

eligible to be categorized under HT - II (A) tariff which came into operation with effect from 14.08.2014.

(ii) Direct the respondent to collect energy charges from the petitioner hospital under HT -II (A) tariff with effect from 14.08.2014

(iii) To grant such other reliefs that may be deemed just and proper by this esteemed authority

3. The hearing was conducted at 11AM on 23.08.2016 in the Court Room of the Commission. Adv. Firoz K Robin presented the petition on behalf of M/s Little Flower Hospital and explained the facts of the case. Sri. Joseph V K, Chief Engineer (Commercial & Tariff) presented the arguments of K S E B Ltd. Both Adv. Firoz K Robin and Sri. Joseph V K responded to the queries of the Commission. As requested by the petitioner M/s M/s Little Flower Hospital, the Commission allowed time up to 02.09.2016 to file written submission on the submission made by K S E B Ltd. The petitioner had submitted the same on 20-09-2016.

4. The petitioner M/s Little Flower Hospital submitted that,

“The petitioner has been an HT consumer of the KSEB Ltd with a contract demand of 850 kVA. Prior to the tariff order dated 14-08-2014 in OP No. 9 of 2014, the petitioner had been billed under HT-IV tariff. As per the tariff order dated 14-8-2014, a new tariff has been introduced and 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 are brought under HT-II(A) tariff. The petitioner hospital is a charitable hospital and considering the charitable activity carried out in the hospital, the Income Tax Department have granted the benefits of Section 80 G.

In the light of the tariff order dated 14-8-2014, the petitioner has submitted an application before the Assistant Engineer, Electrical Section, KSEB Ltd requesting to grant benefit of the tariff which was come into force on 14-8-2014. The Deputy Chief Engineer, Electrical Circl, Perumbavoor gave a reply stating that, updated letter from Income Tax Department stating that donations to the petitioner is exempted from payment of income tax and also directed to produce the registration certificate to prove that the petitioner hospital is registered under under Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955. It is submitted that, the second point raised by the Deputy Chief Engineer is against the tariff revision order issued by the competent authority.

The petitioner hospital is a charitable trust and is established not for any profitable motive but for philanthropic purpose irrespective of caste, creed or religion. Hence the petitioner hospital is also entitled to get similar treatment has given to the charitable institutions registered under Travancore- Cochin Literary, Scientific and Charitable Societies Registration Act 1955. The only difference between the registration of the petitioner and those who have submitted application under Travancore- Cochin Literary, Scientific and Charitable Societies Registration Act 1955 is that, the latter requires registration under the Societies Registration Act, 1860.

The petitioner hospital is being run with the kind hearted support of the general public as well as other persons who are donating to the hospital. The hospital is finding it difficult to meet both ends. A reclassification in the tariff as given in the tariff order which came into operation and implemented from 16-8-2014, the liability of the petitioner by way of electricity charges will be reduced substantially”.

5. The main arguments of KSEB Ltd are summerized below.

“ As per the prevailing tariff order, the Private Hospitals are categorized under LT VI(F) under low tension category and HT II (B) tariff under high tension category and those private Hospitals having registration under Travancore -Cochin Literary, Scientific and Charitable Societies Act,1955 and the donations to which are exempted from payment of Income Tax are categorized under LT VI (A) and HT II (A).

Hon’ble Commission vide its tariff order dated 14.08.2014 has unambiguously stated that the tariff applicable to the Private Hospitals having (a) registration under Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, and (b) the donation to which are exempted from payment of Income Tax were categorized under LT VI (A) and HT II(A) tariff. It may be noted that both the above conditions are to be satisfied in order to consider the private hospitals under HT II (A) tariff as per the tariff order.

The KSEBL as a distribution licensee in the State is also governed by provisions of the Electricity Act-2003. Section-45 of the said Act empowers KSEBL as a distribution licensee of the State to recover the tariff for the supply of electricity at the rates approved by the Kerala State Electricity Regulatory Commission (KSERC) from time to time. Accordingly, the request made by the petitioner for changing the tariff of hospital to HT II (A) on the

grounds that the donations to the hospital are exempted from income tax cannot be considered under HT II (A) tariff as they have no registration under Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955.

As per the previous tariff orders applicable upto 2012-2013 the private Hospitals were categorized under HT IV commercial category and in the re categorization done for the year 2013-14 the same was included under HT V General category. Further, as per the revision made in the prevailing tariff order which was in effect from 16.08.2014, those private hospitals which are registered under Travancore- Cochin Literary, Scientific and Charitable Societies Registration Act 1955 are only eligible to get the concessional tariff of HT II(A) applicable to Government hospitals and the rest has been categorized under HT II(B) tariff category.

