

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/034/2018
(Present: A.S. Dasappan)
Dated: 31st August 2018

Appellant : Sr. Brigit Superior
Monna Tessa & Charitable Society,
S.L. Puram, Cherthala,
Alappuzha

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd.,
SL Puram,
Alappuzha

ORDER

Background of the case:

The appellant is a consumer bearing consumer number 16480 and was running an old age home under Electrical Section, S.L. Puram, Cherthala, with LT VI D tariff assigned by KSEB. The service connection was registered in the name of Sister Celina, St. Agnus Convent Superior, Monna Tessa Convent with 23950 watts of connected load. On 24-11-2017, APTS, Kottayam inspected the premises of the appellant and found that the 'old age home' is not eligible for concessional electricity tariff, under LT VI D. Based on the findings of APTS, the Assistant Engineer, Electrical Section, SL Puram reassigned the tariff as LT VII A and short assessment bill for Rs.89,956/- was issued on 27-11-2017 for tariff reclassification from 05/2017 to 11/2017. The appellant submitted an objection before Executive Engineer, Electrical Division, Cherthala on 11-12-2017 and the Executive Engineer reassigned the tariff to LT VI C. Being aggrieved by the tariff reassigned, the appellant approached the CGRF, Ernakulum, pleading for lower rate tariff LT-VID. The CGRF after hearing disposed of the petition of the appellant confirming the tariff under VI C. Against the order of the CGRF, the appellant has filed a petition, challenging

the order dated 14-05-2018 of CGRF, Ernakulam in OP No. 97/2017-18, before this Authority.

Arguments of the appellant:

The brief facts of the case, according to the appellant are as follows:

The Order issued by the CGRF Central Region is completely one sided and even the version of the appellant is not included in the final order.

During the hearing conducted by the CGRF, the appellant has submitted their income statements in which it was clear that no boarding and lodging charges were collected from the inmates. But, in the final order CGRF stated that no convincing answers and documents were received from the appellant regarding the boarding lodging charges of inmates.

The only proof submitted by the licensee as the base of tariff reassignment and penal charges are the appellant's old guidelines found during the inspection. Since the old age home is a certified charitable old age home, the appellant is bound to run this old age home as per the guidelines of Social Justice Department (SJD), Kerala. That means the brochure found during the inspection is obsolete.

In the order of the CGRF, it is mentioned that "as per the brochure of the institution the charges of boarding lodging are collected since the appellant had not submitted any documents to prove that the charges for boarding and lodging for inmates are not collected". This conclusion is against all norms of natural justice because the burden of proof is always the responsibility of respondent.

The appellant as a registered charitable old age home collects only maintenance charge from inmates as per the order of SJD/ Kerala Govt. This maintenance charge cannot be considered as boarding and lodging charges. So as per the current tariff of the installation falls under 6D tariff not 6C or 7A.

Considering all the above objections, the appellant requests to set aside the order of CGRF No. CGRF-CR/OP N0.97/2017-18 dated 14.05.2018 and the letter of Assistant Engineer, Electrical Section, S.L. Puram No.work/AE/ES/SLP/17-18/95 dated 27.11.2017 and also allows to continue in 6D tariff.

Arguments of the respondent:

The respondent has put forward their version as follows.

On 24.11.2017, APTS, Kottayam along with the section squad of S.L. Puram inspected the premises and found that the institute is not eligible for LT VI D tariff.

As per tariff revision order No. 1007/F&T/2016/KSERC dated 17-04-2017 of KSERC and BO.(FTD) No. 1043/2017/KSEB/TRAC/TARIFF REVISION/2017-18)Tvpm dated 21-04-2017, Tariff VI D is applicable to old age homes run by charitable institutions or organizations where no service charges are levied for boarding and lodging of inmates.

As per the brochure (guidelines for admission), which the consumer has given to the inspection team, Rs. 30,000/- is chargeable as security deposit and Rs.7000 is required to be remitted towards the expense of food and lodging of inmates on or before 10th of every month. For single room charges per month is Rs.8000.

The guideline for admission is an important document of this organization which clearly specifies various fees collected from inmates for running this old age home. The argument put toward by the appellant that the guideline is old and obsolete is contrary to the exact facts.

As per the notification of the Social Justice Department of Govt. of Kerala, dated 20.8.2016 a detailed fee structure fixed and approved by the governing body of the Home including initial deposit or other charges if any and the mode of collection shall be communicated to every service user before admission. Copy of the approved fee structure and revisions whenever take place shall be intimated to the district social justice officer and the competent authority by every Care Home. Present guidelines published by the old age home is prepared and published on the basis of this order.

The income and expenditure statement for the financial year ended on 31.3.2017 is established beyond any doubt that huge amount is being levied from the inmates under different heads for operating the old age home. Income and expenditure statement is legally valid and narrates the nature of all financial transactions being conducted by the old age home. Even though claimed as a charitable institution, the institution is not eligible for VI D Tariff.

