

THE STATE ELECTRICITY OMBUDSMAN  
Charangattu Bhavan, Building No.34/895, Mamangalam-Anchumana Road,  
Edappally, Kochi-682 024  
[www.keralaeo.org](http://www.keralaeo.org) Ph: 0484 2346488, Mob: 91 9539913269  
Email: [ombudsman.electricity@gmail.com](mailto:ombudsman.electricity@gmail.com)

---

APPEAL PETITION No. P/003/2020  
(Present: A.S. Dasappan)  
Dated:18<sup>th</sup> March 2020

Appellant : Fr. Jijo Jacob  
Guardian Angel Care Charitable Society,  
Airapuram P.O., Keezhillam,  
Ernakulam

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

### **ORDER**

#### **Background of the case:**

The appellant is a consumer under Electrical Section, Valayanchirangara bearing consumer number 12939 under LT VI D tariff with a connected load of 9460 watts. The APTS had conducted an inspection in the premises of the appellant on 24-07-2019 and detected that the tariff assigned to the consumer is wrong and the tariff of the appellant reassigned to LT VI B from 08/2017.

Since the appellant was wrongly classified under LT VI D tariff and billed accordingly, a short assessment bill amounting to Rs. 1,25,448/- was served on 26-07-2019 towards the undercharged amount due to wrong fixation of tariff for the period 8/17 to 6/19. 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. 65/2019-20 dated 31-12-2019 by dismissing the petition and allowed instalment facility. Against the above order, on 20-01-2020, the appellant has filed this appeal petition before this Authority with a request to quash the short assessment bill and retain the tariff assigned before the inspection.

#### **Arguments of the appellant:**

Guardian Angel Charitable Society was registered vide Registration No. ER/101/85 and has been functioning since 1985. The society is comprising of old age home, orphanage, palliative centre and mental health centre which are charitable institutions. Guardian Angel Retirement Home is functioning under the society at Airapuram in Mazhuvannoor Panchayath.

The Retirement Home was established in 1985 and delivering free service to the aged inmates. But the Home became incapable to run with free facilities to the inmates, a nominal amount was being collected from certain inmates having financial sources, with proper receipts of money.

In the meantime, an inspection was conducted by the KSEBL and reassigned tariff to a higher rate on the grounds that the society has collected fees from the inmates. Moreover, a penal bill with retrospective effect was issued for two years.

The request of the appellant is to exempt them from paying the penal bill and retain the tariff assigned before the inspection.

**Arguments of the Respondent:**

In an inspection conducted by the APTS, Vazhathoppe in the premises of the consumer no. 12939, Mathai PU, Guardian Angel's Charitable Institute registered under LT VI D with a connected load of 9.46 KW under Electrical Section, Valanchiraangara, a short assessment was issued for an amount of Rs. 1,25,448/-. A site mahazar was prepared and the same was acknowledged by the consumer. The consumer was indulged in unauthorized use of power. Instead of assessing at penal rate under section 126 of the Electricity Act., 2003, only a short assessment was made at normal rate as per rules.

In the appeal, it is stated that the appellant's institution was registered in the year 1985 under the Charitable Societies Act and that they are protecting age old parents and orphans in all respects and extending medical treatment free of cost. Under the guise of an old age home, the appellant had managed to obtain a lower tariff i.e. LT VID Tariff applicable to old age homes where no charges are levied for the boarding and lodging of inmates. As per tariff order with effect from 08.07.2019 (OP No. 15/2018), old age homes where no charges are levied for the boarding and lodging of inmates are classified under a relatively lower tariff LT VID, (Clause (III)) wherein the energy charge is only Rs. 2.10 per unit.

In the site mahazar prepared during the inspection, which was acknowledged by the appellant himself, it was specifically found that Rs. 10,000/- per month is being realized from each inmate as fee for food and accommodation in addition to Rs, 25,000/- realized as security deposit. The appellant has also categorically admitted in the representation dated, 01/08/2019 submitted to the respondent that they are realizing an amount towards expenses for the food being given to the inmates.

