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APPEAL PETITION NO. P/093/2017  
(Present: A.S. Dasappan)  
Dated:17<sup>th</sup> November 2017

Appellant : Sri Dr. S.K. Madhavan  
President,  
Mahatma Nature Cure Centre,  
APX-443E, Kanool P.O.,  
Morazha, Kannur

Respondent : The Assistant Executive Engineer  
Electrical Sub Division,  
KSEB Limited,  
Taliparamba, Kannur

### **ORDER**

#### **Background of the Case:**

The appellant is the president of M/s Mahatma Nature cure centre at Kanool and has availed an electric connection from Electrical Section, Dharmasala with consumer number 13399 in the name of Sri. Madhavan S.K., President, Mahatma Prakrithi Chikilsa Kendram, Kanool with connected load 23.390 kW and with date of connection 25-01-2008. In the A.G.'s audit detected that the tariff assigned to the appellant was LT VI B tariff instead of the eligible tariff of LT VII A. The appellant had been enjoying the tariff, which is eligible to private hospitals.

Since the appellant was billed under LT VI B tariff, a short assessment bills dated 01-10-2015 amounting to Rs. 1,85,797/- was issued towards the undercharged amount due to wrong fixation of tariff for the period from 25-01-2008 to 28-02-2011. Aggrieved against this, the appellant approached with a petition before CGRF, Kozhikode, which was dismissed vide order No. 176/2016-17 dated 30-06-2017 stating that activities in the premises was not of a hospital as the appellant had not produced relevant documents, allowing the respondent to grant instalment facility on the request of the appellant.

Against the above order, the appellant has filed this appeal petition before this Authority.

**Arguments if the appellant:**

1. The appellant herein is the president of a charitable society named Mahatma Nature Cure Centre, which is registered under the provisions of Societies Registration Act, 1860. The said society has also obtained exemption from income tax under section 12A.

2. It is pertinent to note that, the aforesaid certificates have been obtained when the said society was functioning at Karimbam, Taliparamba. Subsequently the aforesaid society has established a full-fledged Nature Cure Centre with all facilities for inpatient treatment in a building which was specifically constructed for the purpose, at court road, Taliparamba. From the documents it can be seen that the establishment managed by the appellant is a hospital which is providing treatment for various diseases by following naturopathy.

3. Right from the inception, the Electricity Board has also recognized the same as a hospital and accordingly they were provided with an electricity connection under LT VIB tariff. The appellant was always very prompt in remitting the charges as against the bills issued to them from time to time. While so, to the utter surprise of the appellant, they were served with the notice issued by the Assistant Engineer, Electrical Section, Dharmasala, intimating the appellant that as per the audit report, it was informed that the establishment of the appellant cannot be treated as a hospital with exemption under the income tax and therefore the tariff provided to the appellant's establishment has to be converted from LT VI B to LT VII A. Accordingly it was informed that the monthly bills issued to the appellant from 25/01/2008 till 28-02-2011 have to be reworked and accordingly and amount of Rs. 1,85,797/- with surcharge have to be remitted by the appellant. Even though the appellant submitted objections highlighting the illegality in the aforesaid demand, the said objections were not considered and it was confirmed. Challenging the aforesaid demand the appellant approached the Consumer Grievance Redressal Forum, Kozhikode.

Being deeply aggrieved by the aforesaid order of the CGRF, the appellant has adduced the following grounds for consideration.

The establishment run by the appellant is a hospital and is also a charitable institution exempted from the payment of Income Tax Act under section 12 A. As per the tariff order which was prevailing at the relevant time, hospitals and charitable institutions exempted under the provisions of the Income Tax Act are entitled to be classified under LT VI B tariff. Therefore absolutely no justifiable reasons are for converting the tariff of the appellant.

It is pertinent to note in this regard that the establishment of the appellant is a natural cure centre where naturopathy is practiced for the purpose of treatment of various ailments. The Central Council for Research in Yoga and Naturopathy which is under the Ministry of Health And Family Welfare, Government of India is providing grant in aid for running the said establishment. From the documents, it is evident that the activity that is being conducted in the establishment of the appellant is that of a hospital where inpatient treatment is provided. Apart from the above Anthoor Municipality has also issued a certificate evidencing that the establishment of the appellant is providing inpatient treatment since 1984. From all the documents the only irresistible conclusion possible is that the establishment of the appellant is a hospital and is also a charitable institution registered under the Societies Registration Act, which is exempted from payment of Income Tax Act. In the light of the aforesaid documents, the order passed by the CGRF is liable to be set aside and the orders impugned in the said complaint are also liable to be set aside.

