KERALA STATE ELECTRICITY REGULATORY COMMISSION
THIRUVANANTHAPURAM

Present: Shri. T.M.Manoharan, Chairman
Shri. S. Venugopal, Member
Shri. K.Vikraman Nair, Member

Original Application. No.2/2017

In the matter of application for reclassification of tariff applicable to the members of the Qualified Private Medical Practitioners' Association, presently categorised under Low Tension VI (F) at LT level and High Tension II (B) at HT level

Applicant	:	Qualified Private Medical Practitioners' Association (QPMPA).5th Floor, Vallamattam Estate, Ravipuram, MG Road, Kochi 682015
	:	Represented by Dr.O. Baby, QPMPA Dr.K. Kishorekumar, QPMPA
Respondent	:	KSEB Ltd, Vydyuthi Bhavanam Pattom, Thiruvananthapuram. Represented by Sri. Bipin Sankar, Deputy CE, TRAC, KSEB Ltd Sri. K G P Namboothiri, EE, TRAC, KSEB Ltd Sri. Rajesh . R, AEE, TRAC, KSEB Ltd

Order dated 14.3.2017

1. The Qualified Private Medical Practitioners' Association, (QPMPA), has filed an application for reclassification of tariff applicable to the members of the Applicant Association which are presently categorised under LT VI (F) at Low Tension level and HT II (B) at High Tension level. The prayers of the applicant are quoted hereunder:

(a) Re-classify hospitals, including private hospitals under industries and to fix tariff applicable to industrial consumers.

(b) Fix tariff for all hospitals, including private hospitals, on the criteria permitted under sub-Section 3 to Section 62 of Electricity Act, 2003.

The nut shell of the prayer is to classify them under Low Tension IV (A) Industry and High Tension – I - Industry (A) category instead of LT-VI (F) and HT-II (B) respectively at LT and HT level.

2. The Commission admitted the application as OA 2/17 and held detailed hearing on 14-02-2017, at Court Hall, O/o the Commission at Vellayambalam, Thiruvananthapuram. Dr. O. Baby, the president, QPMPA presented the facts and grounds of the case.

3. KSEB Ltd, the respondent was represented by Sri. Bipin Sankar, Dy.CE, Tariff and Regulatory Affairs Cell (TRAC). KSEB Ltd has also submitted written comments on the application filed by QPMPA. KSEB Ltd has contended that the applicant cannot be granted the tariff applicable to industries and therefore prayed that the application may be dismissed.

4. Commission allowed 15 days to QPMPA for filing reply to the written statement of defence submitted by KSEB Ltd. The Commission directed the applicant to submit any further submission related to the application after going through the various relevant judgments in the case. KSEB Ltd was also allowed 15 days to submit further written statements if any. The QPMPA submitted the summary of oral submission made by them in the hearing along with copies of the case laws referred to by them.

5. The facts and grounds of the case as submitted by the applicant in the written and oral submissions, are briefly stated below.

   a. The applicant is a body registered under the Travancore – Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 with register No. ER.556/85. It is an association of private sector doctors and hospitals in Kerala. The Members of the association own and operate consulting rooms, small clinics, dispensaries and hospitals.

   b. The private hospitals were classified under LT VI (B) and corresponding High Tension category until 1987. In 1987 private hospitals were reclassified to LT VII (A) causing the electricity tariff to be double. The association had taken up the matter of the arbitrary re-classification

with Government of Kerala and consequently private hospitals were again re-classified to LT VI (B) in 1993. Consequently tariff was reduced by about 50% and that situation continued until 2013.

c. As per the Tariff Order for KSEB Ltd for 2013-14, private hospitals were shifted to LT VIII and HT V categories, resulting in huge hike in tariff. The said re-classification was justified by KSERC based on the judgment of the Hon'ble APTEL in Appeal No. 110/2009 (Association of Hospitals Vs MERC). In para 8.25 and 8.26 in the order of the Commission pertaining to the ARR and ERC of KSEB Ltd for the financial year 2013-14, the Commission had referred to the order of the Hon'ble APTEL in the above appeal. In para 57 (iv) the Hon'ble APTEL had directed that the State Commission may classify the hospital, educational institutions and spiritual organizations which are service oriented and put them in a separate category for the purpose of determination of tariff. This Commission had considered the issues relating to classification of hospitals and other institutions in health care sector in the backdrop of the socio economic conditions in Kerala. It was found that, there were Government hospitals with X-ray units, clinical laboratories and mortuaries attached to them, blood banks run by Indian Medical Association, hospitals run by local self-government institutions which give medical care to the public. There were also private hospitals registered under Cultural Scientific and Charitable Societies Act which are exempted from payment of Income Tax in view of their charitable activities. Such institutions which were rendering services to the people in general and to the poor sector of the society in particular were differentiated by this Commission from the private hospitals, private X-ray units, private clinical laboratories, private blood banks, private scanning centre and such other institutions engaged in health care business with profit motive. Therefore this Commission had classified the private hospitals and such other institutions functioning with profit motive in health care sector under LT VIII (General) and HT V (General).

