

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No. 160 of 2008 &  
I.A. No. 207 of 2008**

**Dated: 16<sup>th</sup> February, 2009**

**Present : Hon'ble Mr. Justice M. Karpaga Vinayagam, Chairperson  
Hon'ble Mr. A.A. Khan, Technical Member**

**Cipla Cancer & AIDS Foundation  
Mumbai – Bangalore Bypass Road,  
Warje, Pune**

**... Appellant (s)**

**Versus**

**1. Maharashtra Electricity Regulatory Commission  
World Trade Centre, Centre NO.1,  
13<sup>th</sup> Floor, Cuff Parade, Mumbai-400 005  
2. Maharashtra State Electricity Distribution Co. Ltd.,  
Plot No. G-9, Prakashgad, Bandra (E),  
Mumbai – 400 051**

**... Respondent (s)**

Counsel for the Appellant/ (s) : Mr. Vijay Nair, Mr. Rajat Joneja &  
Mr. Manik Bakshi  
Counsel for the Respondent(s) : Mr. Ravi Prakash for MSEDCL-Resp.2  
Mr. Buddy A. Ranganadhan &  
Mr. Arijit Maitra for MERC- Resp.1

**ORDER**

The tariff order passed by the Maharashtra Electricity Regulatory Commission on 20.06.2008, is challenged in this Appeal before this Tribunal, mainly on the ground that the appellant has been shifted to Category HT II Commercial from HT I Non-continuous Category without giving any notice to him.

It is strenuously contended by the learned counsel for the appellant that the appellant cannot be categorized as HT II Commercial, especially when it is not running a hospital, but it is running a Palliative

Care Centre helping cancer patients, who are beyond curative treatment, that too without charging any money. The only request the learned counsel for the appellant makes before this Tribunal is to give him an opportunity to make the submissions and place the materials, with reference to the same, before the Commission, so that he could convince the Commission that it will not come under the hospital category.

We have heard the learned counsel for the appellant, the learned counsel for the Commission and the learned counsel for the distribution licensee. We have also gone through the counter affidavit ~~etse.~~

Though it is contended by the learned counsel for the respondents that it is for the distribution licensee to determine about the billing, we are of the view that the letter dated 1.11.2008 sent by the appellant to the Commission has been rejected by the Commission through the letter dated 25.11.2008, on the ground that it could be reviewed in the next year. As such, the Commission has not decided the question raised in the letter dated 01.11.2008 seeking for the review.

Thereupon, the appellant went to the High Court of Bombay and filed a writ petition. Ultimately, the High Court directed the appellant to file an appeal before this Tribunal. That is how, the matter has now come before this Tribunal.

In this context, it would be appropriate to refer to the statement made by the learned counsel for the distribution licensee in para 7 of his counter. It is stated in para 7 of the counter affidavit that the Commission has tried to provide certain reliefs to Hotels/Daramshalas/Remand homes which are meant for under privileged people; the Commission has categorized them under 'Domestic Consumers-Other than BPL' for those drawing under Low Tension Category; these have not been considered under commercial category which would have a higher tariff rate.

It is also stated in the counter in the next paragraph that the decision of the Commission to club the charitable, trust owned hospitals, such as the appellants, appears to be appropriate, since it is well known that the charitable, trust owned hospitals, particularly like the appellants provide luxurious facilities, like air-conditioned rooms, fridge, TV etc., to the indoor patients, though such luxurious facilities are not always required for the medical treatment being given to the patients that is an admitted position that, any or all of such extra facilities results in increase in consumption, which can be termed as luxurious consumption and is therefore liable for higher tariff. On the basis of this statement made in the counter, the learned counsel for the 2<sup>nd</sup> respondent would venture to justify the impugned order passed on 20.06.2008 by the Commission.

It is specifically stated in the appeal and emphatically submitted by the learned counsel for the appellant that it is not a hospital and does not own any luxurious facilities like air conditioned rooms, fridge, TV, etc., to provide facilities to the indoor patients, and as such, if opportunity is given to him, he would establish before the Commission that they are not hospitals owning such facilities and that in that event, <sup>the Appellant is</sup> we will be re-categorised as HT I Non-Continuous category and not HT II Commercial. We find force in this contention.

Under these circumstances, we are of the opinion that the matter can be remanded to the Commission and the Commission can be directed to consider this question and pass suitable orders in accordance with law, with reference to the aspect which has been raised by the learned counsel for the appellant before this Tribunal, on the basis of the materials placed before the Commission by the appellant after hearing the learned counsel for the distribution licensee. Accordingly, it is ordered.

This could be done as expeditiously as possible. It is made clear that we are not expressing any opinion in that <sup>regard</sup>.

The appeal is disposed of. No costs.

  
(A.A. Khan)  
Technical Member

  
(Justice M. Karpaga Vinayagam)  
Chairperson

D/O

D/O