TAMIL NADU ELECTRICITY REGULATORY COMMISSION

(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:

ThiruM.Chandrasekar .... Chairman

Dr.T.PrabhakaraRao .... Member

and

Thiru.K.Venkatasamy .... Member (Legal)

R.A. No.4 of 2019

Association of Healthcare Providers (India)
Rep. by its President, TN (Reg. No. S/186/2012)
Dr.S.Gurushankar
S/o. N.Sethuraman
2/47, Melur Main Road
Uthangudi
Madurai – 625 107.

… Petitioner
(Thiru Venkatesh
Advocate for the Petitioner)

Vs.

1. The State of Tamil Nadu
   Through Chief Secretary
   Fort St. George
   Chennai – 600 009.

2. Tamil Nadu Electricity Board
   The Chairman
   NPKRR Maaligai
   144, Anna Salai
   Chennai – 600 002.

3. Tamil Nadu Generation and Distribution
   Corporation Ltd.
   (TANGEDCO)
   Represented by Chairman and Managing Director
   10th Floor, NPKRR Maaligai
   144, Anna Salai
   Chennai – 600 002.

…Respondents
(Thiru M.Gopinathan
Standing Counsel for R2 and R3)

Dates of hearing : **30-07-2019; 06-08-2019; 20-08-2019; 17-09-2019; and 24-09-2019**

Date of Order : **29-10-2019**

1. Theprayer of the petitioner as seen from the affidavit filed before the Hon'ble High Court in W.P. No.4199 of 2019 is to lower the tariff from commercial category (Tariff HT-II-A) or at a Special Category which is way below the existing category HT-III for the NABH accredited hospitals situated at rural and semi-urban areas in Tamil Nadu based on the petitioner's representation dated 02-03-2017.

2. In the above said W.P. No.4199 of 2019 dated 08-03-2019, the Hon'ble High Court has directed as follows:-

> *"Hence, the Tamil Nadu Electricity Regulatory Commission can also, in exercise of its power conferred under section 62 (3) read with 86 of the Electricity Act, 2003, consider the grant of separate category to the hospital functioning in the rural areas and semi urban areas, which are accredited with the National Accreditation Board for Hospitals and Health Care Providers, to place them below the commercial category. As the said concession can be relegated to both the hospitals set up in the rural areas and semi urban areas and also the patients coming from the rural and semi urban areas, this court, finds no impediments to issue Writ, accordingly direct the 2nd respondent, namely, the Chairman, Tamil Nadu Electricity Regulatory Commission, Chennai to consider the representation of the petitioner dated 02-03-2017 on merits by exercising its power conferred under section 62 (3) read with*

section 86 of the Electricity Act, in the light of the tariff orders passed by the Karnataka State Electricity Regulatory Commission dated 30-04-2012 and also an order of the Appellate Tribunal for Electricity, State of Maharashtra in Appeal No.110 of 2009 dated 20-10-2011 and pass appropriate orders, within a period of four months from the date of receipt of a copy of this order."

3. Pursuant to the above direction, the affidavit filed by the petitioner Association before the Hon'ble High Court has been treated as Remanded Application and numbered as R.A. No.4 of 2019. In the said affidavit, the petitioner Association has made the following submissions:-

(i) The petitioner association is the collective of the members providing quality health care to the public. There are more than 12,000 hospitals in India who are enrolled as members of the petitioner association. In particular there are more than 300 Hospitals in Tamil Nadu as members of the Petitioner.

(ii) For standard quality health care service certain norms, standards and regulations are being fixed by the accrediting body I.e., National Accreditation Board for 'Hospitals and Health care providers in short referred as NABH. The NABH was formed after recommendation from the Ministry of Health and Family Welfare by Government of India. The object of the NABH is to see that quality and standard is maintained by the health care providers and Hospitals. The 'hospitals which fulfil the required standards and regulations are only accredited by NABH.

(iii) The hospitals have to maintain clean, hygienic and sterile environment and deliver quality patient care. Each and every aspect of this quality health care which is also a fact of the Fundamental Right to Life is electrical energy driven and electrical energy intensive and results in substantial consumption of electrical energy.

(iv) The rest of the populace, mostly in semi-urban and rural areas feels the burden. The hospitals operation in these Tier-II and Tier-III towns and rural areas are also burdened due to the affordability factor of the patients though they provide the same quality of health care as any other hospital in a metropolitan area.

