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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2024

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.3698 of 2024

and

W.M.P.Nos.4000, 4001 and 4003 of 2024

PSG Institute of Medical Sciences and Research
(an Institution under PSG & Sons Charitable),
Rep. by its Managing Trustee,
Post Box No.1674, Peelamedu,
Coimbatore – 641 004.

... Petitioner

Vs.

The Superintending Engineer,
CEDC/ Metro/ Coimbatore,
Tatabad, Coimbatore – 641 012.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in its order dated 08.08.2023 in reference Lr.No.SE/CEDC/M/CVE/DFC/AO/R/F.HT-063/D.No.308/2023 and order dated 10.01.2024 in reference Lr.No.SE/CEDC/M/CBE/DFC/AO/REV/AAO/HT/AS2/F.Court case/D.14/24, quash the same and consequently direct the respondent to apply only the tariff prescribed under Tariff II-A to the HT service connection no.63 availed by the petitioner.



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For Petitioner : Mr.Vijay Narayan, Senior Counsel
for Mr.Abishek Jenasen

For Respondent : Mr.P.Wilson, Senior Counsel
for Mr.L.Jai Venkatesh,
Standing Counsel for TANGEDCO

ORDER

The change of concession of HT Tariff II into HT Tariff III (commercial) is under challenge in the present Writ Petition.

2. The petitioner is the PSG Institute of Medical Sciences and Research. The issue mainly raised in the Writ Petition is as to whether the petitioner Institution is liable to pay HT Tariff-III (Commercial) for the Hospital attached with the Medical Institution or they are entitled to avail the benefit of the concessional charge of HT Tariff-II for the Medical Institutions as well as the Hospital attached with the Medical Institution.

3. The learned Senior Counsel, Mr.Vijay Narayan appearing on behalf of the writ petitioner would submit that the first Writ Petition filed by the writ petitioner in W.P.No.34073 of 2002 questioning the HT Tariff-III charged on the writ petitioner ended with an order of remand. Again the writ petitioner challenged the order passed by the respondent Board and the High



Court directed the Board to decide three issues viz., the orders of TNERC in the case of “***Sri Ramachandra Educational and Health Trust -vs- Tamil Nadu Electricity Board***” whether can be applied for the petitioner's institution, the Minimum Standard Requirement Regulations, 1999 of the Medical Council of India and its impact on the petitioner's claim, which has been merely brushed aside by stating that those are the conditions stipulated under different enactment regulations as the Judgement of the Hon'ble Supreme Court of India in the case of “***Dr.Asim Kumar Bose -vs- Union of India and others***” reported in (1983) 1 SCC 345.

4. The grievances of the writ petitioner is that the issue relating to the Sri Ramachandra Educational and Health Trust alone was considered by the Board authorities leaving the other issues directed to be determined. Thus, the present impugned order imposing HT Tariff-III is liable to be set aside.

5. Mr.Vijay Narayan, Learned Senior Counsel would contend that the Hospital attached with the Medical Institution is to be treated as an Educational Institution for all purposes. The issue is yet to be decided by the Tamil Nadu Electricity Regulatory Commission (hereinafter referred to as 'the TNERC' for short) and by the Courts. Therefore, the benefit extended to



Sri Ramachandra Medical College is to be extended to the writ petitioner till such time such issues are decided by the TNERC.

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6. The learned Senior Counsel, Mr.Wilson appearing on behalf of the respondent Board would oppose by stating that two issues directed to be determined are not directly connected with the tariff classification. In respect of Sri Ramachandra Medical College, the learned Senior Counsel has conceded by stating that it is an isolated case, where some concession has been granted and it is ought not to be. Therefore, the Board may re-consider and would take appropriate action to maintain uniformity in respect of the consumers falling under the commercial tariff i.e., HT Tariff-III.