d. According to the applicant, the Commission had failed to note the findings in paras 15, 16, 17, 18, 26, 27, 40, 43 and 45 of the judgment of the Hon'ble APTEL in appeal No. 110/2009. In the above paragraphs the Hon'ble APTEL had, referring to the provisions in Section 62 of the Electricity Act, 2003, directed that the Commission shall not show undue preference to any consumer and may differentiate consumer groups based only on the purpose for which supply is required.

e. In the tariff order dated 14.08.2014, this Commission had classified private hospitals to LT VI (F) and HT II (B) categories. The increase of 20

paise in the tariff order for private hospitals can easily be passed on to the public by large corporate hospitals. However, for LT VI (F) consumers, which are predominantly small clinics, consulting rooms, dispensaries etc., the increase in tariff varied from 30 paise per unit to 70 paise per unit. Such increase will cripple this small hospitals, consulting room, dispensaries etc most of which operate in rural areas. According to the applicant the burden of such huge tariff increase cannot be passed on to the patients who are from economically weaker sections of society.

f. According to the applicant, there is no rational nexus in classifying government hospitals, hospitals run by charitable institutions and private hospitals into different categories. In the order of the Appellate Tribunal, it is clearly held that profitability cannot be used as a feature to distinguish between consumers falling within the same category. Further, the Central Government has classified hospitals as Industry for various purposes.

g. The main ground relied upon by the applicant is that definition of "Industry" under Industrial Disputes Act, 1948 includes healthcare institutions and hospitals also. This is the settled law of the land after the Apex Court had so held in Bangalore Water-Supply vs. R. Rajappa & Others (1978 AIR SC 548). All labour laws such as ESI, PF, etc., are applicable to healthcare institutions and hospitals, etc., in equal measure. Therefore, there is no reason to classify hospitals and healthcare institutions in a class different from industries. It is also submitted that the private hospitals and health care institutions satisfy the following triple tests as laid down by the Hon'ble Supreme Court in the above judgment.

    (i) Systematic activity.
    (ii) Organized by cooperation between employer and employee.
    (iii) For the production and or distribution of goods and services calculated to satisfy human wants and wishes.

h. The applicant submitted that the presence or absence of profit motive is irrelevant and true focus should be on the functional and decisive test and the nature of activity with special emphasis on the employer – employee relation. It was also held by the Hon'ble Supreme Court that running of hospital is a welfare activity and not a sovereign function of the State. Therefore running of hospital is an industry and the presence

or absence of profit motive would not take the health care institutions out of the scope of industry.

i. In 1985, private hospitals were included as Industries by the Union of India through the Finance Act of India. That was the turning point for the growth of private hospitals in Kerala and India. Financial Institutions like IDBI, ICICI, IFCI, etc., started giving long-term loans for hospitals for building construction and purchase of equipment after the above inclusion. Therefore, according to the applicant, the present classification of the government hospitals and the hospitals run by charitable institutions different from the private hospitals for fixing tariff is irrational and has no nexus to the object to be achieved.

j. The applicant has submitted that as per sub-section (3) of Section 63 of the Electricity Act, 2003, the Commission can differentiate the consumers only based on the following grounds

(i) Load factor
(ii) Power factor
(iii) Voltage
(iv) Consumption during a specified period
(v) Time at which supply is required
(vi) Geographical position of the area
(vii) Nature of supply, and
(viii) The purpose for which the supply is required.

