

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
B.E.S. & T. UNDERTAKING

(Constituted under section 42(5) of Electricity Act 2003)

Ground Floor, Multistoried Annex Building,
BEST's Colaba Depot
Colaba, Mumbai – 400 001

Telephone No. 22853561

Representation No. N-E-68-09 dt . 30/3/2009

M/s. Balaji heart Hospital & Diagnostic CentreComplainant

V/S

B.E.S. & T. UndertakingRespondent

Present

Quorum 1. Shri. S. P. Goswami, Ag. Chairman
2. Smt. Vanmala Manjure, Member

On behalf of the Complainant 1. Shri. Dr. Ramesh S. Kagzi

On behalf of the Respondent 1. Smt. Estella Jacques, AOCC (E Ward)
2. Shri. V.S. Gujar, A.E. CC (E Ward)
3. Shri. Mohan Parthasarathy, OACC (E Ward)
4. Smt. P.S. Kirtikar, O.A. Legal

Date of Hearing: 23/4/2009

Judgment by Shri. S.P. Goswami, Ag.Chairman

M/s. Balaji heart Hospital & Diagnostic Centre, Byculla East, Mumbai-27 has come before this Forum with application for concessional tariff in bill a/c no. 202-024-343*8.

Brief history of the case

- 1.0 vide letter dated 28.09.2006 complainant requested BEST to levy the tariff rate as per hospital's tariff as his premises were exempted from tax under Section 143.
- 2.0 vide letter dated 13.11.2006 the complainant submitted certificate from MMC stating that, the property granted exemption from the levy of general tax under section 143 (I) (a) of the MMC act.
- 3.0 vide letter dated 29.08.2008 complainant requested chief Engineer (Customer Care) of BEST that there hospital electricity bills should be classified in LT-I residential consumers as their hospital fall in the category of local authority aided hospital.
- 4.0 Vide letter dated 29.09.2008 Chief Engineer (Customer Care) of BEST informed the complainant that their hospital does not qualify for LTI tariff.
- 5.0 vide letter dated 30.12.2008 complainant approached to IGR Cell of BEST mentioning that their tariff should be charged as per LF-I from 4th April 2005 rather than from October 2006 and further requested that there tariff should be charged as per LT-I residential w.e.f. 1st April 2007 there premises are aided by government / local bodies.
- 6.0 vide letter dated 26.02.2009 BEST's IGR Cell informed to the complainant that under prevailing tariff schedule (as approved by MERC) their hospitals does not qualify for LT-I tariff.
- 7.0 Unsatisfied by the reply of the respondent dated 26.02.2009 consumer approached CGRF Forum in schedule 'A' format on 26.03.2009.

Consumer in his application and during Hearing stated the following

1. The Distribution Licensee published a schedule of Electricity Tariffs effective 15.07.1997. In respect of a consumer to whom the Distribution Licensee had granted exemption from payment of general tax under Section 143(1) (a) of the Act, the Tariff (per unit) was fixed as follows:

i)	0-150 units	1.40
ii)	151-300 units	2.25
iii)	300 & above units	3.50

2. The Distribution Licensee published New Electricity Tariffs effective 01.10.2006. In respect of a consumer to whom the Distribution Licensee had granted exemption from payment of general tax under Section 143(1) (a) of the Act, the Tariffs (per unit) was fixed as follows:

