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APPEAL PETITION NO. P/18/2016  
(Present: V.V. Sathyarajan)  
Dated: 13<sup>th</sup> June 2016

Appellant : Fr. Mathew Thekkel  
Holy Ghost Mission Hospital,  
Muttuchira P.O.,  
Kottayam.

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

## **ORDER**

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

The appellant is a consumer having HT service connection with consumer code 2/5652 availed for running a hospital in the name and style, "Holy Ghost Mission Hospital" and LT service connection with consumer No.10802, availed for pumping water to the above hospital. Both service connections are coming under the jurisdiction of Electrical Section, Kaduthuruthy. The LT connection with a connected load of 12 kW was effected on 02-01-1969 under LT VI A tariff. On 28-09-2015, the APTS team inspected the premises and detected that the billing of LT service connection is under LT VI A instead of LT VI F. The inspection team prepared a site mahazar after recording the above irregularity. Based on the above finding, provisional assessment was issued for an amount of Rs. 2,18,795.00 for a period of last 24 months under Section 134 (1) of Kerala Electricity Supply Code, 2014.

Being aggrieved against the above short assessment, the appellant approached the Assistant Engineer, Electrical Section, Kaduthurthy with a complaint. Since the Assistant Engineer failed to take any action on that complaint, the appellant filed a petition before the CGRF, Kottarakkara, which was disposed of with the following directions.

"1. The impugned bill for Rs. 2,18,795.00 dated 05-10-2015 is hereby quashed.

2. The opposite party shall revise the short assessment bill under VI F tariff for a period of one year prior to the inspection of the premises”.

Still aggrieved by the above decision, the appellant has filed the Appeal Petition before this Authority.

**Arguments of the appellant:**

The appellant is running a hospital in the name and style, “Holy Ghost Mission Hospital”. The Anti Power Theft Squad have conducted an inspection on 28-09-2015 in their pump house with 12 kW of connected load which was billed in LT VI A tariff and prepared a site mahazar. The KSEB Limited has given a demand notice as per Regulation 134(1) of Supply Code, 2014 along with a provisional bill. The demand is that the tariff should be LT VII up to 15-08-2014 and subsequently it should be LT VI F. The appellant has given an objection on 16-10-2015 which was acknowledged by the Assistant Engineer. He has not given any reply or conducted a detailed hearing. Hence the appellant filed a complaint before CGRF.

There is no dispute with KSEB Limited that the purpose of the supply is water pumping. For water pumping for any purpose the tariff is LT IV A which states that “Tariff applicable for general purpose industrial loads (single or three phase) which include manufacturing units, grinding mills, flour mills, oil mills, rice mills, saw mills, ice factories, rubber smoke houses, prawn peeling units, tyre vulcanizing/retreading units, workshops using power mainly for production and/or repair, pumping water for non-agricultural purpose, public waterworks, sewage pumping, power laundries, screen printing of glass ware or ceramic, printing presses including presses engaged in printing dailies, bakeries (where manufacturing process and sates are carried out in the same premises) diamond cutting units, stone crushing units, book binding units with allied activities, garment making units, SSI units engaged in computerized colour photo printing, audio/video cassette/CD manufacturing units, seafood processing units, granite cutting units (where boulders are cut into sheets in the same premises), cardamom drying and curing units, and units carrying out extraction of oil in addition to the filtering and packing activities carrying out in the same premise under the same service connection, manufacturing rubber sheets from latex, telemetry stations of KWA, dairy, processing of milk by pasteurization and its storage and packing, soda manufacturing units, plantations of cash crops, all non- agricultural pumping, drinking water pumping for public by Kerala Water Authority, corporations, municipalities and panchayaths, electric crematoria, pyrolators installed by local bodies”. Hence our tariff should be Rs. 60/kW towards fixed charge and Rs. 5.20/kWh towards energy charge.

The appellant has requested the CGRF to direct KSEB Limited to rework out the tariff in LT IV A for their preceding and prospective bills. For the argument sake if the appellant assumes that there was a tariff change it can be done only as "incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the

consumer" as per Regulation 152(1) of Supply Code, 2014. In such case the maximum period of assessment of such short collection of electricity charge shall be limited to 12 months as per Regulation 152 (3). Hence the impugned bill is wrong.

