



**IN THE HON'BLE TAMIL NADU ELECTRICITY
REGULATORY COMMISSION
CHENNAI**

23rd DAY OF AUGUST 2005.

PRESENT:

The Hon'ble Chairman Mr. A. Balraj, IAS., Retd. - Chairperson

The Hon'ble Member Mr. S. Thangarathnam - Member

and

The Hon'ble Member Mr. B. Jeyaraman - Member

M.P. Nos.1/2005 to 23/2005 and 25/2005

Manjushree Plantations Ltd., New Hope P.O., 643 226, The Nilgiris. - Petitioner in M.P.1/2005

The Nilgiris Tea Estates Limited, Mailoor Estate, Kullakamby P.O., The Nilgiris. - Petitioner in M.P.2/2005

Neelamalai Agro Industries Ltd., Katary and Sutton Estates, Katary Post, The Nilgiris-643 213. - Petitioner in M.P.3/2005

The Kil Kotagiri Tea & Coffee Estates Co. Ltd., Kil Kotagiri Estate, Post Box No.1, Kil Kotagiri P.O. 643 216, Nilgiris - Petitioner in M.P.4/2005

M/s Kairbetta Estates Syndicate, Kotagiri P.O., 643 217, Nilgiris. - Petitioner M.P.5/2005

M/s. Waterfall I Estate (East) Private Limited, Waterfalls Estate P.O.-642 105, Coimbatore District. - Petitioner in M.P.6/2005

M/s. Tata Tea Limited, Regional Office, Post Box No. 9, Munnar P.O. Kerala State Pin 685 612. - Petitioner in M.P.7/2005

M/s. Craigmores Plantations (India) Pvt. Ltd., CraigmoresGroup, Kullakamby P.O., 643 218, The Nilgiris. - Petitioner in M.P.8/2005

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| The Manar Estate Limited, Manar Estate, Kullakamby P.O.- 643 218, The Nilgiris. | - Petitioner in M.P.9/2005 |
| M/s. Kothari Industrial Corporation Ltd., Glendale Estate, Coonoor 643 102 The Nilgiris. | - Petitioner in M.P.10/2005 |
| The Senior Manager,kParr Agro Industries Ltd., Carolyn Estate, Mangorange Post, The Nilgiris. | - Petitioner in M.P 11/2005 |
| The Dy. General Manager(P), Parry Agro Industries Ltd., Attikunna Estate, Uppatty Post, The Nilgiris. | - Petitioner in M.P.12/2005 |
| M/s. Parry Agro Industries Limited, Iyerpadi Estate, Iyerpadi Post,-642 108. | -- Petitioner in M.P.13/2005 |
| M/s. Parry Agro Industries Limited, Paralai Estate, Iyerpadi Post,-642 108. | -- Petitioner in M.P.14/2005 |
| M/s. Parry Agro Industries Limited, Sheikalmudi Estate, Murugalli Bazar Post 642 118. | -- Petitioner in M.P.15/2005 |
| M/s. Parry Agro Industries Limited, Murugalli Estate, Murugalli Bazar Post -642 118. | -- Petitioner in M.P.16/2005 |
| M/s. The Peria Karamalai Tea and Produce Company Limited, Vellamalai Estate, Karamalai Bazaar P.O., Valparai-642 130. | - Petitioner in M.P.17/2005 |
| The Peria Karamalai Tea & Produce Co. Ltd., Karamalai Estate, Karamalai Bazaar Post, Coimbatore District. | - Petitioner in M.P.18/2005 |
| The Peria Karamalai Tea & Produce Company Ltd., Akkamalai Estate, Akkamalai Branch Post, Valparai,Coimbatore Dt. | - Petitioner in M.P.19/2005 |
| M/s. Peria Karamalai Tea & Produce Co. Ltd., Nadumalai Esdtate, Valparai-642 127. | - Petitioner in M.P.20/2005 |
| M/s. Hindustan Lever Limited, Tea Estates India Division, Sirikundra Estate, Sirukundra Post-642 153, Valparai. | - Petitioner in M.P.21/2005 |
| M/s.Hindustan Lever Limited, Tea Estates India Division, Stanmore Estate, Valparai-642 127. | - Petitioner in M.P.22/2005 |
| M/s.Hindustan Lever Limited, Tea Estates India Division, Injipara Estate, Valparai-642 127. | - Petitioner in M.P.23/2005 |
| M/s.Waterfall Estate (West) Private Limited, Waterfalls Estate P.O.-642 105, Coimbatore District. | - Petitioner in M.P.25/2005 |

Vs.