It is further submitted that, even if it is assumed, without admitting that, the tariff applicable to the appellant is that of commercial establishment, under no circumstances the person demand is sustainable. The tariff was assigned to the appellant by the competent officers of the Electricity Board after inspecting the premises and also verifying the nature of the activity carried on in the premises. Therefore if any mistake is occurred in the classification, under no circumstances the appellant can be saddled with any liability in respect of the same. Therefore at any rate the present demand made by the respondents and the order passed by the CGRF confirming the aforesaid orders are liable to be set aside.

It is further submitted that the person demand is also barred by limitation as contemplated under section 56(2) of the electricity act, 2003 as the demand is pertaining to the period is beyond 2 years proceeding to the date of the notice.

#### 5. Nature of the relief sought from the Ombudsman

To set aside the order passed by the Honourable CGRF, Northern Region, Kozhikode in OP No. 176/2016-17 dated 30-06-2017 and grant the reliefs sought for in the said complaint.

#### **Arguments of the respondent:**

On verifying the Society registration certificate and income tax registration certificate dated 09-03-95 produced by the consumer it is found that both the certificate do not pertain to the Mahatma Prakrithi Chikilsa

Kendram at Kanul but pertains to the Mahatma Prakrithi Chikilsa Kendram, Karimbam. The certificate from the Income tax under Section 12A stated that "registration is not a finding regarding the charitable nature of fund."

The Consumer has never produced the hospital license 'Mahatma Prakrithi Chikilsa Kendram at Kanool' for the period 25-01-2008 to 28-02-2011 from the Secretary of the Taliparamba Municipality to the Electrical Section Dharmasala though requested to the consumer.

AG's audit conducted in Electrical Section Dharmasala reported, vide audit enquiry No.68 dated 04-03-2011 that, it as a wrong application of tariff stating that, the consumer runs a nature cure centre providing/offering services like massage, yoga, meditation, various baths like hip bath, foot bath, spinal bath, sun bath etc and hence the institution is not a hospital and should have been billed under LT VII A treating it as a commercial instead of VI B (i.e. tariff applicable for private hospitals). It was also pointed out that the consumer has not furnished any documentary proof (like hospital license) for claiming it as a hospital and hence an amount of Rs. 1,85,797 has been calculated as short assessed amount for the period 25-01-2008 to 28-02-2011 and hence the same has been intimated and issued as short assessment bill for Rs. 1,85,797 to the consumer vide letter No. BB AG/DSL/2011-12/421/ 31-03-2011.

As a reply to the above letter, consumer vide letter dated 07-04-2011 stated that, M/s Mahatma Nature cure centre is a prakrithi chikilsa hospital where no medicines are used, instead treatment is done through dieting, baths, yoga and meditation and the consumer is following the same method of treatment which is practiced in the prakrithi chikilsa kendram at Urulikanchan (Pune) which is started by our father of nation. Consumer has also stated that, they treat patients with diseases ranging from common cold to cancer at M/s Mahatma Nature cure centre and hence it is a hospital and also a charitable society registered under Societies Registration Act. For supporting these claims, the consumer has attached the copies of documents such as - Certificate of Registration of Societies Act No.XXI of 1860 (but seen registered in the name of Mahatma Prakrithi Chikilsa Kendram at Karimbam, Karimbam is not under the jurisdiction of Electrical Section, Dharmasala) and the certificate of registration of the M/s Mahatma Nature Cure Centre under sec 12A(a) of the Income Tax Act 1961 (but seen registered in the name of Mahatma Prakrithi Chikilsa Kendram, Taliparamba P.O., Karimbam, Karimbam is not under the jurisdiction of Electrical Section, Dharmasala), bye law etc. As a reply to the AG's audit note, all these has been furnished and submitted, but was not accepted by the AG stating that, no document was available to prove that the consumer is a hospital. Hence short assessment bill dated 01-10-2015 for Rs. 1,85,797/- and a letter dated 30-09-2015 has been served to the consumer.

