

KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present : Adv. A.J Wilson, Member (Law)

OP No 78/2022

In the matter of : Petition to restore the electricity tariff of LT VI A & LT VI B category to SI-MET institutions

Petitioner : SI- MET College of Nursing, Palluruthy.
Respondent : Kerala State Electricity Board Ltd.

Petitioner represented by : Smt. Magi Xavier

Respondent represented by : Shri. Jayaraj, CE, TRAC, KSEB Ltd.
Shri Rajesh AEE, TRAC, KSEB Ltd.

Date of hearing : 10.01.2023, 11:00 AM
Venue : e-hearing through video conferencing

Order dated 31.01.2023

1. The petitioner SI- MET College of Nursing, Palluruthy (herein referred as SI-MET or petitioner) filed a petition dated 06.05.2022 before the Commission with the following prayers.
 - “(1) *Necessary steps maybe taken to stop the disconnection of electricity supply to the college.*
 - “(2) *Exempt from the payment of the short assessment bill amount of ₹1,99,071 and also to bring the tariff of the SI-MET institutions at par with the tariff of Government/ Government controlled educational institutions. The SI-MET also requested to bring the tariff of the College buildings at Palluruthy (Consumer No. 1155599023929) at LT-VI(A) tariff and tariff of the hostel buildings (Consumer No. 1155484027014) at LT-VI(B) tariff.”*
2. The summary of the petition filed by the petitioner is given below.
 - (1) SI- MET College of Nursing, Palluruthy is an institution functioning under the State Institute of Medical Education & Technology (SIMET), an autonomous body of the Department of Health, Government of Kerala (GoK), constituted under the control of the Governing Body with Hon'ble Minister of Health as Chairman and Secretary of Health as Vice-Chairman. SI-MET has been receiving plan funds every year from the State budget of the Government of Kerala.

- (2) The petitioner has two LT connections for the hostel buildings with Consumer Nos.1155597022876 and 1155597022877 respectively. KSEB Ltd has changed the tariff of these hostel buildings from LT-VI (B) tariff to LT-VI(F) Tariff, and raised a short assessment bill of Rs.155598/- for consumer No. 1155597022876, and Rs.187719/- for consumer No. 1155597022877.
 - (3) Aggrieved by the short assessment bill, the petitioner filed a petition before the CGRF, Central Region to revert the tariff of SI-MET nursing college hostel to LT VI B. The CGRF vide the Order dated 30.06.2018 in OP No.159 disposed of the petition by limiting the applicability of the short assessment bills for two years only, however not interfered in the tariff change. Aggrieved by the Order of the CGRF, M/s KSEB Ltd had filled a writ petition before the Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala vide Order dated 29.03.2022 had upheld the Order of the CGRF.
 - (4) The petitioner further submitted that the Government of Kerala vide the Order dated 07.03.2019 had issued orders treating all institutions under State Institute of Medical Education and Technology (SI-MET) at par with the Govt institution/ self-financing colleges under Government.
 - (5) Petitioner also submitted that, KSEBL has also changed the tariff of the college building of the petitioner bearing consumer no 1155599023929 from LT-VI (A) to LT-VI (F) and issued a short assessment bill amounting to Rs 2,12,339/- to the petitioner as the difference in electricity charges due to change in tariff from LTVIA to LT VIF.
 - (6) The petitioner, in the Janakiya Adalat held in Ernakulam District, requested to the authorities to change the tariff of the college building and hostel buildings (three connections) of the petitioner to LT-VI(A) tariff, applicable to Government educational institutions. In the Adalat, it was decided to take up the matter with KSERC.
 - (7) The petitioner had further filed a petition before the CGRF for exemption from the payment of short assessment bill, amounting to Rs 2,12,339 and the CGRF vide Order dated 24.02.2022 in OP No.59/2021 had ordered that the SI-MET is bound to pay the short assessment bill issued by the KSEB Ltd. The petitioner further filed a writ petition before the Hon'ble High Court Kerala against the Order of the CGRF. However, the Hon'ble High Court of Kerala has disposed of all the cases of the petitioner by Order dated 29.03.2022 with the direction to approach the Kerala State Electricity Regulatory Commission on the disputed matters.
3. The respondent KSEB Ltd vide its affidavit dated 09.01.2023 submitted the following;
- (1) SI- MET College of Nursing, Palluruthy was established as per the G O dated 23.05.2008. In the said GO it is clearly mentioned that SIMET was

set up as an autonomous body under the control of Government, in the model of IHRD and LBS.

