

D-923

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-284/2017

Dated :18.08.2017

Nanjappa Trust,
No.660, Kuvempu Road,
Shimoga
(RR No.HT-68)

... Appellant

(By Sri M.A.Delvi, Advocate)

V/S

1. Assistant Executive Engineer (O & M),
MESCOM, CSD-3,
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 the appeal for a direction to the respondent to (i) set aside the order passed by the CGRF, MESCOM, Shivamogga dated 4.4.2017; (2) direct to treat the installation HT-68 as falling under the Tariff Schedule HT-2c(i); (iii) to bill the consumption of the Nursing College on pro-rata basis and bill the resultant consumption under appropriate tariff; (d) to refund the excess amount with interest as per S and D code 29.08(a).
3. The appellant has contended as follows :
 - (i) The appellant is a recognised as a Charitable Trust by the Income Tax Department u/s 12(A) of the Income Tax Act. As per the tariff order, the criteria to classify an installation as a charitable institution or not, depends on production of the Certificate u/s 12(A) issued by the Income Tax Authorities. The subject institution has been granted a Certificate under Section 12(A) which entitles it for the tariff benefit (Annexure A to the appeal memo);
 - (ii) On an application made to the Licensee for sanction of supply of power to an extent of 25 KVA, power was sanctioned (Annexure B to the appeal memo). The Licensee considered and power was sanctioned;
 - (iii) The Institute made an application for sanction of additional power to an extent of 275 KVA on 09.07.2010 for the purpose of putting

up of a Hospital. The additional load was sanctioned on 03.03.2011 for establishing a Hospital based on the report of jurisdictional Engineer. The sanction letter and remarks are produced as Annexures C and D to the appeal memo;

- (iv) It is relevant to mention that the classification and fixing up the tariff of an installation falls within the exclusive jurisdiction of the Licensee and he was duty bound to fix the same judiciously. In respect of the installation HT-68 while availing the additional load of 275 KVA it was clearly shown as a Hospital and the field officer report conclusively goes to show that the additional power was intended for a Hospital. The Licensee by virtue of this report ought to have classified the installation under HT-2(A) but unfortunately the officer committed an error of judgement and proceeded to wrongly classify under HT-2(B);

- (v) The Licensee through a letter dated 23.04.2014 was apprised of this misclassification and requested to reclassify the subject installation appropriately under HT-2(C) (i) category by virtue of the Certificate issued by the Income Tax Authorities under Section 12(A) of the Income Tax Act. The respondent acceding to the request of re-classification, brought the installation under the tariff schedule HT-2(C)(i) and started billing the installation under HT-2C(i) tariff starting from May 2015. The reclassification of category was communicated through a letter dated 07.04.2015 (Annexure E to the appeal memo);

- (vi) By letter dated 25.08.2015 the Executive Engineer, Elecl, MESCOM, informed that the tariff applied to the institution under HT-2C(i) was withdrawn for the reason that a portion of the load is used for education activity and hence the billing of the installation under HT-2C(i) was discontinued. (Annexure F to the appeal memo). This reclassification was done without serving a notice and calling for objections against the proposed change. It contravenes the provision of Regulation 3.04 of the Conditions of Supply;
- (vii) The complainant put-in concerted efforts to air his grievances in reclassifying the installation including the corporate office of MESCOM. The Chief Financial Officer, MESCOM, by a letter dated 15.09.2015 addressed to the Deputy Controller of Accounts, Shivamogga called upon to submit his replies to the questions raised by the appellant. The letter dated 15.09.2015 is produced as Annexure G to the appeal memo. Although the officer concerned called the appellant and held a meeting, the concerned officer denied having conducted such a meeting. The respondent was not interested in resolving the issue;
- (viii) At the first instance it is on record that power was availed to an extent of 25 KVA in the name of Nanjappa Trust for the purpose of Amruth College of Nursing;
- (ix) The CGRF although not properly constituted in accordance with KERC directives in the matter, heard the issue at length and very unfortunately passed an order dated 04.04.2017 rejecting the

complaint for reason that the power supply at the first instance was availed towards Nanjappa Institute of Nursing Sciences. The complainant's claim for applying the appropriate tariff as HT-2C(i) for hospital and hostel was rejected only on the ground that a Nursing Institute is being run in the premises. Thus the order suffers with incorrect appreciation of the tariff order, with legal infirmities;

