

TAMIL NADU ELECTRICITY REGULATORY COMMISSION

Order of the Commission dated this the 20th Day of February 2025

PRESENT:

Thiru.K.Venkatesan

.... **Member**

and

Thiru.B.Mohan

.... **Member (Legal)**

M.P. No. 29 of 2023

M/s.Annamalai University,
Rep. by its Registrar,
Annamalai Nagar,
Chidambaram – 608 002.

... **Petitioner**
(M/s.S.Sithirai Anandam
Advocate for the Petitioner)

Versus

1. The Chairman & Managing Director,
TANGEDCO,
(Formerly TNEB),
No. 144, Anna Salai,
Chennai – 600 002.
2. The Superintending Engineer,
Cuddalore Electricity Distribution Circle,
(Formerly TNEB),
Cuddalore.
3. The Chief Financial Controller,
(Regulatory Cell),
TANGEDCO,
Anna Salai,
Chennai – 600 002.

... **Respondents**
(Thiru.N.Kumanan and
Thiru.A.P.Venkatachalapathy
Standing Counsel for TANGEDCO)

This Miscellaneous Petition stands preferred by the Petitioner M/s.Annamalai University with a prayer to set aside the impugned communication, dated 24.08.2004 bearing LR.No.5E/CEDC/CUD/AO/R/Audit-03-04/95/A4/2004 and declare the same as illegal, and consequently direct the 2nd Respondent to classify the HTSC 95 of the Petitioner under the TARIFF-IIA for Educational Institutions instead of the Commercial TARIFF and pass such further or other orders as the Commission may deem fit and proper in the circumstances of the case and thus render justice.

This petition coming up for final hearing on 19-09-2024 in the presence of Thiru.S.Sithirai Anandam, Advocate for the Petitioner and Tvl.N.Kumanan and A.P.Venkatachalapathy, Standing Counsel for the Respondents and on consideration of the submissions made by the Counsel for the Petitioner and the Respondents, this Commission passes the following:

ORDER

1. Contentions of the Petitioner:-

1.1. The Petitioner University is one of the premier Universities in the country and was established consequent upon the Madras Act 1 of 1929 and the Annamalai University Act, 1928 enacted by the then Presidency of Madras. The University is long established as a premier educational institution in the varied fields such as Arts, Science, Engineering, Education, Medical, agriculture, Fine Arts, Indian Languages etc. and has a total of 52 departments. The University is also recognized by the University Grants Commission under Section 12-B of the UGC Act. The University is the only unitary residential university with 75 years standing in India with 15 hostels accommodating

8000 students. The petitioner was, prior to July, 1996, availing of 8 supply points under 11 KV for each of the connections and Tariff II had been applied to the same. The said service connections were availed of independently for its various colleges and other facilities. Thereafter, in July 1996, all separate HT services were merged as a single HT service under 33 KV. Consequent upon that, the petitioner was continuing to avail of service and was being charged tariff under Tariff II for the service connection.

1.2. The present petition is filed as per the directions of the Hon'ble High Court, Madras, made in Writ Petition in W.P.No.31550 of 2005. The operative portion of the common order dated 24.03.2023 passed in the above Writ Petition is as hereunder : -

“3. In view of the above observations, the writ petitions are disposed of. However, the petitioners are at liberty to file appropriate petition before the Tamil Nadu Electricity Regulatory Commission as per Regulation 26(3) of the Tamil Nadu Electricity Supply Code, within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the Regulatory Commission shall dispose of the petitioners as expeditiously as possible.”

1.3. On an earlier occasion, pursuant to an audit objection, the respondent Board sought to revise the tariff to HT Tariff III applicable to commercial category. The petitioner made a representation for revision of the said tariff and restoration of *status quo ante* by putting forth all the facts including the fact that the petitioner's service connection falling squarely within Tariff II as applicable to recognized educational institutions and that reclassification of the HT Tariff III by the respondent on baseless grounds was not maintainable. The petitioner also brought to the notice of the respondent that insofar as the hospital at the University was concerned and the Dobi Khana operating theatre, the same were part and parcel of the medical college, namely,

the Raja Muthiah Medical College and Hospital. Furthermore, since it was a mandatory requirement in law to commence a medical college in order to continue to have recognition and that a hospital also needs to be part of the medical college, the hospital and the other required services were being maintained as part of the requirements of the grant of and continuation of recognition of the educational institution.

1.4. The above issues were considered in detail by the respondent Board and the respondent Board by its order dated 1.6.1999, after examining the issue in respect of tariff, after considering the audit objection that had been raised in respect of two numbers of erstwhile HT Services because of the merger of all the service connections, arrived at a considered opinion after obtaining a report of the Superintending Engineer that the medical college was functioning with the hospital at the University and that the Dhobi Khana was entirely incidental to the hospital activities. The respondent further negated the audit contention that the service connection to the hospital could only be categorized under HT Tariff II by examining the issue thereby concluding that the audit had raised the objection on the consideration of individual utility while overlooking the fact that the services are interdependent and that their co-existence is a must for proper functioning of the medical college. The Board further gave a finding that the hospital is an essential requisite for the medical college for imparting training to the students in treatment of patients and as such the hospital was part and parcel of the college similar to an Engineering workshop being considered as part and parcel of the Engineering College. After considering the issues in detail, the respondent Board directed that audit

objections be dropped and that the predominant utility and the main purpose should be taken as the criteria for applicability of tariff and in cases where utility of individual services were interdependent and the primary aim is that of running an educational institution, HT Tariff II should apply. After giving a finding in that regard, the respondent Board withdrew its claim for short levy and also refunded the excess amount collected by wrong classification under HT Tariff III. Consequent upon the said order, the respondent Board itself recognized the stand in respect of classification under HT Tariff II and continued to levy the electricity service charges under HT Tariff II subsequently.

