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APPEAL PETITION No. P/088/2015

(Present: Sri. V.V. Sathyarajan)

Dated: 21st July 2015

Appellant : The Principal
College of Engineering
Thodiyoor P.O.,
Kallelibhagam,
Karunagappally

Respondent : The Assistant Executive Engineer,
Electrical Sub Division,
KSE Board Limited,
Karunagappally (South)
Kollam.

ORDER

Background of the case

The appellant is the Principal, College of Engineering, Karunagappally. The service connection with consumer No. 21180 having a connected load of 23 kW was effected on 07-10-2003 to the appellant under of Electrical Section, Karunagappally South. On the basis of audit report of the Accountant General, Kerala, a short assessment bill dated 18-12-2012 amounting to Rs. 58,936/- was issued to the appellant for the misclassification of tariff, being the loss sustained by KSEB during the period from 02/2008 to 04/2012. Due to non remittance of the short assessed amount, Revenue Recovery Notice for an amount of Rs. 70,960/- was issued to the appellant by the Tahasildar, Karunagappally. Aggrieved by the aforesaid order, the appellant filed a complaint before the CGRF (South), Kottarakkara in OP No. 1259/2014 which was not allowed. Hence the appellant filed this appeal petition before this Authority.

Arguments of the appellant

According to the appellant, College of Engineering, Karunagappally is managed by IHRD which is fully owned by Government of Kerala. The admission to this institution is done by observing the rules laid down by Government of Kerala and the fees charged are as per Government rules. All the IHRD institutions including College of Engineering, Karunagappally are remitting electricity bill under LT- VI A tariff. But the Assistant Executive Engineer, Electrical Sub Division, Karunagappally (South) has charged tariff LT VII A to the appellant instead of LT VI

A. Hence the appellant pointed out the relevant portion of the judgment in Writ Appeal No. 1064/2009 which reads thus: **"The inclusion of self financing Educational Institution under LT VII A as a commercial Consumer is bad in law in so far as such differentiation is not for any of the ground specified under section 62(3) of Act. Accordingly we allow all the Writ Petitions. They will be treated like falling under tariff VI until any new notification is issued in accordance with the law."**

As per the above judgment all IHRD institutions have to be billed under tariff LT VI A. Based on the above Order, the Kerala State Electricity Board vide their Letter No.LA-1/5243/2009 dated: 02-11-2009 has issued direction to all field officers to collect electricity charges as per tariff VI A from all the self financing institutions. Meanwhile, it has been requested vide letter dated: 21-12-2012 by the Principal College of Engineering, Karunagappally to disconnect the Electricity connection in Consumer Nos. 21780, 6276, 6277 and 6218 under KIP Campus, as the above Campus have been shifted to main Campus. Accordingly the Electricity connections to the above said Consumer Nos. have been disconnected. On receipt of the short assessment bill the appellant submitted all the above facts before the Executive Engineer, Electrical Division, Karunagappally during the Adalath on 27-12-2012. The Executive Engineer, Electrical Division, Karunagappally after hearing had admitted the claim for quashing the additional bill imposed and restoring under LT VI A.

On receipt of the RR Notice No. B8-13945/14 dated 23-07-2014 the Principal College of Engineering, Karunagappally moved before the Hon'ble Consumer Grievance Redressal Forum Kottarakkara with a complaint No. 1259/14 submitting all the above facts. The Hon'ble Consumer Grievance Redressal Forum heard upon the complaint No. 1259/2014 on 01-11-2014 and disposed with the finding that College of Engineering, Karunagappally is an educational institution under Government of Kerala but it is a self Financing Engineering College, and the tariff applicable is LT VII A. At the same time it may be noted that all Govt. Educational institutions including Aided Private Educational institutions are classified under LT VIA. As such IHRD institutions established by Government of Kerala including College of Engineering, Karunagappally are being billed under LT VI A. Government Self Financing Institutions are categorized under tariff LT VI A. Early such order have been delivered by the Hon'ble CGRF, Kottarakkara in OP No. 596/2011 dated 09-02-2011 under the petition filed by the same petitioner, the Principal College of Engineering, Karunagappally.

Considering the above facts the appellant requested to issue orders to quash the recovery proceedings taken against him vide RR notice No. B-8-13945/14 issued by Tahasildar Karunagappally dated 14-07-2014 in the light of the orders issued by the Hon'ble CGRF, Kottarakkara on 09-02-2011 in OP No. 596/2011 filed by the same petitioner.

Arguments of the respondent

The respondent stated that service connection with consumer No. 21180 was effected to the appellant's premises on 07-10-2003. The auditing of accounts by the Accountant General's office had reported irregularities in fixing the tariff of the appellant and directed to bill under LT VII A instead of LT VI A, the tariff applicable for self financing institutions and instructed to recover the loss sustained in this during the period 02/2008 to 04/2012.

Accordingly a short assessment bill was prepared for Rs. 55,606.00 and issued to the appellant. Later, the service connection was dismantled on 12-09-2013 for non remittance of above said amount and issued notice on 13-10-2013 for remitting Rs. 70,960.00 after deducting the CD. Further it was informed that Revenue Recovery action will be taken for the failure of remitting the bill amount by the appellant. The respondent's contention is that in the Board Order No. LA /5243/2009 dated: 05-01-2010 it is specifically mentioned that all the Self Financing Institutions are to be billed under LT VII A tariff except those consumers who obtained favourable orders from Hon'ble High Court of Kerala.

