

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/065/2019
(Present: A.S. Dasappan)
Dated: 14th October 2019

Appellant : Sr. Roji CSN,
St. Ann's Home,
Institute of Sisters of Nazareth,
Paduapuram P.O., Karukutty,
Thrissur

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Angamaly,
Ernakulam

ORDER

Background of the case:

The appellant is a consumer under Electrical Section, Karukutty bearing consumer number 1155816012314 under LT VI D tariff with a connected load of 28.35 KW. The Anti Power Theft Squad, Vazhathoppu had conducted an inspection in the premises of the appellant on 21-2-2019 and detected that the tariff assigned to the consumer is wrong since this premises is functioning as old age home after accepting charges from inmates. The tariff assigned for this consumer was LT VI D, which is the tariff assigned for 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 as per tariff order published in Extra Ordinary Gazette No.782 dated 21-4-2017. The tariff LT VI D was effected on 8.8.2017 by the respondent based on the certificate of recognition from Orphanage Control Board and 12 A (a) registration for Income tax exemption.

Since the appellant was wrongly classified under LT VI D tariff and billed accordingly, a short assessment bill amounting to Rs. 2,55,945/- was served on 21-02-2019 towards the undercharged amount due to wrong fixation of tariff for the period 9/17 to 21/2/19. 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. 127/2018-19 dated

12-07-2019 by dismissing the petition and allowed installment facility without surcharge to remit the bill amount. Against the above order, the appellant has filed this appeal petition before this Authority with a request to quash the short assessment bill.

Arguments of the appellant:

The appellant institution, St. Ann's Home is a charitable institution rendering services to old age women including infirm women. St. Ann's Home is a unit for disabled and old women functioning under a registered charitable society known as Institute of Sisters of Nazareth and House of Refuge. The members of Nazareth Convent do generous services in the institution and for the inmates. The Society, Institute of Sisters of Nazareth and House of Refuge is also a registered association u/s 12A of the Income Tax Act, 1961. Accordingly, the income of the institutions is exempted under the Act.

The income at the St. Ann's Home is only very little which are obtained from the relatives who are able to pay. No charges are collected compulsorily. Donations from public are also very rare. On the basis of the above facts the KSEB was very lenient to charge electricity consumed by the St. Ann's Home at concessional rate categorising it under LT VI D Tariff. But unfortunately, based on wrong information gathered by APTS, KSEB had withdrawn the concessional tariff by changing it to LT VII A. Consequently, a consolidated sum of Rs. 2,55,945/- was demanded through bill served on 22.03.2019. This was really a shock to the Institution.

There was actually any demand for charges by the institution from its inmates compulsorily. If the family of the inmates wish to give some donation, that will be accepted by the institution to mitigate their struggle for funds for the maintenance of the inmates and the institution. Even if such voluntary contributions are received which is given by few of their relatives, that will not affect the charitable nature of the Institution.

The institution had applied for approval under section 80G before the Commissioner of Income Tax (Exemptions) Kochi and it is pending for disposal. The approval is expected to be received shortly. (F.No.CIT(E)/CHN/80G/169/2018-19). Even though this fact was let known to the CGRF, orders were issued based on the report of the lower authorities.

Considering these and other grounds that may be raised at the time of hearing, it is humbly prayed to issue necessary orders allowing the appeal.

Arguments of the respondent:

The service connection of the appellant was effected on 17.6.2014 for construction purpose with connected load of 12 kW. After completion of building the party has submitted completion report during 7/2017 and load change with tariff change to LT VI D was effected on 8.8.2017 based on the certificate of recognition from Orphanage Control Board and 12 A (a) registration for Income tax exemption. The tariff assigned for this consumer was LT VI D, which is the tariff assigned for 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 as per tariff order published in Extra Ordinary Gazette No. 782 dated 21-4-2017.

As per tariff revision with effect from 18-4-17 published in Extra Ordinary Gazette No. 782 dtd. 21-4-2017 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 are categorized under VI D tariff.