The present classification of hospitals for tariff purposes based on ownership, distribution of profits etc are not the criteria sanctioned under Electricity Act, 2003 and therefore such classification is illegal and arbitrary.

k. The applicant further submitted that, definitions of 'Industry' and 'Commerce' are the most misunderstood and misinterpreted words by ERCs all over India and they are not defined electrically. These familiar words are not defined in any Act or Regulation connected with Electricity and sky is the limit for the authorities. However, **"Industry"** is defined in S.2(j) of the Industrial Disputes Act,1947, as follows,-

> *"(j)"industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or a vocation of workmen;".*

On the other hand, the common parlance meaning of the word "Commerce" is transactions (sales and purchases) having the objective of supplying commodities (goods and services)."In short, "Legally" both words are the same and "Electrically" they are different and electricity is a super-luxury for the few coming under "Commercial tariff", though every Industry is involved in commerce also. According to the applicant, the purpose of consumption of electricity for healthcare, education and many other activities do not find any place in the categories. To make things easy, the Electricity Regulatory Commission invented categories called "non-domestic, non-industrial, non-commercial, and non-agricultural", and by permutations and combinations, healthcare and education found a place in "Commercial" as it happened in Maharashtra or in "LT VI A,B & F General" in Kerala.

l. In nut shell, the applicant has submitted that the definition of 'industry' under Industrial Disputes Act, 1948 include the healthcare institutions and hospitals. This is a settled law of the land that after the Apex Court held in Bangalore Water Supply & vs. Rajappa & others (1978 AIR SC 548). Based on the definition of the industry under Industrial Disputes Act, 1948, the health care industry has to be treated as Industry for the purpose of tariff determination also. The members of the association own small dispensaries own small clinics, nursing homes, etc and such premise are the backbone of the health care in rural and semi urban centers in Kerala. Tariff classification has to be done only in accordance with Section 62(3) of the Electricity Act-2003.

m. The applicant had relied on the judgments of the Hon'ble Supreme Court in the following cases,-

   (i) D.N. Banerji Vs P. R. Mukherjee 1953 AIR 58, 1953 SCR 302
   (ii) State of Bombay and Others Vs The Hospital Mazdoor Sabha 1960 AIR 610, 1960 SCR (2) 866
   (iii) Corporation of City of Nagpur Vs Its Employees 1960 AIR 675, 1960 SCR (2) 942
   (iv) Bangalore Water Supply and Sewerage Board Vs R. Rajappa and Others 1978 AIR 548, 1978 SCR (3) 207

   The applicant has submitted copies of the above judgments to substantiate his argument that hospital is an industry.

n. In view of the above facts and circumstances the applicant has requested that the private hospitals should be given electricity at the tariff applicable to Industries.

6. KSEB Ltd, the respondent, submitted its arguments in support of their prayer to dismiss the application. It has also cited few judgments of the Hon'ble APTEL on related issue. The relevant paragraphs of the written statement of defence submitted by KSEB Ltd are extracted below.

(a) in paragraph 13 of the written statement of defence the respondent has stated as follows,-

> *"13. The matter of different tariff for the private and Government entities has been raised before Hon'ble APTEL and in the Judgment in Appeal No. 39 of 2012 dated 28.08.2012, it was stated that the different classification between the Private entities and the Government Institutes is permissible and explained in the order as follows:*
>
> > *24) It is true that Commission cannot differentiate on any other ground except those given in 2nd part of Section 62 (3) of the Act. However, the grounds mentioned in the Section are Macro level grounds and there could be many micro level parameters within the said macro grounds. The term 'purpose for which supply is required' is of very wide amplitude and may include many other factors to fix differential tariffs for various categories of consumers as explained below:*
> >
> > *25) It could be argued that while residential premises are charged at domestic tariff, the Hotels are being charged at Commercial tariff. Both, the residential premises and the hotels are used for purpose of residence and, therefore, cannot be charged at different tariff because purpose for the supply is same. The argument would appear to be attractive at first rush of blood, but on examination it would be clear the purpose for supply in both the cases is different. The 'Motive' of the categories is different. Whereas Hotels are run on commercial principles with the motive to earn profit and people live in residences for protection from vagaries of nature and also for protection of life and property. Thus 'purpose of supply' has been differentiated on the ground of motive of earning profit. The fundamental ground for fixing different tariffs for 'domestic' category and 'commercial' category is motive of profit earning. In*

this context it is to be noted that in even charitable 'Dharamshalas' are charged at Domestic tariff in some states. The objective of Dharmshalas and Hotels is same i.e., to provide temporary accommodation to tourists/pilgrims but motive is different; so is the tariff. Thus the 'Motive of earning profit' is also one of the accepted and recognized criterions for differentiating the retail tariff. "

(b) In paragraph 18 of the written statement of defence, the respondent has submitted that the Commission can differentiate consumers based on financial criteria. Para 18 of the written statement of defence is quoted hereunder.

