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APPEAL PETITION No. P/050/2014

(Present: Sri. V.V. Sathyarajan)

Dated: 16th April 2015

Appellant : Sri Joy. P. Jacob
Secretary,
Malankara Orthodox Syrian Church
Medical Mission Hospital,
Kolencherry P.O.
Ernakulam District

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Limited,
Puthencruz,
Ernakulam District

ORDER

Background of the Case

The appellant is the Secretary of Medical Mission Hospital, Kolencherry with consumer Nos. 8627 and 9093 under Electrical Section, Kolencherry. On 02/07/2013, two additional bills amounting to Rs. 1,96,008/- and Rs. 2,68,576/- were issued to the appellant on the ground of wrong classification of tariff during the period from 12/07 to 12/12. Against the said short assessment bills, the appellant filed complaint before the CGRF on 22/01/2014. The Forum held that the short assessment bills for Rs. 1,96,008/- and Rs. 2,68,576/- were in order. Aggrieved against the said order, this appeal petition was filed.

Appellant's arguments

The institution represented by the appellant is a charitable society registered under the Travancore Cochin Literary Scientific and Charitable Societies Act, 1955, as per its Registration Certificate of 1967. Being a charitable society, the said institution is exempted from payment of Income Tax and has been registered as a charitable society under Section 12 AA of the Income Tax Act, 1961. The female

staff-nurses of the hospital are provided accommodation in its hostels which have LT power connection bearing consumer Nos. 8627 & 9093. As per Circular No. plg.com.2462/94, the appellant's institution is entitled to concessional tariff. The electricity connections to the hostels were provided under tariff LT VI (B). As per the Schedule of Tariff & Terms and Conditions for Retail Supply, notified by the KSEB on 01/12/2013, the tariff applicable to hostels run by institutions which are charitable societies under the Travancore Cochin Literary Scientific and Charitable Societies Act, 1955, is LT VI (B) and not LT VII A as claimed by the respondent.

The hostel is not used for accommodation of students. As per statutory tariff order of 2002, issued by the KSERC, LT VI (B) tariff is applicable to hostels run by institutions that are registered under Cultural, Scientific and Charitable Societies Act and exempted from payment of income tax. The Hon'ble High Court of Kerala has held in 2009 (3) KLT 1022 that private educational institutions are liable to pay electricity charges only under LT VI A tariff. The Hon'ble High Court has also held in 2007 (4) KLT 779 that the tariff LT VI (B) covers hostels of educational institutions affiliated to the universities.

Respondent's arguments

Two connections bearing consumer Nos. 8627 and 9093 were issued under LT VI (B) tariff. The purpose of the said connections is accommodation of staff nurses of MOSC Hospital which is having an HT connection under HT-V. Based on Regional Audit Officer Report dated: 20/06/2013 short assessment bills were issued to both numbers, since both connections were re-categorized under LT VII A from 01/12/2007 onwards. The hospital itself is under HT V general tariff and hence the classification of hostel under LT VII A is in order. Self financing educational institutions including hostels come under LT VII A with effect from 01/12/2007 as per Gazette Notification dated: 27/11/2007. MOSC hospital was under HT IV commercial category applicable to private hospitals and on 01/05/2013, it was changed to HT V general category applicable to private hospitals. The MOSC medical college is purely a self financing institution, under HT V tariff.

The appellant remitted the entire amount on 17/01/2014 under protest. The CGRF, while dismissing the complaint, has observed that it is not genuine on the part of the present appellant to claim a tariff coming under Charitable Societies Act while the hostels are being used for accommodating staff nurses of the hospital having a tariff under HT V general tariff

Analysis and findings

Hearing of the case was conducted on 13/02/2015 in my chamber at Edappally, Kochi. The appellant and his advocate Sri Harish Gopinath appeared for the appellant's side and Sri C.P. Boban, Assistant Executive Engineer represented the respondent. Hearing the arguments of the parties and perusing the appeal petition,

statement of facts and all other documents, this Authority comes to the following conclusions.

The first question to be decided is as to whether the two hostels having consumer Nos. 8627 and 9093 were utilized for accommodating staff nurses or students. It has come to my notice that an educational institution i.e. medical college and a hospital are functioning in the campus. Hence there are students studying in the medical college and staff nurses working in the hospital. The stand of the appellant is that the hostels are not used for accommodating the students. In the circumstances, the decisions of the Hon'ble High Court of Kerala in 2009 (3) KLT 1002 and 2007 (4) KLT 779 will not support the case of the appellant. Both the decisions deal with the tariff rate (i.e. tariff VI) of educational institutions. Since the hostels in the present case are used for accommodating staff nurses working in the hospital, it cannot be said that the said hostels are run for the students of an educational institution.

The contention of the appellant is that the MOSC Medical Mission Hospital is a charitable society registered under the Travancore Cochin Literary Scientific Charitable Societies Act, 1955 and being a charitable society, the said institution is exempted from payment of Income Tax. It is pointed out that as per the tariff order of KSERC issued in the year 2002, LT VI (B) tariff is applicable to hostels run by institutions that are registered under the said Act and exempted from the payment of Income Tax.

But the fact is that the hospital itself is placed under HT V general tariff. It is seen that the hospital was under HT IV commercial category applicable to private hospitals and the tariff was changed to HT V general on 01/05/2013. It is curious to note that the benefit of charitable institution is not solicited for the hospital. It appears that the management of the hospital is satisfied with the tariff HT V imposed on them. Moreover the following facts have come to the notice of this Authority.

- (1) A self financing medical college under HT category is attached to the above hospital.
- (2) The students in the self financing institution are also enjoying the facilities of the hospital.
- (3) A hospital annexure is rented out monthly for the Doctors and Interns.
- (4) Two Bank ATM counters and a commercial shop are functioning in the hospital building.

From the above it is clear that the nature of activities in the appellant's hospital is quite distinct from a charitable institution and hence the appellant has not taken any attempt to change the tariff of the parent institution i.e. hospital. In this connection, I am of the view that the tariff of the staff nurses' hostels can be changed, only if the tariff of the parent institution i.e. hospital is changed. The tariff of MOSC Medical College is also under HT V category i.e. applicable to self financing

educational institution. On going through the records, it can be seen that the appellant has made no effort to show that their hostel used for accommodating staff nurses is registered under Charitable Societies Act and hence their request for LT VI B tariff cannot be granted.

Decision

In view of the above discussion it is held that the stand taken by the CGRF is justifiable. The order of the CGRF is upheld. The appeal petition is dismissed. No order as to costs.

ELECTRICITY OMBUDSMAN

No.P/050/2014/ /Dated: _____

Forwarded to:

1. Sri Joy. P. Jacob, Secretary, Malankara Orthodox Syrian Church Medical Mission Hospital, Kolencherry P.O. Ernakulam District.
2. The Assistant Executive Engineer, Electrical Sub Division, KSEBoard Ltd, Puthencruz, Ernakulam District.

Copy to:

1. The Secretary, Kerala State Electricity Regulatory Commission, KPFC Bhavanam, Vellayambalam, Thiruvananthapuram-10.
2. The Secretary, KSE Board Limited, Vydhyuthibhavanam, Pattom, Thiruvananthapuram.
3. The Chairperson, Consumer Grievance Redressal Forum, Power House, Power House Buildings, Cemeterymukku, Ernakulam-682 018