

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/012/2017
(Present: A.S. Dasappan)
Dated: 30th May 2017

Appellant : Sr. Superior,
St. Anne's Nursing Home,
Pettah,
Thiruvananthapuram.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Pettah,
Thiruvananthapuram.

Background of the case:

The service connection with consumer No.1145144000702 was effected in favour of Sister Superior, St. Anne's Nursing Home, Pettah under Electrical Section, Pettah and the tariff was LT VI B. The connected load of the premises is 28 kW. On 17-08-2016, the APTS team inspected the premises and detected that the billing of LT service connection is under LT VI B 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. 84,987/-. 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. 246/2016 dated 29-12-2016 dismissed the petition due to lack of merit. Not satisfied with the above order, the appellant has filed this appeal petition before this Authority.

Arguments of the appellant:

The appellant has adduced the following arguments in his appeal petition.

This petition is against the order of Consumer Grievances Redressal Forum (South), Kottarakkara vide order OP No. 246/2016 at 29th December

2016. The appellant was utilizing LT VI B tariff till date under consumer Number 1145144000702. On inspection by the Anti Power Theft Squad of KSEB Ltd., it is found that the institution should be under LT V1 F since it is a private hospital/clinic. Under tariff LT VI A the institution should be a private hospital/clinic and should be

- a) registered under Societies Act
- b) Income should be exempted under Income Tax Act

1. The Institution St Anne's Nursing Home is a branch of Holy Cross Hospital, Kottiyam registered under the provision of Travancore-Cochin, Literary, Scientific and Charitable Societies Regulation Act, 1955. The copy of the Registration Certificate and the amended copy of Memorandum of Association are enclosed. This will evidence the branches of the society.
2. Now the second condition is donation to which are exempt from payment of Income Tax. This condition is also complied by registering under section 12 A of the Income Tax Act.
3. The wrong understanding of the Consumer Grievance Redressal Forum is about 80 G. As given in Para 5.5 section 80 G is applicable to the persons giving donation to a trust or institution, 50% of the donation can be claimed as deduction from his Income.
4. However the society is also Registered under section 80 G.
5. Both the conditions specified in the tariff order dated 27-08-2014 are fulfilled and the appellant is eligible for tariff LT VI B.
6. As per the Assessment order of the Assistant Commissioner of Income Tax, Trivandrum for the year 2013-2014 relevant to assessment year 2014-2015 passing an order for entire income is exempted.
7. All the Certificates of Registration under Society Act, Income Tax Act under Section 12 A and Registration under Section 80 G will be in the name of the Society and branches. Once the Society is registered all the laws will be applicable for the branches also.
8. Pray that orders may be passed rejecting the orders of Consumer Grievance Redressal Forum and giving relief to the appellant.

Arguments of the respondent:

1. The documents submitted by the appellant, consumer No. 114514400702 are the documents in favour of Holy Cross Hospital, Kottiyam and not relevant to statements made in Clauses 5 to 7 & 11 in the representation filed by Sr. Superior, St. Anne's Nursing Home, Pettah, Thiruvananthapuram.
2. The tariff of the power supply given to the premises of the consumer number 114514400702 was in IT VI B. On inspection of the Anti Power Theft Squad of KSEB Limited dated 17-08-2016, it is found that this hospital is to be included under the category of private hospitals/clinics. As per the Kerala State Electricity Regulatory Commission notification dated 14-08-2014 for electricity tariff, private hospitals/clinics are under the tariff structure of LT VI F. The documents submitted by the consumer shows that they are registered under "The Society of Sisters of the Holy Cross". Also this institution does not have an approval under Section 80 G of the Income Tax Act. The document copy submitted was of Holy Cross Hospital, Kottiyam, Kollam. So an invoice for Rs. 84,987/- (Rupees Eighty Four Thousand Nine Hundred Eighty Seven only) for short assessment was issued to the consumer. As per the Interim Order from CGRF, the electric supply to this consumer is still continuing.
4. As per Kerala State Electricity Regulatory Commission Thiruvananthapuram (KSERC) notification dated 14-08-2014, private hospitals /clinics come under the tariff structure LT VI F. For the notification dated 14-08-2014, the consumer, if it is a private hospital, the tariff structure quote, "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".
3. The documents submitted by the appellant, consumer No. 114514400702 are the documents in favour of Holy Cross Hospital, Kottiyam along with the Memorandum of Association (MoA), which is registered as a society with registration No. C350/99 to take up the management of Holy Cross Hospital Schools of Nursing or the Colleges of Nursing wherein, St. Anne's Nursing Home, Pettah is also listed.
4. In the context, the respondent pointed out orders issued in the following cases by the CGRF / The State Electricity Ombudsman.
 - a. CGRF Order of disposal of OP No. 147/16, where it is ordered as: The respondent shall change the tariff of the consumer after obtaining the details (want of certificate to the effect of 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) prescribed in the Gazette notification (KSERC notification dated 14-08-2014).