"18. In respect of the argument on classifying private hospitals and Govt institutions etc, APTEL has clarified that differentiation can be made on the basis of finance criteria etc of the organization. The para 26,28,29 and 30 of the above order is given below.

'26. Again, on the issue of discrimination between two similarly placed consumers, this Tribunal in Northern Railway V. Delhi Electricity Regulatory Commission in Appeal No 268 of 2006 has held that differentiation can be made on the basis of age of the organization as well as on the financial condition of the organization. The case of Northern Railways in Appeal no. 268 of 2006 was similar to the case of Appellant before us. The grievance of Northern Railway in this case was although the purpose of supply is same for Railways and Delhi Metro i.e. traction, the Delhi Commission has shown undue preference to later by fixing lesser tariff as compared to the tariff for Railways.

……..

28. From the above it is clear that the term 'purpose' includes many factors. However, the differentiation done by the Commission has to be tested on the anvil of 'undue preference' as per first part of Section 62(3). The Appellant has submitted that the Commission has given undue preference to the Government run institutes by keeping them in the mixed-load category and re-categorised the Appellant and shifted it to non-domestic category. According to the Appellant ownership cannot be the criteria to differentiate the tariff under

section 62(3) of the Act. Both the government run institutes and institutes run by members of the Appellant society imparts education and therefore the purpose for supply is same. Article 14 of the Constitution prohibits Equals to be treated unequally.

29. The above contention of the Appellant that Government run educational institutes and institutes run by private parties are equal is misconceived and is liable to be rejected for the following reasons:

i) Government run institutes are controlled by the education departments and run on budgetary support. On the other hand private institutions are run by the Companies incorporated under Companies Act 1956 and operate on the commercial principles. The survival of Government run institutes very often depends upon the budgetary provision and not upon private resources which are available to the institutes in the private sector.

ii) Right to education is a fundamental right under Article 21 read with Articles 39, 41, 45 and 46 of the Constitution of India and the State is under obligation to provide education facilities at affordable cost to all citizens of the country. Private institutes are not under any such obligation and they are running the education institutes purely as commercial activity.

ii) Article 45 of the Constitution mandates the State to provide free compulsory education to all the children till they attain the age of 14 years. In furtherance to this directive principle enshrined in the Constitution, a Municipal School providing free education along with free mid-day meal to weaker sections of society cannot be put in the same bracket along with Public School with Air-conditioned class rooms and Air-conditioned bus for transportation for children of elite group of society. They are different classes in themselves and have to be treated differently. Where Article 14 of the Constitution prohibits equals to be treated unequally, it also prohibits un-equals to be treated equally.

iv) The same is true for hospitals. Right to health is a fundamental right under Article 21 of the Constitution and Government has constitutional obligation to provide the health facilities to all

citizens of India. Therefore, Hospital run by the State giving almost free treatment to all the sections of society cannot be treated at par with a private hospital which charges hefty fees even for seeing a general physician.

30. Hon'ble Supreme Court in Hindustan Paper Corpn. Ltd. Vs. Govt. of Kerala (1986) 3 SCC 398 has also held that Government undertakings and companies form a class by themselves."

(c) In paragraphs 19, 20, 21, 22 and 23 of the written statement of defence, KSEB Ltd has argued that there is no merit in the submissions made by the applicant claiming industrial tariff on the ground that private hospitals have been classified as industries in the Industrial Disputes Act. The above paragraphs are quoted hereunder.

"19. In view of the above observations there is no merit in the argument of the petitioner regarding the tariff categorization made by the State Commission.

20. Further, the petitioner as per the above petition has requested for classifying the private hospitals under Industrial tariff on the grounds that, the definition of 'Industry' under Industrial Disputes Act, 1948 includes healthcare institutions and hospitals.

21. The Commission in classifying the consumers under their purview need not be going on with any other classification done by the Government, any other utility or any classification made by any other statutes for different purposes. The above matter has been made clear in the orders issued by the Hon'ble APTEL in appeal no 131 of 2013 filed by M/s Vianney Enterprises in a tariff re-categorization case. The relevant part of the order is extracted below;

"23. The Appellant has also raised the following issues for continuation of their classification under LT IV Industrial category:

i) Unit being recognized as industry under Factory's Act etc.

ii) Bottling and packing activity is being considered as industrial in other States for the purpose of electricity tariff.

