

THE STATE ELECTRICITY OMBUDSMAN  
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APPEAL PETITION NO. P/014/2017

(Present: V.V. Sathyarajan)

Dated: 07<sup>th</sup> April 2017

Appellant : The Secretary  
Thrikkakkara Municipal Co-  
operative Hospital Society Ltd.,  
No. E 993, Kakkanad P.O.,  
Ernakulam

Respondent : The Assistant Executive Engineer,  
Electrical Sub Division,  
KSE Board Limited  
Vytila,  
Ernakulam.

**ORDER**

**Background of the case:**

The appellant is the Secretary of the Thrikkakkara Municipal Co-operative Hospital Society Ltd. No. 993, Kakkanad and the institution is registered under the Co-operative Society Act. The hospital had two service connections with consumer Nos. 41016 and 41017 availed on 24-12-2012 having a connected load of 9 kW and 7 kW respectively. The tariff assigned at the time of connection was LT-VI A. It is alleged that during the inspection conducted by the Audit Wing of KSEB Limited it was detected that the tariff was wrongly assigned to LT VI A instead of LT VI F. The appellant had been enjoying the concessional tariff under LT VI A, which is eligible only to those consumers registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, the donation to which are exempted from income tax, vide tariff order dated 25-07-2012.

So, the appellant was issued with short assessment bills for Rs. 54,413.00 and Rs. 92,980.00 to recover the undercharged amount due to wrong fixation of tariff to consumer Nos. 41016 and 41017 respectively for the period from 12/12 to 06/2015. Aggrieved against this, the appellant approached with a petition before CGRF (Central), Ernakulam which was dismissed by the Forum vide order No. 92/2016-17 dated 29-12-2016. Not satisfied with the above decision, the

appellant has filed this appeal petition before this Authority with a request to set aside the short assessment bills and to retain the tariff under LT VI A.

**Arguments of the appellant:**

1. The appellant's hospital was established during 1998-99 under the People's Plan Project as a project of the then Thrikkakkara Grama Panchayath. It was felt during the discussions under the People's Plan Project that though being the District Head Quarters and having several commercial establishments, Kakkanad did not have a hospital in Government Sector so as to cater medical needs of the lower strata of the society. For the smooth implementation of the project, it was registered as a Society under the Kerala Co-operative Societies Act, 1969. The Government of Kerala is having 29% of shares in the appellant's Society. The hospital was established out of the plan and non-plan funds of the Panchayath, Block Panchayath as well as that of District Panchayath. The development funds of M.L.A.s and M.P.s were also contributed for the purpose of establishing and developing the hospital. The old building of the Panchayath was handed over to the Hospital. It has become a model institution and received international attention.
2. Two electric connections were provided to the appellant's hospital by the KSEB. The tariff assigned at the time connection was LT VI (A) treating the appellant's hospital as a Government Hospital. But with effect from 24-06-2015, KSEB changed the tariff to LT VI (F) and issued short assessment bills. The above tariff change was effected since KSEB felt the appellant hospital is not a hospital run by Government.
3. It is submitted the tariff that was initially applied was correct since the hospital is run by a Co-operative Society established by the Government under the People's Planning Programme of the Government of Kerala and is situated in the Government owned land. The Government of Kerala is having share capital in the Society. The hospital itself is established under the People's Plan Project to cater the requirement of lower strata of the society. Plan and funds of the local bodies were made use of to establish the hospital. Hence KSEB was wrong in changing the tariff to LT VI (F)

Nature of relief sought from the Ombudsman

- (i) to set aside the order of CGRF dated 29-12-2016
- (ii) to set aside the action of KSEB ordering tariff rectification of the appellant from LT VI - (A) to LT VI (F) and
- (iii) to set aside short assessment bills issued to the appellant consequent to tariff re-classification.

**Arguments of the respondent:**

In the tariff revision order dated 25-07-2012 the tariff LT VI A applicable to hospitals run by Government and hospitals run by Societies those who have exemption for income tax under 80(G) and registered under Travancore Cochin Literary and Charitable Societies Act. This hospital is not coming under the purview of this. So the tariff assigned is 8/2012 to 2/2013 is LT VI B, 5/2013 to 3/2014 is LT VIII and 8/2014 to till date is LT VI F. So the tariff of these consumers changed to LT VI F from 24-06-2015. This was done after the Audit Wing found out the discrepancies. Thus a short assessment bill was served to both consumers for the short collection of energy consumed. This comes to Rs. 54,413.00 and Rs. 92,980.00 respectively for consumer Nos. 41016 and 41017. Under Regulation 134 of Electricity Supply Code this bill is sustainable by law.

The appellant approached Honourable Kerala Electricity Regulatory Commission against the short assessment bill and for review of tariff. But the Commission had not given a favourable order to the appellant, because the tariff order was approved and issued by the Commission. This year public hearing is completed and tariff revision is already in draft / approved. The appellant preferred complaint before the Honourable CGRF, Ernakulam and the Forum also accepted the version of KSEB. So the tariff assigned to the consumer is correct and as per tariff order of Regulatory Commission. The short assessment bill is as per order and sustainable by law. Hence the consumer is liable to pay the amount.

**Analysis and findings**

A hearing of the case was conducted in my chamber at Edappally on 08-03-2017. Sri. K. Madhavan, Director and Smt. Rosely Jasmine, Secretary of the hospital were present for the appellant's side and Sri. Rajan P.K., Assistant Executive Engineer, Electrical Sub Division, Vyttila 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 decided in this case is as to whether the appellant's institution is entitled for availing concessional tariff under LT VI A.**

The appellant's contention is that the hospital was registered as a Society under the Kerala Co-operative Societies Act, 1969 and the Government of Kerala is having 29% of shares in the appellant's Society. The eligibility for

concessional tariff under LT VI A is applicable to Government Hospitals; and 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. The appellant's institution is not found registered under the Travancore Cochin Literacy, Scientific and Charitable Societies Registration Act. 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. Considering the above aspects, the appellant's institution is not eligible for concessional tariff under LT VI A.

The second aspect to be examined is whether the hospital is Government Hospital in its strict sense. Though the Government has shares in the hospital and it is managed by a body constituted under Co-operative Societies Act, it cannot be considered as a Government Hospital. 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 Government Hospitals; and 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. During the hearing, the appellant has adduced the argument that they had submitted application before the Regulatory Commission to include their hospital registered under the Co-operative Societies Act under the purview of concessional tariff VI A and it is under process. But here in this case the appellant has not registered under Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955, and not produced the approval under Section 80G from the Income Tax Department, and since it is not a Government Hospital, the appellant's claim for the benefit of tariff under LT VI A cannot be admitted. However, the appellant is eligible for reclassification of tariff as per Regulation 98 of the Kerala Electricity Supply Code, 2014, if the Commission allows their request for inclusion under the concessional tariff LT VI A.

Regulation 152 of the Supply Code, 2014 deals with *Anomalies attributable to the licensee which are detected at the premises of the consumer.*  
***(1) Anomalies attributable to the licensee which are detected on inspection at the premises of the consumer, such as wrong application of multiplication factor, incorrect application of tariff by the licensee even while there is no change in the purpose of use of electricity by the consumer and inaccuracies in metering shall not attract provisions of Section 126 of the Act or Section 135 of the Act.***

***(2) In such cases the amount of electricity charges short collected by the licensee if any shall only be realized from the consumer under normal tariff applicable to the period during which such anomalies persisted.***

***(3) The amount of electricity charges short collected for the entire period during which such anomalies persisted, may be realized by the licensee without any interest:***

***Provided that, if the period of such short collection due to the anomalies is not known or cannot be reliably assessed, the period of assessment of such short collection of electricity charges shall be limited to twelve months:***

***Provided further that while assessing the period of such short collection the factors as specified in sub regulation (8) of regulation 155 shall be considered:***

***Provided also that realization of electricity charges short collected shall be limited for a maximum period of twenty four months, even if the period during which such anomaly persisted is found to be more than twenty four months.***

***(4) The consumer may be given installment facility by the licensee for a maximum period of twelve months for the remittance of such amount of short collection with interest at the bank rate as on the date of remittance of the amount of installment.***

In the instant case, the above short assessment bill was issued upon detecting that the appellant is being wrongly billed under LT VI A and the respondent has not reclassified the appellant to LT VI F tariff 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 can 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.

Here, on a perusal of the short assessment issued to the appellant, it can be seen that the period of assessment was made from 12/2012 to 06/2015. But, as per Regulation 152(3) of Supply Code, 2014, realization of electricity charges short collected shall be limited for a maximum period of 24 months,

even if the period during which such anomaly persisted is found to be more than 24 months. In the above circumstances, the issuance of short assessment bill for the period from 12/2012 to 06/2015 is found not in order and hence the same shall be limited for a period of 2 years.

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

However, it is made clear that the period of short assessment shall be limited for a maximum period of 24 months as per Regulation 152(3) of Supply Code, 2014. Installment facility, if any, requested by the appellant shall be sanctioned as per Regulation 152(4).

The order of CGRF in No. 92/2016-17 dated 29-12-2016 is modified to the extent as ordered above. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/014/2017/\_\_\_\_\_ /Dated:\_\_\_\_\_

Delivered to:

1. The Secretary, Thrikkakkara Municipal Co-operative Hospital Society Ltd., No. E 993, Kakkanad P.O., Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Limited, Vyttila, 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, KSE Board Limited, Substation Compound, HMT Colony P.O., Kalamassery, PIN: 683 503.