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REPRESENTATION No: P 84/09

Appellant : The Director,
Department of Sacred Music and Communications
SCS Campus, Thiruvalla 689101

Respondent: Kerala State Electricity Board
Represented by
The Assistant Executive Engineer
Electrical Sub Division Thiruvalla 689101

ORDER

The Director, Department of Sacred Music and Communications, SCS Campus, Thiruvalla submitted a representation on 17.7.2009 seeking the following relief :

1. *To set aside the Order dated 28.4.2009 of the CGRF Kottarakkara on OP 333/2009*

2. *To restore the tariff of the Appellant to LT VI A of KSEB Tariff order 2002.*

Counter statements of the Respondent was obtained and hearing of both the parties conducted on 25.9.2009 and 14.10.2009.

The Department of Sacred Music and Communications (DSMC) is functioning in the premises of the head quarters of the Marthoma Syrian Church at SCS compound Thiruvalla and has an independent electric connection vide number 8433 for the institution. The DSMC has a connected load of 22.78KW and the connection was reported to be effected in 2002. The institution is functioning in an independent building with 4 floors. In the ground floor a recording studio is functioning .In the 1st floor the office of the DSMC is functioning and in 2nd floor a music school/prayer hall is functioning. The 3rd floor is used as residence of the Director. The electric connection is common for all the floors. The recording studio for recording devotional songs started functioning in 2004 .There are a large number of other buildings with independent electric connections under various tariffs in the church compound.

The DSMC recording studio in the building is functioning now with sophisticated and well equipped musical systems where recordings of religious songs and hymns are carried out. The studio was opened to public commercial recordings and related activities from 28th May 2006. Various commercial activities such as mixing and recording of songs, preparation of music albums, multiplication of CDs, designing CD covers, graphic and multi media design etc are carried out in the premises. The music school affiliated to London School of Music functioning in 2nd floor had strength of around 110 students. The tariff originally assigned to the connection was LT VI A. But the tariff was changed to LT VII A with effect from 4/03 onwards in accordance with the direction of the Regional Audit Officer in an inspection report dated 4.8.2006 and a short assessment bill was issued to the DSMC in 2006. The DSMC had been agitating against this and their pleas were dismissed by the Officials of the KSEB. The CGRF also upheld the action of the KSEB.

The representation with the pleas noted above is submitted to the under signed in the above back ground.

The contentions/arguments/points raised by the Appellant in the Representation. Argument notes and during the hearing are summarized below:

1. The Appellant is entitled to the tariff LT VI A. The Appellant is a part of the church functioning within its premises. The Appellant has got exemption u/s 10(23) of the Income Tax act 1961. The Appellant has satisfied the conditions prescribed for LT VI A tariff. Since the studio is situated within the church yard the tariff applicable to church alone will be applicable to the studio. By no stretch of imagination the activity carried on by the Appellant can be termed as commercial activity. The conclusion that the activities are commercial is absolutely perverse and contrary to facts.
2. As per the agreement entered into between the KSEB and the Appellant the tariff approved and allotted was LT VI A taking into consideration the income tax exemption, religious activities, etc. As per regulation 19(5) and 19(6) of the KSEB Terms of Conditions of supply when there are changes in the tariff a fresh agreement is to be entered into as per written requirement from the Board. Until a new agreement is executed the old agreement will prevail as per 19(8). No change of tariff without fresh agreement is contemplated by the Act and Regulations.
3. As per the Tariff Order of 2002 Tariff is made applicable not based on the nature of the activity and the purpose for which energy is used but based upon the status of the consumer.
4. As per Regulation 31 the Board is entitled to recover charges for electricity based on approved tariff in force. The approved tariff is only LT VI A as per form 7 agreement. As per regulation 32 supplemental schedule to original form 7 has to be executed to make change of tariff effective.
5. As per regulation 37 of the KSEB Terms of Conditions of supply any revision of demand can be made by an officer not below the rank of an Executive Engineer. The Respondent had no jurisdiction and the order was null and void.

6. The Respondent had not furnished a copy of the inspection report of the audit wing of the KSEB in spite of repeated requests.

7. The interest charged is exorbitant and arbitrary. The interest has to be levied as per regulation 36(5) not exceeding twice the bank rate.

8. The orders of the CGRF and the KSEB officials were violation of the principles of natural justice and were non reasoned and non speaking orders. The CGRF had relied upon an article in Malayala Manorama daily dated 27.9.2006 on the DSMC to arrive at the conclusion. The CGRF had not furnished or informed the Appellant about the said article on which he was intending to place reliance upon.

The contentions/arguments/points raised by the Respondent in the counterstatement and during the hearing are summarized below:

The statement of facts received from the Respondent on 24.8.2009 was subsequently revised on 18.9.2009. In addition to the above the Regional Audit Officer Pathanamthitta was called for the hearing and he submitted a written statement on 25.9.2009.

The RAO stated that the consumer who had been under LT VI A was noted as 'Studio' in the Meter reading register. The meter reading staff reported that commercial activities such as recording of film songs were being under taken in the premises. The news paper report on the various activities in the institution published in July 2006 also established the commercial nature of the activities. Hence instruction was issued to convert the connection to LT VII A Commercial with effect from 4/03.

