

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/064/2017
(Present: A.S. Dasappan)
Dated: 28th September 2017

Appellant : The Director
Devamatha Medical Institutions,
Koratty, Thrissur

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd., Koratty,
Thrissur.

ORDER

Background of the case:

Three numbers of service connections with consumer No. 10981, 10982 and 10983 were effected in favour of Devamatha Medical Institutions, Koratty, Thrissur under Electrical Section Koratty under LT VI A tariff. The connected load of these connections is 62 kW, 31 kW and 24 kW respectively. The Anti Power Theft Squad (APTS) Wing of KSEB Ltd conducted an inspection in the appellant's premises on 21-03-2017 and detected that the tariff assigned to the appellant was LT VI A tariff instead of the eligible tariff 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, short assessment bills dated 04-07-2017 amounting to Rs. 5,88,091/- to consumer number 10981, Rs. 9,143/- to consumer number 10982 and Rs. 51,303/- to consumer number 10983 were issued towards the undercharged amount due to wrong fixation of tariff. Another complaint of the appellant is that he was denied HT conversion by the respondent. 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. 8/2017-18 dated 22-06-2017 by cancelling the short assessment bills dated 04-07-2017 and directed the respondent to revise the bills limiting the period of short assessment for a period of 24 months and to consider his application for LT

to HT conversion after clearing the dues in LT connections. 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 have filed a complaint before CGRF on 20-04-2017 to confirm the tariff as LT VIF and to consider application for HT conversion. The entire work for HT conversion is over. The appellant have even remitted the estimated cost of work to be done by KSEBL. After filing complaint with CGRF, KSEBL is not accepting the CD and giving the supply. This delay from KSEBL is violation of Supply Code and denial of justice. Hence appellant approached CGRF and have submitted additional submission for an interim direction for providing with the electric supply immediately and the hearing was conducted CGRF on 25-05-2017. Even now they have not come out with order and appellant have continuously penalized by KSEBL. Hence appellant approached Hon. Ombudsman for an immediate interference and direction to KSEBL to give supply without further delay and also for the compensation towards the losses because of the delay from KSEBL.

Appellant is an institution registered under Travancore - Cochin Literary, Scientific and Charitable Societies Regulation Act, 1955. The tariff is LT- VI A. Upon the receipt of intimation that appellant is not having Income Tax 80 G (5) (VI) registration, appellant immediately approached the Income Tax and have filed the application for the same.

Since appellant is having Income Tax 12 A registration and also exempted from the payment of Income Tax, appellant is eligible for 80 G (5) [VI]. Appellant expect to get the same within three months. The receipt received from Income Tax office is attached.

Appellant has not wilfully availed LT-VI A tariff. It was given to appellant after verification and scrutiny of KSEBL. There is no change in the purpose because appellant's is a Charitable Institution as envisaged in Income Tax Act and Tariff Order. As per Reg. 97(2) of the Supply Code, 2014 if the licensee is proposing a tariff change or reclassification of the tariff a notice of thirty days is a requirement. They cannot suo motu reclassify the tariff. An opportunity of hearing should also be extended to the consumer by the Licensee. A reply was given on 03-04-2017, the KSEBL have given their clarification on 11-04-2017 which is being attached here with. The tariff LT VI A was given only after verifying and confirming the documents which was available with appellant at that time. It is only a natural justice to allow sufficient time to provide with the details and records which are subsequently precipitating.

Appellant's application for HT conversion is pending before the KSEBL. Appellant applied for power allocation with 191.25 kW connected load and 80kVA contract demand. The fees of Rs.10,000/- and Rs.10 remitted on 01-07-2016. Appellant has received the sanction order from Electrical Inspectorate Order No.BI-2526/16/EIR' dated 03-01-2017 (copy of Sanction order and Approval letter received from Inspectorate is attached). Appellant has approached KSEBL to give the completion report, along with sanction order. They didn't accept the completion report or permit to remit the CD or required estimate towards cost of providing supply.

Subsequently the hearing was conducted by CGRF on 25.05.2017 but no order was given or directed to KSEBL. Even though KSEBL have given a reply they have changed the tariff without appellant's concurrence and acceptance. And the KSEBL is not accepting the CD and giving the HT supply.

Reliefs Sought for:

1. Direction may be given to the KSEBL not to disconnect the supply till hearing and disposal of the complaint.
2. Direct KSEBL to continue with the billing in LT VI A tariff till a decision is taken by CGRF.
3. Direction may be given to KSEBL to give HT supply immediately.

Arguments of the respondent:

The appellant is an electricity consumer under Electrical Section Koratty and they have three connections having the consumer numbers 10981, 10982 and 10983. The details of these service connections are submitted below.

Consumer No.	DOC	C/L	Current Tariff	Remarks
10981	15-02-1985	62 kW	LT-6F	Earlier Tariff - LT6A
10982	15-02-1985	31 kW	LT-6F	Earlier Tariff - LT6A
10983	15-02-1985	24 kW	LT-6F	Earlier Tariff - LT6A

The above connections were effected in LT-VI A tariff to the hospital managed by the appellant. The Anti Power Theft Squad (APTS) wing inspected the premise on 21-03-2017 and found that the tariff assigned to the service connections are not as per the tariff notification dated 14-08-2014 approved by the Hon'ble Kerala State Electricity Regulatory Commission (KSERC). During the site inspection, it was detected that the appellant has no income tax exemption as stipulated in the tariff notification and hence observed that Board has sustained the financial loss in lieu of lower tariff assigned to them.