1.5. Thereafter, the petitioners were shocked to receive a communication from the 2nd respondent dated 24.08.2004, without, in any, manner making reference to the earlier determination by the respondent Board itself which is binding on the respondent Board, stating that the respondent is seeking to reclassify the service connection from HT Tariff II-A meant for recognized educational institutions to HT Tariff III meant for commercial connections. The said stand of the respondent was wholly contrary and it was brought to the notice of the 2nd respondent that the Raja Muthiah Medical College and Hospital are part and parcel of the Annamalai University and that the hospital is required to be part of the medical college and therefore the conclusion on the part of the 2nd respondent was incorrect and sought for dropping of the said proceedings. Thereafter, nothing was heard from the respondent. It was only on 30.06.2005, that the petitioner was shocked to receive the impugned communication dated 27.6.2005 from the 2nd respondent where the 2nd respondent, informed the petitioner that the Board Office Audit Branch audited

the accounts for the year 2003-04 and came to the conclusion that there was a wrong application of tariff HT Tariff IIA for the petitioner instead of HT Tariff III in respect of its sanctioned demand. The ground for such objection was that the power was being utilized for the purposes of the medical college hospital belonging to the Annamalai University and its vital allied works at the hospital, namely, the Dobi Khana, water pump house etc. The respondent therefore called upon the petitioner to pay a huge amount of Rs.5,75,49,168/- as short levy being the difference between Tariff II & III for the period from December 2001 to May 2005 and called upon the petitioner to make the payment within one month. It is pertinent to state that the respondent failed to even make a reference to its own findings given on an identical audit objection raised earlier when it had, as set out in the affidavit, fully agreed with the stand of the petitioner and classified the service connection under HT Tariff II-A. The respondent has merely ordered the re-classification based on an audit objection that has been given without application of mind. The respondent cannot act contrary to its own finding to by way of impugned order. Even to its own determination, the said demand also contained no reasons for the change in stand particularly when there was no change in facts. Consequently, the petitioner issued a reply dated 1.9.2004 recognized, the functioning of a hospital is a mandatory requirement. The hospital and its allied activities cannot in any manner be separated from the college of which it is an integral part. The respondent rather than informing the Board Office Audit Branch, of its earlier determination on the issue, which is binding on them, has blindly raised a demand on the petitioner. The petitioner has also issued reply to the same bringing to the attention of the respondent the earlier orders

passed by its letter dated 14.07.2005, 03.08.2005 and 24.08.2005 for which a reply has now been sent by the 2nd respondent baldly rejecting the petitioner's claim by the impugned letter dated 31.8.2005. There is threat of disconnection and should the respondent seek to take any coercive steps, educational activities and medical hospital activities may be jeopardized.

1.6. Hence the petitioner is approaching this Commission for the following among other

a) The impugned action of the respondent is wholly arbitrary, illegal and violative of the petitioner's fundamental rights under Article 14 of the Constitution of India.

b) The impugned order of the respondent is one without jurisdiction and wholly illegal inasmuch as the issue has been fully considered by the respondent Board itself which on an earlier audit objection, being raised after calling for records, finally determined that the service connection to the petitioner would fall under the Category of HT Tariff II- A. The action of the respondent is wholly arbitrary in as much as it is bound by its earlier determination and cannot seek to make a demand contrary to its own finding when there is no change in the facts. The respondent is barred by estoppel by raising an identical issue which has been determined in favour of the petitioner by the respondent itself.

c) The impugned order has been passed without any application of mind and is wholly unreasonable inasmuch as it seeks to determine various activities of the petitioner University and states that the medical college hospital and its allied activities have to be treated separately. The respondent has failed to note that under the relevant regulations of the Medical Council of India, in order for the petitioner to obtain recognition and continue to be a recognized as a Medical College, it is required to run a medical hospital as well. Such being the case, when the hospital is an integral part of the educational institution, namely, Raja Muthiah Medical College and hospital, the respondent cannot seek to artificially classify the same.

d) The arbitrary action of the respondent is liable to be set aside in as much as it has failed to note that the petitioner University has 9 faculties including that of Arts, Science, Engineering, Education, Medical, Agriculture, Fine Arts, Indian Languages etc. and its activities are solely that of an educational institution. Furthermore, the petitioner can be only categorized as a recognized educational institution in respect of its activities and none of its activities relate to anything other than its activities as a recognized educational institution.

e) The respondent has failed to consider that the service connection is being used solely for the purpose of an education institution and tariff reclassified cannot be done in an arbitrary and illegal manner. The respondent's order has been passed without any application of mind in as much as the demand has been

raised based solely on the audit objection without an independent application of mind by the second respondent. When the respondent Board itself has determined the issue finally, the 2nd respondent ought to have considered the audit objection and given an appropriate reply to the said objection by pointing out the earlier proceedings which the audit branch of the respondent Board has failed to notice. The 2nd respondent's action in merely quoting an audit objection and raising a demand without applying his mind independently is therefore wholly arbitrary, illegal and liable to be set aside.

f) The respondent's action in relying on the audit objection and the alleged working out of the percentage is wholly irrelevant for the purposes of a service connection inasmuch as the hospital and its allied activities having been recognized as part and parcel of the educational institution, cannot be said to be treated differently and would be entitled to the same tariff classification. In any event, even the percentage arrived at has been done in a wholly arbitrary and baseless manner without any basis for arriving at the alleged calculation and percentage. Without prejudice to the applicability of the tariff as a whole to the educational institution even the calculation that has been sought to be arrived at is without any basis, and hence the impugned communication is liable to be quashed.

g) The petitioner would also like to highlight the request made by the then the Administrator of Annamalai University to the Chairman and Managing Director,

TNEB for revision of the tariff from IIB to IIA for levying charges for supply of electricity to Annamalai University under tariff IIA (Applicable to Government aided Institutions) which was accepted by the then Chief Financial Controller (Rev) of TANGEDCO and brought into effect from 25.09.2013 pending the Tariff dispute case in the Honourable High Court.

The impugned order has been passed without application of mind and without giving the petitioner the opportunity of being heard.

h) The abrupt and unilateral change of classification without the Petitioner being informed of the same has caused prejudice and irreparable loss to the Petitioner. If only the Petitioner had been given an opportunity, it would have been in a position to explain the above facts. Further the said change in classification being made without taking any Test Report is also against the Rules of the Electricity Board.

i) The impugned order has arbitrarily sought to apportion half the total bill to commercial activities without there being any basis and has sought to make the impugned demand which is liable to be quashed.

j) The respondent Board by way of the impugned levy is seeking to classify the petitioner under a category that is wholly inapplicable to its activities as an educational institution. By treating the petitioner under the commercial category, the respondent is acting wholly contrary to the tariff classification and causing

great prejudice to the petitioner's charitable activities which have been recognized for more than 75 years in the field of education and health care. For these and other reasons, the impugned order is liable to be set aside.

