IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

CORAM:

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.35409 of 2003 and
W.M.P.43036 of 2003 and
W.V.M.P.No.10 of 2013

M/s.Saveetha Medical and Educational Trust.
No.112, Poonamallee High Road,
Velappan Chavadi,
Chennai - 77 Rep - by
the President. ... Petitioner

vs.

1. Tamilnadu Electricity Board
Rep. By the Additional Chief Engineer,
CEDC/West.
P.B.No.7350,
33/11 KV Thirumangalam,
SS Complex,
Chennai - 40.

2. The Superintending Engineer/CEDC/West,
P.B.No.7350,
33/11, K.V.Thirumangalam,
SS Complex,
Anna Nagar,
Chennai - 40.

3. The Accounts Officer,
Chennai (West) Circle,
TNEB,
Thirumangalam,
Chennai - 40. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records on the file of the respondents 1,2 and 3 in connection with the orders passed by them in Lr.No.ACE/CEDC/W/AO/AS/HT/SC.NO.1633/D.2157/2003, dt.27.11.03 of the first respondent. Lr.No.ACE/CEDC/W/AO/HT S/C NO.1633/D.2137/2003 dated 25.11.03 of the first respondent and Lr.No.SE/CEDC/W AO/AS/A4/HT S/C NO.1633/D 1886/2003 dated 16.10.2003 of the second respondent and also the bill issued by the 3rd respondent for the service No.1633 in Bill No.1633 dated 29.11.03 and quash the same and direct the respondents to classify and fix the Electricity charges under Tariff MT-II.

For Petitioner : Mr.S.Saravanan
For Respondents : Mr.P.R.Dhilip Kumar

ORDER

This writ petition has been filed to call for the records on the file of the respondents 1,2 and 3 in connection with the orders passed by them Lr.No.ACE/CEDC/W/AO/AS/HT/SC.NO.1633/D.2157/2003, dt.27.11.03 of the first respondent. Lr.No.ACE/CEDC/W/AO/HT S/C NO.1633/D.2137/2003 dated 25.11.03 of the first respondent and Lr.No.SE/CEDC/W AO/AS/A4/HT S/C NO.1633/D 1886/2003 dated 16.10.2003 of the second respondent and also the bill issued by the 3rd respondent for the service No.1633 in Bill No.1633 dated 29.11.03 and quash the same and direct the respondents to classify and fix the Electricity charges under Tariff MT-II.

2. The petitioner submitted that in terms of G.O.(Ms). No.17, Energy Department, dated 14.02.1997, all the recognised educational institutions, hostels run by the recognised educational institutions, Government Hospitals under the control of Panchayat Unions, Municipalities or Corporations, Veterinary Hospitals, etc., have been directed to pay the bills under Tariff II and hospitals attached to the self-financing Medical Colleges are to be charged under HT Tariff-III .

3. The learned counsel for the petitioner submitted that petitioner-educational Trust was brought under Tariff III with effect from 03.07.1998 and he further submitted that the clarification was issued the Electricity Board on 04.07.2002 stating that the Tariff under notification mentioned supra regarding HT Tariff II and III for the hospitals attached to the recognised self-financing Medical Colleges are to be charged under HT Tariff-III only. According to the petitioner, the clarification came into force only on 04.07.2002 and the same cannot be extended to the petitioner retrospectively. That apart, there was no Medical College-cum-Hospital till 2000 and hence, demanding the amount from 1988 is illegal and that the petitioner was unnecessarily charged with the said Tariff when the institutions-cum-hospital were not there. It is further submitted that the said G.O. is silent with regard to the applicability of the tariff to the medical college-cum-hospital and the respondents cannot unilaterally extend the same to the petitioner's institution. Finally, the learned counsel submitted that even assuming for the sake of argument that the respondents are demanding the amount, they can do it only from the year 2000 and apart from that, no opportunity has been given

and no details of break-up as to how they have arrived at the figure of Rs.45,84,225/- has been produced.

4. Per contra, learned counsel for the respondents would submit that the College was in existence on the date of issuance of the said G..O. and that the petitioner has agreed to pay the amount demanded in 10 instalments. The respondents permitted the petitioner to pay the amount in two months. The leanred counsel for the petitioner is erroneously contending that the petitioner is liable to pay HT Tariff II till the date of issuance of clarification and only after the issuance of the said clarification, the petitioner is liable to pay the amount. Learned counsel for the respondents further submitted that the petitioner started paying the Electricity consumption charges under HT Tariff III after filing of this Writ petition, namely in the year 2003 and the arrears amount alone from 1998 till the date of interim order has got to be paid. It is further submitted that after arriving at the amount due and payable by petitioner, the demand has been made and however, the Electricity Board has no objection in issuing the break-up statement.

5. In reply, learned counsel for the petitioner reiterated the contentions and submitted that no amount much less the amount demanded, can be asked to be paid, as there is fault on the part of the petitioner. The petitioner has never started paying the amount in installments and also it is the unilateral clarification issued by the Electricity Board mentioning the Tariff III to self financing institutions-cum-hospitals.

6.Heard both sides and perused the materials available on record.

