

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: Shri. T.M.Manoharan, Chairman
Shri. S.Venugopal, Member
Shri. K.Vikraman Nair, Member

In the matter of Tariff applicable to private hospital, the donations to which are exempted from the payment of Income Tax under section 80G of the Income Tax Act, 1961

Petitioner : M/s Lisie Hospital, Ernakulam.

Respondent(s) : 1. KSEB Ltd, Thiruvananthapuram
2. Deputy Chief Engineer, Electricla Circle, Ernakulam

Petitioner represented by :Adv. Jose J MAtheikel

Respondent represented by : Sri. Sarmakumar C G, Dy CE (TRAC), K S E B Ltd.
Sri.Rajesh R , AEE (TRAC) , K S E B Ltd.
Sri. Edward P Boniface, AEE (TRAC) , K S E B Ltd.
Sri Anoop Mathew, SA (TRAC) , K S E B Ltd.

Order No. 2193/DD/2015 dated 9.11.2016

1. M/s Lisie Hospital, Ernakulam filed a petition under regulation 22(d) of KSERC (Conduct of Business) Regulations, 2003 praying for granting HT II (A) general Tariff to the said Hospital on the ground that Lisie Hospital, is run by a charitable trust by name Lisie Medical Institutions. The prayers of the petitioner are the following:

(1) To set aside Annexure A (Letter No. AEE1/ Concode 9/837/ Lisie Hospital/ 15-16/ 234-5 dated 6-10-2015) issued by the Deputy Chief Engineer, KSEBL, Ernakulam.

(2) To direct KSEBL to sanction HTII (A) general category tariff to the Lisie Hospital, Erankulam forthwith

(3) To include private hospitals and charitable institution registered as Charitable Trust, the donations to which are exempted from payment of income Tax under HT II (A) tariff

2. The petitioner, Lisie Hospital is a high tension consumer at Electrical Section, Kaloor. The tariff at which electricity charges are levied from the petitioner is HT II (B), which is the tariff applicable to private hospitals. The petitioner has submitted that, the Lisie Hospital is a charitable hospital run by a charitable trust and the donations to the petitioner hospital are exempted from payment of Income Tax. The petitioner has submitted a copy of the order from IT Department dated 21st May 2013 which states that the donations to the petitioner hospital is exempted from payment of Income Tax under Section 80G (5) of the Income Tax Act, 1961. The petitioner claims that, it is eligible for HT-II (A) tariff, which is the tariff applicable for 'private hospitals and charitable institutions registered under Travancore - Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, the donations to which are exempted from payment of Income Tax'.
3. The petitioner has further submitted that it had submitted an application before the second respondent namely, the Deputy Chief Engineer, Electrical Circle, Ernakulam for changing its tariff to HT II (A). The Deputy Chief Engineer, KSEB Ltd, vide the letter dated 6/10/2015 requested the petitioner to furnish certificate to the effect that the petitioner hospital is registered under Travancore Cochin Literacy, Scientific and Charitable Societies Act, 1955, and that the donations to it are exempted from payment of Income Tax. It was informed that the request for the tariff change could be considered only after producing the above documents. Aggrieved by the said decision of the Deputy Chief Engineer, Electrical Circle, Ernakulam, the petitioner has filed the present petition before this Commission. The petitioner has submitted that it is a charitable trust registered in the office of Sub Registrar, Ernakulam, under the Indian Trust Act, 1882 and that no part of its income or funds is being utilised for any purpose other than charitable in nature. It is further submitted that no part of its income shall be distributed as dividend or profit. The petitioner has submitted a copy of the trust deed to substantiate its claim.

The petitioner has further submitted that Lisie hospital has spent Rs 310 Lakh, 344 lakhs, 474 lakhs and 614 lakhs for years 2011-12, 2012-13, 2013-14 and 2014-15 respectively for charity.