i)	0-100 units	0.75
ii)	101-300 units	2.00
iii)	300 & above units	3.60

3. By and under an Agreement dated 4th August 2004 made between Municipal Corporation of Greater Mumbai (BMC) and the Consumer, the BMC permitted the Consumer to use the structure admeasuring 1657 square meters situated at plot bearing no.566 Mazgaon Division, Near Victoria church, Byculla (E) Mumbai 400 008 for a term of 10 years commencing from 20th August 2004 at a nominal rate of Rs.1 per square meter per annum and on payment of one time premium amounting to Rs.15,11,000/- and on the terms and conditions contained therein.
4. The Distribution Licensee raised bills for supply of electricity on the Consumer on and from 1st April 2005. The Distribution Licensee applied Tariff Rate applicable LT-2. The Distribution Licensee charged the consumer for supply of electricity of Rs.5/- per unit.
5. On the application made by the consumer, the Distribution Licensee vide its letter dated 30th October 2006, issued a certified true copy of the assessment extract for 2005-06. In the said letter it was certified that the consumer was exempted from payment of general tax vide letter dated 10th November 2006. The Distribution Licensee further clarified that the said property is exempted from payment of property tax viz. General Tax, State Education Cess, Municipal Education Cess and Street Tax under the provision of Section 14A of the Municipal Act.
6. In view of the Certificate of the Distribution Licensee, the BMC extended the benefit of Tariff applicable LT-1 (resident) with effect from October 2004. The Distribution Licensee however did not extend the benefit of tariff applicable LT-1 to the consumer with effect from 1st April 2005.
7. The Consumer in this behalf carried out correspondence with the Distribution Licensee to refund the excess charges recovered from the Consumer for supply of electricity during the period 1st April 2005 to 31st March 2007. The Distribution Licensee published a revised tariff with effect from 1st April 2007.
8. In the revised Tariffs, the Distribution Licensee has charged electricity charges to the consumer under serial no.3 as applicable to LT-II column, non-residential –cum-commercial serial no.3 of the tariff on page 3 to 5 of the booklet.
9. The consumer claimed that the proper Tariff applicable to it under serial no.2 as applicable to LT-I residential. It was the case of the consumer that its hospital is aided by the Distribution Licensee.
10. In the meantime the Distribution Licensee published revised tariff with effect from 1st June 2008 to 31st March 2009.
11. The consumer by its application dated 29th August 2008, requested the distribution Licensee to charge Tariff applicable to LT-I as its hospital is aided by Distribution Licensee.
12. The Distribution Licensee, vide its letter dated 29th September 2008 addressed to the consumer rejected the request of the consumer

contained in the letter dated 29th April 2008 on the ground that the hospital of the consumer does not qualify LT-I tariff.

13. The Distribution licensee, vide its letter dated 02.03.2009 informed us rejecting our request. The copy of letter enclosed. In this regard we have to state:
 - i) The property tax exemption under Section 143(l) (a) of MMC act is applicable to us from day one and not from the date of issuance of letter as mentioned in the above letter. The distribution licensee has not gone strictly as per dates of the letter also, as claimed in above letter. As the claim, admittedly, was given from 01.10.2006 whereas letter was dated 13.11.2006.
 - ii) He had also produced copy of their letter showing exemption from 1st property Tax bill to the distribution licensee in 2006.
 - iii) As per their point no. details reason is given.
14. At the time of hearing complainant state that his hospital works 'on no loss no profit' basis. As desired by Forum complainant submitted chartered Accountant's letter as the documentary evidence on 27th April 2009, to show that complainant's hospital works on 'no loss no profit'.
15. As per Complainant his hospital is government aided as it has property tax exemption u/s 143 (1)(a) of MMC Act, rent charges are minimum & operating on no loss no profit basis. On 27.04.2009, as desired by Forum complainant submitted the letter issued by BMC mentioning that the complainant premises were eligible for property tax exemption u/s 143(1)(a) of MMC Act since 04.08.2004.
16. At the time of hearing complainant state that his hospital is private limited company whereas, in similar name they have a charitable trust.

BEST in its written statement and during Hearing stated the following:

1. Balaji Heart Hospital & Diagnostic Centre Pvt. Ltd had applied for higher capacity meter vide requisition no. 50541652 dated 30.09.2004 under 'Hospital' tariff. Consequently, the electronic Meter No.T950768 was installed in their premises on 11.01.2005 & as per the computerized ledge of A/c. No.202-024-343, the first electricity bill was preferred in the month of February 2005 for 2640 units as per the above mentioned rates under 'H' tariff. As such, we have charged the consumer from February 2005 on the basis of the actual consumption of units as per the below mentioned tariff rates as applicable under 'H' tariff.
2. As per the Schedule of Electricity Tariffs effective from 15th July 1997, the rates per unit for Hospital (H) tariff was as follows:-
Rs.3.00 per unit for first 150 units, plus, Rs.4.00 per unit from 151 to 500 units, plus, Rs.5.00 per unit for rest of units, Subject to minimum

monthly charge of Rs. 35/- Plus Fuel Adjustment Charges, plus other charges as given in footnote.

