

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION NO. P/084/2016
(Present: V.V. Sathyarajan)
Dated: 28th December 2016

Appellant : Sr. Mercy John
Administrator,
St. Joseph Mission Hospital,
Anchal P.O., Kollam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Anchal,
Kollam

ORDER

Background of the case:

The service connection with consumer No.1289 is effected under HT II (B) tariff in favour of M/s St. Joseph's Mission Hospital, under Electrical Section, Anchal. The appellant had submitted an application for tariff change from HT II (B) to HT II (A) to Special Officer, Revenue, Thiruvananthapuram, which was forwarded to Deputy Chief Engineer, Electrical Circle, Kottarakkara. But the Deputy Chief Engineer, Electrical Circle, Kottarakkara had rejected the request with an observation that the tariff change can be granted only on production of permanent certificate from the Income Tax Department without any condition. Aggrieved against this decision, the appellant approached with a petition before CGRF (South), Kottarakkara, which was dismissed by the Forum vide order in OP No.1632/2015 dated 20-02-2016. Still aggrieved against the above order, the appellant has filed this appeal petition before this Authority.

Arguments of the appellant:

The Deputy Chief Engineer has rejected the request of the Administrator with the following observation, "The tariff changes can be granted based only on obtaining permanent certificate from income tax department without any condition." The form used by the Income Tax Commissioner is the only one

used by the department. This is not a temporary sanction as can be seen by the last sentence of the proceedings of Pr. Commissioner of Income Tax (Exemptions) dated 15-06-2015 which reads "This approval shall continue to be valid in perpetuity unless specifically withdrawn".

As per the orders of CGRF, the licensee has some practical problem in changing tariff from HT II B to HT II(A) General continuously because the tariff is to be changed every year based on the certificate/approval issued from the Income Tax Commissioner. This statement is also incorrect. The tariff is not being changed every year. The practice followed previously was to change the tariff once in 5 years. For the last two or three years the tariff was revised by the Regulatory Commission yearly. The tariff rate from 2014 tariff revision is continued now and it may take some more time for a revision.

The 80G registration is of perpetual nature and there is no question of issuing of revised 80G every year. The invoices are revised only when the tariff is revised. From the above it may be noted that the Chairperson has taken decision based on wrong conclusion. There are many Electrical Circles in KSE Board where the concessional tariff was granted based on identical order of Income Tax Department.

In view the above the appellant requests to kindly set aside order the order of CGRF and direct the Deputy Chief Engineer to allow the reduced tariff to St. Joseph's Mission Hospital, Anchal also.

Arguments of the respondent:

The respondent stated that the present appeal is seen filed against the order of the Hon'ble CGRF (South) in OP No. 1632/2015. The Hon'ble CGRF (South) had made its order on 20-02-2016. As per relevant statutes the time limit for filing appeal against the order is 30 days. The present appeal is seen filed only on 07-11-2016, i.e., after an inordinate delay of nearly 9 months. Hence the Hon'ble Authority may dismiss the present appeal as it has no locus standi. The respondent further stated that St. Joseph's Hospital, Anchal is an HT Consumer under Electrical Section, Anchal with Consumer No. 1345970001289 (Legacy No. 24/2461). The tariff assigned to the hospital is LT II (B), which is the tariff applicable to private hospitals having HT service connection as per the tariff notification issued on 14-08-2014.

The appellant had filed an OP No. 1632/2015 before the CGRF (South) for getting revised the existing HT II (B) Tariff to HT II (A) Tariff. The arguments raised by the appellant for change in tariff are that

- i) the hospital had obtained Income Tax exemption under 80G(5) (vi) of Income Tax Act 1961

- ii) They had obtained registration from Income Tax Department under Section 12A.
- iii) The Hospital is a charitable hospital established in 1953 as a unit of society of Daughters of Mary St. Mary's Province which was registered under Travancore Cochin Literary, Scientific and Charitable Societies Regulation Act 1955.

It is admitted that the as per the Tariff order dated 14-08-2014, HT II General (A) tariff is applicable to 'private hospitals and charitable institutions registered under Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, the donation to which are exempted from payment of Income Tax". The documents submitted for revising the tariff are