- (2) The observations made by the Commission vide the tariff Orders dated 08.07.2019 and 25.06.2022 regarding the IHRD and LBS is also binding to the petitioner.
- (3) Hon'ble Appellate Tribunal for Electricity in various judgments have observed that the Government/ Aided educational institutions cannot be compared with Private Educational Institutions, though both are providing education. Hence the Commission cannot extend the Tariff applicable to Govt/Aided institutions to educational institutions run by autonomous bodies/private institutions."
The Commission while determining the tariff vide the Order dated 25.06.2022 has examined in detail the tariff applicable to autonomous educational institutions under Government such as LBS, IHRD etc. and decided that the electricity tariff of these institutions cannot be equated with the electricity tariff of the Government/aided educational institutions.
- (4) KSEB Ltd further submitted that, the tariff determination is initiated as per Section-64 of the Electricity Act-2003. Hon: Appellate Tribunal for Electricity and the Hon'ble 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 tariff revision process.
- (5) The plea of the petitioner for having LT VIA tariff on SI-MET Institutions can only be seen as an individual request, against the prevailing tariff Order. KSEB Ltd further submitted that the adjudication of a dispute by this Hon'ble Commission under Section 86(1)(f) does not cover individual complaints of consumers. This position has been set out very clearly by the Hon'ble Supreme Court of India as well as by the Appellate Tribunal for Electricity in various judgments.

The Hon'ble Supreme Court in Maharashtra State Electricity Distribution co. Ltd Vs Lloyd's steel Industries limited (Appeal (civil) 3551 of 2006) held as follows;

"Therefore, now by virtue of sub-Section (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only. In the face of this statutory provision, we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. The matter should have been left to the said forum. "(Para 7). "Hence wherever a Forum/Ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances". (Para 8) In this connection, we may also refer to Section 86 of the Act which lays down the functions of the State Commission. Sub-Section (1) (f) of the said Section lays down the adjudicatory function of the State Commission which does not encompass within its domain complaints of individual

consumers. It only provides that the Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any such dispute for arbitration. This does not include in it an individual consumer".

- (6) Hon'ble APTEL in appeal no 131 of 2013 filed by M/s Vianney Enterprises, decided as follows;

"23 The Appellant has also raised the following issues for continuation of their classification under LT IV Industrial category:

- i) Unit being recognized as industry under Factory's Act etc.*
- ii) Bottling and packing activity is being considered as industrial in other States for the purpose of electricity tariff*

*24. In our view the above two arguments are not valid. The categorization of consumer for the purpose of electricity tariff is under the domain of the State Commission under the Electricity Act, 2003. Under Section 62(3) of the Electricity Act, the State Commission can differentiate between the tariffs based on interalia, purpose for which the supply is required. Accordingly, the State Commission is empowered to differentiate in tariff based on a purpose for which the supply is required. In this case the State Commission has differentiated between the units which use electricity for extracting oil from seeds which is a manufacturing activity and those units which are only engaged in packing of oil brought from outside which has been considered as commercial activity. **Secondly, each State Commission is empowered to decide the retail supply tariff and categorization of consumers for its State.** It is not binding for the State Commission to follow the categorization of consumers for tariff purpose decided by the Regulatory Commissions of other States.*

- (7) In this regard, it may be noted that the automobile service stations which has been classified as a service Industry as per Government was included under the Commercial tariff in the tariff Order. Here also the Commission has categorized the same under commercial tariff going by the purpose for which the supply is used for and not based on the classification done by the Government. Accordingly, it is not binding on the State Commission to follow any classification done by any other utility or the State Government.
- (8) Sub section 4 of section 62 of Electricity Act, 2003 stipulates that, no tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified
- (9) As far as the petitioner's plea for providing rebate on short assessed amount and for avoiding disconnection on the electric connection provided to the SI-MET Nursing College, Palluruthy, KSEB Ltd submitted

that the adjudication of a dispute by this Commission under Section 86(1)(1) of the Act does not cover individual complaints of consumers. This position has been set out very clearly by the Hon'ble Supreme Court of India as well as by the Appellate Tribunal for Electricity in various judgments.