1.7. The petitioner is aggrieved by the arbitrary and illegal action of the respondent Board in seeking to re-classify the petitioner's HT Service Connection for the purposes of tariff under HT Tariff III meant for commercial category from the present category of HT Tariff IIA for recognized educational institutions. The action is wholly arbitrary in as much as in respect of an identical action sought to be initiated on an earlier occasion, the respondent Board itself made a determination of tariff in 1999 to the effect that the classification of the petitioner's connection under HT Tariff IIA is correct and hence the respondent cannot charge on the basis of HT Tariff III for commercial category.

1.8. The petitioner left with no other alternative remedy, approached the Hon'ble High Court by invoking Article 226 of the Constitution of India by filing a writ petition in W.P.No.31550 of 2005 for issuance of a Writ of Certiorarified Mandamus by calling for the records of the 2nd respondent comprised in the impugned order dated 24.08.2004 bearing LR.No.SE/CEDC/CUD/AO/R/Audit-03-04/95/ A4/2004 and the consequential order dated 27.06.2005 bearing Lr.No.S.E/CEDC/DFC/CUD/AO/R/RCS/AS/A4/F.BOAB.Audit/2005 and quash the same as being arbitrary and illegal and consequently direct the respondent to continue to apply HT Tariff IIA for the petitioner's service connection HTSC No.95 and order refund of excess amount collected by the respondent by wrongly applying HT Tariff III instead of HT Tariff II-A to the petitioner's HTSC NO.95.

1.9. The said Writ Petition was disposed by the Hon'ble High Court, Madras with the following observations :-

"3. In view of the above observations, the writ petitions are disposed of. However, the petitioners are at liberty to file appropriate petition before the Tamil Nadu - Electricity Regulatory Commission as per Regulation 26(3) of the Tamil Nadu Electricity Supply Code, within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the Regulatory Commission shall dispose of the petitioners as expeditiously as possible. - - -"

As a sequel the petitioner has come forward with the instant petition seeking appropriate reliefs.

2. Counter Affidavit filed on behalf of the Respondents:

2.1. The petitioner is having Medical College with Hospital and obtained HT Services having No.95 effected on 31.07.1996. The applicability of Tariff is based on the Govt. orders issued by the Govt. of Tamil Nadu and Commission from time to time, The HT Service was billed under HT Tariff IIA (Up to May – 2004) and as per the Tariff G.O.Ms. No.95 Energy (A2) Department dt. 28.11.01, but the HT service should have been billed under HT Tariff –III. Based on the circular Chairman/ TNEB/Chennai in his letter dated 04.07.2002 the HT Bill for the month of June – 2004 billed under Commercial Tariff. Further the petitioner had been informed regarding the applicable Tariff from the Superintending Engineer / CEDC/Cuddalore vide the letter No.SE/CEDC/CUD/AO/R/Audit-03-04/95/A4/2004 and the consequential letter dated 27.06.2005 bearing Lr. No.SE/CEDC/CUD/AO/R/RCS/AS/A4/F.BOAB. Audit/2005.

a. The petitioner has filed a writ petition vide W.P.No.31550/2005 before the Hon'ble High Court of Madras challenging the Tariff change. The Hon'ble High Court issued interim stay and disposed the case on 24.03.2023 with the following direction.

In view of the above observations, the writ petitions are disposed of. However, the petitioners are at liberty to file appropriate petition before the Tamil Nadu Electricity Regulatory Commission as per Regulation 26(3) of the Tamil Nadu Electricity Supply Code, within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the Regulatory Commission shall dispose of the petitions as expeditiously as possible. No costs. Consequently, connected miscellaneous petitions are closed.

b. The petitioner has filed this Miscellaneous Petition vide M.P.No.29 of 2023 before the Tamil Nadu Electricity Regulatory Commission / Chennai for applicability of Tariff.

2.2. The HT service connection No.95 is used for Medical College & Hospital.

2.3. The G.O.Ms. No.95 Energy (A2) Department dated 28.11.2001 has fixed the HT Tariff-IIA & HT Tariff-III as furnished below:-

High Tension Tariff – IIA

Recognised educational institutions, Hostels run by recognised Education Institutions, Govt. Hospitals, Hospitals under the control of Panchayat Unions, Municipalities, Veterinary Sub Centre, Primary Health Centres, Health Sub Centres, Orphanages, Public Libraries, Water Works, Public Lightings, Public Sewerage works by Govt., Local bodies, Laboratories, Research Institutions, Studio, Cinema Theatres and such other Institutions declared by the Govt. from time to time.

Area	Rate per KWH	Rate per KVA of Maximum Demand
1	Rs.in Paise	Rs.

Metropolitan	3.60	150
Non Metropolitan	3.50	150

High Tension Tariff-III

Commercial and all categories of consumers not covered under High Tension Tariff 1A, 1B, IIA, IIB, IV, and V.

Area	Rate per KWH	Rate per KVA of Maximum Demand
1	Rs.in Paise	Rs.
Metropolitan	4.30	300
Non Metropolitan	4.20	300

2.4. The petitioner is rendering treatment on chargeable basis and is a self financed institution imparting Medical and allied education and conducting research. Though the hospital is attached to the institution, the patients are treated on payment basis and not free of cost until September 2013.

2.5. The Government of Tamil Nadu issued Annamalai University Act 2013 vide its notification dated 25.09.2013 (Based on G.O (Ms.) No.170, Higher Education (H1), 25th September 2013). Based on the G.O. the entire University was undertaken by the Government of Tamil Nadu and consequently the applicable tariff to government educational institutions falls under HT tariff IIA from October 2013 onwards.

2.6. As per the above, the applicability of tariff for the period December 2001 to September 2013 is as per the Tariff Categorisation made in the Tariff Schedule in respect of recognised educational institutions and hospitals under various Tariff Orders, which provides as follows:

“a) Order in T.P.No.1 of 2002 dated 15.03.2003:

3.0 HT Tariff II-A

High Tension Tariff II-A Tariff Category	Rate in paise per kWhr (unit)- Energy Charges	Rate in rupees per KVA of Maximum Demand
HT Tariff II-A	350	200

This tariff is applicable to recognized educational institutions, hostels run by the recognized educational institutions, Government Hospitals and the hospitals under the control of Panchayats, Municipalities and Corporations, Veterinary hospitals, Leprosy Centre, Primary Health Centre, Orphanages, Public Libraries, Water Works, Public Lighting, Public Sewerage Works by Government / Local Bodies, Laboratories, Research Institutions, Studios, Cinema Theaters, Ministry of Defence Establishments, Housing Complexes and such other institutions declared by the Commission from time to time.