As a reply to the above letter and bill, the consumer has issued a letter stating more or less the same reasons as furnished by the consumer through their previous letter and which was already reported as a reply to the audit and got rejected.

Hence a clarification along with the documents and reply submitted by the consumer, in the matter of tariff to be applied to these categories of consumers (including Mahatma Prakrithi Chikilsa Kendram) has been sought and received from the Deputy Chief Engineer of the Electrical Circle, Sreekandapuram. In the clarification letter the Deputy Chief Engineer has made it clear that as the consumer has not produced any proof for treating the premises as private hospital or private hospitals registered under Cultural, Scientific and Charitable Societies Act and exempted from the payment of income tax as per Gazette notification no.2148 dated 27-11-2007 and hence tariff requested by the consumer cannot be granted. So the consumer has been intimated the same vide letter no. DB/2016-17/DSL/CN No 13399/76/ 30-09-2016 and pay the short assessment bill. The bill issued to the consumer for Rs. 1,85,797 ( for the period 25.01.2008 to 28.02.2011) is only a short assessment bill due to the wrong application of tariff and no surcharge is included in the amount Rs. 1,85,797 thus calculated.

It is true that as per tariff order which was applicable during the period for which the short assessment bills were issued, the tariff applicable to the private hospitals were LT VI B. But in this case the consumer was able to produce (before the CGRF) the hospital registration certificate issued by the local body (only for the period 24-10-2016 valid up to 31-03-2017 only) which is not sufficient to prove the status of the premise during the period 25-01-2008 to 28-02-2011.

The consumer has never produced the private hospital registration certificate from the secretary of the local body during the period for which the short assessment bills were issued to the consumer. The certificate dated 20-10-2016 produced by the appellant, obtained from the Anthoor Municipality is not issued by the secretary and also Anthoor Municipality was formed and started functioning only 2015 onwards. As per section 311 of the Kerala Municipality Act, 1994, "on or after the commencement of this act no private hospital and private paramedical institutions shall be established within the territorial area of Municipality without prior registration in that Municipality under Section 313.

There is legal provision allowing the licensee to reclassify the tariff of a consumer if it is found that a consumer has been wrongly classified in a particular category and to collect the arrear charges for the actual period of wrong classification of the tariff and this short assessment bill is issued as per rule. It is not an arrear bill, it is only under charged bill issued to the consumer when it was noticed that the tariff has been wrongly applied to the consumer.

The under charged bill was confirmed and issued as final to the consumer on 2016 after considering all the objections from the consumer and getting the clarification from the Deputy Chief Engineer, Electrical Circle, Sreekandapuram. Hence it is humbly prayed that this Hon: Ombudsman may permit the KSEBL to collect the under charged amount from the consumer for the period of wrong application of tariff as the consumer has been given sufficient time and has failed to produce the required valid documents like hospital registration certificate for the period for which the short assessment bill has been served to the consumer.

### **Analysis and findings**

A hearing of the case was conducted in the Court hall of CGRF, Kozhikode on 04-10-2017. Sri S.K. Madhavan and Sri Ziyad Rahman, advocate represented for the appellant and Smt. Shyni, Assistant Executive Engineer, Electrical Sub Division, Taliparamba 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 entitled for availing tariff under LT VI B eligible for private hospitals for the period from 25-01-2008 to 28-02-2011.

The main averments of the respondent in changing the tariff to LT VIIA and for issuing the short assessment bill are based on the following reason.

The appellant's institution is not a private hospital and failed to substantiate its claim for tariff categorization under LT VI B.

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 KSEERC, the eligibility for under LT VI B is applicable to private hospitals. As per tariff notification issued by the Hon'ble KSEERC, 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 and the donations to which are exempted from payment of Income Tax. So, the criteria for considering a consumer under VI A tariff as per the above tariff order are:

- (1) Registration certificate under the Travancore Cochin Literacy, Scientific and Charitable Societies Registration Act, 1955.
- (2) The certificate to show that whether the donations to the institutions under Section 80G of Income Tax Act, 1961 are exempted from the payment of Income Tax.

Since the appellant lacks the above two criteria, there is no question of the eligibility to consider the appellant under LT VI A category. The appellant's plea is only to allow him under VI B category and to set aside the short assessment bill issued on revising the tariff under LT VII A category.