4. The Commission admitted the petition as OP No. 78/2022. The hearing of the petition was held on 10.01.2023 through video conference. Smt. Magi Xavier, SI- MET College of Nursing presented the matter on behalf of SI- MET. Shri. Rajesh, AEE, TRAC presented the petition on behalf of KSEB Ltd. The summary of the deliberations during the hearing is given below;

- (1) The petitioner submitted that, M/s SI- MET College of Nursing, Palluruthy is an autonomous institution functioning under the State Institute of Medical Education & Technology (SIMET), Department of Health, Government of Kerala. The petitioner has two LT connections for the hostel buildings with consumer Nos.1155597022876 and 1155597022877 respectively. KSEB Ltd has changed the tariff of these hostel buildings from LT-VI (B) tariff to LT-VI(F) Tariff and raised a short assessment bill of Rs 155598/- for consumer No. 1155597022876) and Rs 187719/- for consumer No. 1155597022877. Aggrieved by the short assessment bill, the petitioner had filed a petition before the CGRF, Central Region as well as Hon'ble High Court of Kerala. The Hon'ble High Court of Kerala vide Order dated 29.03.2022 had upheld the Order of the CGRF for limiting the applicability of the short assessment bills for two years only.

The petitioner further submitted that, subsequently, KSEBL has changed the tariff of the college building of the petitioner bearing consumer no 1155599023929 from LT-VI (A) to LT-VI (F) and issued a short assessment bill amounting to Rs 2,12,339/-. Against the short assessment bill also, the petitioner approached the CGRF and Hon'ble High Court of Kerala. But the petitioner could not get a favorable decision. Hence, the petitioner approached the Commission to change the tariff category of SI-MET Nursing College and Hostel buildings to LT IV A and LT IVB respectively as being provided to the Government /aided educational Institutions.

- (2) The respondent KSEB Ltd submitted that, as per the G.O.(P)No. 168/2008/H&FWD dated 23.05.2008, SIMET is set up as an autonomous body under the control of Government, in the model of IHRD and LBS. KSEB Ltd also submitted that, KSERC vide Order dated 08.07.2019 in OP No. 15/2018 has clearly stated that the electricity tariff applicable to the Government/Aided Educational Institutions cannot be extended to the educational institutions run by the autonomous bodies under the State Government.

Moreover, the fees for studying at the autonomous institutions is much higher than that prevailing at similar Government/Aided Educational

Institutions. The same was observed by the Commission in the Order dated 25.06.2022 in OP No. 11/2022.

KSEB Ltd further pointed out the following;

- (i) As per Section 62(3) of Electricity Act, 2003, the Commission is empowered to differentiate in tariff based on a purpose for which the supply is required.
- (ii) The Hon'ble APTEL Judgment in Appeal No 131 of 2013 is that it is not binding for the State Commission to follow the categorization done by Regulatory Commissions of other states and other statutes.
- (iii) Even though the Automobile service station is categorized as a service Industry by the State Government, the same had been categorized under commercial tariff by the Commission.
- (iv) As per sub section 4 of section 62 of Electricity Act, 2003, no tariff or part of any tariff may ordinarily be amended, more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.
- (v) It was also submitted that the realisation of the amount through the current tariff is much less than the ARR of KSEBL. Hence any revision made in tariff will affect the financial condition of KSEBL.
- (vi) Regarding the matter on relief sought by SI-MET on short assessment bill and to prevent disconnection of supply to the Nursing College, KSEB Ltd submitted as given below;
 - The CGRF vide Order dated 24.02.2022 in OP No. 59/2021-22 has ordered that the Petitioner is bound to pay the short assessment bill issued by the Licensee.
 - The adjudication of a dispute by the Commission under section 86(1)(f) of the Act does not cover individual complaints of consumers. This position had been set out very clearly by the Hon'ble Supreme Court of India as well as by the Appellate Tribunal of Electricity in various Judgments.
 - The Hon'ble Supreme Court in Maharashtra State Electricity Distribution Co. Ltd Vs Lloyd's steel Industries limited (Appeal (civil) 3551 of 2006) held that the adjudicatory function of the State Commission does not encompass within its domain complaints of individual consumers.