The Chairman, Tamil Nadu Electricity Board, --- Respondent in all M.Ps.
80, Anna Salai, Chennai-600 002.

These petitions coming for final hearing on 26th day of July 2005, before us in the presence of the petitioners in M.P. Nos.1/2005 to 5/2005 and 8/2005 to 23/2005 represented by their authorized agent Thiru Pradeep Sukumar, the petitioners in M. P. Nos.6/2005 and 25/2005 represented by its one of the Director Thiru A. Rubandhas and Thiruvalargal Joy Joseph, Abraham Markos, Joseph Kodianthara and Sony Sebastian of M/s. Joselph & Markos, Advocates, P.B. No.86, Kottayam-1, Kerala for the petitioner in M.P. No.7/2005, and of Thiru G. Vasudevan, Advocate for the Respondent in all the petitions, having heard the arguments of the said authorized agent, the Director of the Company in M.P.6/2005 and 25/2005 and the Counsel for the petitioner in M.P.7/2005, having perused the petitions, affidavits, counter affidavits and rejoinder and other connected records and having stood over for consideration till this day, this Commission deliver the following

COMMON ORDER

1. Prayer by the Petitioner

The prayer in all the MPs referred to above namely MPs 1 of 2005 to 23 of 2005 and MP 25 of 2005 is that the Commission may be pleased to direct that Electricity Service connections in plantations used exclusively for provision of statutory welfare amenities to workers as required under the Plantation Labour Act, 1951 and as set out in Annexure I shall fall under Tariff Category L.T. I A. The additional prayer as prayed for by the Petitioners in the Common Rejoinder filed by the Petitioners to the Common Counter Affidavit filed by the Respondent Board is to direct the Respondent Board that the service connection provided

within the plantations be classified under a sub-category within Agricultural services or alternatively, within appropriate heads under LT II Tariff.

2. Facts of the case as set out in the petition and Common Counter Affidavit filed by Respondent Board.

- (i) The Petitioners in the MPs referred to above have stated as follows:
 - (a) The operations in the plantation are primarily agricultural operations. The real commercial activity in the plantation is the manufacturing activity carried therein. Hence power consumed by the plantation for all non-factory and statutorily prescribed facilities should be charged only at the Domestic LT tariff rate.
 - (b) A service connection can be commercial service connection only if the immediate and proximate purpose is to carry on a commercial enterprise or activity. Using energy to pump water to an overhead water tank for servicing a workers' colony or to provide lighting and other purposes in a hospital / dispensary cannot make the use a commercial purpose use. A hospital or dispensary set up by plantations in order to comply with statutory provisions to provide free medical care to the plantation labour population cannot be regarded as a commercial enterprise.
 - (c) The welfare infrastructure provided by the plantation management is intended exclusively for the benefit of the plantation workers employed in the plantation fields. These workers are engaged in agricultural activities. Therefore the service connections provided for extending welfare amenities to these workers is ancillary to their agricultural activities.
- (ii) The Respondent Board in their Common Counter Affidavit have stated as follows:

- (a) Petitioners being agreement holders are bound by the terms and conditions of supply and as such estopped from disputing the tariff, since it has been paid all along for several years.
- (b) The provision of welfare infrastructure to the workers of the estates is a statutory obligation of the petitioner. Whereas TNEB is only bound by the Tariff Order issued by TNERC from time to time.
- (c) As per the TNERC Order dated 15.3.2003, LT Tariff V is applicable to all commercial establishments and sectors not covered under any other category viz. LT Tariffs IA, IB, IC, IIA, IIB, IIC, IIIA (1), IIIA(2), III (B) and IV. Hence charging the services of Petitioners under LT Tariff V is in order.
- (d) TNEB has categorized the petitions as per the TNERC order dated 15.3.2003. The Plantation Labour Act, 1951 is not binding on the TNEB. Therefore the contention of the petitioners to charge the service connections said to have been provided for extending welfare amenities to estate workers under LT Tariff I A is not feasible of compliance.
- (e) Even Hospitals run by the Government & Local Bodies, Public Water Supply, Public Sewerage, other public activities, etc. to the people at large and which caters mainly to the people of "Below Poverty Line" are not classified as Domestic purpose. In this connection, it is also to be stated that the commercial sector as well as sectors not covered under any other classification of tariff come under tariff V – commercial and others.

