

BEFORE THE ELECTRICITY OMBUDSMAN

No.16 C-1, Miller Tank Bed Area (Behind Jain Hospital)
Vasanthanagar, Bengaluru-560052.

Present: **R. Sharada,**
District Judge (Retd)
Electricity Ombudsman,

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

Dated: 16/03/2022

In the matter of

Nanjappa Trust,
No. 660, Kuvempu Road,
Shivamogga-577201.

Represented by:

M/s King & Partridge,
Advocates, 48, Lavelle Road,
Bengaluru-560 001.

-

Appellant

Vs

- 1) The Assistant Executive Engineer (Elec.),
O & M City Sub Division-1, MESCOM,
Shivamogga.

Represented by:

Sri H.V. Devaraju, Advocate,
A-202, "Brigade Magestic",
2nd Floor, 'A' Block, 25, Kalidasa Marga,
Gandhinagar,
Bengaluru-560009.

- 2) Chairperson,
Consumer Grievance Redressal Forum/(CGRF)
O & M Circle, MESCOM,
Near Railway Station, P.B. No. 49,
Shivamoga-577201.

-

Respondents

This Appeal is filed by the Complainant/Appellant under Regulation 21.2 of KERC (Consumer Grievance Redressal Forum and Ombudsman) Regulations 2004, with a prayer to direct the Respondent to apply appropriate tariff to the installation HT-19 as applicable to the Hospitals run by a Charitable Institute with effect from July 1998 by granting equitable interest on excess amount so collected and refund the amount with interest as per Regulations with cost by allowing the appeal in the interest of justice and equity.

- 1) It is the case of the Complainant/Appellant that, he availed power supply to an extent of 100KVA under the name of the Trust to put up a hospital and the same was serviced in the year 1987. An additional 50KVA was subsequently availed and serviced on 06.09.2009. The Appellant Trust has been recognized as a Charitable Trust under Income Tax Act and has been granted exemption under Section 12(A) of Income Tax Act. The Appellant Trust has on several occasions in the past had approached the 1st Respondent to fix appropriate tariff as applicable to a Charitable Institute but the Authorities failed to comply with the request.

- 2) It is further stated that the Government in their Tariff order during the year 1998 included Hospitals run by Charitable Institutions under Tariff Schedule HT-2(a), but the Licensee Company did not extend this benefit to the Appellant Trust Hospital. Hence, the Appellant had approached Hon'ble High Court of Karnataka for required relief through a Writ Petition in WP No. 36726/1993 to direct the Respondent/KEB to extend the benefit of HT-2(a) to the Hospital as the same is run by a Charitable Institution.
- 3) It is stated that, it was within the knowledge of the Respondent No. 1 that the installation is a charitable one. Although the Appellant time and again made request to the Respondent to apply appropriate tariff to the installation with effect from July 1998, but his request went in vain. It is relevant to state that a tariff order when made applicable to a particular category the Licensee is duty bound to bill such installation without waiting for the Consumer to approach the Licensee for the applications of the tariff. Such changes are effected automatically, but the Respondent No. 1 instead of applying the tariff as per the tariff order with a view to deny the same on untenable grounds whenever approached this Appellant into seeking irrelevant

details even as late as 2015. The chief financial officer was busy with the issue seeking irrelevant details. This shows that the Respondent Company was reluctant to extend the benefit accruing to the installation by virtue of the certificate granted under Section 12(A) of the Act. The 1st Respondent has collected extra amount from the Appellant wrongfully since 1998, hence the Respondent No. 1 is duty bound to pay the difference wrongly collected amount to the Appellant in accordance with law.

- 4) Further it is stated in the appeal that, the KERC has made new tariff order applicable with the effect from 15.07.1998, created a new category tariff 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 installation was provided to the 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 other.
- 5) The Respondent No. 1 after classifying the subject installation HT-19 under HT-2(c)(1) with effect from 01.04.2015, once again reverted it 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 of Electricity. Having no alternative, the Appellant filed a complaint before the 2nd Respondent seeking a reversal tariff order to HT-2(c)(1) and for refund of amount collected by wrong application of tariff since July 1998. After hearing both the parties the 2nd Respondent passed an order dated 04.04.2017 wherein, it was pleased to order application of tariff schedule HT-2(c)(i) with effect from 22.08.2014 and further order to quantify the excess amount collected by applying tariff schedule to HT-2(c)(ii), during the said period and refund the amount with interest as per the 29.08(a) of Conditions of Supply of Distributions Licensees in the State of Karnataka with interest. But the 2nd Respondent has not passed any orders with regard to the period between July 1998 to 22.08.2014 during which it has collected huge sums by way of application of higher tariff. Aggrieved by the orders of the 2nd Respondent the present appeal is filed under the following grounds: -

GROUND

- a. The installation HT-19 was availed service during the year 1989 towards a hospital run by a Charitable Institute. At the time of service there was no separate tariff category for

hospitals hence the installation was built under HT-2(b) at the time.

- b. The KERC with effect from July 1998 categorized to hospitals under HT2(a) tariff which was less than HT2(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, the denial is unjustified.
- c. The Respondent Company conferred the tariff HT-2(c)(i) with effect from 01.04.2015 although the tariff was applicable from an earlier date but for no reason again withdrew the tariff from January 2017 only with ulterior motive.
- d. The 2nd Respondent/CGRF in the impugned order dated 04.04.2017 restored the application of tariff with effect from 22.08.2014 but for in explicable reasons failed to order its entitlement for the earlier period.
- e. The order of the 2nd Respondent/CGRF has failed to do justice by restricting the benefit only from 22.08.2014 instead from the month of July 1998, the date from which hospitals were categorized to be included in the tariff schedule HT-(2)(a) instead of HT-2(b), hence the present

appeal is filed and he prays to allow the appeal in the interest of justice and equity.

