

THE STATE ELECTRICITY OMBUDSMAN

Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,
Edappally, Kochi-682 024

www.keralaeo.org Ph: 0484 2346488, Mob: 91 9447576208

Email:ombudsman.electricity@gmail.com

APPEAL PETITION No. P/009/2017

(Present: V.V. Sathyarajan)

Dated: 19th April 2017

Appellant : The Administrator
Ursala Hospital,
Ambalappuzha,
Alappuzha

Respondent : The Assistant Executive Engineer,
KSE Board Limited,
Electrical Sub Division,
Ambalappuzha,
Alappuzha

ORDER**Background of the case:**

The service connection with consumer No. 867 is effected in favour of M/s. Ursala Hospital under Electrical Section Ambalappuzha under LT VI A tariff. The connected load of the premises is 70000 Watts. The Anti Power Theft Squad (APTS) Wing of KSEB Ltd conducted an inspection in the appellant's premises on 25-05-2016 and detected that the tariff assigned to the appellant was LT VI A tariff instead of LT VI F. The appellant had been enjoying the concessional tariff, which is eligible only to those consumers having registration under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, the donation to which are exempted from income tax.

Since the appellant was billed under LT VI A tariff, a short assessment bill dated 27-05-2016 for Rs. 1,55,139.00 was issued towards the undercharged amount due to wrong fixation of tariff. Aggrieved against this, the appellant approached with a petition before CGRF (Central), Ernakulam, which was disposed of by the Forum vide order in OP No. 49/2016-17 dated 26-09-2016 by cancelling the short assessment bill dated 27-05-2016 for Rs. 1,55,139.00 and directed the respondent to change the tariff under LT VI F only after issuing a notice under Regulation 97 of Supply Code, 2014. Against the above order, the appellant has filed this appeal petition before this Authority with a request to retain the tariff under LT VI A till the appellant gets the certificate 80G from Income Tax Department.

Arguments of the appellant:

The appellant's institution is registered under Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. The tariff of the appellant is LT VI A. Upon the receipt of intimation that the appellant is not having Income Tax 80 G (5) (VI) registration, immediately approached the Income Tax and have filed the application for the same. Since the appellant is having Income Tax 12 A registration and also exempted from the payment of Income Tax, is eligible for 80 G (5) (VI), and application is pending before Income Tax Authorities.

The appellant had filed the complaint before CGRF and the CGRF was kind enough to release an order cancelling the claim of Rs.1,55,139.00 for want of notice as per Regulation 97(2) of the Supply Code, 2014. Now KSEBL have given a notice stating that they have decided to reclassify/change the tariff from LT VI A to LT VI F. Even though the appellant is eligible for 80G the appellant couldn't able to get it. Hence the appellant is in need of further six months' time for getting the 80G. More than that, the Assistant Engineer stated that they will approach other Forums or Court against the order of CGRF.

Relief Sought for

1. Direction may be given to the Assistant Engineer not to disconnect the supply till hearing and disposal of the complaint.
2. Direction may be given to the Assistant Engineer to retain the tariff under LT VI A for further six months till the receipt of certificate under 80G from Income Tax Department.

Arguments of the respondent:

The appeal is not maintainable either on facts or in law. Furthermore, the respondent/KSEB Ltd. prays the Hon'ble Ombudsman also to allow realisation the short assessment bill issued lawfully to the consumer, which was cancelled by the CGRF. It is submitted that the respondent is aggrieved by the impugned order of the Hon'ble CGRF Ernakulam, which could not appreciate all the facts and circumstances of the case adequately.

The appellant is a private hospital functioning under the jurisdiction of Electrical Section, Ambalappuzha, bearing Consumer No. 867. The inspection conducted by the Anti Power Theft Squad (APTS) Wing of KSEB Ltd. on 25-05-2016 found that the right tariff to be assigned to the consumer was LT VI F, where as the consumer had been enjoying the concessional tariff of LT VI A, which is permissible only to those consumers who produce the certificate under Section 80G of the Income Tax Act. Accordingly a short assessment bill for Rs. 1,55,139.00 under the tariff LT VI F, for the period 09/2014 to 05/2016, was issued, against which the consumer filed a complaint before the Hon'ble CGRF Ernakulam as Complaint No. 49/2016-17. The Forum

disposed of the same on 26-09-2016 by cancelling the bill and directing KSEB to change the tariff LT VI F only after issuing a notice under Regulation 97 of the Supply Code, 2014.

