

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/021/2017
(Present: A.S. Dasappan)
Dated: 25th May 2017

Appellant : Fr. Edward George
Santhula Charitable Trust Hospital
Koothattukulam,
Ernakulam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSEB Limited,
Piravom,
Ernakulam

ORDER

Background of the case:

The appellant is a consumer having consumer number 17477 under Electrical Section, Koothattukulam. The appellant is running a private hospital registered under Charitable Trust Act. The appellant was served with a bill dated 28-03-2016 amounting to Rs. 4,96,944/- for the short assessment of wrong fixation of tariff, on the basis of an inspection conducted by the APTS in the premises on 19-03-2016. The appellant filed a complaint in the Section Office which was not allowed. The appellant approached the CGRF, Ernakulam requesting to set aside the short assessment bill issued. The CGRF has dismissed the Petition on finding that the bill issued by the respondent was in order and the petition was found as devoid of any merits, vide its order No. CGRF-CR/Comp.79/2016-17/501 dated 31-12-2016. Aggrieved by the decision of CGRF, the appellant has submitted the Appeal petition before this Authority.

Arguments of the appellant:

The gist of the arguments of the appellant in the appeal petition is as follows:

The appellant is a Registered Public Charitable Trust conducting a hospital for mentally challenged patients. Due to wrong fixation of tariff that too, twice, by the APTS wing, huge financial loss was occurred to the appellant and the two

reclassifications were suo moto conducted by the respondents' officers, the appellant approached the consumer grievance redressal forum. At no point of time the appellant suppressed any material facts or misled the officers of the respondents. Neglecting all those facts, the forum, without application of mind, or going to the merit of the complaint finds the reclassification correct. Even non service of notice before reclassification is not considered by the forum. If at all any fault in fixing the tariff occurred it is on the part of the officers of the respondents, and for that penalizing the innocent appellant/consumer is not proper. The attempt to realise the enhanced rate with retrospective effect for previous 2 years is against law and natural justice. The fact that the appellant is a public charitable trust, who enjoys the benefit under Section 80 G of the Income Tax Act, is also not considered by the forum. Hence the appellant is constrained to agitate before the Ombudsman challenging, the order of the forum, for the just disposal.

The appellant is a registered Charitable Trust declared and constituted as a Public Charitable Trust, under the name Santhula Charitable Trust. The appellant enjoys benefits under Section 80 (G) of Income Tax Act. The trust is constituted in the year 2006 with the present director and petitioner herein Fr. Edward George as settler and the Trust deed was registered at Sub Registrars' Office at Muvattupuzha on 24-02-2006. Subsequent to the registration an amendment was carried out on the basis of the decision and resolutions passed at the meeting of the trustees on 29-05-2009. Those amendments were carried out after getting prior permission of the income tax department as per proceedings No. ITO/TDPA/12A/W. 1/89/08-09 dated 21-05-2009. As such

- 1) The Trust formed is irrevocable.
- 2) The Trust shall maintain regular accounts of all income, expenses, assets and liabilities and the books of accounts of the trust shall be closed on 31st March of every year. The accounts of the Trust shall be audited by a qualified accountant.
- 3) The benefits of the Trust are open to all irrespective of caste, religion, sex etc.
- 4) As per Section 13(1) C of the Income Tax Act 1961, the members of the Board of "Santhula Charitable Trust" hereby declare that the income of the Trust already earned has not been used and shall not be used in the future or applied directly or indirectly for the benefit of any person.

From the above it can be seen that Santhula Charitable Trust is a Public Charitable Trust. The Santhula Trust Hospital is wholly owned by the above Charitable Trust enabling it for the classification for Power tariff for Public Charitable Trust. Initially after proper inspection of the site and proper evaluation, electrical connection was granted (Con. No: 17477) and Tariff was fixed by the K.S.E.B. under LT VI-D. But in the year 2013 APTS wing of the K.S.E.B. inspected the premises and changed the Tariff to LT VI-A and a short assessment bill was issued for Rs. 6,00,113/- for two years and that amount was paid by the appellant in instalments. Again on 19-03-2016 Anti Power Theft Squad Assistant Engineer inspected the premises and the Tariff classification was changed to LT VI F and assessed a high

rate for the consumed units with retrospective effect for the previous years and additional bill for Rs. 4,96,944/- was served. This was done arbitrarily and without providing an opportunity to hear the appellant and without understanding the status of a Public Charitable Trust. This is a clear incident of violation of natural justice. The wrong classification was done by the officers of the respondent twice and thereby put the appellant in a very difficult situation.

If at all any fault in fixing the tariff occurred, it is from the part of the officers of the respondent and for that penalizing and victimizing the innocent appellant/consumer is not justifiable. The attempt to realize the high rate with retrospective effect is against law and natural justice.

Arguments of the respondent:

The respondent has filed the following statement of facts.

Following the inspection of A.P.T.S, Vazhathope on 19-03-2016, the team made the observation that the existing tariff under which the supply is given for M/s Santhula Trust Hospital is LT VI A. The team made the observation the tariff should be charged to IT VI F since the institution is a private mental hospital. Accordingly a bill was issued to Mr. Skaria under consumer number 17477 charging the arrear of excess charges as per the section 97 of supply code, which is totally justified due to the facts cited below.

1. KSERC order dated 14-08-2014 sanctioned by Kerala State Electricity Board Limited vide B.O (CMD) No. 2584/2014 Tvm 4/10/2014 explicitly states that an institution can be classified as VI (General (A) only institutions are registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act 1955. The consumer has not produced any document as a proof of registration under the above Act and also the representative of the institution in the hearing conducted by Assistant Engineer, Koothattukulam on 27-05-2016 has explicitly stated that they have not registered under the above mentioned Act.