- b. The State Electricity Ombudsman order of disposal of appeal petition No. P/169/2015 dated 26-02-2016, where it is ordered as: The appellant is free to approach the respondent for reclassification of tariff as per Regulation 98 of Kerala Electricity Supply Code (KESC) 2014 with relevant approval under Section 80G(5) (vi) of Income Tax Act, 1961 obtained from Income Tax Department. The order of CGRF in OP No. 1509/2014 is upheld by the Hon'ble State Electricity Ombudsman in this case.
- c. Since the appellant could not furnish the required documents, the relief sought for in the Representation No. P/012/2017 before the Hon'ble Electricity Ombudsman is unsustainable. Hence, the respondent requests the Hon'ble Ombudsman to dismiss the complaint favouring KSEBL and by directing the appellant to obey the short assessment order issued by KSEBL.

Analysis and findings:

The hearing of the case was conducted on 15-05-2017, in the CGRF Court Hall, Kottarakkara. Sr. Theresa Martin and Sr. Josca represented the appellant's side and Smt. Sreekala B. Nair, Assistant Executive Engineer, Electrical Sub Division, Beach, Thiruvananthapuram represented the respondent's side. On examining the petition, the argument note filed by the appellant, the statement of facts of the respondent, perusing all 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.

The only question to be decided in this case is as to whether the appellant's institution is a charitable one registered under the Charitable Societies Act and is exempted from payment of Income Tax thereby entitled for concessional tariff under LT VI A.

The main averments of the respondent in changing the tariff to LT VI F and for issuing the short assessment bill are based on the following reasons.

1. The appellant has not produced any document to prove that the premises of Consumer No: 1145144000702 registered in favour of Sr. Superior, St. Anne's Nursing Home, Pettah Thiruvananthapuram is a registered charitable organization under Cultural

Scientific and Charitable Societies Act. A certificate No. S No. Q 43 of 1964 dated 30-11-1964 issued by the Registrar of Societies has been produced by the appellant in which it is stated that "the Society of Sisters of the Holy Cross, Kottiyam" is a registered charitable organization and the respondent has not accepted this.

2. The appellant's institution is a private hospital and failed to substantiate its claim for exemption from Income Tax liability by producing certificate to this effect from the IT Department.

Refuting the above contentions the appellant has stated that the said hospital is a branch of Holy Cross Hospital, Kottiyam, a charitable organization registered under the provisions of Travancore Cochin Literary Scientific and Charitable Societies Act and the functioning and management of the said unit is strictly in tune with the bye-law provisions of Holy Cross Hospital, Kottiyam and all its units come under the purview of this registration.

This Authority has found that the Society is registered in the name of "The Society of Sisters of the Holy Cross" under the provisions of Travancore Cochin, Literary, Scientific and Charitable Societies Registration Act 1955 as per certificate No. S No. Q 43 of 1964 dated 30-11-1964 and the registered office at Kottiyam. The organization has also formulated their separate Memorandum of Association for regulating the functions of the organization including their various branches and units throughout the state. It is revealed from the records that as per a Resolution passed at Extra Ordinary General Ordinary Meeting of the Society held on 8th January, 2016 amended the Memorandum of Association & Rules and Regulations of the Society and registered under Registration No. C350/99. According to the amended Clause, the management of Holy Cross Hospital, Schools of Nursing or Colleges of Nursing already run by the Society of Sisters of the Holy Cross registered under the Act with Registration No. Q43 of 1964 are taken by the Holy Cross Hospital, Kottiyam. Since this amendment, the various units of the organization are functioning under the ambit of a single umbrella organization, under Holy Cross Hospital, Kottiyam. Further it is argued by the appellant that since the institution is a unit under Holy Cross Hospital, Kottiyam formed as per the bye-laws, no separate registration under the provisions of Travancore Cochin, Literary, Scientific and Charitable Societies Registration Act, 1955 is not required, as alleged by the respondent.