- 6) The 1st Respondent after receiving notice has appeared in person and filed written objections, stating that M/s Nanjappa Trust applied for 100KVA power supply for hospital purpose and same was serviced in HT-1(b)2 tariff on 28.05.1987 to the RR No. HT-19 and subsequently additional 50KVA was sanctioned and serviced on 06.09.2009. The M/s Nanjappa Trust has not requested for exemption by submitting any documents at the time of service of installation. Even he has not approached the Department of 1st Respondent to fix appropriate tariff since 28.05.1987 to 13.04.2014. The consumer has requested to fix appropriate tariff applicable to the Charitable Institution on 14.04.2014. The Government in the Tariff order during the year 1998 included the hospitals run by Charitable Institutions under Tariff Schedule HT-2(a). Even the Hon'ble High Court of Karnataka has not given any direction to extend the benefit under HT-2(a) since the Consumer of HT-19 has not brought to notice to the Department to implement appropriate tariff HT-2(a) by submitting required documents, hence the benefit is not extended.

- 7) The tariff order 2014 created a new category in respect of the hospitals run by the Charitable Trust is HT-2(c)(i), but the Licensee did not know that the Appellant Trust comes under the definition of Charitable Trusts and no relevant document i.e., certificate issued by the Income Tax Department under Section 12A of Income Tax Act is produced. Only on 14.04.2014 the Consumer/Appellant had approached the 1st Respondent Company to fix appropriate tariff as applicable to the Charitable Institutions. Then only the 1st Respondent could act upon the request of the Appellant. The other allegations made in the appeal are on false and untenable. The order passed by the 2nd Respondent is in accordance with law. Hence the appeal is liable to be dismissed in the interest of justice and equity,
- 8) This case is taken up for second time disposal as per directions given by Hon'ble High Court of Karnataka in Writ Petition WP No. 53406/2017 (GM-KEB) dated 01.06.2021.
- 9) Originally, the Appellant has filed the Appeal in OMB/M/G-285/2017 on 05.05.2017 under Clause 21.02 of the KERC (CGRF & Ombudsman) Regulations, 2004. After receiving notice, the Respondent No. 1 has appeared before this Authority through his Counsel contested the Appeal by filing written objections. After

hearing both the parties this Authority has passed orders on 18.08.2017 dismissing the Appeal by upholding the orders of the CGRF in case No. 02/2017 dated 04.04.2017.

10) Aggrieved by this order the Appellant had approached the Hon'ble High Court of Karnataka, Bengaluru in Writ Petition bearing WP No. 53406/2017 (GM-KEB) challenging the orders of the Electricity Ombudsman. After hearing both the parties the Hon'ble High Court of Karnataka was pleased to pass orders dated 01.06.2021 held that as: -

- i) The Writ Petition is allowed in part.
- ii) The impugned order dated 18.08.2017 in case No. OMB/M/G-285/2017 passed by the 2nd Respondent Electricity Ombudsman is quashed.
- iii) The matter is remitted back to the 2nd Respondent to consider the matter afresh and pass appropriate orders in accordance with law, as expeditiously as possible, at any rate within 4 months from the date of receipt of the copy of the order.

11) After receiving the certified copy of the orders, this Authority has issued notice to both parties. The Appellant has appeared through his Counsel and filed written submissions along with documents.

The 1st Respondent has also appeared through his Counsel. This Authority has taken up the case for fresh disposal as per the guidelines given by the Hon'ble High Court of Karnataka, Bengaluru as referred supra.

- 12) The case is posted for arguments. During the course of arguments, the Learned Counsel for Appellant has submitted oral arguments along with written submissions. The Counsel for the 1st Respondent has submitted oral arguments.
- 13) Heard the arguments, and perused the records.
- 14) At this stage the below mentioned points arose for my consideration.

a) **Point No. 1:** - Whether the Appellant proves that the order passed by the 2nd Respondent/CGRF in case No. 02/2017 dated 04.04.2017 is arbitrary, and not sustainable under law, thereby the interference of this Authority is needed.

b) **Point No. 2:** - What Order?

- 15) My answers to the points as stated below

Point No. 1: - In the Negative.

Point No. 2: -As per final order, for the reasons made herein

below: -

REASONS

- 16) During the course of the arguments the Learned Counsel for the Appellant has submitted that the present appeal is filed challenging the order of the CGRF/Respondent No. 2 dated 04.04.2017. The Appellant is a public charitable Trust registered in the year 1984 and the Appellant was recognized as a charitable Trust by the Income Tax Department and the said Department had issued certificate dated 16.01.1984 under Section 12(A) of the Income Tax Act, 1961. The Appellant had set up hospital called Nanjappa Hospital at Kuvempu Road, Shivamogga. On 30.04.1987, 100KVA of power was sanctioned to the hospital and the installation came to be numbered as HT-19. The Appellant had made an application to the KEB dated 03.08.1993 along with necessary documents including the certificate issued under Section 12 (AA) of Income Tax Act, 1961 requesting that the hospital be billed under tariff HT-2(a). But the prayer of the Appellant was rejected by the then AEE (Ele) through a letter dated 10.08.1993 stating that there was no separate tariff for

charitable hospitals and further refused refund the difference in energy charges as claimed by the Petitioner.