The Accountant General, in its Audit Enquiry No. 68 dated 04-03-2011, had directed the Assistant Engineer, Dharmasala regarding the subject of short assessment due to adoption of incorrect tariff assigned to consumer No. 13399 of the appellant. The extract of the Audit Enquiry is reproduced below.

“Service connection to consumer No. 13399 for a connected load of 24 kW was effected on 25-01-2008. The consumer was classified and being billed under Tariff VI B as it was a private hospital. The consumer runs a Nature Cure Centre which provided/offers service like massage, yoga, meditation, various baths like hip bath, foot bath, spinal bath, sun bath etc. It is obvious from the services provided/offered by the institution that the same is not a hospital to be assessed under tariff VI B. Instead the consumer should have been assessed under Tariff VII A. It was further observed that the consumer had not furnished any documentary proof (like hospital license) for claiming it as hospital except an entry made ‘hospital’ in the application form. In the light of the above, the service connection to the consumer should have been treated as commercial and billed under VII A tariff.”

The question to be answered here is whether a Nature Cure Centre comes under the definition of hospital and the appellant is eligible for categorization under Tariff VI B.

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Naturopathy is recognized and well accepted as an independent system of medicine. As per the guidelines issued for registration of naturopathy practitioners and accreditation of institutions by the Indian System of Medicine and Homeopathy (ISM&H), “Naturopathy” means a drugless, non-invasive, system of therapy involving the use of natural materials in its treatments based on the theory of vitality, the theory of toxemia, the theory of self healing capacity of the body and the principles of healthy living.” In the guidelines, the hospital means a Naturopathy hospital with 10 inpatient beds and an outpatient department.

The respondent's contention is that the consumer has never produced the private hospital registration certificate from the secretary of the local body during the period for which the short assessment bills were issued to the consumer. As per section 311 of the Kerala Municipality Act, 1994, "on or after the commencement of this act no private hospital and private paramedical institutions shall be established within the territorial area of Municipality without prior registration in that Municipality under section 313. It is revealed that the appellant had not obtained a registration certificate from the concerned Municipality.

The appellant's version is that the appellant is a natural cure centre where naturopathy is practiced for the purpose of treatment of various ailments. The Central Council for Research in Yoga and Naturopathy which is under the Ministry of Health And Family Welfare, Government of India is providing grant in aid for running the said establishment and true copies of the letters dated 26-04-2010 and 11-10-2010 are produced.

It is essential to look into the Schedule of Tariff and Terms & Conditions for Retail Supply of Electricity published by Hon'ble Regulatory Commission vide order dated 26-11-2017 effected from 01-12-2017 and order dated 02-12-2009 effected from 01-10-2010 which is extracted below:

The tariff applicable to offices and institutions under State/Central Government, Corporations, Boards under State/Central Government/Local bodies, hostels of educational institutions (other than self financing educational institutions) affiliated to Universities or under the control of the Director of Technical/Medical education/Public instruction or such other offices of Government or run by the Government or state social welfare board, hostels run by institutions that are registered under Cultural, Scientific and Charitable Societies Act and exempted from payment of Income Tax, KHRWS pays wards and institutions of KHRWS, travelers bungalows, guest/rest houses under Government, typewriting institutes, private hospitals, private clinical laboratories, X-ray units, private mortuaries, private blood banks, private scanning centres, offices of advocates/chartered accountants/tax consultants/architects/social organizations, press clubs, museum/zoo, computer training institutes, offices of political parties not approved by the Election Commission of India and collection centres of 'FRIENDS' single window service centres under Department of Information Technology and Police clubs and Akshaya e-centres.

Another important argument of the appellant is that the claims were apparently time barred as the KSEB preferred to raise the same abruptly after a lapse of many years. The main contention of the Appellant is based on the Limitation of the bills, under Section 56(2) of Electricity Act, 2003, which reads "The licensee shall not recover any arrears after a period of two years from the date when such sum become first 'due' unless such sum has been shown