Analysis and findings

A hearing of the case was conducted in my chamber at Edappally, Ernakulam, on 15/05/2015. Sri Abdul Jaleel, Administrative Officer, College of Engineering, Karunagappally was present for the appellant's side and Sri Abdul Salim, Assistant Executive Engineer, Electrical Sub Division, Karunagappally (South) represented the respondent's side. Both sides have presented their arguments on the lines as stated above. 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.

On a perusal of the contentions of respondent it can be seen that the appellant was billed under tariff LT VI A instead of LT VII A which is the tariff eligible for self financing institutions. During the audit of accounts by Accountant General, Kerala this irregularity in tariff fixation was detected and directed to recover the loss sustained to KSEB during the period from 02/2008 to 04/2012. Accordingly the respondent had issued a short assessment bill dated 18-12-2012 amounting to Rs. 58,936/- to the appellant. Due to non remittance of the short assessment, revenue recovery notice dated 13-10-2013 for Rs. 70,960/- was issued and the appellant is liable to remit the amount.

But the appellant's contention is that the College of Engineering, Karunagappally is a government educational institution managed by IHRD. As per the tariff order, LT VI A tariff is applicable to government educational institutions. The relevant portion of the tariff order reads thus: **LT VI A "Tariff applicable to premises of religious worship, government or aided private educational institutions, libraries and reading rooms of educational institutions, convents,**

government hospitals, X-ray units, laboratories and mortuaries attached to government hospitals, private hospitals registered under Cultural, Scientific And Charitable Societies Act and exempted from income tax."

Another contention of the appellant is that all educational institutions managed by the IHRD including self financing colleges are being billed under LT VI A and hence the appellant's institution is also eligible for LT VI A tariff. The CGRF, Kottarakkara had already disposed a similar case of appellant's with consumer no. 20487 in OP No. 596/2011 dated 09-02-2011 and the respondent issued bills under LT VI A tariff. The appellant also stated that during the Adalath conducted on 27-12-2012 by the Executive Engineer the appellant's claim for quashing the short assessment bill for Rs. 58,936/- and restoration of the tariff under LT VI A was admitted. But the appellant failed to produce any orders in this regard.

In this connection it is pertinent to note that a number of Special Leave Petitions filed by the Board against the judgments of the Hon'ble High Court of Kerala in various Writ Petitions / Writ Appeals in the matter of classification of self financing educational institution are now pending before the Hon'ble Supreme Court. The Hon'ble Supreme Court has stayed the operation of the judgments of the Hon'ble High Court of Kerala as per the interim orders issued on 4-12-2009 and 18-12-2009. Consequent on this, the KSEB had issued directions to the Field Officers that in cases of consumers who obtained favourable orders from the Hon'ble High Court, they may be allowed to continue in LT VI A/ HT II tariff. In the instant case, the contention of the respondent is that the appellant's college is not a party in the Writ Petitions/Writ Appeals and is not eligible for tariff classification under LT VI A.

On going through the tariff notification, it can be seen that self financing educational institutions are categorised under LT VII A commercial tariff. But the government or aided private educational institutions are classified under LT VI A. Admittedly the Engineering College, Karunagappally is a self financing education institution managed by IHRD, which is an autonomous body established by Government of Kerala. It is a fact that various self financing colleges are functioning under IHRD and tariff allotted to the above are under LT VI A. The appellant alleged that the respondent failed to clarify the queries of audit party at the time of audit which led to the misclassification of tariff. Further stated that the respondent has already restored the tariff of the appellant for the consumer No. 20487 under LT VI A in the light of the orders of CGRF, Kottarakkara in OP No. 596/2011 dated: 09-02-2011.

It is clearly specified in the Board Order No. LA1/5243/2009 dated: 05-01-2010 that all self financing educational institutions are billed under LT supply in LT VII A and for HT supply in HT IV A tariff. In cases of consumers who obtained favourable orders from the High Court of Kerala, they may be allowed to continue in LT VI A / HT II until interim orders are obtained from Hon'ble Supreme Court against the individual judgment in the WP(C)s / WAs in favour of the consumers concerned. IHRD is a Government managed autonomous body. The IHRD institutions established by Government of Kerala are being billed under LT VI A

tariff. Appellant's one electricity connection bearing Consumer No. 20487 comes under LT VI A tariff in the light of orders of CGRF, Kottarakkara in OP No. 596/2011. Taking the above aspects, it is concluded that the appellant is eligible for LT VI A tariff and the bill issued shall be revised accordingly. As there is no specific classification of tariff in the case of Government owned self financing colleges, the licensee may take up the issue with the Hon'ble KSERC if desires so.

Decision

In view of the reasons recorded above, the arguments of the respondent cannot be accepted. LT VI A tariff is also applicable to the appellant's institution. The appeal is allowed and the order of CGRF is set aside. The respondent will revise the short assessment bill accordingly and reimburse the excess amount if any charged within a period of 30 days of communication of this order. No order as to costs.

ELECTRICITY OMBUDSMAN

No.P/088/2015/_____ /Dated:_____

Forwarded to:

1. The Principal, College of Engineering, Thodiyoor P.O., Kallelibhagam, Karunagappally, Kollam.
2. The Assistant Executive Engineer, Electrical Sub Division, KSE Board Limited, Karunagappally (South) 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.
3. The Chairperson, Consumer Grievance Redressal Forum, Vydhyuthibhavanam, KSE Board Ltd, Kottarakkara - 691 506.