7. The learned Senior Counsel, Mr.Wilson would further contend that the case of ***Sri Ramachandra Medical College*** has been adjudicated elaborately by the TNERC in the case of the ***Rajah Muthiah Charitable and Educational Trust -vs- Tamil Nadu Generation and Distribution Corporation Ltd.,*** wherein it has been adjudicated that the Government Order and the concession extended to Sri Ramachandra Medical College is not in consonance with the provisions of the Electricity Act, 2003 and the Tamil Nadu Electricity Supply Code. It was a concession extended and such



concession need not be extended to all, which would result in great financial loss to the Electricity Board. Thus, the said case cannot be cited as a precedent and already the TNERC has negatived the contention to adopt the Tariff applied to Sri Ramachandra Medical College and Research Institute.

8. Mr. Wilson, learned Senior Counsel would rely on Section 62 of the Electricity Act, 2003 which empowers the TNERC to determine the tariff. Under Section 62, the TNERC alone is competent to fix the tariff charges. In the present case, the TNERC has time again reiterated that the Educational Institutions and Hostels cannot be equated to the Hospitals being run by such institutions for commercially. Therefore, the Hospitals attached with the Educational Institutions operating commercially are liable to pay HT Tariff-III, as per the decision of the TNERC, which is notified under Section 62 of the Electricity Act, 2003. Therefore, the very comparison made by the petitioner is untenable and thus, the Writ Petition is to be rejected.

9. It is further contended that relegating the petitioner again to the TNERC would be a futile exercise, since the TNERC has already decided the issue considering the case of Sri Ramachandra Medical College and on



the same ground, if the petitioner is relegated, the TNERC has to reiterate the said position. Further, the Board cannot extend concession or adjudicate those two issues already referred in the order passed by the High Court vide order dated 12.01.2023 in W.P.No.35372 of 2012. Those two issues are unconnected with the tariff classification. In respect of the Hon'ble Supreme Court case referred, it is about labour issue and thus, the Board is incompetent to consider the claim of the petitioner in that aspect. Further, the Minimum Standard Requirement Regulations, 1999 of the Medical Council of India is no way connected with the electricity tariff, which is to be fixed in accordance with the Electricity Act, 2003 and the said issue is also totally unconnected with the electricity tariff, which has been fixed under Section 62 by the TNERC.

10. Considering the arguments as advanced between the respective learned Senior Counsels appearing on behalf of the parties to the lis, Section 62 of the Electricity Act, 2003 denotes "Determination of Tariff". The appropriate commission shall determine the tariff in accordance with the provisions of this Act regarding retail sale of electricity, which is applicable in respect of the issue raised in the present case.



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11. In the context of Section 62, the Tamil Nadu Electricity Regulatory Commission time and again clarified that all private Educational Institutions and Hostels run by them are falling under HT Tariff-II. In respect of all other categories of consumers non-covered under HT Tariff-IA, IB, IIA, IIB, IV and V will be falling under HT Tariff-III. One of the argument is that there is no specific mention about the Hospital attached with the Educational Institution. The Hospitals attached with the Educational Institutions are admittedly operating commercially by providing treatments to the inpatients and outpatients by collecting charges. Therefore, the Hospitals attached with such Medical Institutions cannot be compared with the Educational Institutions and the Hostels being run for the benefit of the students. The Hostels and Educational Institutions may not be falling under the commercial activities, as per the tariff fixation. However, the Hospitals run by these Medical Institutions are falling under the commercial tariff i.e., HT Tariff-III. Therefore, they are commercial establishments and the tariff, which is applicable to Educational Institutions and hospitals need not be fixed by the TNERC for these commercial hospitals. They have been treated on par with other commercial establishments.

12. Therefore, this Court do not find any infirmity in respect of the



decision taken by the TNERC, which is being followed by the Board. More so, such decision is based on the sound reason that these Hospitals are providing treatment to inpatients and outpatients and collecting charges. Thus, they have involved in commercial activities. Thus, the distinction made is logical and cannot be found fault with. Merely because the Hospital is attached with the Medical Institution, without physical segregation, they cannot be construed as non-commercial. Though the Hospitals are attached with the Medical Institutions, the functions are commercial in nature. Therefore, the TNERC is empowered to draw distinction between the Educational Institutions and the commercial institutions, which is based on intelligible differentia.

13. In this context, the TNERC has taken a decision to treat the Hospitals attached with the Medical Institutions as commercial Hospital (Private Hospital) and accordingly, fixed the HT Tariff-III and the said decision being a policy decision taken in exercise of the powers conferred under Section 62 of the Electricity Act, 2003 this Court do not find any infirmity.