4.0 High Tension Tariff II-B

Tariff Category	Tariff	
	Rate in paise per kWhr (unit)- Energy Charges	Rate in rupees per KVA of Maximum Demand
HT Tariff II-B	2.80	125

This tariff is applicable to private educational institutions and hostels run by them, Studios, Cinema Theatres.

5.0 High Tension Tariff III

Tariff Category	Tariff	
	Rate in paise per kWhr (unit)- Energy Charges	Rate in rupees per KVA of Maximum Demand
HT Tariff III	500	300

This Tariff is applicable to all commercial Establishments and other Categories of Consumer not covered under HT Tariff- IA, IIA, IIB, IV &V.

b) Order in 3 of 2010 dated 31.07.2010:

9.11.1 High Tension Tariff II- A

Tariff Category	Tariff	
	Demand charge in Rs./KVA / Month	Energy charge in Paise per kWh (unit)
HT Tariff IIA	200	400

The tariff is applicable to Government and aided educational institutions, Hostels run by such educational institutions, Government Hospitals, Hospitals under the control of Panchayat Unions, Municipalities or Corporations, Veterinary Hospitals, Leprosy sub-Centres, Primary Health Centres. Health Sub-Centres, Orphanages, Public Libraries, Water works, Public Lighting, Public Sewerage Works by Government / Local Bodies, Public Water Supply by New Tirupur Area Development Corporation, Electric crematorium by Local bodies, Laboratories, Research institutions, Ministry of Defence and Avadi CRPF Establishment, Desalination plant at Kudankulam Nuclear Power Plant.

High Tension Tariff II-B

Tariff Category	Tariff	
	Demand charge in Rs./KVA / Month	Energy charge in Paise per kWh (unit)
HT Tariff II-B	200	450

The tariff is applicable to private educational institutions and hostels run by them, Studios, Cinema Theatres.

High Tension Tariff III

Tariff Category	Tariff	
	Demand charge in Rs./KVA / Month	Energy charge in Paise per kWh (unit)
HT Tariff III	300	580

This tariff is applicable to all commercial Establishments and other Categories of consumer not covered under HT Tariff-IA, IIA, IIB, IV & V.

c) Order No.1 of 2012 dated 30.03.2012

High Tension Tariff II-A

Tariff Category	Tariff	
	Demand charge in Rs./KVA / Month	Energy charge in Paise per kWh (unit)
HT Tariff IIA	300	450

This tariff is applicable for the following services under the control of Central / State Governments /Local bodies / TWAD Board/ CMWSSB:

- 1. Educational institutions including government aided educational institutions and Hostels run by such educational institutions, Hospitals, Veterinary Hospitals, Leprosy Sub-Centres, Primary Health Centres and Health Sub-Centres, Orphanages, Public Libraries, Public Water works and sewerage works, Public Lighting, Residential colonies and Housing complexes, Senior Citizens communities, Electric crematorium, Research Laboratories and institutions, Ministry of Defence and Avadi CRPF establishment, Dairy units, Hospitals and Rehabilitation centres run by charitable trusts which offers totally free treatment for all categories of patients on par with government hospitals, Desalination plants and Art Galleries.*

2. *Desalination plant at Kudankulam nuclear power plant and Minjur Desalination plant of Chennai water desalination Ltd.*
3. *Single point supply to Co-operative group housing society as specified in “The Electricity (Removal of Difficulties) Eighth Order 2005”.*
4. *Actual places of public worship.*

High Tension Tariff II-B

Tariff Category	Tariff	
	Demand charge in Rs./KVA / Month	Energy charge in Paise per kWh (unit)
HT Tariff IIB	300	550

The tariff is applicable to private educational institutions and hostels run by them.

High Tension Tariff III

Tariff Category	Tariff	
	Demand charge in Rs./KVA / Month	Energy charge in Paise per kWh (unit)
HT Tariff III	300	700

This tariff is applicable to all commercial Establishments and other Categories of consumer not covered under HT Tariff-IA, IIA, IIB.IV & V

The applicability of other tariff categories of High Tension Tariff are as follows:

- High Tension Tariff IA: Applicable mainly for Industries
- High Tension Tariff IB: Applicable mainly for Railway
- High Tension Tariff II A: Applicable mainly for Government educational institutional and hostels run by them
- High Tension Tariff IV: Applicable mainly for Agriculture

High Tension Tariff V: Applicable mainly for Temporary supply

From the above, it is clear that the tariff category applicable to the Petitioner's Hospital, does not fall under any of the Categories mentioned above. The only permissible classification in the case of Petitioner is High Tension Tariff III, which is applicable to all other categories of consumers not covered under High Tension Tariff IA, IB, IIA, IIB, IV and V.

2.7. As per the G.o.Ms.No.95 of 2001 dated 28.11.2001 the tariff had to be changed to HT Tariff-III from the month of 12/2001 which was correct as the G.O had to be implemented. The relevant part of the order issued by the commission in M.P.No.9 of 2020 date 22.12.2020 in a similar case concerning private Medical College and Hospital is as follows.

7.14 The Respondent has further stated that in respect of hospitals, the respective tariff orders of TNERC have assigned the tariff of HT Tariff IIA to only government hospitals and hospitals run by charitable trusts wherein they offer totally free treatment / services for all categories of patients / inmates on par with government hospitals and institutions. But there was no specific categorization for private hospitals. Hence, as per the tariff orders the categories of consumers not covered under the categories of High Tension Tariff IA, IB, IIA, IIB, IV and V should be assigned the tariff of HT Tariff III (Commercial) and hence all the private hospitals are being charged under HT Tariff III. For the reason being associated with an educational institution if a hospital has to be assigned the tariff of HT Tariff IIB, then it will invalidate tariff categorization procedure in the manner of disparity in the application of tariff.

7.15 The Respondent further states that the Petitioner contends that the treatments to the out patients in their hospital attached with their medical college are not charged at all and it is only for the medicines for some serious ailments that the patients are charged for. It must be specifically mentioned that in government hospitals, the outpatients are not even charged for medicine also. So, the educational institution attached to the hospital of Dr. Rajah Muthiah Chettiar Charitable and Educational Trust even though being run by the

Charitable Trust may not even be treated on par with the government hospitals hence only the tariff of HT Tariff III is appropriate as a commercial category.

