

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION NO. P/169/2015  
(Present: V.V. Sathyarajan)  
Dated: 26<sup>th</sup> February 2016

Appellant : Sr. Alice Pendanathu  
Karuna Bhavan Medical Centre,  
Koruthodu,  
Mundakkayam.

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Ltd, Kanjirappally,  
Kottayam.

### **ORDER**

#### **Background of the case:**

The service connection with consumer No.18778 is effected in favour of M/s Karuna Bhavan Medical Centre, Koruthodu P.O under Electrical Section Mundakkayam and the tariff is LT VI F. The connected load of the premises is 20000 Watts. The appellant had submitted an application for tariff change from LT VI F to LT VI A which was not allowed by the Assistant Engineer, Electrical Section, Mundakkayam for the reasons that the appellant had not submitted required documents. Aggrieved against this the appellant approached with a petition before CGRF (South), Kottarakkara. The petition was disposed of by the CGRF vide order in OP No.1509/2015 dated 19-9-2015 with a direction to the respondent to change the tariff from LT VI F to LT VI A when the appellant produces the certificate under Section 80 G from the Income Tax Department. Not satisfied with the above order, the appellant has filed this appeal petition before this Authority.

#### **Arguments of the appellant:**

The appellant who is the Administrator of the Karuna Bhavan Medical Centre having consumer no. 18778 under Electrical Section, Mundakkayam, submitted an application for tariff change of the institution from LT VI F to LT VI A, before the Assistant Engineer on 14-10-2014. The appellant had also submitted the required documents like Certificate of Registration of Charitable Institution and Certificate of Income Tax Exemption. Since the Assistant Engineer, Electrical Section, Mundakkayam has not taken any action, the appellant approached the CGRF with the request of tariff change. The appellant has argued that they are not getting any donation for the institution, it is not possible to produce the required Certificate under Section 80 G from

Income Tax Department. According to the appellant, some similar institutions not having the 80 G Certificate are availing the benefit of tariff LT VI A. Their hospital is small one having 18 beds functioning in a rural area. Hence the prayer of the appellant is to change tariff to LT VI A.

**Arguments of the respondent:-**

1. The respondent stated that appellant has applied for change of tariff from LT VI F to LT VI A on 14-10-2014, but all the necessary documents were not produced at that time. After verifying the documents, the respondent advised the appellant to produce a valid registration certificate under Section 80G (5) (vi) of the Income Tax Act, 1961 - which stating that the donations to the hospital is exempted from the payment of income tax, from the office of the Commissioner of Income Tax. In March 2015, the appellant again approached the respondent with a copy of an Assessment Order for the year 2012-13 from the Income Tax Department.
2. As per tariff notification order dated 14-08-2014 in OP No.9/2014 which is in force there exists following conditions for the application of LT VI A subsidized tariff.
  - (i) The applicant's institution should be registered under Travancore-Cochin Literacy, Scientific and Charitable Societies Regulation Act, 1955
  - (ii) The donations to such institutions (which are registered under Travancore-Cochin Literacy Scientific and Charitable Societies Regulation Act, 1955) are exempted from the payment of Income Tax assessment. ( 80G-Certification)
3. The petitioner was formally informed to produce the above documents vide letters dated 25-03-2015 and 17-06-2015 as the oral instructions in this regard failed to bring the desired results. But the documents produced by the appellant were as follows:
  - (i) Registration Certificate under Travancore –Cochin Literacy, Scientific and Charitable Societies Regulation Act, 1955
  - (ii) 12 A Registration Certificate of the Income Tax Act-which is the registration required for exempting the income of the hospital from the payment of Income Tax during the time of Income Tax assessment.
4. The tariff change to LT VI A cannot be effected on the basis of the Gazette notification issued by the Kerala State Electricity Regulatory Commission dated 14-08-2014. Several consumers are availing subsidized tariff under LT VI A by producing required documents. For instance the copy of the Registration Certificate under Section 80G (5) (vi) of the Income Tax Act, 1961, provided by M/s IHM Hospital, Bharananganam is produced here with for verification.

5. The tariff notification is issued by the Kerala State Electricity Regulatory Commission and the respondent has the option only to comply the notification in toto. There is no discrimination mooted on the appellant but only asked to meet the stipulated requirements and to produce necessary documents. But the appellant failed to produce the required documents.
6. All the contentions raised by this licensee were accepted by the Hon'ble CGRF (South), Kottarakkara on passing the subject order.
7. Therefore as a responsible licensee the respondent is bound abide by the tariff notification in force. The respondent had acted only in accordance with the existing rules and regulations. In the wake of the above factual positions, it is humbly prayed that this Hon'ble Ombudsman may be please to accept this version and to dismiss the petition with costs to this respondent as the same is without any merit.