Then KSEB on the one hand issued notice for changing tariff to the consumer under Regulation 97 of the Supply Code, as instructed by the Forum, and on the other hand decided to challenge the order of the Forum, which quashed the short assessment bill. As stated in the petition, the notice upheld that the KSEB Ltd. was at liberty to legally challenge the impugned order of CGRF and the issuance of the notice no way restrain KSEB from seeking legal remedy against the order of Forum. Thereafter, while the KSEB was taking steps for a legal remedy against the impugned order, the consumer filed this complaint against the notice issued by the Board.

It is submitted that the decision of the Forum to cancel the short assessment bill is not sustainable on facts or in law. The Forum agrees that the consumer is not eligible for the lower tariff LT VI A, and therefore can be assigned the higher tariff LT VI F. But the Hon'ble Forum permits to reclassify the tariff only after satisfying condition laid down in Regulation 97 of Supply Code. But here the context is entirely different. Once a tariff notification is issued by the Government, after satisfying all the procedures including hearing of consumers if necessary, and changes are brought about to prevailing tariffs, it tantamount to issuance of notice, and there is no need of further notice. No courts will interfere with Government Orders fixing tariffs, if properly done, unless there is evidence of violation of fundamental rights or constitutional rights (*Puttamma v/s State of Karnataka*, AIR(2009)98 Ker.). Therefore, as clearly opined in the dissenting note of one of the members of the Forum in page No. 4 of the impugned order, "as per tariff order dated 27-09-2014, which was published in the Kerala Government Gazette and known to the public, LT VI A tariff is applicable only to those having 80(G) Certificate. The fact that the amount was not assessed during 09/2014 does not prevent the licensee from claiming the amount. Hence the bill is in order".

The Regulation 97 of the Supply Code, 2014 itself allows the licensee to reclassify the tariff wrongly assigned. The only condition stipulated in the Regulation is that the licensee should issue a notice to the consumer. Here the misclassification of tariff was identified in an inspection within the presence of the officer in charge of the hospital, and the site mahazar, which clearly specified the misclassification, was acknowledged by that officer. Furthermore, a notice was issued to the consumer on 27-05-2016, noting the reclassification and demanding the remittance of the short assessment bill attached with for the period 09/2014 to 05/2016. Therefore, the observation of the Forum that the tariff was reclassified without issuing a notice is baseless. Furthermore, the Forum failed also to consider the Regulation 97(4), which allows the licensee to realise the arrears in respect of reclassification. Thus the Forum wrongly arrived at a decision that the short assessment bill is unlawful. Moreover, as per Clause 37(5) of KSEB Terms and Conditions of Supply, 2005, and Regulation 134 of the

Kerala Electricity Supply Code, 2014, the KSEB Limited is well within its authority in demanding the short assessed amount from its consumers.

The contention of the appellant, that the failure of the licensee in conducting a hearing of the consumer makes the bill unlawful, is baseless. The Supply Code, 2014 does not stipulate that the hearing on the objection filed by the consumer against the notice is mandatory. Regulation 97(3) states that the licensee after due consideration of the reply of the consumer, may reclassify the tariff. Here the licensee had not raised any valid objections, other than claiming further time for presenting the certificate under Section 80 G. So no hearing was required. Nevertheless the Assistant Engineer had given due consideration to the objection and provided a reply letter to the consumer. Without prejudice to the above dispute, it is submitted that the direct observation of the Hon'ble Forum that "had it (the notice under Regulation 97) been informed the appellant in 2014 itself, they could have applied for this registration then and there", and the implied meaning of this observation that the appellant could have obtained the certificate in 2014 itself, if the notice had been issued, are not sustainable on facts. Even now the consumer is not eligible/has not satisfied all conditions for obtaining a certificate under Section 80G of Income Tax Act. Having received the disputed Short Assessment bill, the consumer filed an application on 20-06-2016 before the Income Tax (IT) Department for the certificate. Thereafter the consumer filed the complaint before the CGRF, submitting an expectation that certificate would be obtained, and thus gained the impugned order. But, owing to lack of eligibility of the consumer, the IT Department has not issued the certificate so far.