On the above grounds the application of the tariff of HT Tariff III is proper for medical educational institution as being attached with a hospital with predominated load and public utility. The tariff of HT Tariff IIB is applicable only if the educational institution functions as a separate entity under a individual service connection assigned exclusively, for that respective medical college. And only the tariff of HT Tariff III may be assigned for the separate connection for that respective hospital attached with that medical institution.

2.8. The adjustment made prior to 2001 and the tariff as per the Government Order issued during 12/2001 is applicable from 12/2001 onwards. Based on the GO audit objection raised for the period from December 2001 to May 2004. Further the applicability of tariff up to September 2013 is HT tariff III as per the tariff orders in force as mentioned above.

2.9. After the issuance of clarification for applicability of tariff to private medical colleges the internal audit raised objection for non compliance of government order and bill has been revised. The shortfall in current consumption charges had been informed to the consumer from the Superintending Engineer/Cuddalore EDC during August 2004 (01.08.2004) and further clarified the audit objection is in order vide letter dated 27.06.2005.

2.10. The notice was issued duly considering the functions of private medical college and hospitals. The same has been upheld in the similar issue in Raja Muthaiya Chettiyar Trust in in M.P.No: 09 of 2020 is as follows.

From the above the tariff category applicable to the Petitioner's Hospital, which doesn't fall under any of the Categories mentioned above, the only available option into

charge the petitioner under High Tension Tariff III, which is applicable to all other categories of consumers not covered under High Tension Tariff IA, IB, IIA, IIB, IV and V. In view of the foregoing, the Commission Orders that two separate service connections may be given to the Petitioner as proposed by the Respondent and accepted by the Petitioner for the following purposes as per Tariff Order in T. P. No.1 of 2017 dated 11-08-2017: 1. For the College and the hostels run by them: High Tension Tariff II-B Category and 2. For the Hospital:

High Tension Tariff III Category Subject to compliance of provisions in Tamil Nadu Electricity Distribution Code with respect to physical and electrical segregation. With this the petition is disposed of.

The Commission has clarified for the order in M.P.No: 25 of 2020 order dated:16/11/2021 as follows:-

Whether Physical and Electrical segregation has been done for hospital and Educational institution for availing separate service connection? The Commission in its Order in M. P. No.9 of 2020 dated 22-12-2020 has, inter-alia, ordered as under: "Two separate service connections may be given to the Petitioner as proposed by the Respondent and accepted by the Petitioner for the following purposes as per Tariff Order in T. P. No.1 of 2017 dated 11-08-2017: 1. For the College and the hostels run by them : High Tension Tariff II-B Category and 2. For the Hospital : High Tension Tariff III Category Subject to compliance of provisions in Tamil Nadu Electricity Distribution Code with respect to physical and electrical segregation ". Thus, the crux of the issue is physical segregation and

the impugned demand notice can be quashed only if the petitioner has established the factum of physical segregation. It is seen from the material records, no evidence has been let into prove the factum of physical segregation which is the basic requirement. In this connection, the Commission would also like to refer sub clause 14 in main clause 27 of Tamil Nadu Electricity Distribution Code, 2004, which states as under: "27. Requisitions for Supply of Energy:.....

(14) Where more than one person or more than one establishment is or intended to be in occupation of a door number or sub-door number, more than one service connection will be given only if there is a permanent physical/electrical segregation of areas for which different service connections are applied for". Also, the Commission would like to refer sub-clause (3) in main clause 29 of Tamil Nadu Electricity Distribution Code" 2004, which states as under: "29. Service Lines: (3) The existing High Tension Consumers who want to avail a separate service for their expanded industrial activities within a door No. or sub-door No.(in the same premises) a new service connection shall be given provided the extension is physically and electrically segregated. " But, there is no averment to the effect that physical segregation has been done. 2. Whether the prayer of the Petitioner to set aside the demand of Rs.8,48,47,888 is tenable? The Petitioner has contended that it has received a show cause notice dated 03-05-2021 from TANGEDCO in respect of the Petitioner's electricity service connection in HT SC 513 issued under HT Tariff -III 39 wherein the Petitioner was charged

for the electricity under the Category of "HT Tariff-III" instead of "HT Tariff-IIA", which is the tariff applicable to the Petitioner. In order to set right the same, as stated supra, the physical segregation and obtaining of two separate connections are necessary. The section 62 of the Electricity Act, 2003" also provides for differential tariff on the basis of purpose for which the supply is requested. Further, the demand notice of the year 2006, which has been stayed pending proceeding (before the High Court and the Commission) has not been quashed. In the absence of physical segregation, the mixed load will have to be charged under higher of the two loads only. In this case, higher of two loads i.e. HT Tariff II -A and HT Tariff III, which is HT Tariff III is claimed by the Respondent. Hence, the Respondent's claim is tenable. With the above order, the petition is dismissed.

Further the Commission has dismissed the review petition filed by the M/s Rajah Muthiah Chettiar Charitable and Educational Trust vide order dated: 01/08/2023 in R.P. No.7 of 2021 in M.P.No.25 of 2021.

2.11. The shortfall amount of Rs.5,75,49,168/- as on May 2005 is correct and as per the tariff orders issued by the Government of Tamil Nadu and the Commission during 2001 and 2003.

2.12. The current consumption charges for the period December 2001 to September 2013 is Rs.24,67,21,078/- and the accumulated belated payment surcharge will be Rs.70,10,77,043/- (calculated upto November 2023)

The Difference of CC charges Payable
as per HT Tariff –II to III

(Arrears without BPSC)

H.T.Service connection Number	Purpose of the service	Place	Distance from the college	Arrear amount prior to TNERC, 12/2001 to 03/2003	Arrear amount TNERC period, 04/2003 to 09/2013	Total amount in Rupees	BPSC
95	Educational Institution & Hospital	Chidambaram		Rs.1,38,53,478/-	Rs.23,28,67,600/-	Rs.24,67,21,078/-	Rs.70,10,77,043/-

The total amount receivable from petitioner is Rs. 24,67,21,078/- Crore as CC charges and approximately BPSC up to 11/2023 is around Rs.70,10,77,043/- crore totaling Rs. 94,77,98,121/- crore.