- 17) It is further submitted that the Appellant had approached Hon'ble High Court of Karnataka, through a Writ Petition bearing WP No. 36726/1993 producing all necessary documents including the certificate issued under Section 12 (AA) of the Income Tax Act. Subsequently, the said Writ Petition came to be dismissed on 16.06.1997 as at that point of time only hospitals run by the State or Central Government would fall under tariff HT-2(a) and all other Hospitals, Nursing Homes would fall under tariff HT-2(b). On dismissal of the Writ Petition a demand was raised by the KEB in the year 1997-98 for the differential amount payable and the same came to be paid by the Appellant.
- 18) Further it is submitted that, on 15.07.1998 hospitals run by the charitable institutions were brought under the concessional tariff HT-2(a). Such being the case the KEB was duty bound to bring the Appellant under the aforesaid tariff and charge them accordingly. Despite being fully aware of the fact that the Appellant was a charitable Trust running a hospital, the KEB failed to bring the Appellant under the correct tariff and billed them at a higher tariff rate. Subsequently, supply of electricity

became the duty of Respondent No. 1/MESCOM with KEB having being dissolved. On 06.09.2009 the Appellant obtained additional 50KVA from MESCOM, he approached the MESCOM through letters dated 14.04.2014 and 07.07.2014 requesting that the Appellant's connection be charged as per the tariff HT-2(c)(i). On 07.04.2015, MESCOM classified the Appellant under tariff HT-2(c)(i), accordingly the Appellant was billed under tariff HT-2(c)(i) from May 2015 onwards. The Appellant made several representations to the MESCOM requesting for refund of excess amount, a meeting also took place in this regard. The Managing Trustee of the Appellant furnished the necessary clarifications and produced all necessary documents to MESCOM and the entire proceedings were recorded in the form of Minutes of meeting.

- 19) Thereafter, the Petitioner filed the prescribed form before the CGRF seeking refund of money paid due to the wrong tariff being applied from 15.07.1998 onwards and the dispute was registered as case No. 02/2017. As things stood like this, the MESCOM issued a letter bearing No. 3487-90 dated 04.02.2017 unilaterally changing the Appellant's tariff to HT-2(c)(ii) and claimed the difference amount from the Appellant for bills raised between

May 2015 to February 2017 without intimating the Appellant or giving any opportunity to him.

- 20) Further it is submitted that, the CGRF passed orders dated 04.04.2017 holding that tariff HT-2(c)(i) would be applicable to the Appellant but with effect from 22.08.2014 and the excess amount collected due to application of higher tariff were to be refunded accordingly excluding the months of April 2015 to February 2017. Aggrieved by the said orders the Appellant had approached this Authority in accordance with the Regulation 21.02 of the KERC (CGRF & Ombudsman) Regulations, 2004. This Authority passed an order on 18.08.2017 upholding the orders of the CGRF. Being aggrieved by this Order the Appellant had approached Hon'ble High Court of Karnataka, through Writ Petition, in which the Hon'ble High Court was pleased to remand the matter to this Authority for fresh disposal.
- 21) Further it is stated during the year 1993 itself the Appellant had furnished all necessary documents showing that the Appellant Trust is a charitable Trust. The Respondents were fully aware of this fact. The findings that, the date 22.08.2014 is the relevant date for application of the concessional tariff is without basis. A reading of Regulation 30.01 of the KEB (Electricity Supply)

Regulations 1988, would show that the KEB was ought to collect charges as per the tariff in force. The KEB and thereafter MESCOM had been collecting the charges at a far higher rate than the tariff in force and applicable to the Appellant.

- 22) A reading of the conditions 3.03 and 3.04 of Conditions of Supply of Electricity of the Distributions Licensees in the State of Karnataka make it clear that the Licensee has the power to classify and reclassify a consumer on its own accord. The Respondents had illegally reclassified the Appellant's tariff to HT-2(c)(ii) in 2017 which was set aside by CGRF. As such it was always within the Licensees power to apply the correct tariff to the Appellant even assuming that no request had been made. The erstwhile KEB and Respondents have failed to perform their duty in terms of the above.
- 23) It is settled position of law held in the judgements of (1) State of Karnataka and Another V/s All India Manufacturers Organization and Others reported in (2006) 4 SCC 683 at Para No. 60, and (2) Dwarkadas Marfatia and Sons V/s Board of Trustees of the port of Bombay reported in (1989) 3 SCC 293 at Para Nos. 23 & 24, that the State and its corporations must act fairly without arbitrariness and not whimsically. Further in the case of

(3) Biman Krishna Bose V/s United India Insurance Company Limited and Another reported in (2001) 6 SCC 477 at Para No. 3 it has been held that the State ought not to act arbitrarily in contractual matters. In the case of (4) Indian Council for Enviro Legal Action V/s Union of India and Others reported in (2011) 8 SCC 161, in this judgement 'unjust enrichment' has been defined by the Court at Para No. 151 to 156. All these judgements are applicable to the case on hand because it is clear that despite being entitled to benefit and the same being within the power of Respondents they have not acted fairly with the Appellants. The Respondents have unjustly enriched themselves at the benefit of the Appellant. Hence, this appeal is filed, the Learned Counsel prays to allow the appeal as prayed for in the interest of justice and equity.

