IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.11.2022

Pronounced on : 12.01.2023

Coram

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. Nos.35372 of 2012 and 15620 of 2015
and M.P. Nos.1 of 2012 and 1, 2 of 2015

W.P.No.35372 of 2012:
P.S.G.Institute of Medical Sciences and Research,
(Institution under P.S.G & Sons Charities)
Represented by its Managing Trustee,
Post Box No.1674,
Peelamedu, Coimbatore-641 004. ...Petitioner

Vs.

The Superintending Engineer,
Coimbatore Electricity Distribution Circle,
Metro, (TANGEDCO)
Coimbatore-641 012. ... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the Respondent vide proceedings dated 30.11.2012 in Lr.No.SE/CEDC/M/CBE/DFC/AO/R/HT/F.PSG/D.No.215/12 and quash the same and consequently direct the Respondent to treat the petitioner institution under the category of HT Tariff II-B for levying the electricity consumption charges.

W.P.No.15620 of 2015:

Srinivasan Charitable and Educational Trust,
Represented by its Trustee,
274, Thuraiyur Road,
Perambalur- 621 212. ...Petitioner

Vs.

The Superintending Engineer,
Tamil Nadu General and Distribution Corporation Ltd.,
(TANGEDCO),
Perambalur Electricity Distribution Circle,
Perambalur. ...Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records of the Respondent in proceedings dated 07.05.2015 in Lr.No.SE/PEDC/PBLR/AO/RCS/AS/F.Sc.No.79/D.61/15, quash the same and consequently forbear the Respondent from applying any Tariff other than the Tariff prescribed for private educational institutions to the electricity H.T.Service connection no.79 obtained by the petitioner for use in the Medical College and Hospital.

For Petitioner : Mr.Abishek Jenasenan
in both W.Ps. for Mr.A.Jenasenan
Advocate

For Respondent : Mr.M.Abul Kalam
in both W.Ps. Standing Counsel

COMMON ORDER

There are two writ petitions filed by two Medical Institutions questioning the classification of the Teaching Hospital under Tariff III. It is submitted by the learned counsel for the petitioner as well as the Respondent that the issue raised in both the writ petitions are the same. Thus, both the writ petitions may be disposed by a common order. Though, the facts are not identical but the question raised being the same, this Court would refer to the facts in W.P.No.35372 of 2012 and the decision thereon would also bind the parties in the other writ petition viz., W.P.No.15620 of 2015.

2. W.P.No.35372 of 2012:

The Writ Petition in W.P.No.35372 of 2012 has been filed challenging the order of the respondent dated 30.11.2012 in Lr.No.SE/CEDC/M/CBE/DFC/AO/R/HT/ F.PSG/D.No.215/12, passed pursuant to the order of this Court in W.P.No.34073 of 2002 dated 27.03.2012. The Respondent vide impugned proceeding dated 30.11.2012 had concluded/ found after giving an opportunity of hearing to the petitioner, that the HT service connection No.63 is liable to be classified and charged under Tariff III from June 1993, in terms of Clause 25(3) of the Terms and

Conditions of Supply of Electricity Code.

ii) The petitioner is a public charitable Trust (hereinafter referred to as "First Trust") established in the year 1926 with the object of providing Educational Training and Research facilities in and around Coimbatore. The said Trust has established numerous Educational Institutions. The Government of Tamil Nadu in the year 1985 made a policy decision to grant permission to start new Private Medical Colleges in Tamil Nadu without any financial commitment to the Government. Pursuant to the above policy decision of the Government, the Trust applied for permission to start a private Medical College. The Government of Tamil Nadu vide G.O.Ms.No.1196 (Health and Family Welfare Department) dated 24.07.1985 permitted the petitioner and two others viz.,Sir Ramachandra College of Health Sciences, Madras and Raja Muthiah Institute of Health Sciences, Annamalainagar, South Arcot District, to start Medical College subject to certain conditions, which included that the Private Medical College should be in compliance with the relevant Regulations governing such Institutions and obtain appropriate sanction/ recognition from the