The Respondent also reported that the DSMC functioning in an independent building within the Church complex can not be considered as premises of religious worship. The newspaper report ,the brochures and other publicity materials issued by them shows that DSMC is invariably and undoubtedly a commercial establishment at present. The tariff is determined by the purpose for which electricity is used not by the location where the connection exists.

Change of tariff to a lower one to a higher one need not be done by the Executive Engineer.

Discussion and Findings:

I. The single point to be decided in this case is the appropriate tariff applicable to DSMC.

As per the Tariff Order 2002 dated 24.10.2002 LT VI A Non domestic tariff shall be applicable to '*Temples, Churches, Mosques, Monasteries, premises of religious worship , convents, private hospitals registered under cultural scientific and Charitable Societies Act and exempted from payment of income tax ----- etc*'.

The Appellant claim is that since they are functioning in the premises of religious worship and exempted from payment of Income Tax , they are eligible for LT VIA tariff. A plain reading of the above tariff specification would show that the claim is wrong. Premises of religious worship only shall come under this. Not all the institutions functioning in the premises of religious worship. The qualifications '*registered under cultural scientific and Charitable Societies Act and exempted from payment of income*

tax' is applicable to private hospitals . All the institutions with the qualifications shall not come under the tariff. Temples, Churches, Mosques, Monasteries, premises of religious worship and convents do not need such registration and exemptions for being included in LTVIA.

The above regulations are clear and specific. DSMC is not eligible to be included under LT VIA.

The contention of the Appellant that change of tariff can not be made without fresh agreement is also not correct. The LT service connection agreement Form 7 executed by the Appellant do not specify any tariff group. Item 2 of the schedule to agreement indicates the 'purpose for which supply is required' .The tariff group is not mentioned in LT service connection agreement. The contentions of the Appellant on the matter are erroneous. The clause 19(5), (6), (8) etc of the KSEB Terms of Conditions of Supply are grossly misunderstood / misinterpreted and not relevant here.

One of the basic principles adopted by the Utilities all over the world is that current charges are realized in accordance with the purpose for which electricity is utilized. Arguments of the Appellant against these basic premises are not acceptable. The Appellant has tried to misinterpret the Clause IX of the above tariff order which deals with the principles adopted for categorization/classification of the consumers in general. Hence I conclude that the Appellant has no eligibility to claim LT VI A tariff for the whole period.

II. Now the appropriate tariff to be applied to DSMC has to decided.

In the Tariff notification dated 29.10.2002 *Audio/video cassette recording/duplication , CD recording/duplication* etc were categorized under LT IV Tariff. Naturally the DSMC recording studio should have come under LT IV. But in their case electricity from the same connection was used for music school/prayer hall in one floor, office of the institution in another floor and residence of the Director in another floor. A substantial part of electricity was being used for non-industrial purposes. Hence it will not be proper to apply LT IV tariff.

The recording studio and the associated facilities have been 'opened up' for recordings from outside church from 28.5.2006 and large scale commercial activities beyond mere *Audio/video cassette and CD recording* were going on since then . In view of this fact and other factors noted above, LT VII A Commercial tariff shall be applied from 5/2006.

III. The activities can not be termed as commercial during the period prior to 5/2006. The activities such as recording of devotional songs, conducting prayers in the hall were more or less religious and charitable in nature. But the electricity was used for domestic purposes and music classes also. Of the three non-commercial tariffs, namely domestic, industrial and non domestic VIA it is felt that non-domestic LT VI A is the higher one and shall be more relevant. Hence it would be appropriate to retain them under LTVIA tariff until 5/2006.

The Appellant may obtain separate connections for different floors so that appropriate tariff shall be applicable based upon the purpose for which electricity is used for each connection.

Orders:

Under the circum stances explained above and after carefully examining all the evidences, arguments and points furnished by the Appellant and Respondent on the matter, the representation is disposed off with the following orders:

1. *The Order dated 28.4.2009 of the CGRF Kottarakkara on OP 333/2009 is set aside.*
2. *The consumer number 8433 of the Department of Sacred Music and Communications (DSMC) shall be retained under LT VIA tariff until 5/2006 and changed to LT VII A thereafter.*
3. *No order on costs.*

Dated this the 4th day of November 2009,

P.PARAMESWARAN
Electricity Ombudsman

No P84 /09/ 399 / dated 6.11.2009

- Forwarded to:
1. The Director,
Department of Sacred Music and Communications
SCS Campus, Thiruvalla 689101
 2. The Assistant Executive Engineer
Electrical Sub Division Thiruvalla 689101

Copy to :

1. The Secretary,
Kerala State Electricity Regulatory Commission
KPFC Bhavanam, Vellayambalam,
Thiruvananthapuram 695010
2. The Secretary ,KSE Board,
VaidyuthiBhavanam ,Thiruvananthapuram 695004
3. The Chairman , CGRF,KSE Board ,
VaidyuthiBhavanam KOTTARAKKARA