(v) In Tamil Nadu, all the private hospitals fall in the category of HT-III, which a residual category covering those commercial establishments, as mentioned above. This plainly, is a case of treating unequals equally, as the purpose of supply to all these establishments is different from the purpose of supply of electricity to hospitals. In fact, section 62(3) of the Electricity Act, 2003, envisages and enables the Electricity Regulatory Commission to differentiate between consumers in the matter of fixation oftariff based on the 'purpose for which the supply is required'.

(vi) This situation has to be remedied bythe 2nd respondent by appropriate categorization of the private hospitals/health care providers, fixing concessional tariff than what is being done now. This has to be done taking into account the geographical position also of the hospitals namely in metro, tier II, tier-Ill towns and rural areas.

(vii) The Karnataka Electricity Regulatory Commission by the Tariff order dated 06.05.2013had passed an order by reducing the electricitytariff which was already in force for the Hospitals and health care providers and fixed a special tariff for private hospitals which was earlier in the Commercial category. In the State of Maharastra also the Hon'bleAppellate Tribunal for Electricity had quashed the State Electricity Commission's refusal to categorize private hospitals/healthcare providers differently from the residual category and had directed the State Commissioner to "classify the hospitals, educational institutions and spiritual organizations which are service oriented and put them in a separate category for the purpose of determination of Tariff'. These principles may be applied in our State also.

(viii) On 02.03.2017 a representation was sent by the petitioner to the respondents requesting the same, by stating all the facts and also by pointing to the order of the Karnataka Electricity Regulatory Commission. The respondents having received the same have not responded.

4. In its representation dated 02-03-2017, the petitioner Association has stated as follows:-

(i) Association of Healthcare Providers (India) (AHPI) represents the majority of private healthcareproviders in India with more than 12000 Indian hospitals as its members. The AHPI Tamil Nadu Chapter, represents more than 175 hospitals in the State.

(ii) As per the TNERC Electricity tariff, all private hospitals are categorised under the Commercial consumer (Tariff III) at par with other commercial establishments such as cinema studios, cinema theatres, hotels, bars etc. Hospitals are service

oriented and are institutions that provide emergency care to the people. Hospitals are also required to maintain a sterile and clean environment and are expected to function 24 hours, on 365 days and so tend to consume large amounts of electricity. HVAC (Heating, Ventilation and Air Conditioning Systems).medicalequipments and instruments, technical equipments, lighting systems and recycling equipments etc., which are essential in the hospital's functioning are the major contributors to the electricity bill. The electricity bill contributes to almost 30% of the hospital expenses.

(iii) Hospitals find it difficult to operate with the increasing electricity bills in addition to other operational expenses. Especially, hospitals in rural villages find it impossible to operate with little opportunities for revenue generation as the patient bills tend to be far lesser than those in metropolitan cities.

(iv) The proposal of including atleast the hospitals in rural areas under the residential category (Tariff I) or a Special EB Tariff, which is way below the existing Tariff category III, under the TNERC electricity tariff may be considered, thereby, help bringing down the patient bills and benefiting the rural people of Tamil Nadu.

5. In the counter affidavit filed on 17-09-2019, the Respondent TANGEDCO has submitted as follows:-

(i) As per section 62 (3) of the Electricity Act, 2003, the Tamil Nadu Electricity Regulatory Commission (TNERC) shall determine the tariff in accordance with the provisions of this Act as follows:-

> *"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."

Based on the above statutory provision, Hon'ble TNERC has fixed HT Tariff II A for the services under the control of Central! State Governments/ Local Bodies/ TWAD Board/CMWSSB which includes Hospitals, Primary Health Centres and Health Sub-Centres,Veterinary Hospitals, Leprosy Centres and Sub-Centres. This tariff is also applicable tothe Hospitals and Rehabilitation Centres, Rehabilitation and Training Centres, Old Age Homes and Orphanages run by charitable trusts which offer totally free treatment/services for all categories of patients/inmates on par with Government hospitals and institutions. Private hospitals do not come under this category. The HT Tariff III is applicable to all other categories of consumers not covered under High Tension Tariff IA, IB, IIA, lIB, IV and V. The private hospitals are classified under HT Tariff III, since they are not covered under High Tension Tariff lA, IB, IIA, lIB, IV and V and it does not mean a commercial tariff. Similarly in the LT tariff it falls under commercial category (LT Tariff V).

