



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

**4<sup>th</sup> DAY OF APRIL 2006**

**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. No.27/2005**

Sri Ramachandra Educational and Health Trust,  
25, Sir C.V. Raman Road, Alwarpet,  
Chennai-600 018  
represented by its Managing Trustee  
V.R. Venkatachalam.

--- Petitioner.

**Vs.**

Tamil Nadu Electricity Board,  
800, Anna Salai,  
Chennai-600 002  
represented by its Chairman

--- Respondent.

The above petition coming on for orders before this Commission, upon perusal of the petition filed by the Petitioner and the affidavit filed in support thereof and the counter-affidavit of the respondent Board and all other connected records relevant to the above petition and upon hearing the arguments of the Learned Counsels for both the Petitioner and Respondent Board and having stood over for the consideration of this Commission till this day, the Commission hereby pronounces the following

**ORDER**

**1) Prayer of Petitioner**

The prayer of the Petitioner as set out in para 19 of the Petition is that this Commission may be pleased to pass orders directing the Respondent TNEB to apply

HT Tariff II – A to the Petitioner's Trust in their second point of supply in HT SC No. 479 as applicable to Educational Institutions and may also order to refund or adjust the excess collection of electricity charges by application of wrong tariff w.e.f. 11.4.2001.

## **2) Facts of the case of Petitioner**

The Petitioner Trust is a Public Education and Health Trust registered under the Societies Act. The Petitioner Trust was administering the Sri Ramachandra Medical College and Research Institute. The Petitioner submits that for the purpose of Medical College or Dental College, it is mandatory that such colleges should have a hospital attached thereto which is part and parcel of such educational institutions. Therefore, the Petitioner Trust had applied to the Government of Tamil Nadu to extend HT Tariff II rates as applicable to the Educational Institutions stating the above factual and legal position, viz. that the teaching hospital is an integral part of the Educational Institution. After careful consideration of the representation made by the Petitioner Trust, Government of Tamil Nadu had accepted the above stand and passed orders in G.O. Ms.No.108 Energy Department dated 31.03.1995 directing that the Respondent Board shall apply HT Tariff II to the Petitioner's institutions. To accommodate the load growth, with the approval of the Respondent Board, the demand was raised to 3000 KVA under Service Connection No. 265. Subsequently, a second point of supply was availed of under Service Connection No. 479. But unfortunately, this service connection is being billed under Tariff III as applicable to Commercial Establishments notwithstanding the fact that both the supplies are for the same purpose and the Petitioner Trust is enjoying the benefit of the above referred G.O. to avail HT Tariff II A applicable to Educational Institutions. The above discriminatory treatment meted out to the Petitioner Trust by applying Commercial Tariff is without any basis, without jurisdiction and violative of the concession extended to the Petitioner Trust's institutions vide G.O.Ms.No.108 dated 31.03.1995 passed by the Government of Tamil Nadu. The Petitioner Trust made several representations to the Respondent Board both in person and through letters and the last one was made on 8.5.2001 for change of tariff for the second point in SC No. 479 also as applicable to recognized

Educational Institutions. Unfortunately, without appreciating the actual position, the Superintending Engineer, CEDC / South, TNEB has turned down the representation vide his letter No. SE/CEDC/S/DFC/AAO/HT/AS/A7/SC No.479/D2168/2002 dt. 18.9.02 by passing a non-speaking order stating that the major portion of the load is connected to the said service pertains only to hospital. It is further submitted that the Colleges and Hospital go together and form part and parcel of the Educational Institutions which is inseparable forming as one unit without which the very survival of the educational institutions would be at stake facing de-recognition of the entire institutions which are run for the past several years imparting the rarely available medical education to the society at large. The Respondent Board ought to have followed the orders passed in G.O. Ms.No. 108 Energy Department dated 31.03.95 which is very much applicable to the second point of supply with service connection No.479 also. The denial of the same treatment to the Petitioner's second point in HT SC No.479 as availed by the Petitioner Trust for their first point in HT SC No.265 is discriminatory and arbitrary in nature violative of fundamental rights guaranteed under the Constitution of India. The action of Respondent Board is against the principles of equity as equals are being treated as unequals and also against the principles of Promissory Estoppel and Legitimate expectations. In the additional statement, the Petitioner has stated that the additional demand for 1500 KVA was availed on 11.4.01 through another service connection in Account No.479 with separate cable in order to maintain uninterrupted power supply to the SRMC Deemed University Campus. The Petitioner further submitted that as is the practice in TNEB, the second point of service connection was given initially under commercial tariff which is to be changed to institutional tariff as soon as the demand reached 15% of the sanctioned demand.