Medical Council of India.

iii) The petitioner had obtained two electricity Service Connections. The Low Tension Service Connection No.297 was for the requirement of the load feeding to the Medical College Hostel and effected on 07.01.1989. The High Tension SC No.63 for the combined load of Medical College and Teaching Hospital effected on 14.2.1991 with the sanctioned demand of 300 KVA. This initial demand has been subsequently increased to 800 KVA with effect from 18.11.2000. Further, based on the request of the consumer, the load has been reduced to 600 KVA from 9.7.2002 onwards.

iv) It is submitted that from the date of supply, the High tension SC No 63 was billed at HT Tariff II based on clarification issued by Member (Distribution) in Memo. No. 1204/IEMC/EET/AEE/AE2/93-2 dated 25.6.1993 a result of which, Self financing, Arts and Science & Medical Colleges recognized by the Government was billed at concessional HT Tariff II. This concessional HT Tariff II had been extended to the HT SC No.63 also from 7/1993 and continued until the Accountant General Audit Wing on auditing the High tension accounts for the Circle Office observed that the load/demand sanctioned and effected was predominantly for use in the Hospital i.e, more than 75% of the electricity supplied was consumed by the Hospital and only the rest was utilised by the College and other department including Hostel etc., It was thus pointed out by the Audit that the correct categorization as per Tariff orders to the consumer service connection in HT.Sc.No.63 ought to be HT Tariff III (Commercial) and not the concessional HT Tariff II.

v) Pursuant thereto, the petitioner received a communication from the Respondent dated 29.07.2002 altering the Tariff II to Tariff III (Commercial) in respect of HT.Sc.No.63. The above communication did not set-out any reason for the change in categorization. The petitioner challenged the same before this Court in W.P.No.34073 of 2002 and the same was disposed of by setting aside the said order as it was found to have been made in violation of principles of natural justice with liberty to the Respondent to proceed afresh after giving notice and an opportunity of personal hearing to the petitioner. The petitioner submitted a detailed representation to show that the Hospital was a part of the Medical College and ought not to be treated differently from the Institution/ College and thus the Commercial Tariff is not applicable in terms of HT.Sc.No.63 as well.

vi) However, the Respondent has passed the impugned order confirming the proposal on the premise that categorizing the Private Hospital attached to the Self-Financing Medical College is against Tariff Notifications issued from time to time. The mere fact that a Hospital may be a pre-condition/ pre-requisite for obtaining recognition or starting a Private Self Financing College in terms of Medical Council Regulations may have no bearing in determining the categorization/ classification of the Electricity service connection. It is this order which is under challenge in the present writ petition.

3. It is submitted by the learned counsel for the petitioner that the impugned order suffers from the following infirmities and thus liable to be set-aside:

a) As per the laws in force regulating medical education especially the Medical Council of India Act and the Establishment of New Medical

College, Regulations 2003, an Institution like the petitioner is required to comply with the requirements of Minimum Standard Requirement Regulations, 1999 of Medical Council of India, which includes *inter alia* a functional Teaching Hospital with specified number of beds for purposes of training the medical students. As a matter of fact, the faculty of the college also function as Doctors in the Hospital thereby extending the teaching experience to train students in the field of medicine. The Hospital is a Teaching hospital and a part and parcel of the Medical College and is being used as a training facility for the students studying in the college. The object behind setting up a hospital is to provide continuous training to medical students and to extend community service by rendering Medical service to the general public. In other words, in terms of the law in force governing Medical Education, an Institution like the petitioner which fundamentally comprises of a College supported by Research facilities, Hospital etc., is considered to be one single unit imparting Medical Education and cannot be dissected/ divided and treated as distinct units.

b) It is submitted that in the case of other Medical Colleges, the TNERC has held that the Teaching Hospitals ought to be treated as Medical

College/Institution and thus would be liable to be classified under Tariff II(A) and reliance was placed on the order of TNERC In M.P.No.27 of 2005 dated 04.04.2006 in support thereof.