14. In respect of the concession granted to the Sri Ramachandra



Medical College, the learned Senior Counsel, Mr.P.Wilson drew the attention of this Court with reference to the findings made by the TNERC in M.P.No.9 of 2020 dated 22.12.2020 in the case of **Ramasamy Chettiyar**, wherein the following observations are made:-

“7.12 The Respondent further stated that in respect of Sri Ramachandra Medical College and Research Institute, as per the G.O. MS. No.108 of Energy Department dated 31-03-1995 of Tamil Nadu Government, it was charged under Tariff IIA. By Order of TNERC dated 04-04-2006 in M.P. No.27/2005, the Commission has also substantiated that by virtue of the said G.O. Sri Ramachandra Medical College and Research Institute was eligible for application of the educational institution tariff of HT Tariff IIA (presently charged under HT Tariff IIB).

7.13. The Respondent has further stated that eventhough the attached is a part of the



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Medical Educational Institution, the public activity in the hospital predominates the original main purpose of an educational institution. As such the medical educational institution actually loses its identity and stands just as a private hospital. The treatment of out patients (Public) in the attached hospital is purely a commercial activity and hence the appropriate tariff may only be the commercial of HT Tariff III as per the tariff orders.”

15. This Court is of the considered opinion that the petitioner cannot claim equality in illegality, as rightly contended by the respondent Board. The concession granted to Sri Ramachandra Medical College seems not in consonance with the provisions of the Electricity Supply Code and the tariff classification made by the TNERC time and again. Therefore, the said decision taken cannot be followed as a precedent, so as to deprive the Board from collecting appropriate tariff, as determined by the TNERC in exercise of powers under the Electricity Act. In respect of **Ramachandra's** case, the respondent Board is bound to initiate appropriate action in the manner



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known to law and by following due process for the purpose of avoiding any discrimination amongst the consumers and to maintain uniformity in recovering the electricity charges. It is needless to state that the Electricity Board has to maintain uniformity in the matter of imposing electricity consumption charges to the establishments. One case is being cited by all other similar institutions. In the event of extending the said benefit to all other institutions, the respondent Board will suffer in huge financial loss and as rightly pointed out by the learned Senior Counsel, Mr.P.Wilson that it is very difficult for the Board to survive, if such concessions are extended to the consumers, who all are otherwise not eligible under the Tariff classification. Therefore, appropriate actions are to be initiated by the Board to rectify the illegalities/ irregularities already occurred, so as to maintain uniformity and consistency in fixation of tariff and to recover the consumption charges.

16. This Court is not inclined to relegate the petitioner to approach the TNERC in view of the fact that the issue raised is no more *res-integra* and the TNERC has already decided that the Hospitals attached with the Medical Institutions are liable to pay HT Tariff-III and they are entitled to have separate connections, if they have chosen to do so. Therefore, relegating the



petitioner to the TNERC would end in futile exercise and thus, this Court is not inclined to do so. The petitioner is liable to pay the commercial tariff, i.e., HT Tariff-III for the Hospital attached with the Medical Institutions. They are entitled to get the concessional HT Tariff-III only for the Medical Institution and the Hostel attached with the institution. The petitioner is at liberty to submit an application for segregation of electricity connections both for Medical Institution, Hostels and the Hospital. In the event of receiving any such application, the respondent Board shall consider the same without causing any undue delay, since the continuance will cause loss to the Medical Institution.

17. As far as the fixation of tariff is concerned, this Court do not find any infirmity or perversity, but in consonance with the provisions of the Electricity Act, 2003 and the Electricity Supply Code as determined by the TNERC. Thus, the writ petitioner has not made out any acceptable ground for the purpose of considering the Writ Petition.

18. Accordingly, the Writ Petition stands dismissed. No costs.



Consequently, the connected Miscellaneous Petitions are closed.

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Index : Yes

Speaking order

Neutral Citation : Yes

To

The Superintending Engineer,
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Tatabad, Coimbatore – 641 012.



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S.M.SUBRAMANIAM, J.

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