- (x) It is on record that power at the first instance to an extent of 25 KVA was availed in the name of Nanjappa Trust for the purpose of Amruth College of Nursing;
- (xi) At the time of availing the additional power to an extent of 275 KVA it was specifically mentioned in the field report that the additional load was for the specific purpose of running Hospital. The report made by the jurisdictional AEE on 11.08.2010 and produced as Annexure 'D' makes it manifestly clear that it is for Hospital purposes only. This was within the knowledge of the respondent and ever since the functioning of the Hospital;
- (xii) The tariff order HT-2(C)(1) whereat a Charitable Institute runs a Hospital is entitled to be made applicable along with Hostels. Reading, the tariff order of this provision is a bit ambiguous with regard to Educational Institutions run by charitable institute;
- (xiii) Even agreeing for argument purposes, that an Educational Institute to be specific the Nursing Institute, attracts a different tariff. In that event the respondent could have granted a sub-meter to be fixed to the college portion as per the provision and

applied the tariff schedule HT-2C(1) to the Hospital and the Hostel, since the power used by the Nursing Institute being negligible;

(xiv) The CGRF failed to appreciate that Nursing Institute was an integral part of the hospital and as such it should be classified under HT-2(C(i) as per the tariff order;

(xv) The CGRF has failed to consider the arguments putforth, and has not applied its mind to the issue as the same was not properly constituted. There was an inherent legal infirmity, there being no provision to nominate an Executive Engineer (Elecl) as a member instead of a Deputy Controller of Accounts. Hence the order suffers with legal infirmities;

4. The AEE has submitted the parawise remarks and has contended as follows :

(i) The averment that M/s. Nanjappa Trust produced copy of the Certificate issued by the Income Tax Department is not true. The Certificate at Annexure A is not valid certificate registered under 12(A) of Income Tax Act. The tariff rates are governed and envisaged by the Government from time to time. Initially, under the name of Amruth College of Nursing Sciences the appellant took electricity of 25 KVA on 17.04.2009 and this was under HT-2(B). Further, the appellant taken 275 KVA additional load in the name of Nanjappa Trust, Amruth Nursing College on 03.03.2011. The RR number of the installation, stands as it was, and the same was continued. The installation so continued in HT-2(B) category is as per rules and regulations. The appellant's contention that the

installation ought to have been changed from HT-2(B) to HT-2(A) as per then tariff order is not correct and it cannot be changed when the consumer utilizing power not under the Charitable Trust;

- (ii) The averment made in para No.2 of memorandum of appeal that the Institute made an application to the Licensee (MESCOM) for sanction of power supply to an extent of 25 KVA and the power was sanctioned in the name of Educational Institution is correct i.e. Amruth College which is permanently un-aided Educational Institution as per Government Order;
- (iii) The purpose of obtaining additional load to existing RR No.HT-68 is for Hospital as mentioned in field report is true and correct;
- (iv) The contention of the appellant as averred in para No.4 of memorandum of appeal that the classification and fixing up the tariff of an installation falls within the exclusive jurisdiction of the licensee and he was duty bound to fix the same judiciously is quite true and the respondent MESCOM has fixed rate of consumption as per tariff rates as per the regulations. The appellant might have shown that the installation HT-68, while availing the additional load of 275 KVA was clearly shown as a Hospital and even the field officer report conclusively goes to show the additional power was intended for a Hospital. But this is not true state of affairs and the Licensee (MESCOM) by virtue of this report cannot classify the installation under HT-2(A). The respondent MESCOM never committed an error of Judgement nor wrongly classified the category under HT-2(B);

- (v) The ground of appeal in para No.5 and 6 that, the respondent acceding to the request for reclassification, brought the installation under the tariff schedule HT-2 (C)(i) and started billing under HT-2(C)(i) from May 2015. It is a fact that reclassification was communicated through a letter dated 07.04.2015. But, it is also quite true and apt that by a letter dated 25.08.2015, the Executive Engineer, MESCOM, informed saying that, the tariff applied to the institution under HT-2(C)(i) is being withdrawn for the reasons that a part of the load is used for education activity and hence the billing of the installation under HT-2(C)(i) was discontinued;
- (vi) The contention that an installation once classified under a particular tariff cannot be re-classified without serving a notice on the consumer and asking him to file appropriate objections against the proposed change is not correct and tenable. The provision of Regulation 3.04 provides right to Licensee to re-classify the tariff categorized erroneously. The notice is required to be issued is only for executing fresh agreement as per Regulations;
- (vii) The allegation made in para No.8 of memorandum of appeal is not correct. When the respondent acted in accordance with regulations, question of arbitrary proceedings does not arise. It is a fact that the Chief Financial Officer, MESCOM by a letter dated 15.09.2015 addressed to the Deputy Controller of Accounts, Shivamogga called upon him to file his replies to the question raised by the appellant. The concerned called the appellant to attend the meeting in order to resolve the issue and in the

