

STATE ELECTRICITY OMBUDSMAN

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Appeal Petition No:P/ 313/ 2012.

(Present-T.P. Vivekanandan)

APPELLANT : The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Kuravilangad, Kottayam Dt. Pin - 686640

RESPONDENT : Dr. Kakkanattu T Joseph
St.Joseph's Safe Heaven for Needy Seniors,
Muttuchira P.O., Kottayam Dt.

ORDER.

Background of the case: -

Sri. Kakkanattu T Joseph, is a consumer and is running an old age home under Electrical Section, Kaduthuruthy, with LT VII A tariff assigned by KSEB alleging that the same is a lodging facility. Moreover, the 'old age home' was not registered or approved by the Govt. to be eligible for concessional electricity tariff, they argue. Being aggrieved by the tariff allotted, the consumer approached the CGRF, Ernakulum, pleading for a lower rate tariff, either LT-VID (Govt approved old age home) or LT-I A (domestic). The CGRF after hearing disposed of the petition with a direction to KSEB, to revise the tariff to LT I A (domestic), once a residential certificate is received from the Panchayath for the said building. Against the order of the CGRF, the Board filed WP (C) No.17459/2011 before the Hon. High Court and the Hon Court disposed the case with a direction to file an appeal before this Forum. Accordingly, KSEB has filed a representation, challenging the order dated 7.5.2011 of CGRF, Ernakulam in OP No.607 /2011, before this Forum.

Arguments of the Appellant (KSEB): -

The appellant has adduced the following arguments in their appeal petition.

(1). The consumer after returning from USA has started the 'St. Joseph's Safe Heaven for Needy Seniors' at Muttuchira PO, Kottayam. Normally old age homes are registered with the Govt. and are functioning either as a trust or by participating representatives of inmates and others. The consumer has constructed adjacent to his house a two storied building with 15 rooms and a common kitchen. Though four inmates are residing there, the consumer is not disclosing full particulars. The amount of fee collected from inmates is also not disclosed. The conduct of the respondent (consumer) indicates that he is running it as a profit concern and not as an old age home.

(2). The tariff rate under LT I A is applicable only for domestic use. The respondent is

staying in his residential house in the adjacent building and for that building electricity is charged under LT-I A domestic rate. But the adjacent double storied building is not used for domestic purpose, but says it is being used as an old age home for elderly citizens. Hence the tariff rate applicable for domestic use cannot be made applicable to it.

(3). The Panchayath authorities do not issue Residential Certificate solely for domestic use. As Section 34 of the Kerala Panchayath Building Rule, "All occupancies other than Group A-1 Residential shall be treated as non-residential for the purpose of these rules. The descriptions of the occupancies are given below, namely:-

(a) Group A1-Residential building shall include any building in which sleeping accommodation is provided for normal residential purposes, with or without their cooking and dining facilities. They shall include one or multifamily dwellings, apartment, buildings or residential flats. Small professional offices or space for Advocates, Doctors', Engineers, Architects, Chartered Accountants, and Beauticians are included in this Group A1".

Hence the residential certificate issued by the Panchayath authorities cannot be taken as criteria for determining domestic tariff to a consumer. The Residential Certificate issued by the Panchayath has stated that the certificate is issued solely to satisfy the request of the petitioner for the case and it was not in the general format usually given. Moreover, during building construction, the permit was categorized as under "Special Residence" which clearly indicates the same cannot be considered as equivalent to the generally issued "Residential Certificate".

(4). The consumer is running the old age home as a proprietary concern. The party has not disclosed any of the relevant details to KSEB for treating the double storied building under LT-VI D tariff, applicable to old age home recognized by the Govt. For obvious reasons, the consumer has not registered the old age home with Govt. and the amount of fee collected from the inmates are also not disclosed. If any kind of remuneration is derived from the old age home, it becomes a commercial venture and the tariff applicable for commercial concern has to be applied to the building.

(5). A commercial concern cannot be treated as an old age home just because elderly citizens are residing there. Also energy consumed for non-domestic purpose (special residence purpose) cannot be treated equivalent to that used for domestic purpose. Hence the order passed by the CGRF suffers legal defects and is liable to be set aside.