continuously in the bill as recoverable as arrears of the charges of electricity supplied". This 'due date' is an important date for both consumer and KSEB (Licensee). This is because after a period of two years from the 'due date', the arrear bills are time barred and the consumer is not liable to pay the sum even if it is a legitimate claim otherwise. Therefore it is a boon to the consumer and a loss to the Licensee. For an upright and bonafide consumer, he need not worry of 'Bills' of long pending dues after a period of 2 years, if it is not shown continuously in the regular bills of the consumer. On the other hand, in the case of Licensee he should be more vigilant and smart in preferring the bills in time, otherwise he has to suffer the loss for the laxities and omissions occurred on his part. Since this issue has been dealt with, analyzed and given a firm opinion by the Upper Courts of Law/Jurists, we may follow the same. As such, I have before me the Judgment in the Petition filed, before the Hon: High Court, Bombay, vide No: 3784/2007, which has dealt the 'due date' issue in detail and pronounced its considered opinion. In this, it was spelt by Hon: Judge as follows;

In construing the expression "due" the interpretation that is to be placed must be harmonized so as to be applicable both in the context of Sub section (1)& (2) of Section 56. A sum cannot be said to be due from the consumer unless a bill for the electricity charges is served upon the consumer. Any other construction would give rise to a rather anomalous or absurd result that a disconnection of supply would be contemplated even without the service of bill. Though the liability of consumer arises or is occasioned by the consumption of electricity, the payment falls due only upon the service of a bill. Thus for the purpose of sub section (1) & (2) of section 56, a sum can be regarded as due from the consumer only after a bill on account of the electricity charges is served upon him'.

Thus the period of two years as mentioned in Section 56 (2) of Electricity Act, 2003, would run from the date when such a Bill is raised by the Board and have become due for payment only after that demand has been raised. In the same Case it was further clarified by Hon: High Court that;

"Amount of charges would become due and payable only with the submission of the bill and not earlier. Word 'due' in this context must mean due and payable after a valid bill has been sent to the consumer", (Brihatmumbai Municipal Corporation Vs Yatish Sharma etc-2007 KHC 3784:2007.

In this case, the bill is seen raised on 01-10-2015 and has become due thereafter and time period of two years start from 01-10-2015 only and hence the appellant's argument is not maintainable under the bar of limitation. As the bill was issued in 10/2015 only, I am of the view that Sec 56(2) is not attracted in this case.

In the argument note, the appellant has cited an order dated 18/3/2009 issued by the Hon'ble Regulatory Commission in TP 59/2008. As per the order, the consumer is liable to pay the arrears from the date of inspection only. But this order was issued before the Supply Code 2014 came into effect on 1-04-2014. As per Regulation 97 (5) of Supply code, 2014, " If the actual period of wrong classification cannot be ascertained reasonably, the period shall be limited to a period of twelve months or a period from the date of last inspection of the installation of the consumer by the licensee whichever is shorter:". In view of the above provision, the averment of the appellant on this aspect cannot be admitted.

On receiving the short assessment bill the appellant filed an appeal before the CGRF, Kozhikode. But the Forum observed that the petitioner could not produce relevant documents to prove that the premises were being used for hospital purposes. As per Regulation 152(2) and (3) of Supply Code, 2014, in the case of incorrect application of tariff, 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, provided the realization shall be limited for a maximum period of 24 months, without any interest.

Though appellant's institution is a nature cure centre functioning from 25-01-2008, it has failed to substantiate its claim for tariff categorization under LT VI B, by submitting a registration certificate from the concerned Municipality during these periods. The appellant is eligible to be categorized under LT VI G applicable for health care sector which is introduced w.e.f.18-04-2017, as per the new tariff order issued on 21-04-2017.

### **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 B tariff. As this a case of incorrect application of tariff, the amount of electricity short collected shall be realized from the appellant by limiting a maximum period of 24 months, without interest. The respondent shall issue revised bill and the appellant shall remit the bill within one month from the date of receipt of the revised bill. The respondent shall allow sufficient instalments without interest, if the appellant applies for the same.

The order of CGRF (North), Kozhikode in OP No. 176/2016-17 dated 30-06-2017 is modified to this extent. Having concluded and decided as above, it is ordered accordingly. No order as to costs.

**ELECTRICITY OMBUDSMAN**

P/093/2017/ \_\_\_\_\_ /Dated: \_\_\_\_\_

Delivered to:

1. Sri. Dr.S.K. Madhavan, President, Mahatma Nature Cure Centre, ApX-443E, Kanool P.O., Morazha, Kannur.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Thaliparama, Kannur.

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, Kozhikode 673011.