- i. A certificate issued from the Pr. Commissioner of Income Tax (Exemptions), Kochi dated 15-06-2015. In that approval is accorded for St. Joseph's Medical Trust, St. Joseph's Hospital, Anchal P.O., Kollam with effect from Assessment Year 2016-17 onwards and issued with certain conditions.
- ii. Another order produced by the appellant is the order under Section 12AA(b) of the Income Tax Act 1961 issued by the Commissioner of Income Tax, Thiruvananthapuram issued on 24-01-2005. In that order it is clearly stated that 'this certificate is only to the effect that the applicant's name has been entered in the register maintained in the Office of the Commissioner of Income Tax, Thiruvananthapuram and is not intended to give a finding as to whether the applicant is a charitable trust/society/institution'.
- iii. The document produced for establishing the hospital as a charitable one the appellant had produced only a certificate from the Daughters of Mary St. Mary's Province. The registration under Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 is issued only for the Daughters of Mary St. Mary's Province. From the documents it is seen that St. Joseph's Hospital, Anchal is functioning under St. Joseph's Medical Trust which was registered at Sub Register Office, Anchal. From the same itself it is crystal clear that the hospital is functioning under the Trust and moreover the hospital has not registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. Income Tax exemption under 80 G and Registration under section 12A of Income Tax Act, 1961 is only one criterion for considering the concessional rate of tariff. The Tariff order issued by the Kerala State Electricity Regulatory Commission on 14-08-2014 clearly states that 'private hospitals and charitable institutions registered under Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, the donation to which are exempted from payment of Income Tax are only eligible for HT II (A) tariff. Here the

appellant has failed to produce a permanent certificate from the Income Tax Authority. It is seen that Unique Registration Number is allotted to the Trust and not to a charitable institution.

The Hon'ble KSERC in its orders No.1209/DD (T)/2016/KSERC dated 10-11-2016 and in No. 2193/DD/2015 dated 09-11-2016 clearly ordered that as per the provisions of the tariff order dated 14-08-2014 issued by the Commission, the private hospitals managed by the charitable trusts registered under the Trust Act are not eligible for the tariff applicable to the consumers of LT VI A and HT II A categories, which are applicable to the private hospitals managed by the charitable societies registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955.

Considering the above facts the Hon'ble Ombudsman may dismiss this appeal.

Analysis and findings:

A hearing of the case was conducted in the court hall, CGRF, Kottarakkara on 21-12-2016. Advocate Sri. Saji Kumar was present for the appellant's side and Sri. Anish K, Assistant Executive Engineer, Electrical Sub Division, Anchal 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 registered under the Travancore Cochin Literacy, Scientific and Charitable Societies Registration Act and the donations to which are exempted from payment of Income Tax, thereby entitled for availing concessional tariff under HT II (A).

On a perusal of documents it can be seen that the appellant has produced a certificate dated 13-01-1997 issued by the Mother Provincial, 'Daughters of Mary St. Mary Province' stating that the institution was registered under the Travancore Cochin Literacy, Scientific and Charitable Societies Registration Act. But the respondent has disputed the fact that the appellant's institution is registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act. The appellant neither produced a certificate issued by the Registrar of Societies nor furnished a valid registration number with date of registration under the Travancore Cochin

Literary, Scientific and Charitable Societies Registration Act. According to respondent the eligibility for concessional tariff under HT II 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.

On going through the records, it is revealed that the appellant's institution is registered under the provisions of the Trust Act in the name of 'St. Josephs Medical Trust, Anchal.' It has separate legal entity with regard to its constitution, legal status of the property, functions, consequence of extinguishment/dissolution and such other factors. Since the hospital is found registered under the Trust Act and has separate legal entity as Trust, it cannot be considered as a unit of society of Daughters of Mary St. Mary's Province which was registered under Travancore - Cochin Literary, Scientific and Charitable Societies Regulation Act 1955. The appellant has also admitted that they are regularly submitting annual returns of the institution as a charitable trust in the name of 'St. Josephs Medical Trust, Anchal' to Income Tax Department.

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 HT II 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 certificate of registration under Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955. The Kerala State Electricity Regulatory Commission, in its order no. 2193/DD/2015 dated 09-11-2016, it has been clarified that 'the private hospital run by the Charitable Trust registered under the Trust Act is not included in LT VI A and HT II A categories.'

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 01-10-2009, 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"**.

In the light of above orders, the observation of the Deputy Chief Engineer that the tariff change can be granted based only on obtaining permanent

certificate from Income Tax Department without any condition, has not pertained any validity. At the same time, it is made clear that private hospitals managed by the charitable trust registered under the Trust Act are not eligible for the tariff applicable to the consumers of LT VI A and HT II A categories, which are applicable to private hospitals managed by the charitable societies registered under the Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955.

Decision

In view of the above discussions and considering the facts, circumstances and legal provisions pertaining to the issue this Authority is of the considered view that, as per the provisions of the tariff order dated 14-08-2014 issued by the Commission, the appellant, St. Joseph Mission Hospital, Anchal is not eligible for HT II A tariff. The order of CGRF in OP No.1632/2015 dated 20-02-2016 is set aside. The appeal petition filed by the appellant stands dismissed as it is found having no merits and is accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/084/2016/ _____ /Dated: _____

Delivered to:

1. Sr. Mercy John, Administrator, St. Joseph Mission Hospital, Anchal P.O., Kollam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Anchal, Kollam

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.