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APPEAL PETITION No. P/039/2019
(Present: A.S. Dasappan)
Dated 26th July 2019

Appellant : The Administrator
Stella Maris Hospital,
Paduvapuram P.O, Angamaly,
Ernakulam

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Ltd, Angamaly,
Ernakulam

ORDER

Background of the case:

A service connection with consumer No. 1155818000098 was effected in favour of Sr. Anitha CSN, Administrator of the Stella Maris Hospital, Karukutty under Electrical Section Karukutty under LT VI D tariff with connected load of 74 kW. The Anti Power Theft Squad (APTS) Wing of KSEB Ltd conducted an inspection in the appellant's premises on 20-12-2018 and detected that the tariff assigned to the appellant was LT VI A tariff from 01-07-2014. As per tariff revision with effect from 18-4-2017, all private hospitals are assigned with the tariff VI G and the hospital was assigned with tariff VI G on 1-6-2017. According to the respondent, the appellant had been enjoying the concessional tariff LT VI D and from 01-07-2014 VI A, 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 wrongly classified under LT VI D tariff and billed accordingly, a short assessment bill amounting to Rs. 5,72,140/- was served on 21-12-2018 towards the undercharged amount due to wrong fixation of tariff for the period from 07/2017 to 12/2018. Aggrieved against this, the appellant approached with a petition before CGRF (Central), Ernakulam, which was disposed of by the Forum vide order in OP No. 96/2018-19 dated 06-05-2019 by dismissing the petition and allowing 12 installments to remit the bill amount. Against the above order, the

appellant has filed this appeal petition before this Authority with a request to quash the short assessment bill.

Arguments of the appellant:

On 20th December 2018, the appellant's institution (Consumer No. 115581800098) was inspected by APTS, Thrissur and given a notice saying that the institution's tariff belongs to low rate category. After that the appellant received a notice and short assessment bill for Rs. 5,72,140/-. So the appellant filed a petition to KSEB, Karukutty on 4th June 2019, to express their difficulties to pay this huge amount. So the respondent suggested to approach Consumer Grievance Redressal Forum, Kalamassery.

The appellant submitted a complaint to the Chairperson, CGRF and the Forum issued stay order on 11th January 2019. After the hearing, Consumer Grievance Redressal Forum issued orders dismissing the petition and directed to pay total amount. The appellant's hospital is running for orphans, mentally challenged and poor people around the institution. So the appellant is not in a position to pay this huge amount.

Arguments of the respondent:

The appellant is a consumer under Electrical Section, Karukutty bearing consumer number 98 under LT VI D tariff with a connected load of 74 kW and contract demand 73.786 Kilo watts.

The Anti Power Theft Squad, Thrissur had conducted an inspection in the premises of the appellant along with the officials of section office on 20-12-2018 and detected that the tariff assigned to the consumer is wrong since this premises is functioning as hospital with OP, IP and other facilities. The tariff of this consumer was LT VI A from 1-7-2014, which is the tariff assigned for private hospitals registered under Cultural, Scientific and Charitable Act and exempted from payment of income tax as per tariff order published in Extra Ordinary Gazette No. 1305 dated 28-11-2012. A copy of the proceedings of the Commissioner of Income Tax, Kochi vide file no. CIT/CHN/Tech/12A-51/2013-14 for the registration of this hospital under section 12AA(l)(b)(i) of Income Tax Act, 1961 was produced by the hospital for availing LT VIA tariff. As per Section 12AA(l)(b)(i) of Income Tax Act this hospital is registered as charitable trust and its income is exempted from payment of income tax which is a condition for assigning VI A tariff. Hence this hospital was assigned with VI A tariff.

As per tariff revision with effect from 18-4-2017 published in Extra Ordinary Gazette No. 782 dtd. 21-4-2017 all private hospitals are assigned with the tariff VI G. Hence this hospital was assigned with tariff VI G on 1-6-2017. On receiving the bill the consumer approached Assistant Engineer, Electrical Section, Karukutty and requested to assign the tariff in LT VID categorising them as charitable hospital guidance centres registered under

the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 or under the Societies Registration Act 1860 or under Indian Trust Act 1882, donations to which are exempted from payment of Income Tax. This condition was misunderstood and the certificate issued by the Income Tax Department was treated as the certificate towards the exemption of donations from Income Tax and the tariff of the consumer was changed to LT VI D. This anomaly was detected in the inspection conducted by APTS. Since this premises is functioning as hospital with OP, IP and other facilities, the correct tariff to be assigned to this hospital is VI G. Hence an undercharged bill amounting Rs. 5,72,140/- (Rupees Five lakh seventy two thousand one hundred and forty only) for the period from 7/17 to 20/12/18 was served to the consumer on 21-12-2018.