The CGRF Kottarakkara on 10-02-2016 has released an order quashing the impugned bill with a direction to reclassify the tariff as LT V1 F. The present connection is totally an independent connection with separate consumer number in LT, catering the requirement of an HT hospital connection in HT II B tariff, the CGRF have directed to bill the consumer in LT V1F. There is no consumer in LT V1 F and water pumping for all non agricultural purpose is in LT IV A as per the specific categorization in 'Schedule of Tariff and Terms and Conditions for Retail Supply of Electricity by KSEB Limited and all other licensees.

The CGRF has quoted only the General Conditions 8 and 9 in the above tariff order which is applicable only to power supply for common facilities such as fire control, common lighting, lifts, water pumping, sewage treatment, waste disposal etc. in residential apartment complexes and also power supply for common facilities in the high rise buildings occupied by consumers in LT VI and LT VII categories. The technical requirement in apartment complexes and high rise buildings are typical. As per the statutes they are eligible to have the connection at a single point and it is the duty of builder/developer to segregate the connection from the main switch board with KSEB Limited metering classified as per the different tariff according to the purposes. It is also mandatory to have only a single metering point for the common connection, catering fire control, common lighting, lifts, water pumping, sewage treatment, waste disposal etc. Here no where an independent non agricultural pumping is envisaged for the requirement of water pumping. Hence the tariff of water pumping for non agricultural purpose with an independent LT connection from the KSEB Limited can only be in LT IV as confirmed in the specific order. More than that, the specific order and directions will overrule the general directions and guidelines. Hence the tariff for LT water pump connection can only be in LT IV A.

Relief Sought:-

1. Direction may be given to the KSEB Limited not to disconnect the supply till hearing and disposal of the complaint.
2. The Hon'ble Ombudsman may cancel the short assessment bill.
3. The Hon'ble Ombudsman may direct KSEB Limited to cancel the impugned bill and rework out the same as per LT IV A tariff for preceding 12 months and entire prospective bills.

**Arguments of the respondent:**

The respondent stated the following.

1. The appellant is a consumer under Electrical Section, Kaduthurthy with HT Con code 2/5652 (old LT Con No 10348) & LT Con No 10802. Consumer No. 10348 was availed for electric supply to the hospital premises on 19-10-1958. As the hospital had registration under Travancore - Cochin. Literary, Scientific and Charitable Societies Registration Act, 1955, donations to which are exempted from payment of Income tax, the connection was effected under VI A tariff. Consumer No 10802 was availed on 02-01-1969 for pumping water to the hospital premises. As Consumer No 10802 was also serving / facilitating the purpose of the hospital which had the Travancore - Cochin Literary, Scientific and Charitable Societies Registration, Consumer No 10802 was also effected under VI A tariff.

During 4/2011 the appellant converted the load of Consumer No 10348 to that of an HT connection. Thus HT connection was effected in 4/2011 to the premises of Consumer No 10348. The LT connection was dismantled subsequently. Consumer No 10802 continued to be maintained as an LT consumer, serving the same purpose of water pumping to the hospital.

The "Travancore - Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, donations to which are exempted from payment of income tax" registration certificate was not produced as a document while availing the HT connection. Hence the hospital was categorised under HT-II (B) tariff. If the hospital had the mentioned registration the tariff would be classified under HT II (A) tariff. Due to oversight, Consumer No 10802 was continued to be billed under LT VI A tariff. As Consumer No 10802 facilitates the needs of the hospital connection under HT – II (B) tariff, the connection had to be billed under LT VI F tariff.

2. The main contention of the appellant is that the tariff should be reclassified to LT IV tariff instead of LT VI F. But the LT connection with Consumer No 10802 is facilitating (water pumping) the HT II B connection Consumer Code 26/5652 – intended for private hospitals.

Tariff of different categories of consumers are determined by the Kerala State Electricity Regulatory Commission (KSERC) under Section 62 of the Electricity Act, 2003. The tariff applicable at the time of inspection was one ordered by the Kerala State Electricity Regulatory Commission on 14-08-2014 in OP No. 9 of 2014 as published in the Kerala Gazette (Extra Ordinary) as per No. 2379 in Volume 3 dated 27-09-2014. As per Conditions 8 and 9 in the General Conditions of the Gazette, - states the tariff application of service connections given to common facilities. Condition 8 – 'Power facility for common facilities such as fire control, common lighting, lifts, water pumping, sewage treatment, waste disposal etc in residential apartment complexes and in individual houses shall be billed at domestic tariff.' Condition 9 - 'Power supply for common facilities in the high rise

buildings for the occupation by consumers in LT VI or in LT VII categories shall be charged at the respective tariff for such categories. When there is a combination of occupation of different categories of consumers, common facilities shall be charged at the highest of LT VI or LT VII tariff applicable to such categories.