A perusal of the various tariff orders notified by the KSEB before the constitution of the Commission and also the tariff approved by the Commission since 2003-04, reveals that, the private hospitals registered under Societies Registration Act-1860 or with the Travancore- Cochin Literary, Scientific and Charitable Societies Registration Act 1955, are only eligible to get the tariff at par with that of Government Hospitals. But, the private hospitals constituted under Indian Trust Act, 1882 and donations to which are exempted from payment of income tax is not eligible for the concessional tariff applicable to Government Hospitals.

A comparison of an institution registered as a trust and a society clearly reveals that a trust created under Indian Trust Act, 1882 cannot be compared with the society registered under Indian Societies Act 1960 or Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act 1955.

A society is basically an association formed by seven or more persons with some common objectives for promotion of literature, fine arts, science etc. There may or may not be some common asset to start with but, in the course of time, the society can acquire assets. In the case of a Trust, the very basis of its formation is the existence of an asset/property which is donated by the will maker for a particular purpose, social or religious.

The society, prima facie, is a democratic entity, as all its members (at least seven in number) have an equal say in its running whereas in a Trust, control over the property remains fully in the hands of the Trustees and depending on the clarity of the will, such a management continues to be in existence for a long time. Government intervenes only when Trustees change

or the Trust becomes too old to be managed as per stipulations (Cypres) of the original wil, or on grounds of malfeasance or abuse of trust.

The board of management of trust contains trustees but in the case of society, there is a governing body which comprises of committee, trustees, council, directors, governors, etc.

In view of the facts mentioned above, there is no merit in the argument of the petitioner that, they have to be compared with private hospitals registered under Travancore- Cochin Literary, Scientific and Charitable Societies Registration Act 1955.

The Petitioner hospital is found to be registered as a trust and not as a society. Accordingly, the prayer of the petitioner to categorize them under the HT II(A) tariff can only be seen as a review petition filed against the tariff order dated 14.08.2014 in O.P No 09 of 2014, in which the tariff of all the consumers has been revised by the Hon'ble Commission.

Tariff determination process has to be done for each financial year in accordance with the procedures specified for it which include pre-publication of tariff proposal and public hearing. The tariff is determined for all the consumers of the licensee and the tariff petition is not a dispute between two contending parties. The Hon: Appellate Tribunal for Electricity and the Hon: Supreme Court have clarified that the tariff determination process is a quasi-legislative process. Therefore petitions of individual consumers against tariff order after the expiry of the time limits prescribed in the regulations cannot be considered, as the same can disturb the delicate balance achieved by the above tariff revision process.

If the petitioner is aggrieved by the existing tariff order dated 14-08-2014 approved by the Hon'ble Commission, the petitioner has to prefer an appeal before the Hon'ble Appellate Tribunal for Electricity under section-111 of the Electricity Act-2003. Without availing the above legal provisions, the petitioner has approached the Hon'ble High Court and Commission for re-classification. Hence the petition itself is not legally sustainable.

Prime facie, the petition can only be seen as a request for reclassification of the existing tariff of the petitioner. The tariff determination including tariff re-categorisation exercise shall be initiated as per section 64 of the Electricity Act, 2003. Hence the issues raised by the petitioner can be considered along with the next tariff revision exercise, which is on for the year 2016-17.

6. The petitioner in their reply to the objections and comments of KSEB Ltd has further submitted that,

' A trust created under Indian Trust Act, 1882 cannot be compared with the society registered under Indian Societies Act 1960 or Travancore- Cochin Literary, Scientific and Charitable Societies Registration Act 1955. The respondent KSEB Ltd is comparing between a charitable society and a trust, but not comparing between a charitable society and a public charitable trust. The petitioner hospital is a public charitable trust. A public charitable trust and a charitable society are similarly situated and the respondent is not making a comparison between a charitable society and a public charitable trust like the petitioner. As can be seen from the trust deed, petitioner is a public charitable trust and the objects are similar as in the case of a charitable society. Therefore, petitioner hospital being a public charitable trust, petitioner hospital is entitled for a similar treatment like a charitable society, eligible to get the tariff of HT-II(A) category.