meeting the appellant reiterated regarding the issues raised in the appeal. The appellant was reluctant to accept rules . Rather he addressed a representation to KERC requesting to resolve the issue. The Commission routed the representation to the Ombudsman, who in turn by a communication dated 12.08.2016 addressed to the Chairperson, CGRF, advised to conduct proceeding at their level and resolve the issue as per norms;

- (viii) The allegation made in para No. 9 of the memorandum of appeal that (a) the CGRF, although not properly constituted in accordance with KERC directives in the matter, heard the issue at length and very unfortunately passed an order dated 04.04.2017 rejecting the complaint for reason that the power supply at the first instance was availed towards Nanjappa Institute of Nursing Science, and (b) the complaints claim for applying the appropriate tariff as HT-2(C)(i) for hospital and hostel was rejected only on the ground that a Nursing Institute is there in the premises and that the order suffers with incorrect appreciation of the tariff order, with the attending legal infirmities, etc, are not correct and be subjected to proof are not correct and true;
- (ix) At the first instance the power to an extent of 25 KVA was availed in the name of Nanjappa Trust for the purpose of Amruth Nursing College. But appellant's contention that installation as for whether it is charitable institution or not rests with the production of the certificate under Section 12(A) which entitles the appellant's institution for the tariff benefit accruing by virtue of the grant of certificate is not correct. It is submitted that the tariff rates

charges for consumption of electricity is purely governed as per tariff rates envisaged by the Government from time to time. Initially under the name of Amruth College of Nursing Science, the appellant took electricity of 25 KVA on 17.04.2009 and this was under HT-2(B). Further, the appellant taken 275 KVA additional load on 03.03.2011 the RR number of the installation stands as it was and the same was continued. The installation so continued in HT-2(B) as per rules and regulations. But, the appellant contention that the installation ought to have changed for HT-2(B) to HT-2(A) and now HT-2C(i) is not correct as there was not tariff change request along with production of valid 12-A certificate issued by Income Tax Department at that time. Further, the tariff cannot be changed as per the tariff rules, as installation stands in the name of unaided educational institute;

- (x) The contentions of the appellant as averred in para No.4 of memorandum of appeal that the classification and fixing up the tariff of an installation falls within the exclusive jurisdiction of the Licensee and he was duty bound to fix the same judiciously is quite true and the respondent MESCOM has fixed the rates of consumption as per tariff rates as per the provisions of law. The appellant might have shown that the installation HT-68 while availing the additional load of 275 KVA was clearly shown as a hospital and even the field officer report conclusively goes to show that the additional power was intended for a hospital, but this is true state of affairs and the Licensee (MESCOM) by virtue of this report cannot classify the installation under HT-2(A). The

respondent MESCOM never committed an error of Judgement nor wrongly classified under HT-2(B).

5. The learned Advocate for the appellant reiterated the facts and grounds stated in the appeal memo. He further argued that service was taken under Nanjappa Trust. 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 but the Hon'ble High Court did not allow the claim. The appellant was not aware of the concession given by the KERC in the year 1998. Further, he argued that the Licensee should have given the benefit, since the Trust Deed and other related documents were submitted to the AEE. The Licnesee 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. He further argued that eversince that the College run by the Trust is an integral part of the Hospital, and major portion is utilised for the Hospital (25 KVA for College, 275 KVA for Hospital).(HT-68).

6. The AEE reiterated the averments made in written memo and prayed to dismiss the appeal.

7. The oral and written submissions made by both the parties and the order of the CGRF is perused and considered.

8. It is noted that the appellant Institution has obtained power for Amruth Nursing College and Hostel under HT-2(b). From the submission made by both the parties, it becomes clear that the power is taken from the said installation for both the Hospital and the Nursing College, which is an

unaided Institution. Hence the installation cannot be brought under HT-2(C)(i) as per Rules.

9. The documents and submissions makes clear that the Licensee is raising the bills as per the norms. The CGRF has considered all the issues and passed the orders which is in conformity with the prevalent norms.

10. No vital issues are forthcoming to interfere with the order of the CGRF. 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-3, 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