

D-924

BEFORE THE ELECTRICITY OMBUDSMAN

9/2, 6th Floor, Mahalakshmi Chambers, M.G Road, Bangalore – 560 001

**Present: B.N.Krishnaiah
Electricity Ombudsman**

Case No.OMB/M/G-285/2017

Dated : 18.08.2017

Nanjappa Trust,
No.660, Kuvempu Road,
Shimoga
(RR No.HT-19)

... Appellant

(By Sri M.A.Delvi, Advocate)

V/S

1. Assistant Executive Engineer (O & M),
MESCOM, CSD-1,
Shimoga

(AEE in person)

2. The Chairperson,
C.G.R.F.
MESCOM
Office of the Superintending Engineer,
O & M Circle,
Shivamogga

... Respondents

1. This is an appeal under clause 21.02 of KERC (CGRF & Ombudsman) Regulations, 2004 against the orders dated 04.04.2017 passed by CGRF, MESCOM, Shivamogga
2. The appellant has filed this appeal for a direction to the respondent to apply appropriate tariff to the installation HT-19 as applicable to the Hospitals run by a Charitable Institute and refund the amount with interest as per S & D Code 29.08 (a). The appellant has contended as follows :
 - (i) The appellant availed power supply to an extent of 100 KVA under the name of the Trust to put a Hospital and the same was serviced during the year 1987. An additional load of 50 KVA was subsequently availed and serviced on 06.09.2009. The Trust is recognised as a charitable trust under Section 12-A of Income Tax Act and has been granted exemption under Income Tax Act;
 - (ii) On several occasions in the past, the Trust had approached the respondent No.1 and others to fix appropriate Tarff as applicable to a charitable institute but the authorities failed to comply with the request;
 - (iii) The Government in their tariff order during 1988 included Hospitals run by charitable institutions under schedule HT-2(a). But unfortunately Electricity Board did not extend the benefit to the Hospital although the appellant had approached the Hon'ble High Court in W.P.36726 in 1993 to direct the respondent KEB to extend the benefit of HT-2(a) to the Hospital as the same is run by a charitable institute. The Hon'ble High Court did not allow the

claim as it was held that Tariff HT2(a) is applicable only to industrial and non-industrial purposes and there is no specific inclusion of hospital run by (charitable institution). The Trust had submitted the Trust Deed and the registration Certificate in Form 12(A) to MESCOM on 03.08.1993 itself, when it claimed for Tariff under HT-2(a). These documents were also produced to Hon'ble High Court in W.P.36726 wherein the respondent was KEB. The Judgement of the Hon'ble High Court disallowing the claim was pronounced on 16.05.1997. Just after that there was a revision of Tariff, which was effective from 15th July 1998. In this Tariff, the Hospitals run by Charitable Institutions are covered under HT-2(a). The MESCOM has not applied this Tariff to the installation even though they had the necessary documents to apply the appropriate Tariff. This was brought to the notice of MESCOM in letter dated 14.04.2014. After a prolonged correspondence for one year, the KEB authorities have accepted its plea and applied the Tariff HT-2(C)(i) from the billing month March 2015. It was within the knowledge of the respondent that the installation is a charitable one;

- (iv) The appellant requested the respondent to apply appropriate tariff to the subject installation with effect from July 1998 but no action taken;
- (v) A tariff order when made applicable to a particular category, it is the duty of the Licensee to extend the benefit to the consumer. Such charges are effected automatically. The respondent instead of applying the tariff as contained in the tariff order sought

irrelevant details. It is evident that the respondent was reluctant to extend the benefit accruing to the installation by virtue of the Certificate granted under Section 12(A) of the Act. The erstwhile entity had wrongly collected extra amount by denying the consumer the category of tariff it attracted that was HT-2(a) since July 1998;

- (vi) The KERC created a new tariff HT-2(C)(1) by its order dated 15.07.1998 in respect of Hospitals run by a Charitable Trust. The Tariff Schedule HT-2(C)(1) was made applicable among hospitals run by charitable institutions also. The subject installation provided to hospital automatically attracts the said tariff schedule. But the respondent again made the appellant to run from pillar to post and started to evade application of tariff under one pretext or the other. The respondent after classifying the subject installation HT-19 under HT-2(C)(1) with effect from 01.04.2015, reverted to HT-2(C) (ii) with effect from January 2017 for no reason and without following the procedure provided under Regulation 3.04 of the Conditions of Supply;
- (vii) The service for installation HT-19 was availed during the year 1989 towards Hospital run by a Charitable Institute. At the time of service there was no separate tariff category for hospitals. The installation was billed under HT-2(b) at that time;
- (viii) With KERC coming to effect from July 1998, it categorized the hospitals under HT-2(a) tariff which was lesser than HT-2(b) tariff. The installation attracts this tariff automatically. The respondents

are duty bound to classify the installation and apply the tariff applicable to the category.

3 The AEE has furnished the reply on 31.05.2017 and has contended as follows:

- (i) Nanjappa Trust applied for 100 KVA power supply for Hospital purpose and same was serviced in HT-1(b)2 tariff on 28.05.1987 RR No.HT-19 and subsequently additional 50 KVA was sanctioned and serviced on 06.09.2009 as per the norms. The appellant Trust has not requested for exemption by submitting any supporting documents i.e. trust deed certification, etc, issued by the Commissioner of Income Tax at the time of service of installation;
- (ii) The appellant consumer has not approached the Department to fix appropriate tariff till 2014. He requested to fix appropriate tariff applicable to be charitable Institute only with effect from 14.04.2014;
- (iii) The Government in their tariff order during 1998 included Hospital run by charitable institutions under tariff schedule HT-2(a). The Hon'ble High Court of Karnataka has not given any direction to extend the benefit under HT-2(a) on the W.P.36726 in 1993 filed by the appellant. The consumer has not brought to the notice of the department to implement tariff under HT-2(a) by submitting appropriate documents and hence benefit is not extended;

- (iv) The consumer has not approached the Licensee for apply of appropriate tariff to the subject installation;
- (v) Since the Licensee did not have any relevant document (like 12-A Certificate of Income Tax) to bill such installation under HT-2(a) . Hence, it is not possible to change the tariff automatically;
- (vi) The tariff order 2014 created a new category HT-2 c(i) in respect of the Hospital run by charitable trust. But the Licensee did not know that the appellant Institution runs a charitable hospital. They approached the department only on 14.04.2014 requesting to fix the tariff applicable to a charitable Trust;
- (vii) Since the appellant did not submit the relevant document to Licensee reversal of tariff was not done;
- (viii) The Clause 29.08 of S & D Code says that the amount can be refunded to consumer only in case of erroneous billing;
- (ix) The averments in para No.9 of the memorandum of appeal saying that during 1998 to 2014 Licensee had collected huge sums by way of application of higher tariff, etc, is not correct and not true.

4. At the time of hearing, the learned Advocate for the appellant reiterated the facts and grounds stated in the appeal memo. He further argued that for the appellant Trust in question, the Income Tax authorities have given the Certificate u/s 12-A of the Income Tax Act with effect from 16.01.1984. He further argued that the Trust approached the Hon'ble High Court in the year 1993. The appellant was not aware of the concession given

by the KERC in the year 1998. Further, he also argued that the Licensee should have given the benefit under Regulation 3.04 of Conditions of Supply. The Trust has filed IT returns every year to the Income Tax Department. They extend the benefit to the deserving persons.

5. The AEE reiterated the averments made in his reply and prayed to dismiss the appeal. The Licensee insisted for 12-A Certificate from the appellant but they submitted 12-AA Certificate in 2014. The Licensee was not aware that the appellant was a charitable Trust before that. Tariff benefit can be extended only on production of 12-A Certificate and not 12-AA Certificate.

6. The oral and written submissions made by both the parties are perused and considered. Accordingly, the issue which arises for consideration is “whether proceedings of CGRF are in order and in conformity with the prevalent norms”.

7. It is seen that the appellant has submitted 12-(AA) Certificate issued by Income Tax Authorities in respect of HT-19 on 22.08.2014. In pursuance of this, the Licensee have changed the tariff category from HT-2C(2) to HT-2C(1) with effect from 01.-04.2015. Again on 27.01.2017 the Licensee has issued an order changing the category from HT 2(C) (1) to HT 2(C)(2) for the reason that the consumer failed to submit 12-A Certificate which enables them to get relief.

8. However, it is observed that the consumer has provided a clarificatory Note issued by Income Tax Authority which says that 12-A(a) Certificate can be considered as 12-A for claiming the relief as Charitable Institution.

9. Considering all this, the CGRF have ordered to change the tariff category from HT-2C(2) to HT-2(C)(1) with effect from 22.08.2014 and also have directed to pay back the excess amount collected in respect of the said period (barring the period from April 2015 to February 2017).

10. Thus, proceedings of the CGRF appear to be in order. Hence, the appeal is dismissed.

Sd/-

(B.N. Krishnaiah)
Electricity Ombudsman

To :

1. Sri M.A.Delvi, Advocate, No.8, 3rd Cross, Pottery Town, Bengaluru – 560 046.
2. Y.Nagaraja Setty, No.859/5, Nisarga, 1st Stage, 2nd Cross, Shivakumaraswamy Extension, Davanagere – 577 005.
3. Assistant Executive Engineer (O & M), MESCOM, CSD-1, Shimoga
4. The Chairperson, C.G.R.F. MESCOM, Office of the Superintending Engineer, O & M Circle, Shivamogga
5. Managing Directors of ESCOMs.
6. PS to Hon. Chairman, KERC
7. PS to Hon. Member (A), KERC
8. PS to Hon. Member (M), KERC
9. PS to Secretary, KERC