3. Points at issue

From the pleadings of the cases referred to in paragraph 2 above as well as from the arguments made by the Counsels for Petitioners the following issues arise for consideration:

- (i) Whether LT Tariff II B which is applicable to Government Hospitals and dispensaries could have been applied to plantation Hospitals and Dispensaries providing for free treatment for the workers?
- (ii) Whether schools run by Petitioners in their Plantation Colonies can be classified under LT Tariff II B on production of orders of permanent recognition of educational institutions from the concerned educational authorities?
- (iii) Whether places of worship in the Plantation Colonies can be classified under the appropriate LT Tariff II?
- (iv) Whether LT Tariff II A can be applied to water supply provided within the plantation colonies?
- (v) Whether change of tariff classification in respect of Labour Clubs, Muster Roll sheds, etc. is necessary or not?
- (vi) Whether it is necessary to provide a separate classification for the Plantation?
- (vii) Whether the Petitioners are entitled to the grant of main prayer namely classification of plantation as LT II A.

4. Point at issue No. (i) in para 3 above - Whether LT Tariff II B which is applicable to Government Hospitals and dispensaries could have been applied to plantation Hospitals and Dispensaries providing for free treatment for the workers?

In Annexure I of the Petitions, it is seen that Dispensary and Hospital for which there are separate service connections, are now classified under LT V. The Dispensary and Hospital maintained by Petitioners are similar to the hospitals maintained by Government and Local Authorities. In para 11 of the Common Rejoinder filed by Petitioners to the Common Counter Affidavit filed by the Respondent Board, it has been interalia contended as follows:

“Similarly LT Tariff II B, which is applicable to Government Hospitals and Dispensaries could have been applied to plantation hospitals and dispensaries providing free treatment to the workers.”

The above contention has not been specifically met by the Respondent Board in their Counter Affidavit or in their Rejoinder to the reply from the Petitioners.

In para 6 of the Common Counter Rejoinder filed by Respondent Board, it has been stated as follows:

“The service provided for welfare of the labour by Tea Estates are categorized under LT Tariff V not because they are commercial service, but the services which are not covered under LT Tariff I A to LT Tariff IV are to be classified under this category (i.e.) they are treated as services other than domestic, agriculture, industrial and commercial.”

Findings of the Commission

The Hospitals and Dispensaries of the Petitioners which are similar to Government Hospitals cannot be said to be not covered under LT Tariff I A to LT Tariff IV as contended by Respondent Board. The Hospitals and Dispensaries of Petitioners Plantation Colonies can be conveniently classified under LT Tariff II B which is applicable to Government Hospitals and hospitals under the control of Panchayat Unions and Municipalities. Under section 45 (4) of the Electricity Act 2003 (Act 36 of 2003) in fixing charges under the said section 45, a distribution licensee shall not show undue preference to any person or class of persons or discriminate against any person or class of persons. In view of the above section 45 (4) of the Act, the classification of Plantation Hospitals and Dispensaries maintained by Petitioners under LT Tariff V instead of Under LT II B wherein Government Hospitals and hospitals under the control of Panchayats Unions and Municipalities are classified would be discriminatory which is prohibited under the said section 45 (4) of the Act. As such the Plantation Hospitals and Dispensaries providing free treatment to the workers have to be classified only under LT Tariff II B so as to be in conformity with the statutory provisions contained in the said section 45 (4) of the Act.

5. Point at issue No. (ii) in para 3 above - Whether schools run by Petitioners in their Plantation Colonies can be classified under LT Tariff II B on production of orders of permanent recognition of educational institutions from the concerned educational authorities?