4. The respondents were given notice and a hearing was conducted on 07.01.2016 in the Court Room of the Commission. The petitioner was represented by Adv. Jose J Matheikel, Advocate High Court of Kerala. The respondents were represented by Shri. Sarma Kumar.C.S, Deputy Chief Engineer, TRAC, KSEB Ltd and others.
5. A counter affidavit has been filed by the Deputy Chief Engineer, Tariff Regulatory Affairs Cell (TRAC), in charge of the Chief Engineer (Commercial and Tariff), KSEB Ltd. on behalf of the respondents in which they have submitted that the Commission has no jurisdiction to adjudicate this matter, which is a dispute between a consumer and a licensee and that the Commission has jurisdiction only to adjudicate the dispute between licensees and generating companies under Section 86 (1) (f) of the Electricity Act, 2003. The respondents have pointed out the following decisions of the Hon'ble Supreme Court to substantiate their contentions,-
 - (i) Maharashtra State Electricity Distribution Company Ltd Vs Lloyds Steel Industries Ltd (Civil Appeal 3551 of 2006). In this case the Hon'ble Supreme Court has held that the adjudicatory functions of the State Commission does not encompass within its domain the complaints of individual consumers.
 - (ii) Maharashtra Electricity Regulatory Commission Vs Reliance Energy and Others (Civil Appeal 2846 of 2006). In this case the Hon'ble Supreme Court has held that the Commission cannot adjudicate disputes relating to grievances of individual consumers and that the adjudicatory function of the Commission is limited to the matter prescribed in Section 86 (1) (f).
6. The respondents have pointed out the following decisions of the Hon'ble Appellate Tribunal for Electricity in support of their contentions.
 - (i) DHBVNL and Others Vs DLF Service Ltd (Appeal No.104/2005).

- (ii) DHBVNL and Other Vs Princeton Estate Condominium and Others (Appeal No. 105 to 112 and 141 to 149 of 2005).
- (iii) Reliance Energy and Others Vs Maharashtra Electricity Regulatory Commission (Appeal No. 30/2005, 164/2005 and 26/2006)
- (iv) Chhattisgarh Electricity Board Vs Raghuvir Ferro Alloys (Appeal Nos. 125, 126, 127 of 2006)
- (v) Himachal Pradesh State Electricity Board Vs Himalaya International Ltd (Appeal No. 78/2007).
- (vi) UP Power Corporation Ltd Vs Jaganath Steel Pvt Ltd (Appeal No. 153/2011)
- (vii) Madhyanchal Vidyuth Vitaran Nigam Ltd Vs Uttar Pradesh Electricity Regulatory Commission (Appeal No. 165/2005)
- (viii) UP Power Corporation Vs Premier Ispat Ltd (Appeal No.42/2006)
- (ix) Reliance Energy Vs K.H.Nadkarni and Others (Appeal No 11/2005)

In view of the above decisions, the respondents submitted that the consistent position taken in various judgment by the Hon'ble Apex Court as well as by the Hon'ble Appellate Tribunal for Electricity is that the State Electricity Regulatory Commission has no jurisdiction to adjudicate a petition filed by an individual consumer against a licensee.

7. The respondents has also submitted that the petition filed by the petitioner is badly delayed in view of the provisions in the KSERC (Conduct of Business) Regulations 2003 as amended on 07.08.2014 which states that any person or party affected by a decision, direction or order of the Commission may, within 45 days of making such decision or order, apply for review of the same. The prevailing tariff order was issued on 14.08.2014 and therefore the petition filed on 02.11.2015 is badly delayed. The respondents has also pointed out that the Commission has taken this view in its order in Petition No. 257/CT/2014 which was filed by the Association of Classified and Approved Hotels of Kerala.
8. The respondents have also submitted that the tariff determination process has to be done for each financial year following the procedures specified for it, which include previous publication of the tariff proposal and public hearing. Therefore the petitions of individual consumers against the tariff reclassification after the expiry of the time limit cannot be considered. If the petitioner has any grievance against the tariff order dated 14.08.2014, it

should approach the Hon'ble Appellate Tribunal for Electricity under Section 111 of the Electricity Act, 2003. The respondents therefore submitted that the petition may be dismissed at the admission stage itself.

9. The Advocate for the petitioner clarified that this is not a dispute between the consumer and the distribution licensee. The petitioner had applied for a legitimate tariff which is applicable to it, being a hospital run for charitable purpose by a charitable trust. This was denied to the petitioner. The authority which issued the tariff order dated 14.08.2014 is the Commission. Therefore the Commission can issue a clarification on the applicability of HT II A tariff to the private hospitals run by a charitable trust registered under the Indian Trust Act, 1882.

Analysis and Decision

10. The Commission has considered the matter. There is substantial force in the contentions raised by the respondents to the effect that the Commission has no jurisdiction to adjudicate the grievances of individual consumers especially when the statutory provisions in Section 42 of the Electricity Act, 2003, has provided for special institutions such as Consumer Grievances Redressal Forum and the Electricity Ombudsman for this purpose. The directions issued by the Hon'ble Supreme Court and the Hon'ble Appellate Tribunal for Electricity do also clearly substantiate the contentions of the respondents. Therefore the Commission would refrain from examining the validity of the documents presented by the petitioner and from adjudicating the case.
11. The Commission being the authority which issued the tariff order dated 14.08.2014, is of the view that a clarification has to be issued on the applicability of HT II A tariff so that the appropriate authorities can take proper decision. Relevant portions of the tariff schedule are reproduced below:

'HIGH TENSION - II - GENERAL (A) {HT - II (A)}

Tariff applicable to all classes of consumers listed in LT-VI (A), LT-VI (B), LT-VI (C), and LT-VI (E) categories availing supply of electricity at high tension.

HIGH TENSION - II - GENERAL (A)	
(a) Demand Charges (Rs. /kVA of Billing Demand/Month)	350
(b) Energy Charge (Paise/kWh)	510

HIGH TENSION - II - GENERAL (B) {HT -II (B)}

Tariff applicable to all classes of consumers listed in LT-VI (F) category availing supply of electricity at high tension.

LOW TENSION -VI GENERAL (A) {LT- VI (A)}

Tariff applicable to government or aided educational institutions; libraries and reading rooms of government or aided educational institutions; **Government hospitals**; X-Ray units, laboratories, blood banks, mortuaries and such other units attached to the government hospitals; blood banks of IMA or of local self Government Institutions; **private hospitals and charitable institutions registered under Travancore - Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, the donations to which are exempted from payment of Income Tax**; premises of religious worship; institutions imparting religious education and convents; poly clinics under Ex-servicemen Contributory Health Scheme (ECHS).

LT - VI GENERAL (A)	
(a) Fixed Charge (Rs. per kW or part thereof per Month)	50
(b) Energy Charge (Paise/kWh)	550
(i) Of and Below 500 kWh (ii) Above 500 kWh	

LT VI GENERAL (F)

Private hospitals, private clinics, private clinical laboratories, private X-ray units, private mortuaries, private blood banks, private scanning centers, computer training institutes, self- financing educational institutions (including hostels), private coaching or tuition centres, cinema studios,

Audio/video cassette recording/duplication units, CD recording units, all construction works, installations of cellular mobile communications, satellite communications, offices and / or exchanges of telecom companies, offices or institutions of All India Radio (AIR), offices or institutions of Doordarshan and other Television broadcasting companies, cable TV networks, radio stations, insurance companies, call centers, cinema dubbing and animation studios, hall marking centres.

LT VI GENERAL (F)	
<i>Fixed charge (Rs/ kW per month)</i>	
<i>Single Phase</i>	<i>60</i>
<i>Three phase</i>	<i>120</i>
<i>Energy Charge (paise per unit)</i>	
<i>0 to 100 units per month</i>	<i>580</i>
<i>0 to 200 units per month</i>	<i>650</i>
<i>0 to 300 units per month</i>	<i>720</i>
<i>0 to 500 units per month</i>	<i>780</i>
<i>above 500 units per month</i>	<i>900</i>

12. As detailed above, the LT-VI(A) and HT-II (A) are the tariff applicable to Government hospitals and also to the private hospitals and charitable institutions registered under Travancore - Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, the donations to which are exempted from payment of Income Tax. As per the prevailing tariff order in force, a private hospital is eligible for HT-II (A) tariff, the tariff applicable to Government Hospitals, provided it satisfies the following conditions.
- (i) The private hospitals should be registered under Travancore- Cochin Literary, Scientific and Charitable Societies Registration Act 1955, and;
 - (ii) The donations to private hospitals should also be exempted from payment of Income Tax.
13. On examining the facts of the case, the Commission observed the following:
- (i) The Letter dated 21.6.2000 of Income Tax department annexed as III produced by the petitioner mentions that this registration issued under Section 12A is not a finding regarding the charitable nature of the fund. Income Tax department vide the order dated 21st May-2013 had exempted the donations from 01-04-2012 from payment of Income Tax.

- (ii) The deed registered indicates that the Lisie Medical Institutions is registered under Indian Trust Act with the objective of philanthropic purpose and the expenditure can be only for such charitable activities as proposed in the deed. As per the prevailing tariff order, LT VI A / HT-II (A) tariff will be applicable to the *private hospitals and charitable institutions registered under Travancore - Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, the donations to which are exempted from payment of Income Tax.*
- (iii) The total profit of the hospital is not mentioned by the petitioner. Also, whether the total profit of the hospital is managed by the trust is not clear from the statements.
14. The Commission has examined the relevant provisions in The Indian Trusts Act, 1882 (hereinafter referred to as Trust Act) and the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (hereinafter referred to as Societies Act). Section 5, Section 6, Section 77, Section 78 and Section 79 of the Trust Act are quoted hereunder, -

5. Trust of immovable property

No trust in relation to immovable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered or by the will of the author of the trust or of the trustee.

Trust, of movable property: No trust in relation to movable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

6. Creation of trust

Subject to the provisions of section 5, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (a) an intention on his part to create thereby a trust, (b) the purpose of the trust, (c) the beneficiary, and (d) the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transferred the trust-property to the trustee.

Illustrations

(a) A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of C". This creates a trust so far as regards A and C.

(b) A bequeaths certain property to B, "hoping he will continue it in the family". This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(c) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(d) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust-property is not indicated with sufficient certainty.

(e) A bequeaths a ship and stock-in-trade to B, on condition that he pays A's debts and legacy to C. This is a condition, not a trust for A's creditors and C.

77. Trust how extinguished

A trust is extinguished-

(a) when its purpose is completely fulfilled; or

(b) when its purpose becomes unlawful; or

(c) when the fulfillment of its purpose becomes impossible by destruction of the trust-property or otherwise; or

(d) when the trust, being revocable, is expressly revoked.

78. Revocation of trust

A trust created by will may be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only-

(a) where all the beneficiaries are competent to contract-by their consent;

(b) where the trust has been declared by a non-testamentary instrument or by word of mouth-in exercise of a power of revocation expressly reserved to the author of the trust; or

(c) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors at the pleasure of the author of the trust.

Illustration

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

79. Revocation not to defeat what trustees have duly done

No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

The "Society", means (clause (d) of Section 2) a society registered or deemed to be registered under the Societies Act. A charitable society which is registered under the Societies Act are bound by the provisions of the Societies Act. Sections 8, 24, and 32 of the Societies Act are quoted hereunder, -

8. Property of society how vested.

The property, movable and immovable, belonging to a society, if not vested in trustees, shall be deemed to be vested, for the time being in the governing body of such society, and in all proceedings, civil and criminal, may be described as the property of the governing body of such society by their proper title.

24. Upon a dissolution no member to receive profit.

If upon the dissolution of any society, there shall remain after the satisfaction of all its debts and liabilities, any property, whatsoever, the same shall not be paid to, or distributed among the members of the said society, or any of them, but shall be given to the [State Government] upon such terms and conditions as may be mutually agreed upon or to some other society which has for its object the furtherance of aims similar, as near as may be, to be objects of the dissolved society to be determined by the votes of not less than three-fifths of the members present, personally, or by proxy, at the time of the dissolution, or, in default thereof, by such court as aforesaid:

Provided, however, that this section shall not apply to any society which shall have been founded or established by the contributions of share-holders in the nature of joint stock company.

32. To what societies the Act applies.

The following societies may be registered under this Act:

Charitable societies, societies established for the promotion of science, literature or the fine arts, the diffusion of useful knowledge, the foundation or maintenance of libraries or reading rooms for general use among the members or open to the public, or public museums and galleries of painting and other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs.

From the provisions of the Trust Act and of the Societies Act it can easily be seen that the trust registered under Trust Act and the society registered under Societies Act are legally and functionally different type of entities with regard to their constitution, legal status of the property, functions, consequence of extinguishment / dissolution and such other factors.

15. As per the Tariff Order dated 14.08.2014 the private hospital run by a Charitable Society registered under the Societies Act, the donations to which are exempted from payment of Income Tax is eligible for the tariff under LT VI A and HT II A. The private hospital run by the Charitable Trust registered under the Trust Act is not included in LT VI A and HT II A categories.

Order of the Commission

16. Duly considering the facts, circumstances and the legal provisions pertaining to the matter the Commission is of the considered view that, as per the provisions of the tariff order dated 14.08.2014 issued by the Commission, the private hospitals managed by the charitable trusts registered under the Trust Act are not eligible for the tariff applicable to the consumers of LT VI A and HT II A categories, which are applicable to the private hospitals managed by the charitable societies registered under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955.

Hence the petitioner M/s Lissie Hospital, Ernakulam is not eligible for HT II A tariff.

Petition is disposed of accordingly.

Sd/-

K.Vikraman Nair

Member

Sd/-

S Venugopal

Member

Sd/-

T.M. Manoharan

Chairman

Approved for issue

Secretary