4. To the contrary, the following submissions were made by the learned counsel for the Respondent:

i) That the Medical Council Regulations which may require a Teaching Hospital for the purpose of grant of recognition is under a different enactment dealing with different subject matter and thus may have no relevance in determining classification/ categorization of Electricity Consumption Tariff.

ii) That only 50% of the Hospital beds were meant for free patients who would be examined by the students (clinical material for the students). Thus, the remaining 50% of the patients are treated on commercial basis and are thus no different from any other independent Private Hospital, to such extent.

iii) That more than 75% of the load effected is being utilized for the Hospital and only the remaining 25% is utilized/ used by the College. In other words, the electricity supplied is predominantly used by the Hospital.

iv) That TANGEDCO is vested with the power to change/ alter a wrong classification/ categorization in terms of Clause 25.03 of the Terms and Conditions relating to supply of Electricity as per the provisions of Supply of Electrical Energy Act, 1978.

5. Heard both sides and perused the material on record.

6. I find that the impugned order has not examined the following aspects viz.,

i) Judgment of the Hon'ble Supreme Court in the case of ***Asim Kumar Bose vs. Union of India*** reported in ***(1983) 1 SCC 345***, wherein it was held as under:

"40.......... The submission overlooks the distinction between a teaching and a non-teaching hospital. There cannot be a medical college without a teaching hospital as its integral and inseparable part. ."

ii) The Orders of TNERC in the case of Sri Ramachandra Educational and Health Trust Vs. Tamil Nadu Electricity Board In M.P.No.27 of 2005 which has been extracted supra.

iii) The Minimum Standard Requirement Regulations, 1999, of

Medical Council of India, and its impact on the petitioner's claim which has been merely brushed aside by stating that those are conditions stipulated under a different enactment/ Regulations.

7. It appears that the impugned order has lost sight of the fact that compliance with the Minimum Standard Requirement Regulations, 1999, is a *sine qua non* even for the Medical Institution to exist and to ignore the same for the purposes of classification appears *prima facie* unsustainable. In view of the above, it appears to me that the classification of Teaching Hospital need to be examined keeping the above factors relevant for the purpose of classification/ categorisation of Tariff. The opinion expressed at the highest is only a *prima facie* view and the Respondents shall proceed to decide the matters on merit uninfluenced by the observations if any made.

8. Having concluded that the matter may have to be re-examined, it may be relevant to note that both the learned counsel for the petitioner and the Respondent in unison had submitted that the issue raised in W.P.No.35372 of 2012 and W.P.No.15620 of 2015 are similar. In view of the same, the impugned orders in both the writ petitions viz.,

Lr.No.SE/ CEDC/ M/ CBE/ DFC/ AO/ R/ HT/ F.PSG/ D.No.215/ 12 dated 30.11.2012 and Lr.No.SE/ PEDC/ PBLR/ AO/ RCS/ AS/ F.Sc.No.79/ D.61/ 15 dated 07.05.2015 are set-aside and remanded back to the Respondents to examine the issue of categorisation/ classification of Tariff after granting the petitioners in both the writ petitions, a reasonable opportunity of being heard. The Respondents concerned are directed to complete the above exercise within a period of eight (8) weeks from the date of receipt of a copy of this order.

9. With the above directions, both the writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

12.01.2023

Index: Yes/No
Speaking Order: Yes/No
Neutral Citation: Yes/No
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MOHAMMED SHAFFIQ, J.

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To:
1.The Superintending Engineer,
Coimbatore Electricity Distribution Circle,
Metro, (TANGEDCO) Coimbatore-641 012.

2.The Superintending Engineer,
Tamil Nadu General and Distribution Corporation Ltd.,
(TANGEDCO),
Perambalur Electricity Distribution Circle,
Perambalur.

Pre-delivery order in
W.P. Nos.35372 of 2012
and 15620 of 2015

12.01.2023