Tariff VI C is applicable for "any other category consumer not included any where in the schedule". During the hearing by the Executive Engineer, the appellant did not deny the fact that they are charging money from inmates. In accordance with the order of the Executive Engineer Cherthala, Assistant

Engineer S.L. Puram revised the bill to Rs. 73,482/- and changed the tariff to VI C.

The short assessment bill issued for Rs. 73,482/- towards the difference of VI D tariff and VI C tariff is in order and the consumer is bound to remit the amount.

Analysis and Findings:

The Hearing of the case was conducted on 10-07-2018 in the office of the State Electricity Ombudsman, Edappally, Kochi. Sri Bovas Lizanto represented the appellant and argued the case on the lines stated above. Smt. Maya S. Nair, Assistant Executive Engineer, Electrical Sub Division, SL Puram represented for the respondent's side.

On perusing the Appeal Petition, the counter of the Respondent, the documents submitted, arguments during the hearing and considering the facts and circumstances of the case, this Authority comes to the following findings and conclusions leading to the decisions there of.

The tariff, LT VI-D is applicable to orphanages, anganwadies, schools and hostels for differently abled or physically challenged persons (including mentally retarded students, deaf/dumb/blind/physically handicapped persons), old age homes run by charitable institutions or social organizations or non-governmental organizations where no charges are levied for the boarding and lodging of inmates, Cheshire homes, SoS Children's villages, polio homes, cancer and palliative care centers, HIV rehabilitation centers and similar institutions recognized by the Govt. The consumer has produced documents to suggest that he has obtained the recognition of the Government to that effect. The respondent's contention is that the appellant is charging Rs. 30,000/- as security deposit and Rs.7000/- as the expense of food and lodging of inmates. According to her, the income and expenditure statement for the financial year ended on 31.3.2017 also established beyond any doubt that huge amount is being levied from the inmates under different heads for operating the old age home. When there is a specific rule in vogue for a certain tariff, the consumer has to abide by it, so as to become eligible for that particular tariff.

The crux of the case is that the, 'old age homes' where no charges are levied for the boarding and lodging of inmates are eligible for getting the LT VI-D, low rate tariff. The certificate issued by the Social Welfare Officer states that the institution is a recognized 'Old Age Home' for women. The appellant has also produced the Certificate of Recognition issued by the Board of Control for Orphanages and Other Charitable Homes Kerala. The appellant has contended that they are not collecting boarding and lodging charges from the

inmates and only collecting maintenance charges provided by govt. or from inmates. In order to manage the home, they have to obtain charity contribution from public. The appellant has also produced a statement showing the contribution paid by each inmate which shows that there are some inmates who do not make any payment. According to the appellant, the motive of the institution is not making profit, but the audited statement itself clear that it is running excess of expenditure over income. Further it is contended that boarding and lodging expenses and maintenance charges claimed by the organization are two different things.

The tariff is assigned according to the purpose or activity being done on the premises of the consumer in relation to the Tariff order issued from time to time by the Competent Authority.

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.**

This Authority has inspected the old age home on 21-08-2018. It is a two storied building and the inmates are occupied a portion of the building in the first floor. Though the old age homes had been categorized under VI D tariff earlier, the VI D tariff has been limited to the old age homes run by charitable institutions or social organizations or non-governmental organizations where no charges are levied for the boarding and lodging of inmates with effect from 18-04-2017. The appellant has furnished details of 19 inmates occupied in the old age home during 2016-17 and according to the appellant the fee collected from them is maintenance charges. Here amount is seen collected from 15 inmates. A copy of the income and expenditure statement for the year ending 31-03-2017 is produced by the appellant. As per the statement, the fee receipts from the inmates is Rs.5,85,280/- and donation and contribution is Rs.6,58,034/-. An amount of Rs.1,83,,960/- is also shown as expenditure over income. From the statement, it is clear that the appellant is collecting fees from the inmates. Without getting the date of inmates admitted and verification of accounts registers, it is not possible to ascertain the details of fees collected is whether for boarding or lodging or maintenance fees. Hence the claim of the appellant that they collected only maintenance charges from the inmates is not admitted. Since the effect of the new tariff order is from 18-04-2017, the income and statement ending on 31-03-2017 has no relevance at present. Hence the appellant is free to approach the respondent for reconsideration of the tariff assigned by producing the relevant registers of fees collected from the inmates and other documents, if any, from 01-04-2017 and the existing bye laws for admission of inmates.

Decision

Considering the above facts and legal provisions pertaining to the issue this Authority is of the considered view that the appellant's premises are not eligible for LT VI D tariff. So, the appeal petition stands dismissed as it is found having no merits.

The order of CGRF in No. 97/2017-18 dated 14-05-2018 is upheld. No order as to costs.

ELECTRICITY OMBUDSMAN

P/034/2018/ _____ /Dated: _____

Delivered to:

1. Sr. Brigit Superior, Monna Tessa & Charitable Society, S.L. Puram, Cherthala, Alappuzha
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd., S.L. Puram, 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.