Arguments of the Respondent (consumer): -

The consumer has filed the counter statement against the contentions contained in the Appeal Petition, stating that all the averments in the petition except which are admitted, are false and hence denied by him.

(1). The petition is not maintainable either in law or on facts. The petition is barred by limitation. It is only an abuse of process and the petitioner is approaching this Forum with unclean hands and suppressing the material facts. The appeal petition is filed with malafide motive with intention to harass the respondent.

(2). The appellant has filed WP (C) No. 17459/2011 before the Hon. High Court of Kerala against the order of the CGRF. The Court, on 18.1.2012 disposed the petition as withdrawn by the appellant and also granted the appellant to prefer appeal within three weeks from 18.01.2012. After lapse of 10 months, the appellant has filed this appeal before this Forum, hence on that ground itself, the appeal is liable to be dismissed.

(2). The respondent is running the old age home without profit motive. The old age home is not a registered charitable organization. Although without registration, the organization is 100% charitable as respondent built and operate the facility expending only his own money and free of charge to the residents. This fact can be verified from the records and on site inspection and interviewing the past and present residents.

(3). It is submitted that the Kaduthuruthy Grama Pachayath has issued a residential certificate stating that the building is using exclusively for the old aged residents. The appellant cannot deny the certificate by raising untoward reasons.

(4). The respondent denies the allegation of the appellant that the old age home is not registered with Govt. for obvious reasons. This is only imaginations and speculations of the appellant and false. It is submitted that after spending a large sum of money by the respondent to build the facility and still spending own money for operational cost, the respondent could not be forced to register as charitable society, for doing so, he shall lose control over the facility which is 100% charitable to all residents. The consumer's old age home is opened for any officials of the appellant for inspection/verification at any time. The respondent never denied disclosing any of the relevant particulars to the appellant as alleged.

(5). The respondent submits that he transferred the old age home by executing a settlement deed in favour of Indian Missionary Society, a registered charitable institution. Therefore the old age home is now run by a charitable society.

ANALYSIS AND FINDINGS: -

The hearing of the case was done on 03.04.2013, 20.08.2013 and 06.09.2013, in my Chamber at Edappally, Kochi, and the appellant was represented by Sri. N.V. Joshy on the 1st hearing and later by Sri. Biju Prince Abraham, the Asst. Executive Engineers, Kuravilangad and the opposite (respondent) side by the learned Advocates, Sri Frijio K Sundaram on the 1st hearing and Sri. Sijo George, for the latter days and they have argued the case, mainly on the lines stated above. On examining the Appeal Petition and argument note filed by the appellant, the statement of facts of the Respondent, the documents filed and considering all the facts and circumstances of the case, this Forum comes to the following findings and conclusions, leading to the decision there of.

1.0 The appellant in this Case is the Asst. Exe. Engineer of the Licensee (KSEB), who is aggrieved by the decision in the Petition filed by the consumer, vide OP No.607/2011, before the CGRF, Kottarakkara. The CGRF has ordered to allow domestic tariff to the Consumer, if he produces a certificate from the local Panchayath, to the effect that the building is used as a residential house. Not satisfied by the decision, the KSEB filed a Writ petition vide No. 17459/11 before the Hon. High Court and the Hon Court has disposed of the Petition with a direction to represent the Case before this Forum.

1.1 The appellant has submitted that delay was caused due to filing of Case at the Hon. High Court Case and citing other reasons requested to condone the delay.

In this case, the CGRF has disposed the petition on 07.05. 2011. The writ petition No. 17549/11 was disposed on 18.01.2012 and the respondent has requested one month extension time on 27/2/12. The Appeal dated 20/4/2012 has been sent to this

office 24/4/2012 without the required documents and the same was resubmitted only on 05.11.2012, in complete shape. The KSEB's argument that; 'due to filing case at Hon High Court' caused delay is misleading. But as the Hon High Court's intention was to hear and dispose the case by this Forum, I accept the request of KSEB to condone the delay in filing the Petition.