24) During the course of arguments, the Learned Counsel for Respondents has submitted that the Consumer of HT-19 has not approached the Respondents Department to fix appropriate tariff since 28.05.1987 till 13.04.2014. Only on 14.04.2014 the consumer has requested to fix appropriate tariff applicable to the Appellant Trust, since it is a charitable Trust. Since the Licensee did not had the certificate issued by the Department of Income

Tax under Section 12(A) of the Income Tax Act to bill such installation to HT-2(a) it was not possible to change the tariff automatically. When the Appellant had approached with required documents along with the certificate issued by the Department of Income Tax, the 1st Respondent/AEE (Ele) taken up action and changed the tariff. Under these circumstances the allegations made by the Appellant are all false. The order passed by the CGRF/2nd Respondent dated 04.04.2017 is in accordance with law, thereby, interference of this Authority is not required, with this he prays to dismiss the appeal in the interest of justice and equity.

25) I have gone through the documents produced by the Appellant in detail. **Annexure-A** is the copy of the endorsement dated 16.01.1984 issued by Income Tax Officer, Bengaluru stating that Nanjappa Trust, Benakanahalli as constituted by the Trust Deed dated 20.10.1983 has filed the registration application under Section 12 (A) of the Income Tax Act, 1961 in the prescribed Form on 06.12.1983 i.e., within the stipulated time limit. Further it appears that the application has been entered at No. Trust/718/10A/Vol. B II N 62 in the Register of applications under Section 12AA maintained in this office.

- 26) **Annexure-B** is the xerox copy of the letter appears to be written by the Appellant dated 03.08.1993 to the AEE (Ele.), KEB, Shivamogga with a request the Appellant Trust comes under the group Tariff Schedule HT-2(a) and not under Tariff HT-2(b), therefore, Appellant requests to recalculate all the previous bills and refund the excess amount claimed. **Annexure-C** is the reply dated 10.08.1993 given by AEE (Ele.), KEB, Shivamogga to the letter (Annexure-B) of the Appellant, stating that “as per Electric Power Tariff of 1990 effective from September 1990 HT-2(a) Tariff is applicable to Government Hospitals only, the private nursing homes and hospitals are categorized under HT-2(b) Tariff, there is no separate Tariff for private/Charitable Hospitals, thereby, the bills preferred in respect of installation are in accordance with prevailing tariff rates and in order”.
- 27) **Annexure-D & E** are the xerox copies of the Writ Petition in WP No. 36726/1993 and orders dated 16.06.1997. The Writ Petition filed by the Appellant against KEB and Another which came to be dismissed. In that order the Hon’ble High Court of Karnataka was pleased to observe that as “the Learned Counsel for the Petitioner attempted to advance an argument by comparing the categorization followed under Tariff schedule LT-2(a) and LT-

2(b) with Tariff Schedule HT-2(a) and HT-2(b). There is no basis for such comparison, when tariff schedule HT-2(a) and 2(b) are specific and clear” and finally was pleased to dismiss the Writ Petition.

- 28) **Annexure-G** is a copy of the letter written by Appellant on 14.04.2014 to the AEE (Ele), MESCOM, Shivamogga with a request to revise/rectify monthly electricity consumption bills pertaining to installation bearing RR No. HT-19. **Annexure-H** is the copy of the letter written by Appellant to AEE (Ele), O & M City Sub division-1, MESCOM, Shivamogga with a request to change the billing tariff to HT-2(c)(i) from HT-2(c)(ii) and also for payment of interest on Security Deposit. **Annexure-J** is a copy of the letter written by AEE (Ele) O & M City Sub Division-1, MESCOM, Shivamogga to the Appellant dated 07.04.2015 stating that given instructions to issue bills pertaining to the installations bearing Nos. HT-19 and HT-68 at the tariff fixed for Charitable Institutions.
- 29) **Annexure-K** is a copy of the complaint given by the Appellant to the Chairman, KERC. **Annexure-L** is the copy of the letter written by Electricity Ombudsman dated 12.08.2016 to the CGRF/2nd Respondent. **Annexure-M** is the copy of the Form-A

furnished to the CGRF/2nd Respondent. **Annexure-N** is the copy of the notice written by Respondent No. 1/AEE (Ele) O & M City Sub Division-1, MESCOM, Shivamogga to the Appellant dated 04.02.2017 demanding for payment of BBC of Rs. 10,95,345/-.

Annexure-P is the copy of the order passed by the Respondent No. 2/CGRF in case No. 02/2017 dated 04.04.2017. **Annexure-Q** is the xerox copy of the Form-B filed before this Authority.

Annexure-R is the xerox copy of the order dated 18.08.2017.

30) The Respondent has produced a copy of the letter written by the Appellant to the AEE (Ele), City Sub Division-1, MESCOM, Shivamogga dated 14.04.2014 with a request to issue revised bill to the installation HT-19 and a copy of the order passed by the 2nd Respondent/CGRF dated 04.04.2017.

31) The Appellant has also produced certain documents along with Form 'B' filed before this Authority i.e., the copy of the certificate of registration dated 05.08.2014 issued under Section 12A of the Income Tax Act, and another document i.e., a notification dated 27.12.2007 issued by the Registrar Rajiv Gandhi University of Health Sciences stating that on 18.12.2007 Rajiv Gandhi University of Health Sciences, Karnataka grants permission to change the name of Amruth College of Nursing,

Shivamogga to Nanjappa Institute of Nursing Sciences, Shivamogga subject to the approval of GOK & KNC. The other documents i.e., the letters written by the Appellant dated 30.09.2016 to the Chairman, KERC with regard to grievance before Redressal Forum regarding wrong application of tariff to the installation bearing RR No. HT-19 and HT-68 with a request to refund excess amount collected. And letter written by Chief Accounts Officer, MESCOM, Mangaluru dated 04.10.2016 to the Superintending Engineer (Ele), O & M Circle, MESCOM in which it is stated that after verifying the report dated 06.09.2016 there is no provision to extend concessional tariff to the installations bearing RR Nos. HT-19 & HT-68 applicable to Charitable Institutions.