The revenue loss due to wrong assignment of tariff is to be recovered from the consumer and law permits the licensee to recover the undercharged amount. Regulation 134 (1) of Kerala Electricity Supply Code 2014 Provides that 'If the licensee establishes either by review or otherwise, that it has undercharged the consumer, the licensee may recover the amount so undercharged from the consumer by issuing a bill and in such cases at least thirty days shall be given to the consumer for making payment of the bill.

In the subject case licensee clearly established through inspection that the premises is functioning as hospital with OP, IP and other facilities. The Kerala State Electricity Board Limited has every right to collect the undercharged amount from the consumer. The short assessment bill is legally due to Kerala State Electricity Board Limited and the consumer is bound to pay the amount due to Kerala State Electricity Board Limited for the electricity charges used by it.

Analysis and findings

A hearing of the case was conducted in my chamber at Edappally on 02-07-2019. Sr.Anitha CSN, Sr Annmary CSN and Sr. Jesslyn CSN were present for the appellant and Sri. Ashrafudeen J, Assistant Executive Engineer, Electrical Sub Division, Angamaly 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.

As per tariff rules dated 14-09-2014, 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. The appellant has produced a certificate dated 30-11-2018 issued by the District Registrar, Ernakulam, that an institution

under name 'Nazareth Institutions Charitable Society, Karukutty' with registration no. 1025/2001 was registered under the Travancore Cochin Literary, Scientific and Charitable Societies Registration Act and the name of the institution is changed as 'Institute of the Sisters of Nazareth and the House of Refuge'. According to the appellant, the Stella Maris Hospital is a subsidiary institution functioning under the above registered charitable institution. The appellant has stated that they got registration under Section 12 A of the Income Tax Act, 1961 and also exempted from the payment of income tax. The certificate of registration under Section 12 A is only for the effect that the applicant's name has been entered in the register maintained in the office of the Commissioner of Income Tax. As per tariff revision with effect from 18-4-17 published in Extra Ordinary Gazette No. 782 dtd. 21-4-2017 all private hospitals are assigned with the tariff VI G and the concessional tariff under LT VI A 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 is deleted from the tariff order.

On going through the connected documents submitted by the appellant, it is revealed that the appellant filed a petition before the CGRF, Ernakulam. But the Forum observed that the short assessment bill is legally sustainable and allowed 12 installments for remitting the short assessment bill.

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.***

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 G with effect from 1-6-2017. 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 01-06-2017, 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 21-04-2017 issued by the KSERC, the tariff applicable to private hospitals is LT VI G. In the above circumstances, the issuance of short assessment bill for a period of 19 months due to wrong classification is found in order and the appellant is liable for making the payment.

This Authority has inspected the appellant's institution on 19-07-2019. It is found that the hospital is functioning in a nominal sake with an out patients wing and psychiatry department. There are inpatients in the psychiatry department and all the rooms in the first floor are vacant. Though the connected load is 74 kW, the maximum consumption was 2820 units in 8/2018 during the period from 7/2017 to 12/2018. Hence the appellant was forced to pay fixed charge for 74 kW during the above period which caused exorbitant bill due to the tariff revision from 1-7-2017 onwards. The appellant is free to opt contract demand according to their demand of electricity.

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 / VI D tariff as per tariff order dated 21-04-2017 issued by the KSERC. So, the appeal petition stands dismissed as it is found having no merits. The appellant is allowed 18 monthly installments for remitting the short assessed amount since the respondent failed to reclassify the tariff category in time. No surcharge shall be collected from the appellant.

The order of CGRF in No. 96/2018-19 dated 06-05-2019 is modified to the extent as ordered above. No order as to costs.

ELECTRICITY OMBUDSMAN

P/039/2019/_____ /Dated:_____

1. The Administrator, Stella Maris Hospital, Paduvapuram P.O, Angamaly, Ernakulam
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Ltd, Angamaly, 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 Substation Compound, KSE Board Limited, HMT Colony P.O., Kalamassery, PIN: 683 503.