Though the appellant have the registration under classification of "Private Hospitals and Charitable institutions registered under Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act 1955, they haven't obtained the minimum qualification as per the section 80 (G) of the Income Tax Act. Further, they haven't filed the Nil Return Statement to the Income Tax Department. Hence the actual tariff of the consumer as per the tariff notification dated 14-08-2014 is LT 6F.

The short assessment bill, on account of the difference in tariff, had served to the consumer vide regulation 136 of the Kerala Supply Code for realization of the loss sustained to the Board with effective from 14-08-2014. The details of the bill amount is submitted below.

Consumer No. 10981	Rs. 5,88,091	- Short Assessment towards Tariff Difference
Consumer No. 10982	Rs. 9,145	- Short Assessment towards Tariff Difference
Consumer No. 10983	Rs. 51,303	- Short Assessment towards Tariff Difference
Total	Rs. 6,48,537/-	

The detailed and self-speaking notice were served to the consumer on 24-03-2017, as per the regulation 97 (2) of the Supply Code 2014, for filing their grievances, if any. The appellant had addressed their grievance, fulfilling the regulation 97(3), to the Assistant Engineer, Electrical Section, Koratty (R1) on 03-04-2017. Since the appellant couldn't produce any supporting documents to prove their eligibility for assigning the lower tariff, the provisional invoices were treated as the final invoice and same has been intimated to the appellant on 11-04-2017.

The tariff revision and the short assessment invoices were issued vide regulation 97 and 134 respectively of the code is the actual and true loss sustained to the Board and hence the appellant to bound to pay the entire amount. The Board has given the privilege and legal right to realise the undercharged bills vide regulation 152 of the code and in this case, no interest and penalty has been charged to the appellant.

The total present connected load in the three premises is 117 kW and the consumer would like to enhance the connected load into 192kW with Contract Demand 80KVA by availing the electricity supply at High Tension – 11 kV. They had submitted their application and remitted the applicable processing fee on 01-07-2017. The application for converting the service into high tension was declined by the Board for the specific reason that there are arrears in the existing connections in the premise and the facts has also been informed to the consumer.

The regulation 99 (4) of the code stipulates that the "the application for load enhancement of load shall not be considered if the consumer is in arrears of payment of the dues payable to the licensee".

The appellant had filed the grievance before Hon'ble CGRF, Ernakulam vide CC No. 8/2017-18 and the Forum has ordered the following after examining all facts.

- (1) To limit the short assessment bills to the period of 24 months and
- (2) Consider the application for converting the existing LT connections-into HT service after clearing the dues in existing service.

The copy of the order dated 25-06-2017 of the Hon'ble CGRF is submitted herewith. The short assessment bill has been revised by the Board as per this direction of the Hon'ble CGRF on 04-07-2017 for remittance within 30 days and the details are shown below.

Consumer No.	Original Bill Amt. Rs.	Revised Bill Amt. Rs.
Consumer No. 10981	5,88,091.00	4,48,365.18
Consumer No. 10982	9,143.00	7,033.05
Consumer No. 10983	51,303.00	40,377.42
Total	6,48,537.00	4,95,775.65

The consumer is liable to pay the revised bill amount Rs. 4,95,775.65, which is the actual loss sustained to the Board on account of lower tariff assigned to the consumer.

The Board has given all opportunity to the consumer for filing objections and submitting the supporting documents to grant them lower tariff. But they have failed to produce the supporting documents to substantiate the claim before the Assistant Engineer, Electrical Section, Koratty.

It is submitted that the tariff will be reverted back into appropriate tariff on getting the necessary supporting documents from the consumer, subject to the provisions contained in the ruling tariff notification in the state. It is prayed before the Hon'ble Ombudsman (Electricity) to dismiss the representation filed by the Consumer and order them to remit the revised bill amount. The HT service connection will be processed and given immediately on clearing the arrear payment in the existing connection, as per the revised short assessment bill.

Analysis and findings

A hearing of the case was conducted in my chamber at Edappally on 27-08-2017. The appellant was absent and Sri. P.P. Jis, Assistant Engineer, Electrical Section, Koratty 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 they 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. They are expecting to get the same within three months. 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 revised limiting for a period of 24 months.

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, the appellant 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. 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. Revised bills were found issued for Rs. 4,48,365/- to consumer number 10981, Rs. 7,033/- to consumer number 10982 and Rs. 40,377/- to consumer number 10983 and the consumer remitted the amount under protest on 05-07-2017. The HT service connection has already been effected on 02-08-2017. As per tariff order dated 14-08-2014 issued by the KSERC, the tariff applicable to private hospitals is LT VI F. In the above circumstances, the issuance of short assessment bill for a period of 24 months 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 LT VI A tariff. So, the appeal petition stands dismissed as it is found having no merits.

The order of CGRF (Central Region), Ernakulam in OP No. 08/2017-18 dated 22nd June 2017 is upheld. However, the appellant is free to approach the respondent for reclassification of tariff as per Regulation 98 of the Kerala Electricity Supply Code, 2014 with relevant approval under Section 80 G (5) (vi) of Income Tax Act, 1961 obtained from Income Tax Department. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/064/2017/_____ /Dated:_____

Delivered to:

1. The Director, Devamatha Medical Institutions, Koratty, Thrissur
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., Koratty, Thrissur.

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.