Findings of the Commission

In Annexure I of the Petition it is seen that schools for which there are separate service connections are now classified under LT V. The schools run by petitioners are similar to the schools run by Government and Local authorities. In para 6 of the Common Counter Affidavit of the Respondent Board, it has been interalia stated as follows:

“Notices have been issued to the following services which are used for schools to produce the recognition certificate on production of orders of permanent recognition of educational institution from the department concerned the tariff of such service connections will be charged under LT Tariff II B as per the Tariff Order.”

The above statement of Respondent Board is taken note of and plantation schools run by the Petitioners have to be classified under LT Tariff II B as and when the recognition certificates of educational authorities are produced by the Petitioners.

6. Point at issue No. (iii) in para 3 above - Whether places of worship in the Plantation Colonies can be classified under the appropriate LT Tariff II?

Findings of the Commission

In Annexure I of the Petitions, it is seen that most of the temples, mosques and churches have been classified under LT V. In certain cases i.e. SC No. 423 in Kotagiri Sub-Division in Nilgiris Electricity Distribution Circle (Annexure I in MP 5 of 2005) and in Coonoor (Rural) Sub-Division Field No. 13 Temple bearing SC No. 385 Field No. 4 Temple in Coonoor (Rural) Sub-Division bearing SC No. 464 and Woodlands Temple bearing SC No. 361 in the Coonoor (Rural) Sub Division – CMP No. 8 of 2005 have been classified under LT Tariff II B.

The Respondent Board in para 5 of the Common Counter Rejoinder to the Common Rejoinder of Petitioner have observed as follows:

“As per the Tariff Order LT Tariff II C is applicable to places of public worship and mutts, religious institutions, etc., declared by the Commission. Accordingly the temples which are open to public and which do not restrict entry of public are classified under LT Tariff II C. However, the temples which are located not on the public roads but inside the estate premises and which restrict entry of public are charged under LT Tariff V.”

The above statement is not acceptable as it is not substantiated by proof or any acceptable materials. It is not the usual practice for the owners of private temple to restrict entry of public for worshipping the deities in the temples. Moreover, the above statement cannot be applied to churches and mosques in the plantation colonies which are classified under LT Tariff V for which there is no restriction of the public. In this connection, it may be stated that according to section 45 (4) of the Electricity Act 2003 (Act 36 of 2003) a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons. The classification of certain places of public worship under LT Tariff V and certain other places of public worship under LT Tariff II B is discriminatory and it is prohibited under the said section 45 (4) of the Act read with Article 14 of the Constitution of India. In this connection, it may be pointed out that this Commission at p 59 of the Tariff Order dated 15.3.2003 has interalia observed as follows:

“The Act permits higher or lower rate for different purposes or categories for which the supply is used, but it does not permit different rates for varied levels of consumption within any one category of consumers”

Hence, in view of the above position in the levy of different rates for the same category of consumers namely, places of public worship, there cannot be any discrimination. The Respondent Board in their Common Counter Affidavit in paragraph 6 has rightly observed as follows:

“Further for the service connections which are used for actual places of public worship it will be charged under LT Tariff II C as per the Tariff Order.”

The above statement in the counter which is in consonance with the above observations of this Commission at p 59 of the Tariff Order as well as the provisions contained in section 45 (4) of the Act is concurred with by this Commission. Hence all places of public worship where they do not restrict entry of public irrespective of the fact whether they are situated in public road or in private places will have to be classified only under LT Tariff II C as per the Tariff Order of this Commission.

7. Point at issue No. (iv) in para 3 above - Whether LT Tariff II A can be applied to water supply provided within the plantation colonies?