3. The argument of the appellant that the 'General Conditions 8 & 9' are applicable only to residential apartment complexes and high rise buildings is baseless. The conditions are intended to give a general guideline for the application of tariff. Separate LT connections for water pumping, lifts etc. are common in residential and high rise buildings. Hence the same is cited as examples of common facility. If all the individual connections are to be separately defined, the Gazette Notification would be very elaborate.

It is clear that the tariff for the service connections given to common facility (water pumping) - in this case HT II B (i.e. Private Hospital tariff), has to be billed in LT VI F tariff. Hence the bill issued is in order.

4. The bill is a short assessment bill for a period of 24 months. The HT connection was availed in 4/2011, and Consumer No 10802 is billed under LT VI A tariff during the entire period from 4/2011 till date. Hence the actual short assessment period is from 4/2011 to 9/2015, but Regulation 152(3) states that "The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realised by the licensee without any interest:

Provided that; if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months:

Provided further that while assessing the period of such short collection the factors as specified in Sub-regulation (8) of Regulation 155 shall be considered:

Provided also that realisation of electricity charges short collected shall be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months".

Hence the short assessment calculated for 24 months and bill issued in accordance. The period of assessment is limited to twelve months if the date of short assessment is not known. But this case does not come in that category.

5. In spite the case being so, the Hon'ble CGRF has ordered to revise the short assessment bill to a period of 12 months. The licensee has been at a loss of revenue from 4/2011 (date from which Consumer No 10802 had to be classified under LT VI F tariff). Regulation 152 has put constraints for billing the entire period of short assessment. The order of Hon'ble CGRF has further decreased the period for collecting the short assessed bill amount. The short assessment bill if revised as per order of CGRF would be Rs.

1,05,106.00. The licensee would suffer a revenue loss of Rs. 83,227.00 (Rs 2,18,795.00 - Rs 1,05,106.00). Further decrease in the billing period and change to a lower tariff would cause heavy revenue loss to the licensee.

The fixation of tariff is a legislative process. Tariff determined by the Kerala State Electricity Regulatory Commission from time to time forms part of the agreement of supply arrived between the consumer and KSE Board Limited. The liability to remit the current charge is a statutory one.

A distribution licensee supplying electricity to its consumers under a statutory liability casted on it by Section 43 of the Electricity Act, 2003. At the same time, consumer has a liability to pay its charges under an agreement executed by it. Besides, the Act further centres right on the licensee under Section 45 to recover the charges of electricity supplied by it to its consumers. This right cannot be taken away by any Forum/ Court of Law provided the licensee has acted in accordance with the provisions of the Act and the Regulations thereon.

The demand raised by the Assistant Engineer is legally sustainable and issued based on the tariff notification and Supply Code in force. The appeal is liable to be dismissed and the appellants may be directed to remit the demand.

### **Analysis and findings**

The hearing of the case was conducted on 26-05-2016 at Kizhathadiyoor Service Co-operative Bank Auditorium, Pala and the appellants side was represented by Sri Joshy George, Public Relations Officer of the hospital and the respondents side by Sri N.V. Joshy, Assistant Executive Engineer, Electrical Sub Division, Kuravilangad and they have argued the case, mainly on the lines as stated above. On examining the petition filed by the appellants, the statement of facts of the respondents, perusing the documents and considering all the facts and circumstances of the case, this Authority comes to the following conclusions and findings, leading to the decisions thereof.

On going through the records it can be seen that an LT service connection with consumer no. 10348 was effected in the hospital premises of the appellants on 19-10-1958 and during 4/2011 the service was converted as HT connection. As the hospital was registered under Travancore - Cochin Literary, Scientific and Charitable Societies Registration Act 1955, and donations to which are exempted from payment of Income Tax, the tariff assigned was under LT VI A which is in force at the time. But while converting the service connection to HT, the tariff was categorised under HT-II (B) since the appellants had not produced any evidence showing the institution registered under Travancore - Cochin Literary, Scientific and Charitable Societies Registration Act 1955, and donations to which are exempted from payment of Income Tax.