- 32) After perusal of the entire records keenly and after hearing parties to the appeal, I would like to take up the admitted facts at first. The Appellant is a Trust, on an application he was sanctioned power supply to an extent of 100 KVA in the year 1987 under HT-2(b) Tariff. Thereafter, an additional 50 KVA was also sanctioned on 06.09.2009 under the same tariff. Thereafter, the Appellant has requested through a letter dated 03.08.1993 with the Respondent Company to charge the tariff as per Tariff

Schedule HT-2(a), but his request is not accepted by the Respondent Company. Feeling aggrieved the Appellant has approached the Hon'ble High Court of Karnataka in WP No. 36726/1993 for declaration to declare the Appellant Trust is a Charitable Trust, thereby, Tariff Schedule HT-2(a) is applicable. However, after hearing both the parties the Hon'ble High Court of Karnataka was pleased to dismiss the Writ Petition by an order dated 16.06.1997 holding that no merits in the contents of the Petition. It appears that, this order is not challenged by the Appellant, hence it remained unchallenged.

- 33) The only dispute pending between the parties is that, according to the Appellant/Consumer, the 2nd Respondent/CGRF has not considered the request of the Appellant while passing impugned orders in fixing the tariff from HT-2(c)(ii) to HT-2(c)(i) to the installation bearing RR No. HT-19 as prayed by the Appellant from July 1998 to 21.08.2014. Since the Appellant Trust is constituted in the year 1983 by the Trust Deed and also filed application for registration under the provisions of Income Tax, the Respondent Company has to fix the tariff rate as per the Tariff Orders issued by Karnataka Electricity Board, Electric Power Tariff, 1998, under Tariff Schedule HT-2(a) {now HT-2(c)(i)} to

the installation bearing RR No. HT-19, as applicable to the Hospitals run by a Charitable Trust with effect from July 1998 by granting equitable interest on excess amount so collected and refund the amount with interest as per S & D code 29.08.

34) The contention of the Respondent Company is that, the Appellant has not provided the registration certificate issued by the Department of Income Tax under Section 12A of the Income Tax Act 1961 prior to 2014. Without receiving the said certificate from the Consumer, there was no provision to the Respondent Company to change the tariff as contended by the Appellant. The Appellant has produced the said certificate in the month of August 2014 which was considered and the tariff has been changed. Hence there is no fault on the part of the Respondent Company because it has acted as per the guidelines given by the Tariff Order 2013 of MESCOM issued by KERC.

35) Now this Authority has to decide on the basis of the available copies of the documents produced by the parties, whether the Respondent Company ought to have applied Tariff to the Appellant Trust as applicable to the Hospitals run by Charitable Institutions automatically without receiving any application or request from the Consumer, or is it duty of the Appellant Trust

that, to apply before Respondent Company with a request to fix applicable tariff by producing relevant documents including registration certificate issued by Department of Income Tax under Section 12A of the Income Tax Act and whether the impugned order passed by the 2nd Respondent/CGRF is in accordance with law or not.

36) The term 'Charitable Purpose' is defined as per Section 2(15) of Income Tax Act, which reads as follows: -

“Charitable Purpose”, includes relief of the poor, education (yoga), medical relief (preservation of environment including water sheds, forests and wild life and preservation of monuments or places or objects of artistic or historic interest) and the advancement of any other object of general public utility.

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce or business or any activity of rendering any service in relation to any trade, commerce or business, for a cess or fee or any other consideration, irrespective of the nature of use or application, or retention of the income from such activity unless,

- (i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility and*
- (ii) the aggregate receipts from such activity or activities during the previous year, do not exceed 20% of the total receipts, of the Trust or institution undertaking such activity or activities of that previous year.*

37) The provisions under Section 12AA and 12AB of the Income Tax Act, 1961 deals with procedure for registration and for fresh registration: -

Procedure for registration.

12AA. (1) *The Principal Commissioner or Commissioner, on receipt of an application for registration of a Trust or institution made under clause (a) or clause (aa) clause (ab) or sub-clause (1) of section 12A, shall-*

[(a) call for such documents or information from the Trust or institution as he thinks necessary in order to satisfy himself about, -

- (i) the genuineness of activities of the Trust or institution; and*
- (ii) the compliance of such requirements of any other law for the time being in force by the Trust or institution as are material for the purpose of achieving its objects, and may also make such inquiries as he may deem necessary in this behalf; and]*

(a) after satisfying himself about the objects of the Trust or institution and the genuineness of its activities ⁵⁵[as required under sub-clause (i) of clause (a) and compliance of the requirements under sub-clause (ii) of the said clause], he –

- (i) shall pass an order in writing registering the Trust or institution;*
- (ii) shall, if he is not so satisfied, pass an order in writing refusing to register the Trust or institution, and a copy of such order shall be sent to the applicant:*

Provided that no order under sub-clause (ii) shall be passed unless the applicant has been given a reasonable opportunity of being heard.

- (1A) *All applications, pending before the Principal Chief Commissioner or Chief Commissioner on which no order has been passed under clause (b) of sub-section (1) before the 1st day of June, 1999, shall stand transferred on that day to the Principal Commissioner or Commissioner and the Principal Commissioner or Commissioner may proceed with such applications under that sub-section from the stage at which they were on that day.*
- (2) *Every order granting or refusing registration under clause (b) of sub-section (1) shall be passed before the expiry of six months from the end of the month in which the application was received under clause (a) or clause (aa) or clause (ab) of sub-section (1) of section 12A.*
- (3) *Where a Trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A [as it stood before its amendment by the Finance No.2) Act, 1996 (33 of 1996)] and subsequently the Principal Commissioner or Commissioner is satisfied that the activities of such Trust or institution are not genuine or not being carried out in accordance with the objects of the Trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such Trust or institution:*

Provided that no order under this sub-section shall be passed unless such Trust or institution has been given a reasonable opportunity of being heard.