1.2 The tariff, LT VI-D is applicable to orphanages, schools and hostels of mentally retarded students, deaf/dumb/blind/physically handicapped persons, old age homes, Cheshire homes, SoS Children's villages, polio homes, cancer and palliative care centers, HIV rehabilitation centers and similar institutions recognized by the Govt. The consumer has neither produced any document to suggest that he has obtained the recognition of the Govt. nor have a contention to that effect. And without obtaining the recognition, the consumer is not eligible for LT VI-D tariff earmarked for Old age homes having Govt. recognition. When there is a specific rule in vogue for a certain tariff, the consumer has to abide by it, so as to become eligible for that particular tariff.

1.3 As per the direction given during the hearing, an inspection was conducted at the consumer premises on 02.09.2013, by the Asst. Exe. Engineer, but no inmates were seen at the time of inspection and hence were not able to conduct any personal enquiry with the inmates. The In-charge of the site (Building), Fr. Aby Abraham, has issued a letter stating that the present owner of the institution is, Varanasi Province of Indian Missionary Society, a registered charitable society and action is being taken to register the Institution with the Govt. and after getting the same, will approach KSEB for eligible tariff. He also informed that there are no inmates as of now.

The appellant argues that the certificate is issued by the Panchayath is solely to satisfy the request of the petitioner for the Case and was not the general format usually issued by them. The certificate reads as; 'on enquiry it is gathered that the said building is used for the purpose of accommodating people of age above 60'. The crux of the Case is that the, 'old age homes' have to be approved by the Govt. to be eligible for getting the LT VI-D, low rate tariff. It is not disputed by either that the Building is used by senior citizens for their stay.

DECISION: -

From the analysis done above, and the Findings and conclusions arrived at, I take the following decision.

The consumer has not registered his institution with the Govt. or got its approval to run as an "Old Age Home". The Tariff rule for LT VI-D stipulates that such institutions should be recognized by the Govt. to become eligible for the lower rate tariff. If such restrictions are not imposed, any body can demand such a tariff and this fact becomes more prominent in cases where the Parties run private Hostels, Lodges, Guest houses etc, which are grouped under the highest LT VII A tariff. So, when there is a specific clause like Govt. recognition, it has to be obtained to become eligible for the LT VI-D tariff. Otherwise the consumer is not eligible for it.

The certificate issued by Panchayath states that the building is meant for the accommodation of 'Old age people'. Whether it is on a commercial basis or not is not clear. The present In-Charge, Fr. Aby Abraham has issued a statement stating that at present no inmates are there and action is being taken to get the approval of Govt.

Hence, the demand to allot domestic tariff to a building with 15 rooms and no inmates and both sides stressing that it was used earlier for the stay of elderly people only, does not appear to me, it is eligible for domestic tariff.

In such a circumstance, I am of the opinion that the Consumer No. 24873, under Electrical Section, Kaduthuruthy, (St. Stephen's Safe Heaven for Needy Seniors'), shall be given the tariff applicable to Convents, LT VI-A, which comes near to the activities described by both sides, for the disputed period, till the consumer approaches the respondent for appropriate tariff with documents.

Having concluded and decided as above it is ordered accordingly. The Appeal petition filed by the appellant is found having some merits and is allowed to the extent it is ordered and stands disposed of accordingly.

The CGRF order vide OP No. 607/2011 dated 07.05.2011 of the CGRF, Kottarakkara, is set aside. No order on costs.
Dated the 10th of October, 2013.

Electricity Ombudsman.

Ref. No. P / 308 / 2012 / 2001/ Dated 10.10.2013.

Electricity Ombudsman

Forwarded to: - (1). The Assistant Executive Engineer,
Electrical Sub Division, KSEB,
Kuravilangad, Kottayam Dt.

(2). Dr. Kakkanattu T Joseph
St. Joseph's Safe Heaven for Needy Seniors,
Muttuchira P.O., Kottayam.

Copy to : -

(1). The Secretary. Kerala State Electricity Regulatory Commission, KPFC Bhavanam,
Vellayambalam Thiruvananthapuram-10.

(2). The Secretary, KSEBoard, Vyduthibhavanam, Pattom, Thiruvananthapuram-4.

(3). The Chairperson, Consumer Grievance Redressal Forum, KSEBoard,
Vyduthibhavanam, Kottarakkara.