3. Balaji Heart Hospital & Diagnostic Centre Pvt. Ltd. had applied for change in tariff from `H' to `SN' tariff vide their application dated 28.09.2006. For eligibility of applicability of `SN' tariff in case of Hospitals run by Charitable Institutions, a certificate from local authority for exemption of general tax under Section 143 (1) (a) of MMC Act is required to be produced. Hence, Balaji Heart Hospital & Diagnostic Centre Pvt. Ltd. was asked to furnish the same. Accordingly, they submitted a copy of certificate dated 10.11.2006 issued by the Brihan Mumbai Mahanagarpalika.
4. Balaji Heart Hospital & Diagnostic Centre Pvt. Ltd. has applied for Change in tariff on 28.09.2006 from `H' to `SN' tariff. However, they submitted the requisite certificate of exemption of general tax under Section 143 (1) (a) of the MMC Act dated 10.11.2006 on 13.11.2006. Hence, the change of tariff was effected from the first day of the subsequent month (i.e. 01.10.2006) after receipt of the application (i.e.28.09.2006).
5. Prior to 01.10.2006, the tariff schedule (effective w.e.f. 15th July 1997) as approved by the BEST Committee (the then Competent Authority) was in force and as per the then prevailing practice, the change in tariff was to be effected from the date of application and submission of documentary evidence.
6. In response to application dated 28.09.2006 & submission of the certificate (for exemption of general tax under Section 143 (1) (a) of the MMC Act) datd 10.11.2006 the tariff of the consumer was changed for regular billing with effect from December 2006 and refund for difference in tariff for the period from the date of the application (i.e.01.10.2006) to the date of starting of the regular billing (01.12.2006) amounting to Rs.1,79,124.60 was credited in the April 2007.
7. As per the revised schedule of tariff (approved by MERC) effective from 1st April 2007, only Government aided Educational Institutions, Hospitals and Dispensaries (Sr.No.2 (c)) are included under the concessional LT-1 (Residential) Tariff & as per Sr.No.3, all other hospitals are included under the LT-II (Non-residential cum Commercial) tariff. As Balaji Heart Hospital & Diagnostic Centre is a private hospital and was not aided by the Government, this hospital does not qualify for LT-1 tariff & was, therefore, included under the LT-II Category.
8. The Brihan Mumbai Mahanagarpalika has granted exemption of general tax under Section 143 (1) (a) of the MMC Act to Balaji Heart Hospital & Diagnostic Centre. However, no financial aid has been given by the Government for operation and management of the hospital.
9. Balaji Heart Hospital & Diagnostic Centre Pvt. Ltd. has applied for Change in tariff on 28.09.2006 from `H' to `SN' tariff. However, they submitted the requisite certificate of exemption of general tax under

section 143 (1) (a) of the MMC Act dtd. 10.11.2006 on 13.11.2006. Hence, the change of tariff was effected from the first day of the subsequent month (i.e. 01.10.2006) after receipt of the application (i.e.28.09.2006).

10. Prior to 01.10.2006, the tariff (effective w.e.f. 15th July 1997) as approved by the BEST Committee (the then Competent Authority) was in force and as per the then prevailing practice, the change in tariff was to be effected from the date of application and submission of documentary evidence.
11. In response to application dated 28.09.2006 & submission of the certificate (of exemption of general tax under Section 143(1) (a) of the MMC Act dated 10.11.2006, the tariff of the consumer was changed for regular billing with effect from December 2006 and refund for difference in tariff for the period from the date of the application (i.e. 01.10.2006) to the date of starting of the regular billing (i.e.01.12.2006) amounting to Rs.1,79,124.60 was credited in the April 2007.
12. Since, no financial assistance has been given for operation & management of to Balaji Heart Hospital & Diagnostic Centre by the Government or by Brihan Mumbai Mahanagarpalika, the LT-1 tariff has not been applied to the consumer.
13. As stated in point no. 9 to 12 the consumer cannot be given the benefit of concessional tariff with effect from 1st April 2005 to 30th September 2006 & 1st April 2007 onwards.
14. At the time of hearing BEST state that as per conditions of supply of the year 1997 if at any time, the energy supplied under one method of charging is in force, the whole of energy registered as consumed during the period fixed by the undertaking according to documentary evidence produced by the consumer will be charged at the higher rate. The imposition of this liability will not relieve from any penal action imposed by law. Same is applicable in vice-versa. Accordingly as per the document submitted at the time of application the complainant's tariff was decided which was as per the procedure in vogue.
15. At the time of hearing BEST state that the complainant's premises cannot be considered as government aided as except for nominal rent charges by MMC other expenses such as equipment, employees & other operational expenses are borne by the complainant. In this regard as desired by Forum, BEST submitted documents on 27.04.2009 regarding definition of government aid & details of section 143(1)(a) of MMC Act, in which BEST state that complainant's hospital will not come within the purview of government/local authority aided educational institutions, hospitals and dispensaries. The entire hospital is not aided but only a part of their activity is aided. Therefore, complainant's hospital cannot claim the benefit LT-1 tariff.
16. At the time of hearing BEST state that BEST agrees to give concessional tariff if proper documentary evidence regarding government aid is submitted by the complainant.