2.13. In the Higher Education Department Annamalai University Act 2013 (Tamil Nadu Act 20 of 2013) it is clearly mentioned that the entire asset and liabilities are taken by the government of Tamil Nadu and the same is reproduced as follows.

58. (1) *The Annamalai University Act, 1928 (hereinafter in this section referred to as the 1928 Act) is hereby repealed.*

(2) *Upon such repeal, the provisions c sections 8 and 18 of the Tamil Nadu General Clauses Act, 1891 shall apply.*

(3) *Notwithstanding such repeal ---*

(a) *.....*

(b) *all property, whether movable or immovable, including lands, buildings equipments, books and library and all rights of whatsoever kind owned by or vested in, or held in trust immediately before the date of commencement of this Act by the Annamalai University as well as liabilities legally subsisting shall stand transferred to, and vest in, the University which is deemed to have been established under this Act.*

From the above, it is cleared that the due for current consumption charges is legally payable and the petitioner has to pay the entire due along with Belated Payment Charges as per the tariff orders and provisions in the Tamil Nadu Electricity Supply Code 5 (4) (V)

3. Heard the counsel for the petitioner and the respondents. Relevant provisions of law traversed. Written arguments submitted on either side perused. Legal precedents pressed into service considered.

4. Issues Framed for Consideration:

The issues which arise for consideration in this petition are (i) whether the contention of the respondents that the petitioner is liable to pay the respondents at tariff III rates as revised by the 2nd respondent for the energy consumed during the period from 01.12.2001 to 31.07.2004 vide the impugned communication dated 24.08.2004 based on the audit objection is legally sustainable ?

(ii) Whether the petitioner is entitled to the reliefs claimed in the petition ?

5. Findings of the Commission on issue No.1 :-

5.1. It is seen that the impugned demand has been raised solely based on audit objection. It is contended by the petitioner that the issue is a settled one dating back to the year 1999 when the respondent overruled the audit objection but is now trying to reverse its earlier decision on the subject by blindly following the audit observations. Thus, the first question to be decided is whether the audit objection is binding on the respondent. The Commission itself has, in the past, made it clear that merely on the

basis of the audit observations, demand cannot be raised and that the authority raising the demand, has to apply its mind as to the correctness of the observations of the audit team and satisfy itself with the correctness of the levy before raising final claim. However, the impugned demand has been raised mechanically by the respondents and in the natural course would have been a fit case for remanding the matter back to the respondent. But considering the passage of time, the Commission is not inclined to refer the matter back to the respondent as it would entail considerable wastage of time and it would do more injustice. The second ground mounted by the petitioner for assailing the demand notice is that the respondent having taken a well considered decision on an earlier occasion on the same issue to apply Tariff IIA, could not have changed its stance later solely based on the audit objection. On this short point, we have to observe that doctrine of promissory Estoppel is not a rigid principle. It finds applicability only when there is no law or legal precedent governing a subject. Hence, in our view, the promissory Estoppel has no application at all.

Having said that, we find that the issue similar to the one herein has been dealt with by the Hon'ble High Court as well as by the Commission and hence proceed to discuss the facts of the case with reference to the judicial decisions / law on the subject.

5.2. In this connection, it is necessary to refer to the order dated 08.04.2024 of Hon'ble High Court of Madras in W.P.No.3698 of 2024 in the matter of P.S.G.Institute of Medical Science and Research wherein all the issues raised herein came to be

discussed and decided. The Hon'ble High Court of Madras considered all relevant cases in regard to the institutions having Hospital and rendered its final decision.

5.3. In this connection the following portions of the Hon'ble High Court of Madras in the above matter are reproduced below:-

4. The grievances of the writ petitioner is that the issue relating to the Sri Ramachandra Educational and Health Trust alone was considered by the Board authorities leaving the other issues directed to be determined. Thus, the present impugned order imposing HT Tariff-III is liable to be set aside.

5. Mr.Vijay Narayan, Learned Senior Counsel would contend that the Hospital attached with the Medical Institution is to be treated as an Educational Institution for all purposes. The issue is yet to be decided by the Tamil Nadu Electricity Regulatory Commission (hereinafter referred to as' the TNERC' for short) and by the Courts. Therefore, the benefit extended to Sri Ramachandra Medical College is to be extended to the writ petitioner till such time such issues are decided by the TNERC.

6. The learned Senior Counsel, Mr.Wilson appearing on behalf of the respondent Board would oppose by stating that two issues directed to be determined are not directly connected with the tariff classification. In respect of Sri Ramachandra Medical College, the learned Senior Counsel has conceded by stating that it is an isolated case, where some concession has been granted and it is ought not to be. Therefore, the Board may re-consider and would take appropriate action to maintain uniformity in respect of the consumers falling under the commercial tariff i.e., HT Tariff-III.

7. The learned Senior Counsel, Mr.Wilson would further contend that the case of Sri Ramachandra Medical College has been adjudicated elaborately by the TNERC in the case of the Rajah Muthiah Charitable and Educational Trust -vs- Tamil Nadu Generation and Distribution Corporation Ltd., wherein it has been adjudicated that the Government Order and the concession extended to Sri Ramachandra Medical College is not in consonance with the provisions of the Electricity Act, 2003 and the Tamil Nadu Electricity Supply Code. It was a concession extended and such concession need not be extended to all, which would result in great financial loss to the Electricity Board. Thus, the said case cannot be cited as a precedent and already the TNERC has negated the contention to adopt the Tariff applied to Sri Ramachandra Medical College and Research Institute.

8. Mr. Wilson, learned Senior Counsel would rely on Section 62 of the Electricity Act, 2003 which empowers the TNERC to determine the tariff. Under Section 62, the TNERC alone is competent to fix the tariff charges. In the present case, the TNERC has time again reiterated that the Educational Institutions and Hostels cannot be equated to the Hospitals being run by such institutions for commercially. Therefore, the Hospitals attached with the Educational Institutions operating commercially are liable to pay HT Tariff-III, as per the decision of the TNERC, which is notified under Section 62 of the Electricity Act, 2003. Therefore, the very comparison made by the petitioner is untenable and thus, the Writ Petition is to be rejected.