- (4) *Without prejudice to the provisions of sub-section (3), where a Trust or an institution has been granted registration under clause (b) of sub-section (1) or has obtained registration at any time under section 12A [as it stood before its*

amendment by the Finance (No. 2) Act, 1996 (33 of 1996)] and subsequently it is noticed that

- [(a) the activities of the Trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such Trust or institution due to operation of sub-section (1) of section 13; or*
- (b) the Trust or institution has not complied with the requirement of any other law, as referred to in sub-clause (ii) of clause (a) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality,*

then, the Principal Commissioner or the Commissioner may, by an order in writing, cancel the registration of such Trust or institution:]

Provided that the registration shall not be cancelled under this sub-section, if the Trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.

- [(5) Nothing contained in this section shall apply on or after the 1st day of April, 2021.]*

Procedure for fresh registration.

12AB. (1) *The Principal Commissioner or Commissioner, on receipt of an application made under clause (ac) of sub-section (1) of section 12A, shall, -*

- (a) where the application is made under sub-clause (i) of the said clause, pass an order in writing registering the Trust or institution for a period of five years;*
- (b) where the application is made under sub-clause (ii) or sub-clause (iii) or sub-clause(iv) or sub-clause (v) of the said clause, -*
 - (i) call for such documents or information from the Trust or institution or make such*

inquiries as he thinks necessary in order to satisfy himself about-

- (A) the genuineness of activities of the Trust or institution: and*
 - (B) the compliance of such requirements of any other law for the time being in force by the Trust or institution as are material for the purpose of achieving its objects:*
- (ii) after satisfying himself about the objects of the Trust or institution and the genuineness of its activities under item (a) and compliance of the requirements under item (B), of sub-clause (i), -*
- (A) pass an order in writing registering the Trust or institution for a period of five years; or*
 - (B) if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable opportunity of being heard:*
 - (c) where the application is made under sub-clause (vi) of the said clause, pass an order in writing provisionally registering the Trust or institution for a period of three years from the assessment year from which the registration is sought.*

and sent a copy of such order to the Trust or institution.

- (2) All applications, pending before the Principal Commissioner or Commissioner on which no order has been passed under clause (b) of sub-section (1) of section 12AA before the date on which this section has come into force, shall be deemed to be applications made under sub-clause (vi) of clause (ac) of sub-section (1) of section 12A on that date.*

- (3) *The order under clause (a), sub-clause (ii) of clause (b) and clause (c), of sub-section (1) shall be passed, in such form and manner as may be prescribed, before expiry of the period of three months, six months and one month, respectively, calculated from the end of the month in which the application was received.*
- (4) *Where registration of a Trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, the Principal Commissioner and Commissioner is satisfied that the activities of such Trust or institution are not genuine or are not being carried out in accordance with the objects of the Trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such Trust or institution after affording a reasonable opportunity of being heard.*
- (5) *Without prejudice to the provisions of sub-clause (4), where registration of a Trust or an institution has been granted under clause (a) or clause (b) of sub-section (1) and subsequently, it is noticed that*
-
- (a) the activities of the Trust or the institution are being carried out in a manner that the provisions of sections 11 and 12 do not apply to exclude either whole or any part of the income of such Trust or institution due to operation of sub-section (1) of section 13; or*
 - (b) the Trust or institution has not complied with the requirement of any other law, as referred to in item (B) of sub-clause (i) of clause (b) of sub-section (1), and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.*

Then the Principal Commissioner or the Commissioner may, by an order in writing, after affording a reasonable opportunity of being

heard, cancel the registration of such Trust or institution.]

- 38) As per the above provisions any voluntary contributions received by a Trust created wholly for Charitable or Religious purpose, shall for the purpose of Section 11 of Income Tax Act can be deemed to be income derived from property held under the Trust wholly for Charitable or Religious purposes.
- 39) To create a Charitable Trust there shall be registered Trust Deed having its own Bank account including PAN and shall have bye-laws narrating its activities. Thereafter, the Trust shall apply for registration before the Principal Commissioner/Commissioner of Income Tax under Section 12A of the Act in the prescribed Form and also within scheduled time. The Commissioner concerned after verifying all this, if satisfied, issues the certificate of registration under the provisions of Income Tax prevailed time to time for a specific period and the same shall be subject to renewable as provided under Law.
- 40) The provisions under General Terms and Conditions of Tariff applicable to both HT & LT in No. 25 issued by the Karnataka Electricity Regulatory Commission in Electricity Tariff 2014 of MESCOM (in Annexure III Page 200, KERC Order dated 06.05.2013) reads as follows: -

“25. Whether an Institution availing Power supply can be considered as charitable or not will be decided by the Licensee on the production of certificate Form-12 A from the Income Tax Department.”