In the case of service connection with consumer No 10802 availed on 02-01-1969 for pumping water to the hospital premises was effected under

VI A tariff which is in force at that time. According to the respondent the tariff applicable to private hospitals, private clinic and private clinical laboratories are categorized under LT VI - General (F) with effect from 14-08-2014. But due to oversight, the appellant was charged under LT VI A. Hence the short assessment was issued to the appellant relying on the revised 'Schedule of Tariff and Terms and Conditions for Retail Supply of Electricity by KSEB Limited and all other licensees' with effect from 14-08-2014.

As per Clause 9 of General Conditions to the Schedule of Tariff and Terms and Conditions, "*Power supply for common facilities in the high rise buildings for the occupation by consumers in LT VI or in LT VII categories shall be charged at the respective tariff for such categories. When there is a combination of occupation of different categories of consumers, common facilities shall be charged at the highest of LT VI or LT VII tariff applicable to such categories*". The appellant's argument is that the 'General Conditions 8 & 9' are applicable only to residential apartment complexes and high rise buildings. In the tariff order it is specifically mentioned that all non-agricultural pumping, drinking water pumping for public by Kerala Water Authority, Corporations, Municipalities and Panchayath are included LT IV A. But the respondent objected this argument stating that the conditions are intended to give a general guideline for the application of tariff. So separate LT connections are availed for water pumping, lifts etc. which are common in residential and high rise buildings.

***The point to be decided in this case is as to whether the appellant is eligible for LT IV A tariff or not.***

The purpose or the activity for which the electrical energy is being used is considered primarily for determining the applicable tariff of the consumer. As per Section 61 of the Electricity Act, 2003, *the Appropriate Commission shall subject to the provisions of the Act specify the terms and conditions for the determination of tariff by safeguarding of consumers' interest and at the same time recovery of the cost of electricity in a reasonable manner.* In order to cater the genuine need of different types of consumers and also to rectify the anomalies in the prevailing tariff, the Commission introduced new tariff depending upon the purpose for which supply is used. Accordingly Commission introduced LT VI General (F) tariff for private hospitals, private clinics, private clinical laboratories, private X-ray units, private mortuaries, private blood banks, private scanning centres etc.

In the general condition of the tariff order, it is specifically mentioned that Power supply for common facilities in the high rise buildings for the occupation by consumers in LT VI or in LT VII categories shall be charged at the respective tariff for such categories. Since this condition applicable to LT VI or LT VII consumers, the point has to be clarified is whether this general condition is applicable to HT consumers regarding the combination of occupation by different categories of consumers on common facilities. The said general conditions relate under the caption 'Part A- Low Tension (LT) Tariff'. The appellant's service connection for hospital is under HT II B category. General conditions for HT and EHT consumers are also separately

included in the tariff order. Hence Clause 9 of General Condition is applicable for LT consumers.

Low Tension IV category mainly relates to industrial consumers and the appellant's service connection does not come under industrial activities. In this case, the supply is exclusively used for pumping water to the appellant's hospital and hence cannot be included in the LT IV category. Since the appellant failed to produce a certificate under the "Travancore - Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, and donations to which are exempted from payment of Income Tax", he is not eligible to categorise in VI A tariff.

As per tariff order dated 14-08-2014 in OP No. 9 of 2014, Hon'ble Commission has introduced LT VI General (F) tariff for private hospitals, private clinics, private clinical laboratories, private X-ray units, private mortuaries, private blood banks, private scanning centres etc. So, in the above circumstances the appellant is not eligible for LT IV tariff or LT VI A tariff.

### **Decision**

In view of the factual position I don't find any reason to interfere with the findings and decision taken by the CGRF in this case. The respondent is directed to issue revised assessment under LT VI F tariff, for a period for twelve months prior to the date of inspection in the premises. The appeal is found devoid of any merits and hence dismissed. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/18/2016/\_\_\_\_\_ /Dated:\_\_\_\_\_

Forwarded to:

1. Fr. Mathew Thekkel, Holy Ghost Mission Hospital, Muttuchira P.O., Kottayam.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Kuravilangad, Kottayam District.

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.