9. It is further contended that relegating the petitioner again to the TNERC would be a futile exercise, since the TNERC has already decided the issue considering the case of Sri Ramachandra Medical College and on the same ground, if the petitioner is relegated, the TNERC has to reiterate the said position. Further, the Board cannot extend concession or adjudicate those two issues already referred in the order passed by the High Court vide order dated 12.01.2023 in W.P.No.35372 of 2012. Those two issues are unconnected with the tariff classification. In respect of the Hon'ble Supreme Court case referred, it is about labour issue and thus, the Board is incompetent to consider the claim of the petitioner in that aspect. Further, the Minimum Standard Requirement Regulations, 1999 of the Medical Council of India is no way connected with the electricity tariff, which is to be fixed in accordance with the Electricity Act, 2003 and the said issue is also totally unconnected with the electricity tariff, which has been fixed under Section 62 by the TNERC.

10. Considering the arguments as advanced between the respective learned Senior Counsel appearing on behalf of the parties to the lis, Section 62 of the Electricity Act, 2003 denotes "Determination of Tariff". The appropriate Commission shall determine the tariff in accordance with the provisions of this Act regarding retail sale of electricity, which is applicable in respect of the issue raised in the present case.

11. In the context of Section 62, the Tamil Nadu Electricity Regulatory Commission time and again clarified that all private Educational Institutions and Hostels run by them are falling under HT Tariff-II. In respect of all other categories of consumers not-covered under HT Tariff-IA, IB, IIA, IIB, IV and V will be falling under HT Tariff-III. One of the argument is that there is no specific mention about the Hospital attached with the Educational Institution. The Hospitals attached with the Educational Institutions are admittedly operating commercially by providing treatments to the inpatients and outpatients by collecting charges. Therefore, the Hospitals attached with such Medical Institutions cannot be compared with the Educational Institutions and the Hostels

being run for the benefit of the students. The Hostels and Educational Institutions may not be falling under the commercial activities, as per the tariff fixation. However, the Hospitals run by these Medical Institutions are falling under the commercial tariff i.e., HT Tariff-III. Therefore, they are commercial establishments and the tariff, which is applicable to Educational Institutions and hospitals need not be fixed by the TNERC for these commercial hospitals. They have been treated on par with other commercial establishments.

13. In this context, the TNERC has taken a decision to treat the Hospitals attached with the Medical Institutions as commercial Hospital (Private Hospital) and accordingly, fixed the HT Tariff-III and the said decision being a policy decision taken in exercise of the powers conferred under Section 62 of the Electricity Act, 2003 this Court do not find any infirmity.

15. This Court is of the considered opinion that the petitioner cannot claim equality in illegality, as rightly contended by the respondent Board. The concession granted to Sri Ramachandra Medical College seems not in consonance with the provisions of the Electricity Supply Code and the tariff classification made by the TNERC time and again. Therefore, the said decision taken cannot be followed as a precedent, so as to deprive the Board from collecting appropriate tariff, as determined by the TNERC in exercise of powers under the Electricity Act. In respect of Ramachandra's case, the respondent Board is bound to initiate appropriate action in the manner known to law and by following due process for the purpose of avoiding any discrimination amongst the consumers and to maintain uniformity in recovering the electricity charges. It is needless to state that the Electricity Board has to maintain uniformity in the matter of imposing electricity consumption charges to the establishments. One case is being cited by all other similar institutions. In the event of extending the said benefit to all other institutions, the respondent Board will suffer in huge financial loss and as rightly pointed out by the learned Senior Counsel, Mr.P.Wilson that it is very difficult for the Board to survive, if such concessions are extended to the consumers, who all are otherwise not eligible under the Tariff classification. Therefore, appropriate actions are to be initiated by the Board to rectify the illegalities/ irregularities already occurred, so as to maintain uniformity and consistency in fixation of tariff and to recover the consumption charges.

5.4. In view of the above, it is to be held that the issue is no longer *res-integra* and covered by the earlier decision of the Commission which has been further upheld by the Hon'ble High Court of Madras. The earlier decision of the Commission to draw a distinction between the Hospitals attached Medical Institutions with physical segregation

and Hospitals attached to Medical Institution without physical segregations has been held by the Hon'ble High Court to be based on an intelligible differentia and it was further clearly held that there was no infirmity in extension of HT Tariff III for the commercial hospitals attached to Medical institutions.

5.5. However, there is one distinct issue which requires consideration, namely, the fact that the levy is sought to be made for the period when the petitioner was in the hands of a private management. It is seen from the averments of the petitioner that the Government took over the petitioner institution only in the year 2013 by way of notification dated 25.09.2013.

5.6. The decision of the Commission in the Christian Medical College case wherein the Commission made a further distinction in terms of Hospitals attached to the Educational Institution run by Government and Private bodies being not a point of discussion in the order of the Hon'ble High Court, it is necessary to consider the same as well for arriving at a final conclusion. The Commission made a subtle distinction between the Government run Hospitals and Private run Hospitals and held that in each case where the private run Educational Institution having a hospital attached, it is necessary to pass the test of service motive unlike the Government run Educational Institutions and Hospitals where the service motive is a natural presumption. The following portions of the order of the Commission in the case of Christian Medical College in M.P.No.23 of 2023 are reproduced for better understanding:-

6.1.3.5 Hospitals accredited by „National Accreditation Board for Hospitals and Health care providers“ (NABH) situated in Rural areas (Village / Town Panchayats)

6.1.4 High Tension Tariff II (B): (Private Educational Institutions & its hostels, segregated Medical colleges)

For FY 2022-23

Tariff Category	Commission Determined Tariff	
	Demand charge in Rs./KVA/Month	Energy charge in Paise per KWh (Unit)
High Tension Tariff II B	550	750

For FY 2023-24 to FY 2026-27

The applicable tariff (both fixed and energy charge) for FY 2022-23 shall undergo an inflation based adjustment, as per para 6.1.1.13. The revision will be effective from 01st July of each of the subsequent years of the control period.

6.1.4.1 This tariff is applicable to

- i. All Private educational institutions and hostels run by them.
- ii. All Private Medical colleges and hostels which are physically & electrically segregated from Private Hospitals, within same premises.

6.1.5 High Tension Tariff III: (Miscellaneous categories)

For FY 2022-23

Tariff Category	FY 2022-2023 Commission Determined Tariff	
	Demand charge in Rs./KVA/Month	Energy charge in Paise per KWh (Unit)
High Tension Tariff III	550	850

For FY 2023-24 to FY 2026-27

The applicable tariff (both fixed and energy charge) for FY 2022-23 shall undergo an inflation based adjustment, as per para 6.1.1.13. The revision will be effective from 01st July of each of the subsequent years of the control period.