Findings of the Commission

In Annexure I of the Petitions, it is seen that in all cases except in MP No. 5 of 2005, the Plantation water supply have been classified under LT Tariff V. In Annexure I to MP No. 5 of 2005, the water pumps bearing SC No. 288 and 293 in Kotagiri Sub-Division in the Nilgiris Electricity Distribution Circle, have been classified under LT Tariff III B which relates to Industries not covered under LT Tariff III A (1) and III A (2). In para 11 of the Common Rejoinder filed by Petitioners to the Counter Affidavit of Respondent Board, it has been ***interalia*** contended by the Petitioners as follows:

“Similarly LT Tariff II A could have been applied to service connection in plantations used for provision of street lighting in plantation colonies, public water supply and sanitation facilities provided by the managements”

In para 3 of the Common Counter Rejoinder of Respondent Board, the Respondent Board has stated as follows:

“As per the Tariff Order dt.15.3.2003, LT Tariff II A is applicable to public lighting, public water supply and public sewerage system belonging to Village / Town Panchayats, Township areas, Municipalities, Municipal

Corporations, TWAD Board, Street light, water supply and sanitation facilities maintained by the Tea estates do not fall under this category and hence cannot be classified under LT Tariff II A.”

During arguments, the Counsel for Petitioner in MP 7 of 2005 contended that if a pump set to each of the residential flat is attached then domestic tariff would have been levied. He also pleaded that such use is essentially for domestic use, domestic tariff should have been levied. He also contended that if the activities have been taken as a public water supply, then such activity would have been brought under LT Tariff II A. The Counsel for the Respondent Board while reading paragraphs 4 and 5 of the Common Counter Rejoinder filed by Respondent Board contended that LT Tariff II A cannot be made applicable. It may be pointed out that the water supply belonging to Petitioners are similar to the Public Water Supply belonging to Local Bodies referred to under LT Tariff II A. There is no difference between the Water Supply belonging to Petitioners and the Public Water supply belonging to Local Bodies so as to warrant for the levy of higher tariff for the water supply belonging to Petitioners. Under section 45 (4) of the Electricity Act, 2003, the Respondent Board cannot discriminate against the Petitioners in levying a higher tariff and they cannot show undue preference to local bodies in levying a lesser tariff. The differentiation is not based on any intelligible differentia. The water supply belonging to Petitioners can be conveniently covered under LT Tariff II A as the petitioner provides water supply to all the houses in the plantation area. Hence, the water supply belonging to Petitioners should be classified only under LT tariff II A which is applicable to Public Water Supply.

8. Point at issue No. (v) in para 3 above - Whether change of tariff classification in respect of Labout Clubs, Muster Roll sheds, etc. is necessary or not?

Findings of the Commission

In Annexure I of the Petitions, it is seen that Labour Clubs, Muster Roll Sheds, Office, store, Cable TV, Grocery Shop, Tailor Shop, timber Shed, Ration Shop, etc. are classified under LT Tariff V. The Respondent Board in their Common counter Rejoinder in para 2 has stated as follows:

“2. The Labour Clubs, Muster Roll sheds, Office, store, Cable TV, Grocery Shop, Tailor Shop, tea shop, timber Shed, Ration Shop, etc which are charged under LT Tariff V are not eligible for under Domestic tariff.”

In regard to the above categories which are classified under LT Tariff V, the Petitioners have not stressed for change of their tariff classification in their arguments made before this Commission.

In this connection, it may be stated that there is a certain element of trading and commercial activities in the above categories. Further the above categories cannot be conveniently covered under LT Tariff I A to LT Tariff IV of the Tariff Order of this Commission. As such there is no case for the change of tariff classification in regard to the above categories.

9. Point at issue No. (vi) in para 3 above - Whether it is necessary to provide a separate classification for the Plantation?

Findings of the Commission

In the Common Rejoinder filed by the Petitioners to the Common Counter Affidavit filed by the Respondent Board in para 16 (2), the Petitioners have prayed as follows:

“(2) that the service connection provided within the plantation be classified under a sub-category within Agricultural services or alternatively within appropriate heads under LT II Tariff.”

Regarding the above prayer, it may be pointed out that in the Table given in para 2 of the Petitions, irrigation occupies only a meager 1.5 of the distribution of mandays in the Plantation. In regard to crop harvesting (Tea Plucking) which occupies a major percentage of 65.49% electricity is not used as tea plucking is

done only by manual labour, without the aid of power. From the particulars furnished in Annexure I of all the petitions, it is seen that there is no separate service connection mentioned for the activities in column 2 i.e. category of work in the Table in para 2 of the Petitions. From Annexure I to the Petitions, it would be seen that separate service connection exist only for dispensary, school, club, etc. In as much as there is no separate service connection for the activities mentioned in the Table under para 2 of the Petitions, there is no need for providing a separate tariff classification.