The Assistant Executive Engineer conducted a hearing and Fr. Yesudas P.P. who is the representative of the appellant institution has also admitted that certain amount is being collected from the inmates towards the expenses for food. From the above discussion and the material documents produced herewith it is crystal clear that the findings in the site mahazar that Rs. 10,000/- is being realized towards monthly fee in addition to the security deposit of Rs. 25.000/- are correct. As such, the tariff of the appellant consumer was changed to LT VI General (B) (as per clause XVI) applicable to

old age homes, which charge the inmates for boarding and lodging, for which energy charge is Rs. 6.30 for of and below 500 kWh and Rs. 7 for above 500 kWh.

The appellant was liable to be assessed under S.126 of the Electricity Act, 2003 for unauthorized use of power. However, much leniency has been extended to them and thereby a short assessment for 24 months was only made instead of the entire period without any penal rate as provided under Regulation 152 of the Supply Code, 2014 though the anomaly was attributable to the appellant.

Moreover, this respondent was convinced by the inspection conducted by the officials of the licensee. Further, Regulation 97 of the Supply Code 2014 empowers the licensee to reclassify the consumer. Also, this respondent has every right to demand the short-assessed amount as per Regulation 134 (1) of the Supply Code 2014.

That, it is trite law that when parties to the service connection agreement executed with the licensee, commit any contravention to the agreement such cases are governed by the Electricity Act 2003 and Supply Code, 2014. The statute provides the power to recover charges from the consumer and the same is contained in S.45 of the Electricity Act, 2003.

The CGRF (Central Region) had considered all the above facts and the arguments of the appellant and came to a conclusion that "the proceedings of the respondent in re-assigning the tariff in accordance with suitable provisions of tariff order as well as claiming the undercharged bills as arrear for the last 2 years is found genuine since the licensee is found eligible to claim the charge for the undercharged bills". There is no real cause of action for filing this appeal which is filed on an experimental basis.

### **Analysis and findings**

A hearing of the case was conducted in my chamber at Edappally on 25-02-2020. Fr. Jijo Jacob was present for the appellant and Sri. Santhosh P. Abraham, Assistant Executive Engineer, Electrical Sub Division, Velloorkunnam 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.

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 instalments 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 VI B with effect from 18-04-2017. 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 01-04-2014, 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.

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 centres, HIV rehabilitation centres 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 as mentioned in the site mahazar is that the appellant is charging Rs. 10,000/- from inmates as the expense of food and accommodation in addition to Rs. 25000/- as security deposit. This version of the respondent is not supported with any documentary evidence. The respondent's other contentions like unauthorised use of electricity etc is not sustainable and hence not admitted, since this is a case of misclassification of tariff and the responsibility for fixing a correct tariff rests with the respondent.

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 have obtained a certificate of Recognition from the Board of Control for Orphanages and Other Charitable Homes, Kerala. The certificate is valid for four years from 01-02-2018. The appellant has contended that they are collecting donations from the relatives of the inmates. In order to manage the home, they have to obtain charity contribution from public. 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.

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 and lodging or maintenance fees or charity contributions. 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 persons also without collecting any payments. Also, it is found that no financial record of the institution was asked for or checked at the time of inspection by the APTS to establish the collection of fees from the inmates for boarding and lodging. 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.

### **Decision**

Considering the above facts and legal provisions pertaining to the issue, the assessment bill under LT VI B category to the appellant for Rs.125448/- is quashed. Old age homes which charged the inmates for boarding and lodging was not categorized prior to 8-7-2019 in the tariff orders issued. The respondent shall take the matter with proper authorities for fixing appropriate tariff for the period in question i.e. 8/17 to 6/2019 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. 65/2019-20 dated 31-12-2019 is set aside. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/087/2019/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Forwarded to:

1. Fr. Jijo Jacob, Guardian Angel Care Charitable Society, Airapuram P.O., Keezhillam, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Velloorkunnam, Ernakulam

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthi Bhavanam, Pattom, Thiruvananthapuram-4.
3. The Chairperson, CGRF-CR, 220 kV Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.