Observations

1. Complainant has approached the Forum for seeking following reliefs.
 - 1.1 Application of LF-1 tariff from 4th April 2005 instead of October 2006.
 - 1.2 Application of LT-I tariff from 1st April 2007 to 1st June 2008 instead of LT-II tariff.
2. The requisition made by complainant is in the name of “Balaji Heart Hospital & Diagnostic Centre Pvt. Ltd” while the electric bill is being issued in the name of “Balaji Heart Hospital & Diagnostic Centre”.
3. Complainant has not provided documentary evidence regarding exemption of payment of general tax u/s 143(1)(a) of MMC Act at the time of application dtd. 28/9/2006 (also at the time of making his initial requisition dtd. 30/09/2004) for change of tariff from H to SN tariff. However, complainant produced the same on 10/11/2006, in the name of “Balaji Heart Hospital & Diagnostic Centre”.
4. Respondent effected the change of tariff i.e. SN w.e.f. 1/10/2006 which was as per the prevailing practice and as per the conditions of supply, overlooking the fact that “Balaji Heart Hospital & Diagnostic Centre” and “Balaji Heart Hospital & Diagnostic Centre Pvt. Ltd” are two different entities.
5. Complainant has got the aid from BMC only in respect of rent. However, other operational expenses are borne by him.
6. Complainant has an agreement (in the name of “Balaji Heart Hospital & Diagnostic Centre Pvt. Ltd”) with MMC to establish and provide charitable health services by setting up maternity home with modern facilities & for managing and maintaining the same on “no profit no loss basis”.
7. Complainant has an agreement with MMC that they shall use the said premises to provide health services even unrelated to maternity home.
8. Complainant has an agreement with MMC that they shall keep 25% bed in the Maternity Home premises reserved for the patients below poverty line.
9. During the hearing complainant has accepted the fact that the establishments viz. “Balaji Heart Hospital & Diagnostic Centre Pvt. Ltd.” & “Balaji Heart Hospital & Diagnostic Centre.” are separate establishments.
10. Respondent has agreed to consider the complainant’s grievances regarding concessional tariff if he submits the proper documentary evidence on the name of “Balaji Heart Hospital & Diagnostic Centre Pvt. Ltd.” or apply for a separate meter on the name of “Balaji Heart Hospital & Diagnostic Centre.” showing that his establishments are government aided.

11. Complainant submitted the documentary evidence on the name of "Balaji Heart Hospital & Diagnostic Centre" & not in the name of "Balaji Heart Hospital & Diagnostic Centre Pvt. Ltd." on 27/4/2009 from BMC that his premises were eligible for property tax exemption u/s 143(1)(a) of MMC Act since 4/8/2004.
12. The Association of Hospitals, Mumbai had submitted a petition (case no. 130 of 2008) before MERC on December 17, 2008 seeking review of BEST's tariff Order dtd. 6th June 2008 in case no. 73 of 2007, with respect to reclassification of the category of the Public Charitable Trust Hospitals is dismissed by MERC.
The main prayers in the petition was to review and amend in respect of category of Public Trust Charitable Hospitals in Mumbai and place them under LT-I and HT-I concessional tariff categories.

ORDER

1. The complainant's plea for entire hospital to be considered under concessional tariff is here by rejected.
2. Copies be given to both the parties.

(Shri. S. P.Goswami)
Ag. Chairman

(Smt.Vanmala Manjure)
Member