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 and the donations to which are exempted from payment of Income Tax.

It is essential to look into the Schedule of Tariff and Terms & Conditions for Retail Supply of Electricity published by Hon'ble Regulatory Commission vide order dated 14-08-2016 in OP No. 9 of 2014 which is extracted below:

Low Tension – VI General (A) {(LT-VI(A)} Tariff applicable to Government or aided education institutions, libraries and reading rooms of government or aided educational institutions; **Government hospitals**; X-Ray units, laboratories, blood bank, mortuaries and such other units attached to the government hospitals, blood banks of IMA or of local self government institutions; **private hospitals and charitable institutions registered under Travancore – Cochin Literacy, Scientific and Charitable Societies Registration Act, 1955, the donations to which charged exempted from payment of Income Tax**; premises of religious worship; institutions imparting religious education and convents, poly clinic and Ex-servicemen Contributory Health Scheme (ECHS).

So, the criteria for considering this consumer under VI A tariff as per the above tariff order are:

1. Registration certificate under the Travancore Cochin Literacy, Scientific and Charitable Societies Registration Act, 1955.
2. The certificate to show that whether the donations to the institutions under Section 80G of Income Tax Act, 1961 are exempted from the payment of Income Tax.

On receiving the short assessment bill the appellant filed an appeal before the CGRF, Kottarakkara. But the Forum observed that if the petitioner can avail the benefits of VI A tariff only on production of document that they are registered under Charitable Societies Act and the order from the Income Tax Authority under Section 80 G Income Tax Act. On going through the certificate dated 30-11-1964 issued by the Registrar of Societies produced by the appellant, it is admitted that the registration under the Travancore Cochin Literacy, Scientific and Charitable Societies Registration Act is in the name the Society of Sisters of Holy Cross, Kottiyam and not in the name of Holy Cross Hospital, Kottiyam.

Hence the next question to be clarified is whether the appellant's institution has been issued with a certificate to show that the donations are exempted from the payment of Income Tax under Section 80G. 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 in accordance with its objects.

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”**.

It is revealed from the certificate issued by the Deputy Commissioner of Income Tax vide No.46-805-AT-8574 dated 25-09-2000, produced by the appellant, 15 Nos. of institutions are included in the accounts maintained by the Sisters of Holy Cross Hospital and the assessee is borne on the files and is exempt from Income Tax Act. The St. Anne’s Nursing Home (Sl. No. 11) is one among these 15 institutions. Here some clarification is required in this matter since the registration under Charitable Societies Act is in the name of “The Society of Sisters of the Holy Cross”, Headquarters at Kottiyam and in the certificate issued by the Income Tax Department, the accounts are seen maintained in the name of “Sisters of Holy Cross Hospital.” The appellant has also produced a copy of the letter No. CIT(E)/CHN/80G /2015-16 dated 07-10-2015, in which the Deputy Commissioner of Income Tax (Exemptions), Kochi specifically stated that since in the case of the Holy Cross Hospital, Kottiyam, the last approval under Section 80G (5)(vi) granted by the Commissioner of Income Tax, Trivandrum vide C.No.302/80G/New/No. New/12009-2010 dated 13th July 2010 expires on 31-03-2014; there is no need for fresh renewal. But the appellant has not produced any documents to prove that income of their institution is included in the balance sheet of Holy Cross Hospital, Kottiyam during the period in question and exempted under Section 80G of the Income Tax Act, 1961 and both the registration under Section 12 A and exemption under Section 80G are applicable in their case. It is also revealed that the Holy Cross Hospital, Kottiyam has no registration under the Charitable Societies Registration Act 1955.

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 due to wrong classification is found in order and the appellant is liable for making the payment. So it is held that the appellant has not satisfied both the criteria envisaged in the tariff orders for considering a consumer to avail LT VI A tariff as per the prevailing rules.

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 LT VI A tariff. So, the appeal petition stands dismissed as it is found having no merits.

The order of CGRF (South), Kottarakkara in OP No. 246/2016 dated 29th December 2016 is upheld. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/012/2017/ _____ /Dated: _____

Delivered to:

1. Sr. Superior, St. Anne's Nursing Home, Pettah, Thiruvananthapuram.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Pettah, Thiruvananthapuram.

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.