### **Analysis and findings**

A hearing of the case was conducted in the Conference hall, Electrical Circle, Thodupuzha on 10-02-2016. The appellant, Sr. Alice Pendanathu was present for the appellant's side and Sri Shanawas Khan K, Assistant Executive Engineer, Electrical Sub Division, Kanjirappally represented the respondent's side. The brief facts and circumstances of the case that led to filing of the petition before this Authority are narrated above. On examining the petition of the appellant, the statement of facts filed by the respondent, the arguments in the hearing and considering all the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions.

**The only question to be decided in this case is as to whether the appellant's institution is a charitable hospital and the donations to which are exempted from payment of Income Tax, thereby entitled for availing concessional tariff under LT VI A.**

Since the appellant produced a certificate dated 30-11-1983 issued by the Registrar of Societies, the respondent has not disputed the fact that the appellant's institution is registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act. Hence the only point to be decided is whether the institution is eligible to the benefit of tax exemption as per the Income Tax Act, 1961.

According to respondent the eligibility for concessional tariff under LT VI A is applicable to private hospitals and charitable institutions registered under Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955, the donations to which are exempted from payment of Income Tax. But the appellant got registration under Section 12 A (a) of the Income Tax Act, 1961 vide proceedings of Commissioner of Income Tax (Exemptions) Kochi dated 24-10-2005. The Hon'ble KSERC issued tariff notifications vide order dated: 27<sup>th</sup> November, 2007 which came into effect from 01-12-2007. The certificate of registration under Section 12 A is only for the effect that the applicant's name

has been entered in the register maintained in the office of the Commissioner of Income Tax.

An approval under Section 80G of the Income Tax Act is mandatory to decide whether the donations to which are exempted from payment of income tax. As per the Circular No.07/2010 issued by the Central Board of Direct Taxes, New Delhi, the Proviso to Section 80G (5)(vi) under which approvals granted by the Commissioner had a maximum validity period of five years has been deleted with effect from 01-10-2009. Accordingly, approval once granted on or after 01-10-2009 is now valid forever unless withdrawn by the Commissioner where he is satisfied that the activities of the institution or fund are not genuine or are not being carried on in accordance with its objects.

Rule 11 AA of Income Tax Act 1961 prescribes that an application for approval under Section 80G shall be made in triplicate in Form No.10 G.

It shall be accompanied by copies of following documents: -

- (i) order of registration under Section 12A or notification under Section 10 (23C);
- (ii) note on activities conducted since inception or in last three years, whichever is less; and
- (iii) accounts of the institution since inception or for the last three years, whichever is less.

On going through the connected documents submitted by the appellant, it is revealed that the appellant filed an appeal before the CGRF, Kottarakkara. But the Forum observed that if the appellant has produced the documents from the Income Tax Department to prove that the donations to which are exempted from payment of Income Tax, the appellant shall be included in VI A tariff. As such the appellant has not produced certificate the petitioner's claim for the benefit of tariff under LT VI A cannot be admitted.

On a close perusal of the copy of Circular No. 7/2010 [F. No. 197/21/2010-ITA-1] dated 27-10-2010 issued by the Central Board of Direct Taxes, New Delhi, it can be seen that **“it appears that some doubts still prevail about the period of validity of approval under section 80G subsequent to 1-10-2009, especially in view of the fact that no corresponding change has been made Rule 11A (4). To remove any doubts in this regard, it is reiterated that any approval under Section 80G (5) on or after 01-10-2009 would be a onetime approval which would be valid till it is withdrawn”**.

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.*** As per tariff notification issued by the Hon'ble KSERC, the eligibility for concessional tariff under LT VI A is applicable to private hospitals and charitable institutions registered under Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955, the donations to which are exempted from

payment of Income Tax. Here in this case the appellant has not produced the approval under Section 80 G from the Income Tax Department, she is not eligible for tariff change to LT VI A.

### **Decision**

In view of the above discussions it can be concluded that since the appellant failed to produce documents to show that one time approval is obtained under Section 80 G (5) (vi) of Income Tax Act, 1961, the request for tariff change cannot be admitted. However, the appellant is free to approach the respondent for reclassification of tariff as per Regulation 98 of the Kerala Electricity Supply Code, 2014 with relevant approval under Section 80 G (5) (vi) of Income Tax Act, 1961 obtained from Income Tax Department. The order of CGRF in OP No.1509/2015 dated 19-9-2015 is upheld. The appeal is disposed of accordingly. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/169/2015/ /Dated: \_\_\_\_\_

Delivered to:

1. Sr. Alice Pendanathu, Karuna Bhavan Medical Centre, Koruthodu, Mundakkayam.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kanjirappally, Kottayam.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.