- 41) As per above provisions, it is the responsibility of the Licensee to fix the tariff to an institution running under Charitable Trust after due verification of the relevant documents, activities of the Trust as well the certificate of registration issued under Section 12A of the Income Tax Act by the Department of Income Tax.
- 42) Hence the Consumer who is claiming an institution running under Charitable Trust, after obtaining the certificate of registration from the Department of Income Tax under the relevant provisions of the Act, has to apply along with certificate of registration before the Respondent Company with a request to fix the tariff as per the prevailing tariff order. After receiving such application from the Consumer along with required documents including certificate of registration, the Licensee has to act as per General Terms and Conditions of Tariff applicable to both HT & LT in No. 25 issued by the Karnataka Electricity Regulatory Commission in Electricity Tariff 2014 of MESCOM (in Annexure III Page 200, KERC Order dated 06.05.2013 and fix the tariff applicable. It is the procedure to be followed by the

Respondent Company. Hence, the Respondent Company/
Licensee cannot fix the tariff automatically without request/
application made by the Consumer/Appellant Trust falling under
Charitable Institutions.

- 43) In the present case on hand, the Appellant has mainly relied upon Annexure-A, stating in the index particulars that as, it is a true copy of certificate dated 16.01.1984 issued by the Income Tax Officer, Office of the Commissioner of the Income Tax.
- 44) On perusal of this document (it is a xerox copy not fully legible), appears that the Appellant/Nanjappa Trust, Benakanahalli as constituted by the Trust Deed dated 20.10.1983 has filed an application for registration on 06.12.1983 under Section 12A of the Income Tax Act. Further it appears that the said application is in within stipulated time and it is entered in the register of applications maintained under Section 12A in the Office of the Income Tax at No. Trust/718/10A/Vol. B II N 62. This means Annexure-A is not a certificate of registration issued by the Department of Income Tax under Section 12A of the Income Tax Act. It is just an endorsement showing for having received an application submitted by the Appellant Trust, which is duly entered into the register kept for this purpose by the office of the

Income Tax. Hence the contention of the Counsel for the Appellant that, he had obtained the certificate of registration in the year 1983 only, which is in Annexure-A cannot be accepted.

- 45) Added to this the Appellant has produced copy of the certificate dated 05.08.2014 (along with Form-B before this Authority) issued by the Assistant Commissioner of Income Tax, Circle-1, Shivamogga which states that the certificate is issued as per the request of M/s Nanjappa Trust vide its letter dated 08.05.2014. Further it states that the certificate issued to facilitate the Trust to provide the same to several Government Agencies and Corporations who seek clarification. Further it is stated the Trust is running under PAN of Nanjappa Trust (a) Nanjappa Hospital (b) Nanjappa Life Care (c) Nanjappa Institute of Nursing Sciences. Basing on this document the 2nd Respondent/CGRF has passed impugned orders and the 1st Respondent has acted upon it.
- 46) During the course of the arguments, the Learned Counsel of the Appellant has relied upon the Tariff Schedule HT-2(a) issued by Electric Power Tariff, 1998, Karnataka Electricity Board and submitted the Hospitals run by Charitable Institutions and the ESI Hospitals come under Tariff Schedule HT-2(a), thereby, he is

entitled for the Tariff from the year 1998 till 2014 as claimed in the appeal.

- 47) I have perused Tariff Schedule HT-2 issued by Electric Power Tariff, 1998 KEB, which reads as under: -

TARIFF SCHEDULE HT-2

(Industrial, Non-industrial, Non-Commercial & Commercial)

TARIFF SCHEDULE HT-2(a)

(Industrial, Non-Industrial, Non-commercial)

APPLICABLE to Industries, Factories, Workshops, Universities, Educational Institutions belonging to Govt., Local Bodies and Aided Institutions, Research & Development Centres, Estates, Milk Diaries, Rice Mills, Phova Mills, Roller Flour Mills, News Papers, Printing Press, Railway Workshops/KSRTC Workshops/Depots, Crematoriums, Cold storage, Ice & Ice cream mfg Units, Swimming Pools of local bodies, Power Supply Installations of K.I.A.D.B. and other Industries, All Establishments. Hatcheries, Poultry Farm, Museum, Agriculture, Green House, Bio Technical Laboratory, Hybrid Seeds Processing Units, Stone Crushers, Bakery Product Manufacturing Units, Mysore Palace illumination, Film Studios, Dubbing Theatres, Processing, Printing, Developing and Recording Theatres, Tissue Culture, Aqua Culture, Prawn Culture, Information Technology Industries engaged in development of Hardware & Software, Drug Mfg Units, Garment Mfg Units, Tyre retreading units, Hospitals run by Charitable Institutions & ESI Hospitals, Nuclear Power Projects. Stadium maintained by Govt. and local bodies.

It is true that as per Tariff 1998 issued by KEB the Hospitals run by Charitable Institutions fall under Tariff Schedule HT-2(a). This fact is not disputed by the 1st Respondent during course of arguments.

48) In support of arguments, the Learned Counsel for the Appellant, has relied upon a copy of the letter (Annexure-B) dated 03.08.1993. On perusal of this document, it appears that the Appellant Trust has requested the 1st Respondent stating that the Appellant is running the Hospital under the definition of 'Charitable purpose' as defined under Section 2(15) of the Income Tax Act, 1961. Thereby, Appellant comes under the group tariff schedule HT-2(a) and not under tariff HT-2(b). Further this document shows that the Appellant Trust had enclosed copy of the Trust Deed, copy of the certificate issued by District Magistrate, Shivamogga treating the Hospital as a Charitable Trust. However, these documents are not produced before this Authority. Apart from that the Respondent Company has given reply (Annexure-C) to the Appellant Trust. Against which, the Appellant has preferred a Petition before the Hon'ble High Court of Karnataka in WP No. 36726/1993 (Annexure-E)

the Hon'ble High Court was pleased to dismiss the Petition by passing orders dated 16.06.1997.