(ii) At present Government of Tamil Nadu (GoTN) is providing subsidy to Domestic, Huts, Agriculture, Temple, Handloom, Powerloom and HT Lift Irrigation category of consumers. If tariff is reduced for the private hospitals, it will lead to additional burden to GoTN and other category of consumers such as Domestic, Handloom, Powerloom and Temple.

(iii) By reducing the tariff the running cost of the private hospitals will be reduced and in turn the fees collected from the patients will be reduced. But whether the fees collected from patients are reduced cannot be monitored.

(iv) Rationale applied in the court cases of any particular State cannot be applied to other States because cost of supply, geographical conditions vary from State to State.

(v) Identification of urban / rural zones and the hospitals coming under NABH is very difficult for fixing a separate tariff by further sub-categorizing the existing tariff for private hospitals.

(vi) The petitioner had requested for consideration as a special case for charging the petitioner under Tariff II A. But seeking concession is a different issue and can be argued only prospectively during future tariff settings and cannot be invoked for re-classification. The existing order is to be interpreted as such for arriving at a conclusion.

(vii) Creation of new category for consumers like that of the petitioner, with necessary data in accordance to the criteria provided in section 62 (3) of the Electricity Act, 2003 and submit the same in the public hearing meeting that will be held at the time of filing of application for determination of tariff, for any relief required.

6. In the Rejoinder filed by the petitioner on 24-09-2019 has stated as follows:-

(i) The present proceedings are in respect of hospitals in rural and semi-urban area that areNABH accredited hospitals. That is private hospitals accredited by National Accreditation Bureau of Hospitals. There is no demand in respect of all the private hospitals in Tamil Nadu.

(ii) The HT Tariff III is residuary category, encompassing all and sundry consumers not covered under other categories. This by itself is arbitrary and legally and factually unsustainably when Government Hospitals etc. could form a separate category it logically follows that private hospitals should also be treated as a separate category and not under residual category where all commercial purposes like cinema halls, malls, multiplexes, industry etc. are brought under.

(iii) The NABH accredited hospitals are a class by themselves. Unless the required facilities/standards and various other specifications prescribed by the NABH are satisfied this accreditation will not be given. And these hospitals provide high speciality care to the patients in rural and semi-urban areas. When such hospitals form a class by themselves they cannot be treated in a residual category like HT-III. Putting together different categories with intelligible differentia under one category.
also suffers from arbitrariness and it is in violation of Article 14 of the Constitution of India. Even treating the private Hospitals along with multiplexes, Malls, Cinema Theatres and other commercial and entertainment industries is also not legally sustainable, as the nature and purpose of supply differs. However at present we are concern only with one particular category of hospitals.

(iv) Apatient who goes to a multi speciality hospital for saving his life is penalised by the Government by charging higher rates, if this contention of the respondent is taken. This is nothing but illegal. When subsidies rates are given to domestic, huts, agriculture, temple, handloorn, powerloom and HT lift irrigation category of consumers, theprivate hospitals can be charged the average cost of supply and nothing more than that would only be reasonable. The Government can very well rationalise and divide the burden on other categories. In any case the number of NABH accredited Hospitals are only handful in the entire State and fixing them under a different category of tariff is not going to burden the Government.

(v) The respondent has stated that other States like Andhra Pradesh, Telangana, Bihar, Orissa, Madhya Pradesh and Gujarat placed private hospitals under commercial category. This is a wrong example. In fact the Appellate Tribunal in Maharashtra cases which is chaired by a retired High Court Judge has gone into this issues regarding classification and has given a very detailed pronouncement in Appeal No.110 of 2009 etc batch dated 20.10.2011. This was also relied upon before the Hon'ble High Court and the Hon'ble Court inW.P.No.4199 of 2019 has directed this Commission to decide the matter in the light of the judgement of the Appellate Tribunal for Electricity in Maharashtra case.

(vi) In specific the names and location of the hospitals who are members of the petitioner association are mentioned below:-

a. Sree Renga Hospital, Chengalpet, Tamil Nadu, India
b. The Teritary Teaching Hospitals of Christian Medical College, Vellore, Tamil Nadu, India.

c. Meenakshi Hospital, Tanjore, Tamil Nadu, India.

d. Manipal Hospitals, Salem Tamil Nadu, India.

e. Kalyani Kidney Care Centre, Erode, Tamil Nadu, India.

f. Dr.Jeyasekharan Hospital and Nursing Home, Nagercoil, Tamil Nadu, India.

g. Apollo KH Hospital, Melvisharam, Vellore, Tamil Nadu, India

h. Nathan Super Speciality Hospital, Salem, India.