The above facts reveal that the consumer is not eligible for the tariff LT VI A then and now. Hence the Hon'ble Electricity Ombudsman may be pleased to dismiss the petition/appeal, and permit the respondent to realise the short assessment bill by an order quashing the impugned order of CGRF.

Analysis and findings

A hearing of the case was conducted in my chamber at Edappally on 08-03-2017. The appellant, Sr. Rani was present for the appellant's side and Sri V.S. Jayasanker, Assistant Executive Engineer, Electrical Sub Division, Ambalappuzha and Sri Jayachandran V.N., Nodal Officer (Litigation) KSEB, Alappuzha 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 answered in this case is as to whether the appellant's premises is a charitable institution and the donations to which

are exempted from payment of Income Tax, thereby entitled for availing concessional tariff under LT VI A.

With regard to the certificate 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, the only point to be decided is whether the institution is eligible to get 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 has stated that she got registration under Section 12 A of the Income Tax Act, 1961 and also exempted from the payment of income tax and hence filed application for 80 (G) certificate. 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 a petition before the CGRF, Ernakulam. But the Forum observed that the appellant's tariff should have been changed only after issuing notice as stipulated in Regulation 97 (2) of Supply Code, 2014 and also of the view that the short assessment bill issued in this regard without observing the stipulations in the Regulation is illegal. It is held by 2nd member of CGRF, in a dissenting note in the impugned order, "as per tariff order dated 27-09-2014, which was published in the Kerala Government Gazette and known to the

public, LT VI A tariff is applicable only to those having 80(G) Certificate. The fact that the amount was not assessed during 09/2014 does not prevent the licensee from claiming the amount. Hence the bill is in order". But in a majority decision of the CGRF disposed the petition with direction to cancel the short assessment bill.

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, as the appellant has not produced the approval under Section 80 G from the Income Tax Department, she is not eligible for availing tariff under LT VI A. However, the appellant is eligible for reclassification of tariff as per Regulation 98 of the Kerala Electricity Supply Code, 2014 on getting approval under Section 80 G (5) (vi) of Income Tax Act, 1961.

In this case the respondent had not suo motu reclassified the category as per Regulation 97 of Supply Code, 2014. Instead, the reclassification was made on the basis of an inspection conducted by the APTS. Though the respondent issued a notice on 27-05-2016, which has no office number, date etc. and the same was not even seen acknowledged by the appellant. So, a probable conclusion can be arrived at is that the respondent has not informed the appellant regarding the proposed reclassification through a notice with a notice period of 30 days to file objection, if any. However, the short assessment bill was issued upon detecting that the appellant was being wrongly billed under LT VI A instead of LT VI F with effect from 16-08-2014.

It is the bounden duty and the responsibility of the licensee to reclassify the consumer under appropriate category consequent to a revision of schedule of tariff and terms and conditions of Retail Supply of Electricity. As per Regulation 97(1) of Kerala Electricity Supply Code, 2014, which was in force with effect from 01-04-2014, the licensee has to reclassify the consumer under appropriate category consequent to a revision of tariff. Further, as per Regulation 152(2) and (3) of Supply Code, 2014, the amount of electricity short collected by the licensee, if any, can be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted, without any

interest. In the above circumstances, the issuance of short assessment bill for the period from 09/2014 to 05/2016 due to wrong classification is found in order and the appellant is liable for making the payment.

Decision

Considering the above facts and legal provisions pertaining to the issue this Authority is of the considered view that the appellant's premises is not eligible for tariff under LT VI A. However, it is left open to the licensee to consider the issue afresh after observing the procedure for suo moto reclassification of consumer category as per Regulation 97 of Supply Code, 2014, to recover the undercharged amount due to wrong classification of tariff during the period in question. So, in view of the above findings, the appeal petition stands dismissed as it is found having no merits.

The order of CGRF No. CGRF-CR/Comp.49/2016-17 dated 26-09-2016 is set aside. No order as to costs.

ELECTRICITY OMBUDSMAN

P/009/2017/_____ /Dated:_____

Delivered to:

1. The Administrator, Ursala Hospital, Ambalappuzha, Alappuzha.
2. The Assistant Executive Engineer, KSE Board Limited, Electrical Sub Division, Ambalappuzha, Alappuzha.

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, CGRF-CR, 220 kV, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.