24. In our view the above two arguments are not valid. The categorization of consumer for the purpose of electricity tariff is under the domain of the State Commission under the Electricity Act, 2003. Under Section 62(3) of the Electricity Act, the State Commission can differentiate between the tariffs based on interalia, purpose for which the supply is required. Accordingly, the State Commission is empowered to differentiate in tariff based on a purpose for which the supply is required. In this case the State Commission has differentiated between the units which use electricity for extracting oil from seeds which is a manufacturing activity and those units which are only engaged in packing of oil brought from outside which has been considered as commercial activity. Secondly, each State Commission is empowered to decide the retail supply tariff and categorization of consumers for its State. It is not binding for the State Commission to follow the categorization of consumers for tariff purpose decided by the Regulatory Commissions of other States.

23. In this regard, it may be noted that the automobile service stations which has been classified as a service Industry as per Government was included under the Commercial tariff in the tariff order. Here also the Hon'ble Commission has categorized the same under commercial tariff going by the purpose for which the supply is used for and not based on the classification done by the Government. Accordingly, it is not binding on the State Commission to follow any classification done by any other utility or the Government.

24. In view of the above facts, the Board is of the view that the tariff assigned by the State Commission on the Private Hospitals, Government hospitals and the Hospitals run by charitable institution is correct, fair and legally sustainable. Hence, it is requested that the Hon'ble Commission may reject the petition filed by the Qualified Private Medical Practitioners Association."

(d) The respondent KSEB Ltd submitted that the application is devoid of any merit and therefore it has to be dismissed.

Analysis and decision

7. The Commission has examined the contentions of the applicant as well as of the respondent, in view of the facts and circumstances and case laws cited by them. As per the prevailing tariff order dated 14.08.2014, the Government hospitals and the private hospitals registered under the Travancore- Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 are categorized under LT VI(A) / HT-II(A) category. The private hospitals are categorized under LT-VI(F) / HT-II(B) category. The details of the prevailing LT-VI (A) tariff applicable to Government hospitals and LT-VI(F) tariff applicable to private hospitals are extracted below.

LOW TENSION –VI GENERAL (A) {LT- VI (A)}

Tariff applicable to government or aided educational institutions; libraries and reading rooms of government or aided educational institutions; Government hospitals; X-Ray units, laboratories, blood banks, mortuaries and such other units attached to the government hospitals; blood banks of IMA or of local self Government Institutions; private hospitals and charitable institutions registered under Travancore - Cochin Literary, Scientific and Charitable Societies Registration Act, 1955, the donations to which are exempted from payment of Income Tax; premises of religious worship; institutions imparting religious education and convents; poly clinics under Ex-servicemen Contributory Health Scheme (ECHS).

LT - VI GENERAL (A)	
(a) Fixed Charge (Rs. per kW or part thereof per Month)	*50*
(b) Energy Charge (Paise/kWh) *(i) Of and Below 500 kWh* *(ii) Above 500 kWh*	*550* *630*

LT VI GENERAL (F)

Private hospitals, private clinics, private clinical laboratories, private X-ray units, private mortuaries, private blood banks, private scanning centers, computer training institutes, self- financing educational institutions (including hostels), private coaching or tuition centres, cinema studios, Audio/video cassette recording/duplication units, CD recording units, all construction works, installations of cellular mobile communications, satellite communications, offices and / or exchanges of telecom companies, offices or institutions of All India Radio (AIR), offices or institutions of Doordarshan and other Television broadcasting companies, cable TV networks, radio stations, insurance companies, call centers, cinema dubbing and animation studios, hall marking centres.

LT VI GENERAL (F)	
Fixed charge (Rs/ kW per month)	
Single Phase	*60*
Three phase	*120*
Energy Charge (paise per unit)	
0 to 100 units per month	*580*
0 to 200 units per month	*650*
0 to 300 units per month	*720*
0 to 500 units per month	*780*
above 500 units per month	*900*

8. The tariff applicable to low tension industries is as quoted below.

LOW TENSION IV - INDUSTRY (LT- IV)
(a)LT- IV (A) – INDUSTRY

Tariff applicable for general purpose industrial loads (single or three phase) which include manufacturing units, grinding mills, flour mills, oil mills, rice mills, saw mills, ice factories, rubber smoke houses, prawn peeling units, tyre vulcanizing/retreading units, workshops using power mainly for production and/or repair, pumping water for non- agricultural purpose, public waterworks, sewage pumping, power laundries, screen printing of glass ware or ceramic, printing presses including presses engaged in printing dailies, bakeries (where manufacturing process and sales are carried out in the same premises) diamond- cutting units, stone crushing units, book binding units with allied activities, garment making units, SSI units engaged in computerized colour photo printing, audio/video cassette/CD manufacturing units, seafood processing units, granite cutting units (where boulders are cut into sheets in the same premises), cardamom drying and curing units, and units carrying out extraction of oil in addition to the filtering and packing activities carrying out in the same premise under the same service connection, manufacturing rubber sheets from latex, telemetry stations of KWA, dairy, processing of milk by pasteurization and its storage and packing, soda manufacturing units, plantations of cash crops, all non-agricultural pumping, drinking water pumping for public by Kerala Water Authority, corporations, municipalities and panchayats, electric crematoria, pyrolators installed by local bodies.

LT - IV (A) INDUSTRY	
(a) Fixed Charge	
(i) Connected load of and below 10 kW (Rs. per consumer per month)	*100*
(ii) Connected load above 10kW (Rs. per kW or part thereof per month)	*60*
(iii) Connected load above 20 kW (Rs. per kVA or part thereof per month)	*125*
(b) Energy Charge (Paise/kWh)	*520*

Note: 1.- Workshops with automobile service stations shall segregate the workshop load for availing the benefit of industrial tariff. If loads are not segregated the charges shall be realized at the rates applicable to automobile service stations.

Note : 2.- General conditions relating to installation of capacitors will apply

LOW TENSION – IV (B) – IT and IT Enabled Services. {LT IV (B)}
Tariff applicable to Information Technology (IT) and IT enabled services including Akshaya-e-centres, computer consultancy services units, software services, data processing activities, desktop publishing (DTP), software development units and such other IT enabled services, but excluding call centers.

LT - IV (B) IT and IT Enabled Services	
(a) Fixed Charge	
(i) Connected load of and below 10kW (Rs. per consumer per month)	*100*
(ii) Connected load above 10 kW (Rs. per kW or part thereof per month)	*60*
(iii) Connected load above 20 kW (Rs. per kVA or part thereof per month	*125*
(b) Energy Charge (Paise/kWh)	*580*

Note: General conditions relating to installation of capacitors will apply.

9. The contention of the applicant is to the effect that the members of the applicant association should be granted the tariff applicable to industries under LT IV category. The applicant is relying on various judgments of the Hon'ble Supreme Court to substantiate that hospital and other health care institutions are industries in accordance with the definition of the word 'industry' in the Industrial Disputes Act. The judgment issued by the Hon'ble Supreme Court in D N Banerji *Vs* P R Mukherjee and others (AIR 1953 SC 58) is on the dispute of employees. The other judgments (AIR 1960 SC 610, AIR 1960 SC 675, AIR 1978 SC 548) submitted by the applicant do also deal with the disputes of employees. There is absolutely no difference of opinion with the fact that as per the definition in the Industrial Disputes Act and as per the case laws submitted by the applicant, the hospitals and other health care institutions would fall within the ambit of the definition 'industry'. The Hon'ble Supreme Court has, in successive judgments, ordered that hospitals and health care institutions will come under the word 'industry' as defined in the Industrial Disputes Act for the purpose of deciding issues relating to employee-employer relationships. The decision of the Hon'ble Supreme Court in this regard is the law of the land and nobody can have any dispute over this issue. The

Commission also admits that for the purpose of dealing with industrial relations, the hospital will come under the term 'industries'.

10. The industries have been broadly classified into manufacturing industry and service industry. In the recent years, a new category namely IT and IT related industries has also come into existence. It should be noted that the word 'industry' has very wide meaning to bring to its fold various categories of industries such as manufacturing industry, IT and IT enabled industry, hotel industry, hospitality industry, tourism industry, transport industry, plantation industry, construction industry and such many other industries. For the purpose of tariff determination all such industries are not treated alike.

11. Agriculture is the primary sector, the development and sustenance of which is inevitable for the existence of people. In all the States, electricity for agriculture is either heavily subsidized or given free. Cultivation of food crops which are inevitable for the sustenance of human beings and the cultivation of ornamental plants in the nurseries for sale to public, are not treated at par, though both such cultivations of plants would broadly come under the category of agriculture.

12. The residential buildings and the hotels are intended for stay of persons. But the residential buildings are intended for permanent stay of human beings, ensuring safety and security mainly from enemies, thieves, harmful animals and vagaries of climate, whereas hotels are not for meeting such primary needs of the people. The hotels are run for profit whereas residential buildings are maintained by the owners for their living. Therefore, supply of electricity for domestic purpose and supply of electricity for hotels are treated and priced differently.

13. Health care has become the fundamental right of every citizen. Therefore, the Governments have the duty to provide health care facilities free or at nominal charges to the citizens depending upon their income and financial status. The Central Government, the State Governments and the local self-government institutions provide health care facilities to the people either free or at affordable nominal charges. Private hospitals and the other private health care institutions, irrespective of their size or ownership, charge for their services in such a way that the owners can make as much profit as possible. Therefore

private hospitals and private health care institutions cannot be treated at par with Government hospitals and Government health care institutions. Hon'ble APTEL in its various judgments has observed that, the private hospitals cannot be equated to Government hospitals for tariff categorization. Relevant portion in some of the judgments is extracted below.

(a) In the judgment dated 28.2.2012 issued by Hon'ble APTEL in Appeal No 39/2012 (Rajasthan Engineering College Society vs. Rajasthan Electricity Regulatory Commission & Ors.), it is held that:

" Right to health is a fundamental right under Article 21 of the Constitution and Government has constitutional obligation to provide the health facilities to all citizens of India. Therefore Hospitals run by the state giving almost free treatment to all the sections of society cannot be treated at par with a private hospital which charges hefty fees even for seeing a general physician."

(b) In the judgment dated 12.08.2014 in Appeal No. 300 of 2013 (Delhi Voluntary Hospital Forum Vs Delhi Electricity Regulatory Commission and Others), the Hon'ble APTEL held further that :

"17. After going through the aforesaid proposition of law, we are of the firm view that the hospitals/dispensaries run by the private parties or bodies cannot be treated at par with the hospitals or dispensaries or institutions run by the Government of NCT of Delhi or Municipal Corporations because the purpose of the two is not identical. Government hospitals are run under constitutional mandate to provide free medical treatment to every citizen of the country irrespective of his social or financial status whereas, the purpose of the private hospitals is commercial in nature namely; to earn profits by charging hefty charges, etc."

14. In the case of tariff for electricity supplied for public lighting, concessional rates are offered for using LED lights. In the case of ordinary incandescent bulbs, the efficiency of converting electrical energy to light energy is reported to be very low in the range of 4 to 5%. The balance electrical energy is converted to heat energy and it is wasted. It is needless to point out that energy saved is equivalent to energy generated. Therefore, with a view to

promoting energy efficient lighting systems, concessional rates are offered to public lighting with LED bulbs / tubes.

15. Similarly there are many examples of differential pricing for the electricity supplied for similar activities with different purposes and motives.

16. Electricity is a merchantable commodity. In the usual course, the same quantity of electricity with same quality, should be priced equally irrespective of the purpose for which it is used. But this is not the case with the tariff of electricity. Electricity supplied for irrigation, domestic activities, industrial activities, commercial activities, publicity and advertisement activities, entertainment activities etc., are priced differentially depending upon the socio economic importance of such activity for which electricity is used. This is because electricity is a versatile form of energy and it is the life line of all developmental activities in the society. While it is inevitable for improving the standard of living and health care of the people, it is also inevitable for the economic development of the Nation. Electricity is instrumental in engineering the socio economic development in society. As per Section 6 of the Electricity Act, 2003, it is the duty of the Central and the State Governments to provide access to electricity to all areas including villages and hamlets through rural electricity infrastructure and electrification of households. As per Section 43 of the Act every distribution licensee shall, on application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply. Thus it can be seen that electricity has become a statutory right of every citizen of our Nation. The Central and the State Governments have been given the duty to provide access to electricity in all areas and to all households. Thus electrification of rural areas and households therein is one of the statutory duties of the Governments. The National Electricity Policy and the Tariff Policy notified by the Government of India do also stipulate that the citizen should be given 24 x 7 supply of electricity. The Central and State Government have also launched projects for 100% electrification of households.

17. Section 62 (3) of the Electricity Act 2003, authorized the Commission to categorize the consumers as follows;

"(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.".

