorsed this view. Hence, it is submitted that the contentions raised by the appellant, for inclusion in VI D Tariff is devoid of merits and cannot be countenanced for the same reason. The appellant

could not establish his eligibility for claim under VID tariff, with material evidence. The impugned bill is legally valid and liable to be remunerated in terms of the law. The Licensee cannot and should not act up on such hollow claims and hence, it is submitted that the Ombudsman may be pleased to dismiss the petition.

The appellant has conveniently suppressed some material facts which itself speak against their claim while the appellant approached the Consumer Grievance Redressal Forum. While the appellant has taken care to present a letter of the Dy. Chief Engineer, Electrical Circle, Vadakara as an exhibit in support of his claim, he himself has suppressed the fact of having received letter by the same “sister concern” from the Chief Engineer, TRAC, Thiruvananthapuram, negating the claim with reasons thereof. The Deputy Chief Engineer, Electrical Circle, Vatakara has also reversed his earlier decision contained in the letter produced by the appellant by issuing a subsequent order. Thus, the appellant has lost legs of one of the main contentions. The appellant has instituted the case by suppressing material facts as mentioned afore, for the purpose of the case.

Analysis and findings:

An online hearing of the case was conducted on 03-03-2022 with prior intimation to both the appellant and the respondent. Sri. K.V. Ashraf attended the hearing for the appellant and Sri. P.R. Biju, Assistant Executive Engineer, Electrical Subdivision, Kalpetta attended the hearing from the respondent’s side. On examining the petition, the counter statement of the respondent, the documents attached and the arguments made during the hearing 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’s premises had been assigned the tariff category under LT VID from the date of functioning the premises as a Dialysis Centre and later the tariff was reassigned to LT VIG and issued a short assessment bill for Rs.22,620/- towards the difference in tariff LT VID and LT VIG for the period from 09/2020 to 01/2021.

The contention of the appellant is that the Dialysis Centre is intended to help the poor patients without collecting any fee from the patients. As such, it is eligible

to get the tariff assigned for charitable centre for cancer care, pain and palliative care and HIV rehabilitation, LT VID.

According to the respondent, the appellant is not eligible for LT VID tariff since the purpose for which electricity is used is not for any of the category specified in the tariff category LT VID. As such, the tariff to be assigned in LT VIG.

In the hearing, the appellant revealed that the Centre is being run by accepting fund from public by forming ward level committee. On perusing the income and expenditure of the Centre, it is seen that fund was collected from various wards of Local Body and from individuals. On going through the connected documents submitted by the appellant, it is revealed that the appellant filed a petition before the CGRF, Kozhikode. But the Forum observed that decision on the tariff change can be taken by KSERC.

The Section 62 of 'The Electricity Act 2003', enabling the provision for determination of tariff and is read as follows. **The appropriate Commission shall determine the tariff in accordance with the provisions of this Act.**

In this case, the respondent had reassigned the tariff under LT VIG after realizing that the purpose for which electricity is used in the premises will not come under LT VI D tariff category. As per the Schedule of Tariff and Terms and Conditions for retail supply of electricity by Kerala State Electricity Board Ltd. and all other Licensees with effect from 18-04-2017 to 31-03-2018 vide order dated 17-04-2017 and the extended order dated 08-07-2019 of KSERC, "pain and palliative care" will come under LT VID tariff category. The respondent did not allow the tariff LT VID of "pain and palliative care" to the Dialysis Centre and assigned LT VIG tariff category. LT VI (G) tariff is applicable to private hospitals, private clinics, private clinical laboratories, private X ray units, private mortarium, private blood banks and private scanning centers and such other private institution in health care sector.

On going through the document file, commercial and planning wing of the Licensee had intimated the appellant on 15-03-2021 that similar Dialysis Centre in Kozhikode had approached KSERC and the Commission denied eligibility of LT VID tariff to the Dialysis Centre. As such, this Authority cannot take a decision on the subject of change of tariff category.

Decision: -

From the analysis done and the conclusions arrived at as above, the Appeal Petition filed by the appellant is dismissed and this Authority upheld the decision taken by the CGRF, Kozhikode dated 18-12-2021 in OP No.14/2021-22.

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

ELECTRICITY OMBUDSMAN

P/004/2022/_____ dated _____.

Delivered to:

1. The Secretary, Daya Rehabilitation Trust, Kakkavayal P.O., Vallithode, Wayanad Dist. 673122
2. The Assistant Executive Engineer, Electrical Sub Division, KSEB Ltd., Kalpetta, Wayanad 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