7. It is not in dispute that there was a demand for payment of the amount from 1998 based on the said G.O. and that the Electricity Board has bifurcated the HT consumption into two different categories, namely HT Tariff-II and III respectively. The relevant portion of the G.O mentioned supra and the applicability of the same to the educational institutions, including commercial tariff, are mentioned in the said G.O., which reads as follows:

> HIGH TENSION TARIFF-II
>
> Recognised educational institutions, hostels run by recognised educational institutions, Government Hospitals under the control of Panchayat Unions, Municipalities or Corporations, Veterinary Hospitals, Leprosy sub-centres, Primary Health Centres, Health sub-centres, actual places of public workship, orphanages, Public Libraries, Water Works, Public

lighting, Public Sewerage works by Government/Local bodies Laboratories, Research Institutes, Studies, Cinema, Theatres and such other Institutions declared by the Government from time to time.

Area (1)	Rate per Unit (2)	Rate per KVA of maximum demand per month (3)
	(in paise)	(in Rupees)
Chennai Metropolitan	220	100
Non-Metropolitan	210	100

In the case of supply under High Tension Tariff II the usage of Electricity for bonafide purposes of lighting, heating and power loads in the residential quarters within the factory or in the estate premises shall be metered separately by the consumer, taking High Tension Supply and aid for to the Board at Low Tension Tariff I A. The units so metered shall be deducted from the total number of units registered in the main meter of the High Tension Supply for hilling purposes.

HIGH TENSION TARIFF. III

i) Commercial and all categories of consumers not covered under High TensionTariff I, II, IV and V.

Area (1)	Rate per KWH (2)	Rate per KVA of maximum demand per month (2)
	(in paise)	(in Rupees)
Chennai Metropolitan	300	150
Non-Metropolitan	290	150

ii) In the case of supply under High Tension Tariff III, the usage electricity for bonafide purposes of lighting heating and power loads in the residential quarters within the factory or in the estate premises shall be metered separately by the consumer, taking High Tension supply and paid for to the Board at Low Tension Tariff IA. The units so metered shall be deducted from the total number of units registered in the main meter of the High Tension supply for billing purposes.

Provided that the industries requiring High Tension supply during construction period shall be charged under this tariff.

New Tourism Projects set up in any area on or after, 15th Feb.1997 shall not be eligible for any tariff concession.

Provided that the New Tourism Projects setup before 15th February 1997 and availing them tariff concession shall continue to avail themselves of the said tariff concession until the expiry of the period of three years from the date the consumer is given service connection on."

8. The contention of the petitioner is that nowhere the G.O. mentions about the educational Institutions in Tariff III and hence the petitioner's institutions will be covered only under HT Tariff II. This may be correct, provided it is only the educational institution. In case of educational institutions running the hospital, definitely it falls under commercial tariff, mentioned in HT Tariff-III. There is no need that each and every industry/institutions have got to be mentioned in the G.O. In respect of the categories that are not falling under HT Tariff II, if commercial activities fall, automatically, it will fall under HT Tariff III. This has been specifically mentioned in the said G.O. stating the commercial and all other categories of consumers which are not covered under HT-I, II, IV and V, will fall under HT-Tariff III. Not even there is an iotal of evidence produced before this Court to show that that there was only medical college prior to 2000 and that the petitioner came into existence only in 2000. There is no pleading to that effect and no document has been produced this Court for the same. The contention that payment to be made 10 installments covered under letter dated 16.10.2003, does not bear the signature of the TNEB authority, asking the petitioner to pay the amount in 10 installments, has go to be brushed aside, cannot be accepted. There is no reason for the respondents to give time to pay the amount. If the petitioner is not happy with the payment of amount in 10 installments, naturally the same has got to be paid on the date specified for the payment of Electricity charges.

9. The contention that Saveetha Medical College Hospital is doing service and it is a charitable trust, cannot be accepted, as there is no plea to that effect. That apart, when the G.O

was passed in 1997, it is presumed that the educational institutions may not be commercial and that is why it has been brought under the HT Tariff II. After 20 years of issuance of the said G.O., now it is crystal clear that even the educational institutions have got to be brought under commercial tariff, however, this court is not inclined to make any comments or suggest that the tariff should be changed to Tariff III.

10. As Saveetha Medical College Educational Institution's Trust is a commercial establishment failing under HT Tariff III, they are bound to pay the amount as demanded by the respondents. Admittedly, since there is no calculation statement given to the petitioner to ascertain the correctness of the same and pay the amount, this Court directs the respondents-TNEB to give a calculation statement to the petitioner within a period of 15 days from the date of receipt of a copy of this order. Without waiting for such a statement from the Electricity Board, the petitioner-Trust is directed to deposit 50% of the amount demanded by the respondents and after scrutinising the said calculation statement to be given and sorting out the discrepancies if any, the remaining amount of 50% of the demanded amount shall be paid within a period of 3 installments from the date of receipt of such calculation statement.

11. With the above observations and directions, the Writ Petition is disposed of. No costs. The Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To:
1. The Additional Chief Engineer,
Tamilnadu Electricity Board
CEDC/West.
P.B.No.7350,
33/11 KV Thirumangalam,
SS Complex, Chennai - 40.

2. The Superintending Engineer/CEDC/West,
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3. The Accounts Officer,
Chennai (West) Circle,
TNEB,
Thirumangalam,
Chennai - 40.

+1 cc to M/s.Saravanan Advocate sr 54209
+1 cc to Mr.P.R.Dhilipkumar Advocate sr 53929

W.P.No.35409 of 2003

kj(co)
aa3/10/2017