### **3) Contentions of Respondent Board**

The Petitioner being an agreement holder is bound by the Terms and Conditions of Supply of Electricity, Provisions of Tamil Nadu Electricity supply Code and Distribution Code and as such estopped from disputing the classification of tariff. Admittedly the Petitioner is a Private Self Financing College and running on commercial lines. The GO is relevant to the first point of supply only and has been

implemented. The HT service effected subsequently, for feeding essentiality to commercial loads. In the instant case, the Hospitals attached to this Institution are totally different from Govt. Hospital. The patients admitted to the Hospital are charged at substantially high rates. Fees are collected for giving treatment. The private medical college and hospital are run on profit basis, since fees / charges are collected from the patients. Hence the claim made by M/s. Sri Ramachandra Educational and Health Trust, Porur, Chennai is not reasonable.

In the Rejoinder to additional written statement, the Respondent Board has stated that the concessional tariff namely Tariff II A cannot be made applicable to SC No. 479 as the utility of the energy is different between the two services and the G.O. is very specific and is applicable to SC No. 265 only. The Respondent Board submitted that HT SC No. 265 and 479 are separate service connections and they have no connection to each other whatsoever.

#### **4) Point in issue**

The following point in issue arose for consideration of this Commission namely:-

Whether G.O. Ms.No. 108 Energy (A2) Department dt.31.3.1995 is applicable to the second point's supply with Service Connection No. 479 and if so whether the Petitioner is entitled to the relief prayed for?

In regard to the above point in issue, the Petitioner in para 15 of the petition has contended as follows:

The Respondent Board ought to have followed the orders passed in G.O. Ms.No. 108 Energy Department dated 31.03.95 which is very much applicable to the second point of supply with service connection No.479 also. The denial of the same treatment to the Petitioner's second point in HT SC No.479 as availed by the Petitioner Trust for their first point in HT SC No.265 is discriminatory and arbitrary in nature violative of fundamental rights guaranteed under the Constitution of India. The action of Respondent Board is against the principles of equity as equals are being treated as unequals and also against the principles of Promissory Estoppel and Legitimate expectations.

#### **5) Arguments of the Petitioner**

In regard to the above point in issue, the Counsel for the Petitioner contended that the said G.O. Ms. No. 108 which holds good and according to which the Petitioner is entitled to HT Tariff II instead of HT Tariff VII. The Counsel for Petitioner contended that there is a discriminatory treatment by the Respondent Board that is to say for one service the Respondent Board is giving the benefit of the said GO, whereas for other service, there is a denial. The Counsel for the Petitioner also contended that the Petitioner has acted upon relying on the said GO and as such the Respondent Board cannot deny to the Petitioner the bonafide of the said GO as the doctrine of Promissory Estoppel is applicable. He also contended that the said GO has overriding power over the terms and conditions of supply of electricity issued by the Respondent Board. He also pointed out that the said GO already stated that the Petitioner is eligible for the concessional tariff and that the Terms and Conditions of Supply of Electricity of the Respondent Board do not provide for the classification of consumer. He further stated that no time limit or restriction is specified in the said G.O.

#### **6) Arguments of Respondent Board**

The Counsel for the Respondent Board contended that the above GO is meant only for the College of the Petitioner and not to the hospital of the Petitioner. He contended that the Service Connection was given to the Petitioner in the year 2001 but this petition was filed only in 2005 and there are laches on the part of Petitioner in filing the petition. He further stated that all other private Medical Colleges in the State are billed only under Commercial Tariff. He referred to para 10 of the Counter Affidavit wherein it has been stated that the request for the change of tariff made by the other Medical Colleges was rejected by the Respondent Board. He pointed out that the said GO is not applicable to the additional supply given in SC No. 479.