The above mentioned hospitals are the NABH accredited hospitals in semi-urban and rural areas in Tamil Nadu.

(vii) By providing a convectional tariff to the NABH accredited hospitals in rural and semi-urban areas, is inequality will be removed first. Next it will also serve as incentive to establish hospitals with all facilities in rural and semi-urban areas and this will ultimately serve the welfare State goals of the State and Central Governments. When such larger and greater issues and interest of the general public are involved the respondent being worried about monitoring the fees collected, appears to be imprudent and naive.

(viii) The respondent has failed to consider the claim of the petitioner based on the directions given by the Hon'ble High Court in W.P.No.4199 of 2019 wherein it has been specifically stated that the claim of the petitioner is to be considered in the light of the tariff orders passed by the order of Appellate Tribunal for Electricity in Appeal No.110 of 2009 etc batch dated 20.10.2011 and orders passed by the Karnataka State Electricity Regulatory Commission dated 30.04.2012 by exercising its power conferred under section 62(3) read with section 86 of Electricity Act, 2003. The order

of the Appellate authority is binding on the State Commission and the Appellate authority has clarified and decided the legal position that State commission has powers under section 62(3) of the Electricity Act, 2003 to fix a tariff based on the nature of supply and purpose for which it is used.

(ix) The Respondent has contended that the seeking of concession can only be argued prospectively during future tariff settings and cannot be invoked for re-classification is not acceptable. If the tariff is reduced from commercial to residential or pay other special tariff below commercial category III at the present the same can be implemented prospective from the year 2020-2021.

(x) This case on hand is not for fixation of tariff for domestic category. It was for creation of new category for hospitals accredited with NABH situated in rural and semi-urban areas alone by which public will be the ultimate beneficiary. It is necessary to submit that hospitals cannot be placed equal to mails, multiplexes and industries as they are run for profit and hospitals are established for rendering medical service to the public.

7. During the hearing on 24-09-2019, the learned Counsel appearing for the petitioner reiterated the submission already made in the affidavit before the Hon'ble High Court and the submission made in their rejoinder.

8. Findings of the Commission:-

8.1 The petitioner has submitted that their association members have established more than 12000 hospitals in India out of which 300 nos. hospitals are in Tamil Nadu

and they are providing quality health care. The hospitals situated in rural areas find it very difficult to operate with little opportunities for revenue generation as the patient bills tend to be far lesser than those in metropolitan cities. Further, the petitioner has prayed that at least the association members hospitals located in rural areas may be billed under the residential category (Tariff I) or a special EB tariff category which is below the existing tariff III category may be considered thereby helping the hospitals in bringing down the patient's bills and benefitting the rural people of Tamil Nadu.

8.2. But the respondent TANGEDCO has argued that the Hon'ble TNERC has fixed the HT tariff IIA for the service under the control of Central / State Governments/Local bodies/TWAD Board/CMWSSB which includes Hospitals, primary Health centers and Health sub centres,veterinary Hospitals, Leprosy Centers and sub centres. The HT tariff III category is applicable to all other categories of consumers not covered under High Tension Tariff -IA,IB, IIA,IIB,IV and V. The private hospitals are classified under HT tariff III, since they are not covered under high Tension tariff IA,IB,IIA,IIB,IV and V. Similarly in the LT tariff it falls under LT tariff V.

8.3. Further the TANGEDCO has argued that seeking concession can be argued only during the tariff settings in the future and cannot be invoked for reclassification in the existing tariff order category of consumers.Creation of a new category of consumers with necessary data can be submitted in the next public hearing meeting that will be held at the time of filing of tariff application for determination of tariff by the TANGEDCO.

8.4. Considering the arguments of both the petitioner and the respondent, the Commission gives direction to TANGEDCO to bring the petitioner's hospitals established in the rural areas in a separate category in the next tariff petition which will be filed on or before 30.11.2019 with the details of number of such Hospitals,the expected consumption of units of electricity per annum and other details so as to take a decision on the petitioner's claim on merits. The Commission disposes of this petition with the above direction. .

(Sd.....)	(Sd.....)	(Sd.....)
(K.Venkatasamy)	**(Dr.T.PrabhakaraRao)**	**(M.Chandrasekar)**
Member (Legal)	**Member**	**Chairman**

/True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission