

THE STATE ELECTRICITY OMBUDSMAN
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APPEAL PETITION No. P/094/2017
(Present: A.S. Dasappan)
Dated: 30th October 2017

Appellant : Rev. Fr. Koshy Vaidyan,
Secretary, Mar Theodosius Memorial
Medical Mission Hospital,
Poruvazhy P.O., Kollam.

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Sasthamkotta,
Kollam.

ORDER

Background of the case:

Two numbers of service connections with consumer Nos. 5226 and 5227 were effected in favour of Mar Theodosius Medical Mission Hospital, Poruvazhy under Electrical Section Sasthamkotta, under LT VI A tariff. The connected loads of these connections are 68 kW and 39 kW respectively. The Anti Power Theft Squad (APTS) Wing of KSEB Ltd conducted an inspection in the appellant's premises on 08-11-2016 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, a short assessment bills dated 15-11-2016 amounting to Rs. 3,19,816/- to consumer number 5226 and Rs. 1,34,758/- to consumer number 5227 were issued towards the undercharged amount due to wrong fixation of tariff. Aggrieved against this, the appellant approached with a petition before CGRF (South), Kottarakkara, which was disposed of by the Forum vide order in OP No. 379/2017 dated 22-06-2017 by directing the respondent to change the tariff of the consumer as per the revised tariff order of KSEB dated 17-04-2017 and the petitioner shall remit the amount within one month from the date of receipt of the order and also allowed six monthly instalments without interest. 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 and to set aside the short assessment bills issued to the institution.

Arguments of the appellant:

The appellant Mar Theodosius Memorial Medical Mission Hospital, Poruvazhy P.O, Sasthamkotta is an institution owned and run by the Diocese of Kollam of the Malankara Orthodox Syrian Church. The appellant is also registered under the provisions of Travancore, Cochin-Literary Scientific and Charitable Societies Act-1955. Malankara Orthodox Syrian Church is exempted from Income Tax by Order F. No. 280/Exemp/CC-TVM/12/2009-10 dated 26-10-2010 passed by the Chief Commissioner of Income Tax, Trivandrum.

On 08-11-2016, the Sub Engineer attached to Electrical Section, Sasthamkotta along with Kollam APTS wing inspected the premises where the said service connections situate. The officials prepared two detailed mahazars and noticed that the consumer had not produced documents prescribed for availing tariff under LT VI A. The appellant produced certificate of registration under the Travancore-Cochin Literary, Scientific and Charitable Societies Act-1955 and not able to produce order exempting the donations made to the institution from payment of Income Tax under Section 80G(5) of the Income Tax Act as required by the officials.

In the meantime two short Assessment bills were prepared and sent to the consumer along with two letters, i.e.; BB/APTS/2016-17/96/15.11.2016 and BB/APTS/2016-17/97/15.11.2016. For consumer No. 5226, the short Assessment bill is for Rs. 3,19,816/- and for consumer No. 5227, it is Rs. 1,34,758/-. By the said letters, the Assistant Engineer, Electrical Section, Sasthamkotta directed the consumer to pay the amount within 30 days and further the appellant -was directed to file objection, if any, within 7 days from the date of receipt of the said letters. The consumer was warned of disconnection if the bill amount is not paid within 30 days.

On receipt of the said notice, the consumer filed a written objection on 22-11-2016 explaining that the appellant institution is one of the institutions of the Malankara Orthodox Syrian Church and the said church is exempted from payment of Income Tax and copy of the order F. No. 280/Exem/CC-Tvm/12/2009-10 dated 26-10-2010 passed by the Chief Commissioner of Income Tax, Thiruvananthapuram produced before him. In the written objection the appellant requested the Assistant Executive Engineer to keep the connections under Tariff VI A. But the Assistant Engineer, Electrical Section, Sasthamkotta passed Order No. BB/Appeal/APTS/2016-17/157/27.01.2017 changing the tariffs of consumer No. 5226 and 5227 to LT VI F from LT VI A from the date of inspection. By the said order, the Assistant Engineer upheld the short Assessment bills prepared under Section 152 of the Kerala Electricity

Supply Code, 2014. By the said order the appellant was directed to effect payment within 30 days.

The order passed by the Assistant Engineer is not in accordance with law. The Assistant Engineer ought to have found that Mar Theodosius Memorial Medical Mission Hospital is a charitable institution under the Malankara Orthodox Syrian Church and it is exempted from payment of income tax. The Assistant Engineer had not considered the exemption order F. No. 280/Exem/CC-Tvm/12/2009-10 dated 26-10-2010 passed by the Chief Commissioner of Income Tax, Thiruvananthapuram and that alone is needed to keep the service connections in LT.VIA Tariff. But the Assistant Engineer misinterpreted the provisions and insisted for the production of Income Tax exemption under Section 80 G(5) of the Income Tax Act. The Assistant Engineer failed to distinguish exemption under Section 10(23) C (V) and Section 80G (5) of the Income Tax Act 1961.

The Order No. CGRF/KTR/OP No. 379/2017/6559 dated 22-06-2017 is challenged on the following grounds.

- i) The order passed by the C.G.R.F. (South) Kottarakkara is arbitrary, illegal and against facts and evidence.
- ii) The CGRF (South) Kottarakara ought to have found that the appellant is entitled to enjoy the service connections under LT VI A.
- iii) The CGRF (South) Kottarakara ought to have found that the Mar Theodosius Memorial Medical Mission Hospital is a hospital registered under the Travancore, Cochin-Literary Scientific and Charitable Societies Act-1955 and exemption is granted by the Chief Income Tax Commissioner by Order No. F. No. 280/Exemp/C.C-Tvm/12/2009-2010 dated 26-10-2010. The lower authority ought to have found that certificate alone is sufficient to keep the service connections in LT VIA Tariff.
- iv) The CGRF (South) Kottarakara misinterpreted Kerala State Electricity Regulatory Commission Tariff Order dated 14.08.2014. The CGRF (South) Kottarakara ought to have found that exemption is granted by Chief Income Tax Commissioner Under Section 10(23C) (V) of the Income Tax Act 1961 and that exemption is to charitable institutions registered Under Travancore-Cochin Literary Scientific and Charitable Societies Act.
- v) The CGRF (South) Kottarakara misinterpreted exemption under section 10(23C) (V) of the Income Tax Act and Section 80 G(V)(VI) of the Income Tax Act 1961.
- vi) The CGRF (South) Kottarakara ought to have found that exemption under 10(23C) (V) of the Income Tax Act 1961 is for Trust or institution wholly for

Public Religious purpose and exemption under section 80G is applicable to any Trust or institutions registered under section 12 of the Income Tax Act 1961.

vii) The CGRF (South) Kottarakara revised the tariff of the appellant under revised tariff order of KSEERC dated 17-04-2017 under a new category. Tariff LT VI General (LTVIG). The CGRF (South) Kottarakara ought to have found that the revised Tariff Order of KSEERC dated 17-04-2017 with effect from 18-04-2017 is not applicable to the present case. The CGRF (South) Kottarakara ought to have found that the revised Tariff order has no retrospective effect.

viii) The short term assessment bills made by the Assistant Executive Engineer, Sub Division Sasthamkotta are not in accordance with law. The amount calculated is not correct according to his own order itself. The Assistant Executive Engineer changed the Tariff LT VI A with effect from date of inspection, but prepared the short assessment from November 2014 to October 2016. The amount calculated is exorbitant and the period chosen for calculation of short assessment bills are not legal.

ix) The CGRF (South) Kottarakara had not properly applied law for the adjudication of the matter.

5) Nature of relief sought from the Ombudsman

- a) To Set aside the order of the CGRF/KTR/OP No. 379/2017/6559 dated 22-06-2017,
- b) To set aside the short assessment bill dated 15-11-2016 issued to Consumer No. 5226 for Rs. 3,19,816/- and bill dated 15-11-2016 issued to Consumer No. 5227 for Rs. 1,34,750/-
- c) To set aside the Order No. BB/Appeal/APTS/2016-12/157/27.01.2017 and
- d) Maintain and keep Consumer No. 5226 and 5227 in LT VI A Tariff and
- e) Cost of the proceedings.

Arguments of the respondent:

The electric connection with consumer no. 5226 is for the use in a private Allopathic hospital with a registered connected load of 68 KW and the other one with consumer no 5227 is for the use in a private Eye-hospital with a connected load of 39 kW. Tariff of both the connections were LT VI A during

inspection. As per tariff order prevailing at the time of inspection (Schedule of tariff with effect from 16-08-2014 vide order dated 14-08-2014 of Kerala State Regulatory Commission, Thiruvananthapuram in OP No.09 of 2014 and published in 'Kerala Gazette Extra Ordinary dated 27-09-2014 No. 2379), "private hospitals and charitable institutions registered under Travancore-Cochin Literary, Scientific and Charitable Societies Regulation Act, 1955, the donations to which are exempted from payment of Income Tax" are eligible for LT VI A Tariff. Hence at the time of inspection, the hospital authorities were asked to produce the proof for the same.

The consumer's representative produced registration under Travancore-Cochin Literary, Scientific and Charitable Societies Regulation Act, 1955 with registration no Q 245/83 dated 03-05-1983 of Registrar of Societies issued in the name of "Mar Theodosius Memorial Medical Mission, Sasthamkotta" and were not able to produce proof (which is the approval under Section 80 G(5)(vi) of the Income Tax Act) for exempting the donations made to this institution from payment of Income Tax.

The Assistant Engineer, Electrical Section, Sasthamkotta demanding the short collected charges, specifically intimated the consumer to produce all required documents for LT VI A tariff eligibility within seven days, failing which the tariff of these electric connections will be changed to LT VI F and they will be liable to remit the demanded charges of electricity short collected. Considering the request dated 22-11-2016 of the consumer representative, the Assistant Engineer gave opportunities for producing required documents and heard them directly on 20-12-2016. During, the hearing also, the appellant were not able to produce the approval under Section 80G(5)(vi) of the Income Tax Act to prove that the donations to the appellant's institution are exempted from payment of income tax. During the hearing the consumer representative informed that they will produce the same before 27-12-2016.

On expiry of the promised date for producing required documents, the Assistant Engineer, Electrical Section, Sasthamkotta issued an order vide no. BB/Appeal/APTS/2016-17/157 dated 27-01-2017 to confirm the assessments issued on 15-11-2016, and changed the tariff of these two electrical connections to LT VI F with effect from the date of inspection.

The Hon'ble Consumer Grievance Redressal Forum (South), Kottarakkara found that the documents submitted by the petitioner as per the Gazette notification were not satisfactory and the bills issued are genuine and sustainable as per the notification and hence the petitioner is liable to pay the amount.

After producing approval under sub clause (v) of Clause (23C) of section 10 of the Income tax Act, 1961, the appellant is claiming the concessional tariff notified for "private hospitals and charitable institutions registered under

Travancore-Cochin Literary, Scientific and Charitable Societies Regulation Act, 1955, the donations to which are exempted from payment of Income Tax". Rule 11AA, Income Tax Rules specifies the requirements for approval of an institution or fund under section 80G and notification issued under section 10(23) or 10(23C) is one requirement specified in it. Institute requiring the approval under Section 80G(5)(vi) of the Income Tax Act 1961 shall apply in Form 10G with required documents and this approval is mandatory to decide whether the donations received by the appellant's institution will qualify for deduction under Section 80G(5) of the Income Tax Act, 1961, in the hands of the donor.

The appellant's argument that the amount calculated is not correct and that the bills issued is not in accordance with law is invalid and misleading. The Hon'ble CGRF found undoubtedly that the bill issued by the respondent is genuine and sustainable as per the notification and hence the petitioner is liable to pay the amount. After receiving the order containing this observation the consumer is raising new arguments which were not raised previously during the hearing conducted by the Assistant Engineer or in his petition filed before the Hon'ble CGRF. The details of calculation were served to the consumer along with the demand itself. Regulation 152 (1) and 152(2) of Kerala Electricity Supply Code, 2014 permits the respondent to realize the amount of electricity charges short collected, if any, under normal tariff from the consumer due to incorrect application of tariff. Regulation 152 (3) permits the respondent to realize the amount of electricity charges short collected for the entire period during which such incorrect application of tariff 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 this case the incorrect application of tariff persists from 16-08-2014 which is the date of effect of schedule of tariff vide order dated 14-08-2014 of Kerala State Regulatory Commission Thiruvananthapuram published in Kerala Gazette Extra Ordinary dated 27-09-2014 No. 2379 and is more than 24 months. The period taken for realising the electricity charges short collected is limited to 24 months prior to the date of detection. The anomaly was detected during the inspection conducted on 08-11-2016 and hence the period taken from November 2014 to October 2016 is correct as per provisions of Regulation 152(3) of Kerala Electricity Supply Code, 2014.

It is submitted that the Hon'ble State Electricity Ombudsman in its order Dt 26-02-2016 in Appeal No. P/169/2015 specifically mentioned that approval under section 80 G(5)(vi) is essential for concessional tariff under LT VI A to private hospitals and charitable institutions registered under Travancore-Cochin Literary, Scientific and charitable Societies Regulation Act, 1955, the donations to which are exempted from payment of Income Tax. The appellant failed to produce the approval under section 80 G(5)(vi) during the inspection and also during the hearing conducted by the Assistant Engineer. Even though the Assistant Engineer allowed sufficient time as per the appellant's

request at the time of hearing, the appellant failed to produce the same. Again the consumer failed to produce the same before the Hon'ble CGRF; Hence the appellant is not eligible for the concessional tariff of LT VI A as per schedule of tariff with effect from 16-08-2014 vide order dated 14-08-2014 of Kerala State Regulatory Commission, Thiruvananthapuram in OP No. 09 of 2014 and published in Kerala Gazette Extra Ordinary dated 27-09-2014 No. 2379. It is submitted that, the demand issued to the appellant is as per rules prevailing at the time of inspection. Without obtaining proper approvals from the Income Tax department to prove that the donations to the appellant's institution are exempted from payment of income tax, the appellant is raising invalid arguments to avail electricity in a concessional tariff applicable to institutions those who satisfy the above notified requirement. As per the rules prevailing at the time of inspection, the appellant is not eligible for LT VI A tariff without the approval under section 80G(5)(vi) of the Income Tax Act, 1961.

It is also submitted that these demands are not any penal charges. The demands are only the balance amount payable by the consumer for electricity used by them in their institutions and is calculated in accordance with the tariff applicable to such institutions.

The consumer is liable to pay the electricity charges up to 17.04.2017 in LT VI F tariff as per schedule of tariff with effect from 16.08.2014 vide order dated 14-08-2014 of Kerala State Regulatory Commission, Thiruvananthapuram in OP No. 09 of 2014 and published in Kerala Gazette Extra Ordinary dated 27-09-2014 No. 2379. The tariff of the consumer is LT VI G with effect from 18-04-2017 as per Schedule of Tariff and Terms and Conditions for Retail Supply of Electricity by Kerala State Electricity Board Limited and all other Licensees with effect from 18-04-2017 to 31-03-2018 published in the Extra ordinary Gazette dated 21-04-2017 no.782 (order no.1007/F&T/KSERC/2016 dated 17-04-2017).

Analysis and findings

A hearing of the case was conducted in the Court Hall of CGRF, Kottarakkara on 20-10-2017. Sri John George, advocate appeared for the appellant and Sri. Omanakuttan, Assistant Executive Engineer, Electrical Sub Division, Sasthamkotta 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 approval under sub clause (v) of Clause (23C) of Section 10 of the Income Tax Act, 1961 and thereby eligible for concessional tariff under LT VI A.

On going through the connected documents submitted by the appellant, it is revealed that the appellant filed objection against the short assessment bill before the Assessing Officer and having upheld the bill, the appellant filed petition before the CGRF, Kottarakkara. But the Forum observed that the appellant's tariff should have been changed as per the revised tariff order of KSERC dated 17-04-2017.

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.

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. An approval under sub clause (v) of Clause (23C) of Section 10 of the Income Tax Act, 1961 is meant for "any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes, which may be approved by the prescribed authority having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof;". The appellant has failed to establish that its return of income tax statement including the hospital has been filed by the assessee, the M/s Malankara Orthodox Syrian Church and not produced any such returns filed for verification by this Authority. The approval produced by the appellant is found issued to M/s Malankara Orthodox Syrian Church, Catholicate Office, Devalokam P.O., Kottayam and hence the argument of the appellant is not admitted. The appellant's institution is a private hospital and failed to substantiate its claim for exemption from Income Tax liability by producing certificate to this effect from the IT Department. So it is held that the appellant not satisfies both the criteria for considering a consumer to avail LT VI A tariff as per the prevailing rules.

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. 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 Rs. 319816/- to consumer number 5226 and Rs. 1,34,758/- to consumer number 5227 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 appellant shall remit the bills within one month from the date of receipt of this order and the respondent shall allow sufficient instalments without interest, if the appellant applies for the same.

The order of CGRF (South), Kottarakkara in OP No. 379/2017 dated 22-06-2017 is upheld. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

ELECTRICITY OMBUDSMAN

P/094/2017/_____ /Dated:_____

Delivered to:

1. Rev. Fr. Koshy Vaidyan, Secretary, Mar Theodosius Memorial Medical Mission Hospital, Poruvazhy P.O., Kollam.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Sasthamkotta, Kollam.

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, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.