- 49) Further it appears from the records that, after dismissal of Writ Petition in WP No. 36726/1993, and after issuing Electric Power Tariff 1998 by KEB, the Appellant has not approached any Competent Court of Law/Authority, in this regard until filing a Complaint before the 2nd Respondent/CGRF. Even on perusal of the copies of the documents available in this appeal produced by the Appellant, the Appellant Trust has not produced certificate of registration issued by Department of Income Tax in between the period i.e., from 1998 to 2013 under Section 12A or any other relevant provisions under Income Tax Act, except the certificate of registration dated 05.08.2014 along with Form-B. Thereby, the arguments addressed by the Learned Counsel for the Appellant that the 2nd Respondent has not considered his prayer fully as prayed in the complaint cannot be accepted.
- 50) On perusal of Tariff Order 2013 of MESCOM issued by KERC, in Chapter 1, it is stated that the MESCOM is a distribution Licensee under Section 14 of the Electricity Act, 2003, is responsible for purchase of power, distribution and retail supply

of electricity to its consumers in its area of operation. The MESCOM has commenced its operation from 1st June 2002.

- 51) As per Tariff Order MESCOM, KERC in Chapter No. 6 Determination of Tariff for FY-2014, in No. 13 HT-2(c) applicable to Hospitals and Educational Institutions reads as follows: -

“During the public hearing representations have been received to provide electricity to Hospitals/Educational Institutions at lower rates as they are catering to the health care/educational needs of the society. Considering these aspects, the Commission decides to introduce a new tariff category for all hospitals and educational institutions in the HT category.....”

This shows the Tariff HT-2(c)(i) is applicable to the Government Hospitals and Hospitals run by Charitable Institutions is from 2013, when KERC has received public representations in this regard. By applying this provision and also basing upon the documents produced by the Appellant, the 2nd Respondent/CGRF has passed impugned orders which is in accordance with law.

- 52) During the course of arguments, the Learned Counsel for the Appellant relied upon the decisions reported in: -
- a. State of Karnataka and Another V/s All India Manufacturers Organization and Others reported in (2006) 4 SCC 683.

- b. Dwarkadas Marfatia and Sons V/s Board of Trustees of the port of Bombay reported in (1989) 3 SCC 293.
- c. Biman Krishna Bose V/s United India Insurance Company Limited and Another reported in (2001) 6 SCC 477 at Para No. 3.
- d. Indian Council for Enviro Legal Action V/s Union of India and Others reported in (2011) 8 SCC 161.

and submitted that in an area of Contractual relations, the State and its instrumentalities are enjoyed with the obligations to act with fairness and in doing so, can take into consideration only the relevant materials, they must not take any irrelevant and extraneous consideration while arriving at decision. Arbitrariness should not appear in their actions or decisions. As per the findings of the Hon'ble Supreme Court, it is clear the Respondents despite knowing that the Appellant Trust comes under Charitable Institution has not opted fairly and they have unjustly enriched themselves at the benefit of the Appellant.

53) In my humble view, the judgements relied by the Learned Counsel for the Appellant are not helpful to the case on hand, as because it is the only contention of the Respondent Company/Licensee that the Appellant had not furnished

registration certificate issued by the Department of Income Tax under Section 12A of the Income Tax Act prior to 2014. If the Appellant Trust would have furnished such certificate for the period from 1998 to 2013 the Licensee would have taken into consideration to apply tariff as provided under tariff order from time to time. It is seen that even till date except Annexure-A the Appellant Trust had not furnished certificate of registration as required under General Terms and Conditions No. 25 as referred supra. Thereby, the Appellant Trust cannot take shelter under the judgements passed by the Hon'ble Supreme Court because they are not helpful to the present case on hand. However, the 2nd Respondent has considered the certificate of registration dated 05.08.2014 and passed orders. Under these circumstances as per the discussion made herein above, I am of the firm opinion that the order passed by the 2nd Respondent is in accordance with law which do not call for interference by this Authority. Hence, I answer Point No. 1 in Negative.

- 54) **Point No. 2:** - As per the discussions made herein above in Point No. 1, I proceed to pass the following order: -

O R D E R

No. OMB/M/G-285/2017/D-17

Dated: 16-03-2022

The appeal filed by the Appellant/Complainant under Regulation 21.2 of KERC (Consumer Grievance Redressal Forum & Ombudsman) Regulations 2004 is hereby dismissed.

The order passed by the 2nd Respondent in case No. 02/2017 dated 04.04.2017 is hereby confirmed.

Sd/-
(R. Sharada)
Electricity Ombudsman.

- 1) Nanjappa Trust,
No. 660, Kuvempu Road,
Shivamogga-577201.
- 2) M/s King & Partridge,
Advocates,
48, Lavelle Road,
Bengaluru-560 001.
- 3) The Assistant Executive Engineer (Elec.),
O & M City Sub Division-1, MESCOM,
Sivamogga.
- 4) Sri H.V. Devaraju, Advocate,
A-202, "Brigade Magestic",
2nd Floor, 'A' Block, 25, Kalidasa Marga,
Gandhinagar,
Bengaluru-560009.
- 5) Chairperson,
Consumer Grievance Redressal Forum/(CGRF)
O & M Circle, MESCOM,
Near Railway Station, P.B. No. 49,
Shivamoga.
- 6) PS to Hon'ble Chairman, KERC
- 7) PS to Hon'ble Member (M), KERC
- 8) PS to Hon'ble Member (R), KERC
- 9) PA to Secretary, KERC.