18. Therefore, the Commission has to consider the purpose for which electricity is used, while determining tariff for various categories of consumers. The Commission has been authorized by the provisions of the Electricity Act, 2003, to formulate consumer categories and to determine tariff according to the role each consumer category plays in the socio economic development of the society. The categorization of consumer for the purpose of electricity tariff is under the domain of the State Commission under the Electricity Act-2003. Under Section 62(3) of the Electricity Act, 2003, the Commission is empowered to differentiate between tariffs based on purpose for which electricity is required. Hon'ble APTEL in judgment dated 20th October 2011, has expressed the view that,

"30. The real meaning of expression 'purpose for which the supply is required' as used in Section 62 (3) of the Act does not merely relate to the nature of the activity carried out by a consumer but has to be necessarily determined from the objects sought to be achieved through such activity. The purpose is the design of effecting some thing to be achieved or accomplished. The overt act of the person must be looked at so as to find out the effect of the transaction.

31. Webster's New International Dictionary defines the work 'purpose' as that which one sets before him as an object to be attained; the end or aim has to be kept in view of any plan, measure, exertion or operation. Therefore, it is beyond doubt that 'purpose' has to be determined with regard to the ultimate object of the consumer for the use of electricity. While determining the purpose for which supply is required by a consumer, it is ultimately the end objective of the user that has to be ascertained."

19. The request of the applicant association is to reclassify its members to industrial category for the purpose of tariff for electricity. Such reclassification would amount to re-determination and reduction of tariff to

the members of the applicant association. Determination of tariff for electricity has to be done by the Commission in accordance with Sections 61, 62 and 64 of the Electricity Act, 2003, read with the provisions of the KSERC (Terms and Conditions for Determination of Tariff) Regulations, 2014. It has been clarified by the Hon'ble Supreme Court and the Hon'ble APTEL that the tariff determination is a quasi-legislative process. As per the procedures specified by the Tariff Regulations, the tariff can be determined only after notifying the proposal for the information of the public and after conducting public hearing thereon. Therefore the issue raised by the applicant has to be considered in the process of determination of tariff. Section 62 (4) of the Electricity Act 2003 provides that,

> *(4) No tariff or part of any tariff may ordinarily be amended more frequently than once in any financial year, except in respect of any changes expressly permitted under the terms of any fuel surcharge formula as may be specified.*

Further, Section 64 (6) of Electricity Act 2003 provides as follows;

> *(6) A tariff order shall, unless amended or revoked, shall continue to be in force for such period as may be specified in the tariff order.*

Therefore, the present tariff notified as per the order dated 14.08.2014, will continue to be in force in accordance with the orders issued by the Commission.

20. The cross subsidy is a practice recognized by the provisions of Electricity Act, 2003, though it has been stipulated in clause (g) of Section 61 that the cross subsidy should be reduced. In the process of cross subsidy, the sectors such as agriculture and domestic are given electricity at subsidized rates and subsidy is provided by consumers in the categories such as commercial, industrial and general. The Commission has to carefully consider the competing claims of various categories of consumers and work out a delicate balance while determining tariff, in such a way that the legitimate and reasonable expenses of the licensees are met with. Therefore tariff for electricity supplied to various categories of consumers can only be determined in an integrated manner after considering the claims and counter claims of all stakeholders. Few members of the applicant association had presented their claims in the public hearings conducted as a part of the suo motu proceedings initiated by the Commission for determining the tariff applicable to 2017-18. The

Commission will duly consider all such claims and issue appropriate orders whenever tariff proposals are finalized.

21. From the statutory provisions, the judgments of the Hon'ble Supreme Court, the regulations, the orders of the Hon'ble APTEL and the procedures as well as facts explained above it can easily be seen that the private hospitals and other private health care institutions who are the members of applicant association are not entitled to the lower tariff applicable to the industrial category formulated based on the provisions in Electricity Act, 2003 and the Tariff Regulations, 2014, merely based on the fact that they come under the definition of the term 'industry' as per the Industrial Disputes Act.

Orders of the Commission

22. In view of the facts and circumstances explained above it is found that the members of the applicant association are not entitled to industrial tariff for electricity, though they may come within the meaning of industry for the purpose of Industrial Disputes Act. Therefore, the claims of the applicant association for including its members in the industrial category for the purpose of determination of tariff and to supply electricity at a lower industrial tariff, are not sustainable. Therefore the application is dismissed.

Sd/-	Sd/-	Sd/-
K.Vikraman Nair	S. Venugopal	T.M. Manoharan
Member	Member	Chairman

Approved for Issue

Santhosh Kumar. K.B
Secretary