During effecting service connection couldn't be noticed whether they were accepting charges from the inmates for boarding and lodging hence VI D tariff had assigned for the consumer. This anomaly was detected in the inspection conducted by APTS on 21.2.2019 and found that the said building is having about 45 rooms including single and double rooms which is allotted as per the interest of the inmates. The organization is levying Rs 10,000/- and Rs 6,000/- per month for double room and single room respectively including food. At present there are 60 people are residing there out of which about 50 inmates are paid people. Since this premise is functioning as paid old age home, the correct tariff to be assigned to this institution was VII A.

Hence an undercharged bill amounting Rs. 2,55,945/- (Rupees Two lakhs fifty-five thousand nine hundred and forty-five only) for the period from 9/17 to 21/2/19 was served to the consumer on 21-2-2019.

The revenue loss due to wrong assignment of tariff is to be recovered from the consumer and law permits the licensee to recover the undercharged amount. Regulation 134 (1) of Kerala Electricity Supply Code 2014 provides that If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill.

The Kerala State Electricity Board Limited has every right to collect the undercharged amount from the consumer. The short assessment bill is legally due to Kerala State Electricity Board Limited and the consumer is bound to pay the amount due to Kerala State Electricity Board Limited for the electricity charges used by it. Hence the demand is legally correct.

Analysis and findings

A hearing of the case was conducted in my chamber at Edappally on 03-10-2019. Sr. Roji CSN, Sr Linda CSN and T.K.Mathew were present for the appellant and Sri. Ashrafudeen J, Assistant Executive Engineer, Electrical Sub Division, Angamaly 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 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. 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. As per tariff revision with effect from 18-4-17 published in Extra Ordinary Gazette No. 782 dtd. 21-4-2017, 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 are categorized under VI D tariff.

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 short assessment bill is legally sustainable and allowed installments without surcharge for remitting the short assessment bill.

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.***

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 D instead of LT VII A with effect from 1-9-2017. 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 01-09-2017, 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.

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. 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 respondent's contention is that the appellant is charging Rs. 10,000/- and Rs. 6000/- per month for double room and single room respectively as the expense of food and lodging of inmates.

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 appellant has stated that their charitable society is a recognized institution by the government and they are getting grants from the government at a limited amount, but not produced any document to prove this. The appellant has contended that they are not collecting boarding and lodging charges from the inmates and only collecting donations from the relatives of the 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 certain inmate which shows that there are some inmates makes payment. It is contended by the appellant that no financial record of the institution was asked for or checked at the time of inspection by the APTS. According to the appellant, the motive of the institution is not making profit and states no charges are collected from the inmates towards lodging and boarding. But they have furnished the amount of contributions received from the family of certain inmates in the previous years.

This Authority has inspected the old age home on 14-10-2019. 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. However, it is found that they are giving services to some aged poor women also without collecting any payments. In the revised tariff for all categories with effect from 08-07-2019 issued by KSERC vide order dated 08-07-2019, old age homes which charge inmates for boarding and lodging comes under LT VI (B) category and this is a new category included in the tariff revision order. It is clearly stated in the Annexure II of the tariff revision order that this category was not included any tariff category prior to 08-07-2019. Hence the tariff categorization of the appellant under LT VII A category is not justifiable and not sustainable before law.

Decision

Considering the above facts and legal provisions pertaining to the issue, the assessment bill under LT VIIA category to the appellant for Rs. 2,55,945/- is quashed. Old age homes which charged the inmates for boarding and lodging was not categorized prior to 8-7-2019 in the tariff order issued. The respondent shall take with matter for fixing appropriate tariff for the period in question i.e. 9/17 to 7/7/2019 and issue additional bill, if any, required. So, the appeal petition stands allowed as it is found having merits.

The order of CGRF in No. 127/2018-19 dated 12-07-2019 is set aside.
No order as to costs.

ELECTRICITY OMBUDSMAN

P/065/2019/ _____ /Dated: _____

1. Sr. Roji CSN, St. Ann's Home, Institute of Sisters of Nazareth, Paduapuram P.O., Karukutty, Thrissur
2. The Assistant Executive Engineer, Sub Division, KSE Board Ltd, Angamaly, 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 Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.