Hence, KSEB Ltd requested before the Commission to reject the petition filed by M/s State Institute of Medical Education & Technology (SI-MET).

Analysis and Decision

5. The Commission has examined in detail the petition filed by SI- MET College of Nursing, counter affidavit of the respondent M/s KSEB Ltd, deliberations of the subject matter during the hearing held on 10.01.2023, the provisions of the Electricity Act, 2003, KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2021, other Regulations, hereby decides as follows: -
6. The Commission noted that the two issues raised by the petitioner are;
 - (1) To bring the tariff of the SI-MET institutions at par with the tariff of Government/ Government controlled educational institutions i.e., to bring the tariff of the College buildings at Palluruthy at LT-VI(A) tariff and tariff of the hostel buildings at LT-VI(B) tariff.”
 - (2) To exempt the petitioner from the payment of the short assessment bill amount of Rs 1,99,071/- and direct the respondent to stop the disconnection of electricity supply t the SI-MET college.
7. The Commission has examined each issue separately as per the Electricity Act-2003 and other regulations in force and decided as follows;

Issue No 1: To bring the tariff of the SI-MET institutions at par with the tariff of Government/ Government controlled educational institutions i.e., to bring the tariff of the College buildings at Palluruthy at LT-VI(A) tariff and tariff of the hostel buildings at LT-VI(B) tariff.”
8. As per the Electricity Act -2003, electricity tariff determination is one of the statutory functions of the State Electricity Regulatory Commissions. Further, the tariff determination is a quasi-judicial process, which includes pre-publication, stakeholder consultation, public hearing etc.
9. The Commission after completing all the due procedures including pre-publication, stakeholder consultation and public hearings, vide the Tariff Order dated 25.06.2022 in Petition OP No. 11/2022, has determined the retail tariff of all categories of consumers in the State with effect from 26.06.2022. As per the said Order, the tariff of the self-financing educational institutions including hostels are categorized under LT-VI(F) category. However, the tariff of the Government or Government aided educational institutions are categorized under LT-VI(A) category and its hostels are categorized under LT-VI(B) tariff.
10. During the deliberations of the Tariff Order dated 25.06.2022 in petition OP No.11/2022, the Commission has examined the request of the autonomous educational institutions and training centers such as IHRD, Institute of Land and Disaster Management etc for determining the tariff of autonomous educational institutions at par with the tariff of the Government educational institutions/ Government aided educational institutions. The considered decision of the Commission on their request is given under paragraph 2.127 of the Order of the Commission dated 25.06.2022. The relevant portion of the Order is extracted below.

“Opinion of the Commission

2.127 The Commission noted the request of IHRD, ILDM, Shri. Ramesh, NFPS Association, General Secretary State Committee, School Management Association and others for determining their tariff at par with electricity tariff applicable to Govt educational institutions/ Aided educational institutions. The Commission has been approving the Retail tariff of electricity in the State as per the provisions of the Electricity Act 2003 and Tariff Regulation 2021. The Commission noted that in the case of Government/ Aided Educational Institutions all the expenses associated with the administration of educational institutions are met by the Government from its exchequer. **However, the administrative expenses of autonomous bodies such as IHRD, LBS etc are not met by State Government, though grants are provided by Government to such institutions**

The fees collected by autonomous bodies and private educational institutions are much higher when compared to Government/ Aided educational Institutions.

Hon'ble Appellate Tribunal for Electricity in various judgements have observed that the Government/ Aided educational institutions cannot be compared with Private Educational Institutions, though both are providing education. **Hence the Commission cannot extend the Tariff applicable to Govt/Aided institutions to educational institutions run by autonomous bodies/private institutions.**”

11. The present petition filed by SI-MET College of Nursing is a Review Petition to the tariff Order dated 25.06.2022 in OP No.11/2022. The Commission has examined the review jurisdiction as per the provisions of the Electricity Act, 2003, for reviewing the orders and decisions of the Commission and noted the following;

(1) Review jurisdiction as per the Electricity Act-2003.