#### **7) Findings of the Commission**

The Petitioner's contention is that the G.O. referred to above is applicable to the second point of supply given to the Petitioner by the Respondent Board. His plea is that in the said G.O. there is no restriction or condition applicable to a particular service. The contention of the Respondent Board is that the said G.O. is

applicable to the first point of supply given in service No. 265 and that it has been implemented and that the G.O. is not applicable to the second point of supply.

From a reading of the G.O. it would be seen that the G.O. does not refer to any particular service but it specifically refers to the Petitioner trust only and that the Petitioner trust has to be classified as educational for the purpose of levy of tariff. For the sake of easy reference the G.O. is extracted below:

***"The Managing Trustee of Sri Ramachandra Educational and Health Trust, Madras in his representation addressed to Chairman, Tamil Nadu Electricity Board stated that extension of supply was effected to the Trust in 1988 with the permitted demand of 1000 KVA under High Tension Tariff VII as recognition to the college was pending at that time and when subsequently the college was taken over by the Government in 1989 and subsequently the college and hospitals were handed over to the Trust in 1992. He has stated that Sri Ramachandra Educational Medical College and Research Institute was affiliated to Dr. M.G.R. University and the Medical Council of India also approved and granted recognition and that the hospital attached to the college is only as per the norms of the Medical Council and forms part of the educational institutions which incidentally serves the public also.***

***2. The Managing Trustee of the Trust has requested to levy High Tension Tariff II instead of High Tension Tariff VII for the High Tension Service Connection and informed that they are agreeable for adjustment of excess payment against future current consumption charges from the date of recognition i.e. 16.08.90.***

***3. The Government have examined the matter in consultation with the Tamil Nadu Electricity Board. The Tamil Nadu Electricity Board has stated that since M/s. Sri Ramachandra Educational and Health Trust has availed a single High Tension Service with both the educational institution and Hospital combined, High Tension Tariff VII was applied, right from the date of supply and that the proposal for application of High Tension Tariff II has been placed before the Board. The Board has recommended the request of the Trust for application of High Tension Tariff II for the High Tension Service connection to***

***M/s. Sri Ramachandra Educational and Health Trust, catering to Medical College and the Hospital attached to it.***

***4. The Government after careful consideration direct the Tamil Nadu Electricity Board to levy High Tension Tariff II to Sri Ramachandra Medical College and Hospital prospectively instead of High Tension Tariff VII.***

***5. This Order issues with the concurrence of Finance Department vide its. U.O.No.GOB/18/ P/95 dt.8.3.95."***

From the concluding portion in para 4 of the GO, it would be seen that the GO specifically refers to the Petitioner's College and Hospital only viz. Sri Ramachandra Medical College and Hospital. The G.O. does not refer to any specific service owned by the said Petitioner Trust. It is relevant to point out that the G.O. was issued only with concurrence and recommendations of the Respondent Board, which has been consulted by the State Government prior to the issue of G.O. The said G.O. has not been revoked or suspended so far.

Subsequent to hearing of the above M.P. 27 of 2005, the Respondent Board in its letter R.No.599/2006 dated 3<sup>rd</sup> March 2006 addressed to the Commission stated as follows:

***"A copy of the HT application and test report for the supply extended to Sri Ramachandra Educational and Health Trust, Porur to HT SC No. 479 was submitted in the reference 2nd cited.***

***Since the applicability of Tariff in respect of HT SC No. 479 of Sri Ramachandra Education and Health Trust, Porur is not mentioned in the HT application and the Test Report, a copy of the first bill dt. 4.5.2001 in which the applicable Tariff is mentioned (HT Tariff III) is sent herewith for the Commission's perusal.***

***Further, BOAB has pointed out in the Audit remarks that HT Tariff II already sanctioned to the HT SC No. 265 M/s. Sri Ramachandra Educational and Health Trust, Porur as per G.O. No. 108 Energy (A2) Dept. dt.31.8.95 issued for the change of Tariff VII (Commercial) to Tariff II has to be discontinued and converted to Tariff III (Commercial) with effect from 16.3.2003 based on the***

***TNERC Tariff Notification and CC charges short fall to be collected from the above consumer."***

This Commission is not concerned with the audit objections referred to in the said letter. The Commission is only governed by the provisions of Electricity Act 2003, which alone is applicable to the instant case.