2. The arrear bill has been charged from 4/2014 to 3/2016 for previous two years from the period of inspection. For the period from 4/2014 to 8/2014 the tariff was reclassified as LT-VIII instead of VI A because before the order of KSERC dated 14-08-2014 came into force the earlier order in force (KSERC order dated 30-04-2013) stated that a consumer can be classified as VI-A only for private hospitals registered under charitable societies Act. Since the consumer has not produced any proof for the same the consumer has to be classified as LT-VIII which was in force for private hospitals. Hence the petition may be dismissed.

Analysis and findings:

A hearing of the case was conducted in the Office of the State Electricity Ombudsman at Edappally on 16-05-2017. Advocate Sri. John V. Varghese was present for the appellant's side and Sri. Anoop A, Assistant Engineer, Electrical

Section, Koothattukulam 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 Literary, 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 LT VI (A) and the short assessment amount is in order

It is contended by the appellant that their hospital is a charitable institution registered under Charitable Trust Act. The appellant was issued by a huge bill amounting to Rs. 4,96,944.00 as arrear for misclassification of tariff. It is stated that the arrear bill issued is very huge for them to pay in lump and the same was issued without giving a proper notice. According to the appellant, if at all any fault in fixing the tariff occurred, it is the lapse from the part of the officers of the respondent and for that penalizing and victimizing the innocent appellant/consumer is not justifiable.

The respondent has stated that as per the tariff orders, the hospitals registered under Charitable Trust Act are not eligible for fixation of tariff under LT VI A. 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. The tariff for 4/2014 to 8/2014 was reclassified as IT VIII on the basis of KSERC order dated 30/4/2013 which was in force at that time.

On a perusal of documents it can be seen that the appellant has produced a copy of the DEED OF TRUST registered under the provisions of the Trust 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.

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 'Santhula Charitable Trust.' It has separate legal entity with regard to its constitution, legal status of the property, functions, consequence of extinguishment/dissolution and such other factors. The appellant has also admitted that the hospital is having 12 AA registration as well as 80G exemption of income tax and they are regularly submitting annual returns of the institution as a charitable trust in the name of 'Santhula Charitable Trust' 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 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. The Kerala State Electricity Regulatory Commission, in its order no. 2193/DD/2015 dated 09-11-2016 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.

As per Regulation 97 of the Supply Code 2014, the licensee may suo motu reclassify the consumer under appropriate category. The Regulation reads as;

97. Suo motu reclassification of consumer category by the licensee.- (1) If it is found that a consumer has been wrongly classified in a particular category or the purpose of supply as mentioned in the agreement has changed or the consumption of power has exceeded the limit of that category as per the tariff order of the Commission or the category has changed consequent to a revision of tariff order, the licensee may *suo motu* reclassify the consumer under appropriate category.

(2) The consumer shall be informed of the proposed reclassification through a notice with a notice period of thirty days to file objections, if any.

(3) The licensee after due consideration of the reply of the consumer, if any, may reclassify the consumer appropriately.

(4) Arrear or excess charges shall be determined based on the actual period of wrong classification and the account of the consumer shall be suitably adjusted.

(5) If the actual period of wrong classification cannot be ascertained reasonably, the period shall be limited to a period of twelve months or a period from the date of last inspection of the installation of the consumer by the licensee whichever is shorter: Provided that in the case of reclassification consequent to change of the purpose of supply by the consumer without due authorisation, the licensee may examine each case and initiate proceedings under Section 126 of the Act if found necessary.

A notice as required to be issued as specified in Regulation 97 (2) is not seen issued to the appellant. A detailed calculation statement of the arrear amount is also required to be issued to the appellant by the respondent. It is found the respondent has wrongly classified the tariff of the appellant in several times and issued arrear bills to recoup the short assessed amounts after a long period. This kind of lapse on the part of the licensee cannot be justified. As per tariff order dated 14-08-2014 issued by the KSERC, the tariff applicable to private hospitals is LT VI F. In the tariff

order dated 25-07-2012 for the period from 1-7-2012 to 31-3-2013, the private hospitals comes under the tariff of LT VI B. This tariff order was in force till 16-08-2014. Hence the classification of tariff as LT-VIII done by the respondent has also to be reclassified under VI B for the period prior to 16-08-2014. In the above circumstances, the respondent shall issue a notice to the appellant along with a detailed statement of calculation of the arrears for the period from 4/2014 to 3/2016 and if required, allow sufficient instalments for remittance of the bill amount.

Decision

The order of CGRF, Ernakulam in OP No. CGRF-CR/Comp.79/2016- 17/501 dated 31-12-2016 is hereby upheld. Respondent is directed to issue a notice to the appellant as per rules and also issue a fresh bill along with a detailed statement of calculation.

The consumer may be allowed sufficient installments, if requested for, but has to pay interest at the rates as per rules, for the installments from the due date of the bill to the day of payment.

Having concluded and decided as above, it is ordered accordingly. The Appeal Petition filed by the appellant stands disposed of with the decisions ordered as above. No order as to costs.

ELECTRICITY OMBUDSMAN

P/021/2017/ _____ /Dated: _____

Delivered to:

1. Fr. Edward George, Santhula Charitable Trust Hospital, Koothattukulam, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSEB Limited, Piravom, Ernakulam

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.