10. Point at issue No. (vii) in para 3 above - Whether the Petitioners are entitled to the grant of main prayer i.e classification of plantation as LT II A.

The Petitioners did not press for the main prayer during their arguments. They have confined their arguments only to change of classification in regard to water pumps, temples, hospitals and schools in the Plantation.

11. In the above circumstances, the Commission pronounces the following

COMMON ORDER:

COMMON ORDER

- (a) In the above circumstances, the Commission rejects the main prayer of the petitioners that the electricity service connection in Plantations used exclusively for provision of statutory welfare amenities to workers as required under the Plantation Labour Act, 1951, should be classified under Tariff Category LT Tariff I A. The Commission also rejects the additional prayers of the Petitioners as made in the Common Rejoinder to the Counter Affidavit filed by Respondent Board that the service connections provided within the plantations should be classified under sub-category within Agricultural services or alternatively within appropriate heads under LT II Tariff.
- (b) However, due to the reasons explained in detail in the preceding paragraphs, the Commission hereby directs the Respondent Board to

make the alteration in the tariff classification indicated in column 4 of the following table in respect of the categories mentioned in the corresponding column 2 thereof, namely:

Table

| S. No. | Description of Categories | Existing Tariff | Tariff Alteration |
|---------------|---|---|--|
| (1) | (2) | (3) | (4) |
| 1 | Plantation Dispensary and Hospitals belonging to Petitioners | LT Tariff V | LT Tariff II B |
| (1) | (2) | (3) | (4) |
| 2 | Schools run by Petitioners in their Plantation Colonies | LT Tariff V | LT Tariff II B (on production of recognition certificate from the concerned authorities) |
| 3 | Places of worship in the Plantation Colonies belonging to Petitioners (Mosques, Churches and Temples) | (a) LT Tariff V | (a) LT Tariff II C |
| | | (b) LT Tariff II B in SC No. 423 in Kotagiri Sub-division mentioned in Ann. I of MP 5/05 | (b) LT Tariff II C |
| | | (c) LT Tariff II B in SC No.385 in Suttan Distribution, SC No. 464 Craigmere Distribution and SC No. 361 in Suttan Woodlands Distribution as shown in Annexure I of MP 8/05 | (c) LT Tariff II C |
| 4 | Plantation water pumps belonging to Petitioners | (a) LT Tariff V | (a) LT Tariff II A |
| | | (b) LT Tariff III B in SC Nos. 288 and 293 in Kothagiri Sub Division of Nilgiris Distribution circle shown in Annexure . I of MP 5/05 | (b) LT Tariff II A |

(c) The above change of tariff classifications will take effect only prospectively with effect on and from the date of issue of this Common Order and the

Petitioners are not entitled to claim any refund of the tariff paid prior to the date of issue of this order in respect of consumption of energy made in the above services.

(d) The Commission hereby clarifies that the LT Tariff V will continue in respect of other categories such as Labour Clubs, Muster Roll Sheds, Office, Store, Cable TV, Grocery Shop, Ration shop, etc. in the plantation colonies.

(e) The Commission hereby also clarifies that the change of tariff classification in respect of schools run by Petitioners from LT Tariff V to LT tariff II B will be given effect to only if the Petitioners produce the permanent recognition certificates from the concerned educational authorities as required by the Respondent Board.

(f) The Commission also clarifies that the change of tariff classification from LT V to LT Tariff II C in respect of places of worship in plantation colonies belonging to petitioners will have to be given wherever they do not restrict entry to public.

All the above Petitions are finally disposed off with the above observations.

There would be no costs.

Pronounced in the Open Court on this 23rd day of August 2005

**Sd.....
(B. JEYARAMAN)
Member**

**Sd.....
(S. THANGARATHNAM)
Member**

**Sd.....
(A. BALRAJ)
Chairman**

List of Witnesses examined

NIL

List of Documents

NIL

**Sd.....
(B. JEYARAMAN)
Member**

**Sd.....
(S. THANGARATHNAM)
Member**

**Sd.....
(A. BALRAJ)
Chairman**

/True Copy/

SECRETARY