The contention of the Respondent Board is that it has rejected the claims made by other private medical institutions in the State for the change of tariff and as such the claim of the Petitioner has also to be rejected. With reference to the above contentions, it may be stated that in regard to other medical institutions there is no G.O. as in the case of Petitioner who is legally entitled to the benefits of the G.O. Hence in view of the above position the Petitioner cannot be equated with other private medical institutions.

Further it may be relevant to point out that the Electricity Act 2003 is applicable only prospectively that is to say with effect from 10<sup>th</sup> June 2003. The said Act has no retrospective operation so as to take away the benefits conferred upon the Petitioner under the said G.O. issued in the year 1995. The said Act has not taken away vested rights accrued to the Petitioner by virtue of the said G.O. as there is no specific provision in the Electricity Act 2003 providing for the extinguishments of the vested rights accrued to any person prior to the commencement of the Act. The following extract from Bindra's Interpretation of Statutes – Ninth Edition would be relevant.

***"7. Presumption against retrospectivity – As a general rule, every statute is deemed to be prospective, unless by express provisions or necessary implication it is to have a retrospective effect. Whether a statute is to have retrospective effect depends upon its interpretation having regard to well settled rules of construction. A statute is presumed to be prospective in its operation and no further retrospective effect should be given to the provisions of a statute then is expressly provided therein. According to the Supreme Court:***

***All laws which affect substantive rights generally operate prospectively and there is a presumption against their retrospectivity if they affect vested***

***rights and obligations unless the legislative intent is clear and compulsive. Such retrospective effect may be given where there are express words giving retrospective effect or where the language used necessarily implies that such retrospective effect is intended. Hence, the question whether a statutory provision has retrospective effect or not depends primarily on the language in which it is couched. If the language is clear and unambiguous effect will have to be given to the provision in question in accordance with its tenor. If the language is not clear then the court has to decide whether in the light of the surrounding circumstance retrospective effect should be given to it or not."***

***"8. Rights accrued before operation of statute – A statute will not affect rights which had accrued before a statute came into force unless there are express words in the statute affecting such rights or where a retrospective effect to the statute is inevitable by necessary intendment or implication. Statutes should be interpreted, if possible, so as to respect vested rights. It is not to be presumed that interference with existing rights is intended by the legislature, and if a statute be ambiguous the court should lean to the interpretation which would support existing rights."***

It is relevant to point out that as averred by the Respondent Board in the Counter Affidavit the said G.O. has been acted upon and implemented by the Respondent Board. As such the Respondent Board cannot ignore the said G.O. and deny the benefits already given to the Petitioner. The doctrines of promissory estoppel as well as the legitimate expectation as relied upon by the Petitioner will be applicable to the instant case.

In the above circumstances, M.P. 27 of 2005 has to be allowed. The relief asked for by the Petitioner is to direct the Respondent Board to apply HT Tariff II – A to the Petitioner's Trust in their second point of supply in HT SC No. 479 as applicable to Educational Institutions and may also order to refund or adjust the excess collection of electricity charges by application of wrong tariff w.e.f. 11.4.2001. Regarding the above relief it may be pointed out that the Respondent Board has rejected the claim of the Petitioner for the change of tariff as early on 18<sup>th</sup> September 2002. The Petitioner has filed the above M.P. 27 of 2005 only in June 2005 namely

after a period of three years. The Petitioner has acquiesced to the payment of commercial tariff under Tariff III A without protest for a period of three years. Hence it is not appropriate for this Commission to grant the relief with retrospective effect from 11.4.2001 as prayed for by the Petitioner. The Commission hereby directs that the Petitioner is entitled to the relief asked with prospective effect from the date of issue of this order.

There would be no costs.

**Pronounced in the Open Court by this Commission on 4<sup>th</sup> April 2006.**

**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**

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**SECRETARY**