Regarding the argument of the respondent KSEB Ltd that the petition is not maintainable, the petitioner further submitted that, the petition was filed as directed by the Hon'ble High Court in the judgment dated 30-6-2016 in W.P(C) No. 23443/2015, the relevant 4th paragraph of the judgment is quoted hereunder:-

4. Learned counsel for the petitioner submits that the petitioner had filed a fresh application, which is produced as Ext.P8, requesting the Regulatory Commission to consider whether the tariff of private hospitals managed by Public Charitable Trust, who are exempted from payment of income tax, are also eligible to be characterised under HT-II (A) Tariff, which came into operation with effect from 14.8.2014. Now that the petitioner had submitted Ext.P8 modified application, seeking for determining the tariff with reference to charitable trust, having income tax exemption, who are running hospitals, apparently, it is for the Commission to take into consideration the factual aspects involved in the matter and if it comes within the parameters of the functions entrusted to the Commission, the Commission has to decide the same and pass appropriate orders.

Taking into consideration the aforesaid facts, I am of the view that this writ petition can be disposed of as under:

The Commission shall consider Ext.P8 and pass appropriate orders, after hearing the petitioner and the Board within a period of two months from the date of receipt of a copy of this judgment.

It is to be noted that, the respondent Board herein is the 2nd respondent and this Hon'ble Commission is the 1st respondent in W.P. (C) No. 23443/2015 and the judgment dated 30-06-2016 in W.P. (C) No. 23443/2015 has become final, as the respondents have not filed any appeal against the judgment. Therefore the above numbered petition filed by the petitioner is maintainable.

Analysis and Decision

7. The Commission has considered the argument of the petitioner and the counter remarks of KSEB Ltd.
8. As per the records available with the Commission, the petitioner M/s Little Flower Hospital had, earlier filed a petition on 11-03-2013 on the same matter, and the Commission had vide the order dated 04-05-2015 disposed off with direction to approach CGRF. The Commission has also refunded the petition fee to the petitioner.
9. In the judgment dated 30th June 2016 in WP (C) No 23443 of 2015, the Hon'ble High Court has directed the Commission to consider the Exhibit P8, a petition dated 1st December 2015 filed before this Commission for the determination of tariff of hospitals managed by public charitable trust. But the Commission has noted that, as per the records, no such petition dated 1st December-2015 was filed before this Commission. However, in view of the direction of the Hon'ble High Court in the judgment dated 30th June 2016 in WP (C) No 23443 of 2015, the Commission is considering the Exhibit P8 as a fresh petition.
10. As per the prevailing tariff and terms and conditions of tariff approved by the Commission vide the order dated 14th August 2014 in petition OP No. 9 of 2014, the tariff applicable to private hospital is HT II (B) whereas HT II (A) covers Government hospitals, and 'private hospital and charitable institutions registered under Travancore -Cochin Literary, Scientific and Charitable Societies Act 1955, the donations to which are exempted from payment Income Tax'. 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)	
<i>(a) Demand Charges (Rs. /kVA of Billing Demand/Month)</i>	350
<i>(b) Energy Charge (Paise/kWh)</i>	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)	
<i>(a) Fixed Charge (Rs. per kW or part thereof per Month)</i>	50
<i>(b) Energy Charge (Paise/kWh)</i>	
<i>(i) Of and Below 500 kWh</i>	550
<i>(ii) Above 500 kWh</i>	630

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>	60
<i>Three phase</i>	120
<i>Energy Charge (paise per unit)</i>	
<i>0 to 100 units per month</i>	580
<i>0 to 200 units per month</i>	650
<i>0 to 300 units per month</i>	720
<i>0 to 500 units per month</i>	780
<i>above 500 units per month</i>	900

11. 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, 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.

As per the details submitted by the petitioner, the petitioner is registered under Indian Trust Act, 1882 and not under Travancore- Cochin Literary, Scientific and Charitable Societies Registration Act 1955.

12. Further, the petitioner is a HT consumer of KSEB Ltd, under electrical section Angamally. The connected load of the consumer is 1281kW and the contract demand is 850 kVA. The average annual consumption of the petitioner M/s Little Flower hospital is about 3.96 MU. The petitioner has not provide the details on whether the entire electricity is being used for charitable purpose or for providing free treatment to poor patients. Without such details, the Commission cannot go into the merit of the case.
13. The prevailing tariff order was ordered by the Commission vide the tariff order dated 14-8-2014 in OP No. 9/2014. The Commission has issued the tariff order dated 14-08-2014, through public consultation process duly considering the

objections and comments of all stakeholders in writing as well as the same raised during public hearings.

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 Little Flower Hospital, Angamaly 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