As per the Section 94 of the EA-2003, the review jurisdiction of the Commission is very limited in reviewing its orders and directions. The relevant Sections is extracted below:

“Section 94. (Powers of Appropriate Commission): --- (1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 in respect of the following matters, namely: -

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) discovery and production of any document or other material object producible as evidence;
- (c) receiving evidence on affidavits;
- (d) requisitioning of any public record;
- (e) issuing commission for the examination of witnesses;
- (f) **reviewing its decisions, directions and orders;**
- (g) any other matter which may be prescribed. “

- (2) Order 47 Rule 1 of the Code of Civil Procedure 1908, dealing with review of the orders and decisions of a Civil court, which is as quoted below:

“Application for review of judgment. -(1) Any person considering himself aggrieved, —

- (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,*
- (b) by a decree or order from which no appeal is allowed, or*
- (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.*

A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

Explanation: The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.”

12. As extracted above, as per the provisions of the Electricity Act - 2003 and Order 47 Rule 1 of the Code of Civil Procedure, the review jurisdiction of the Commission is very limited. For reviewing its decisions, discovery of new and important matter or evidence, which was not within the knowledge of the petitioner or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on face of record, or for any other sufficient reason. Moreover, the petitioner has not submitted any new facts in this petition before the Commission.
13. **Considering the above reasons, the Commission decided to reject the prayer of the petitioner to bring the tariff of the College Building at Palluruthy at LT-VI(A) tariff and the tariff of its hostel buildings at LT-VI (B) Tariff.**

However, in the next tariff determination, the petitioner, at its liberty, can raise the issue of determining a separate tariff for autonomous educational institutions functioning with the budgetary support of the State Government.

Issue No 2: To exempt the petitioner from the payment of the short assessment bill amount of Rs 1,99,071/- and direct the respondent to stop the disconnection of electricity supply at the SI-MET college.

14. The Commission examined the entire issue in detail and also the Orders of the CGRF, Central Region dated 30.06.2018 and 24.02.2022. As per the various judgement of the Hon'ble Supreme Court and Hon'ble Appellate Tribunal for

Electricity, this Commission has limited powers to interfere in the dispute between the electricity consumers and distribution licensee.

However, since the SI-MET being an autonomous society under the Government of Kerala, the petitioner can approach the Top Management of KSEB Ltd to grant installment facility for remitting the electricity charges as per the provisions of the Electricity Act, 2003 and Kerala Electricity Supply Code, 2014. KSEB Ltd can grant installment facilities similar to the terms and conditions approved by the Commission in the order dated 18.03.2022 in petition OP No.70/2021 in the matter of approval of One Time Settlement Scheme for Arrears (OTS-2022).

Order of the Commission

15. The Commission, after examining the petition filed by SI- MET College of Nursing, counter affidavit of the respondent M/s KSEB Ltd, deliberations of the subject matter during the hearing held on 10.01.2023, the provisions of the Electricity Act, 2003, Kerala Electricity Supply Code, 2014, other relevant Regulations and Orders in force, hereby orders the following;
- (1) The prayer of the petitioner SI-MET College of Nursing to fix the electricity tariff of the college building and hostel building at par with the electricity tariff of the Government educational institutions / Government aided educational institutions is hereby rejected, due to the reasons given in the preceding paragraphs.
 - (2) The petitioner may approach Top Management of KSEB Ltd to get installment facilities for remitting the arrears of electricity charges as per the provisions of the Electricity Act, 2003 and Kerala Electricity Supply Code, 2014. KSEB Ltd, may grant installment facilities to SI-MET College of Nursing, similar to the terms and conditions approved by the Commission in the Order dated 18.03.2022 in petition OP No.70/2021 in the matter of approval of One Time Settlement Scheme for Arrears (OTS-2022).

The petition disposed of. Ordered accordingly.

**Sd/-
Adv. A J Wilson
Member (Law)**

Approved for issue

Sd/-
C R Satheeshchandran
Secretary