6.1.5.1 This tariff is applicable to Commercial Complexes/Malls/Business premises, Supermarket/Departmental stores, Cinema theatres/Multiplex, Private hospitals, Hotels, Restaurants, Private Guest Houses, Boarding-Lodging Homes, Government/ Private/ Local body offices, Banks, Telephone Exchanges, T.V. Station, All India Radio, Railway Stations, MRTS stations, Transport Corporation bus stations, Private bus stations, LPG bottling plants, Stadiums other than those maintained by Government and Local Bodies, Petrol / Diesel and Oil storage plants, Oil / Petroleum projects, Petrol/Gas bunks, Diagnostic/scan centres, Marriage halls, convention centres, Service Stations / Garages, Tyre vulcanizing centres, Gym / Fitness centres, Race Course, Clubs, Amusement Parks, Centralised preparation unit of food with Sales counter/ selling activity , Yoga / Meditation centres, Ashrams, Mutts, Air Port (other than Aeronautical activities), Private hospitals and all other categories of consumers and usages not covered under High Tension Tariff I, II(A), II(B), IV and V. 100

6.1.5.2 In respect of Marriage Hall/Convention centre, commercial establishment 5% extra on the energy charges for the entire consumption will be collected as a component of lavish illumination on usage. For the installations where a separate service connection is available for the exclusive purpose of lavish illumination, this 5% extra charges shall not be applicable. The status of usage of lavish illumination shall be assessed and recorded on regular interval.

It may be seen from the above, that the HT II A is specifically meant for Educational institutions and Hostels & Hospitals under the control of the Central / State Governments / Local bodies including the educational institution and hostels aided by Govt. The petitioner has declared in the petition that it is an unaided educational institution and hence the question of application of Tariff IIA can be ruled out straightaway.

Now coming to HT II B, it may be seen that the said tariff is applicable to

1) All private Educational Institutions and Hostels run by them.

2) All private Medical Colleges and Hostels which are Physically and electrically separated from private Hospitals within the same premises.

The above classification, namely, HT IIB is a specific one and is primarily meant for private educational institutions and hostels in contradistinction to HT IIA which is meant for educational institution run by Govt. including Govt. aided ones in general. Here again, it is to be noted that the in so far as the private Medical

Colleges and Hostels are concerned, there is a further sub-classification inter se private educational institutions in term of physical and electrical segregation. It may be seen that there is a further requirement which has been made in HT IIB of clause II of para 6.1.4.1. of the Tariff Order to the effect that there needs to be a physical and electrical segregation between the education institutions and the hostels on the one hand and the hospitals on the other hand within the same premises.

6.5. Obviously, at the time of tariff determination, it would have weighed on the Commission that unlike the Govt. Medical Institutions, which do not charge fee for its services rendered for its hospital services, the question of similar free service could not be ruled out insofar as the private education institutions and to avoid a largesse being conferred on such private Medical Colleges in terms of tariff in regard to their hospital services, an intelligible distinction has been carved out in the tariff order firstly between the Govt. and private institution and thereafter between the private educational institutions which render hospital services freely and those which do not offer free service and collect charges for the same. In other words, on a conspectus evaluation of the provisions of Tariff orders in regard to tariff IIA & II B, it is pellucid that there was express intention on the part of the Commission not to treat the Govt. educational institutions and private educational institutions alike ostensibly for the reason that the commercial nature of the services cannot be ruled out altogether in regard to private hospitals attached to private education institutions. Such distinction cannot be said to be beyond reasonable bounds of discrimination as the difference in tariff is only to the extent of 50 paise in regard to energy charges with fixed charges remaining the same for both. A blanket extended concession has been given only to hostels run by both Govt. and Private educational institutions and not to the hospitals presumably for the reason that the hostel services are integral part of educational activity.

6.6. But the moot point that requires consideration is whether the same view can be taken with reference to hospitals? The answer will have to be partly “yes” and partly “No”. for the reason that it has to be in affirmative in regard to hospitals run by Govt. as no Govt. education institution, by any stretch of imagination, would resort to commercialize its hospital component and charge a higher fee. But the answer with reference to private educational institution would have to be partly negative for the reason that there is always a possibility of a private educational institution charging a fee for its hospital services, though a general conclusion cannot be arrived at that all hospitals attached to private educational institution are profit centric.

6.7. Here again, the Tariff Order cannot be said to have totally leaned in favour of the Govt institutions, as the hostels have been treated as an integral part of both

Govt and private institution as may be seen from the combined reading of Tariff II A & II B classification and it is only with regard to hospitals that a distinction has been carved out. We find that, such distinction meets the test of reasonable nexus to the object it seeks to achieve, namely, to satisfy the principles of commercial viability of the licensee postulated in Section 61(b) of the Electricity Act 2003 and at the same time to weed out only the profit centric hospitals from the purview of HT II B and group them under HT III.

6.8. To delve further into the rationality of such classification, it must be said that all private educational institutions have not been meted out a discriminatory treatment altogether and a safeguard has been made in such a way that hospitals which have been physically and electricity segregated from the educational and hostels premises have been saved under HT II B and only those who fail the test of segregation are relegated to Tariff III. This is obviously to do justice to the ones who carry out their educational and hospital activities independently and transparently which is ultimately rewarded by retention in HTIIB.

6.9. Situated thus, we find that the plea of the petitioner for classification under Tariff II B even without segregation is absolutely inconceivable. It must be understood that there cannot be an automatic presumption that merely because an institution carries on educational activities and mandated to establish a hospital, under a law or Rule, it has to be treated as an educational institution for all intent and purpose in the determination of tariff. Such omnibus presumption would hit the very foundation of Section 62(3) of the Electricity Act which inter alia, provides for reasonable classification on the basis of purpose for which the supply is required. It also follows that a dichotomy is permissible in cases where an entity is engaged in activities carrying different purposes so as to sever one objective from the other to satisfy the spirit and intent of Section 62(3) in terms of purpose of supply read with Article 14 of the Constitution of India. It is because a natural presumption that the hospital service is incidental to educational purpose and such hospital service is not profit-driven is evidently manifest only in the case of Govt. educational institutions or aided institutions as they are under public scrutiny and subject to audit and legislative gaze. But the same cannot be thought of blindly in regard to a private Medical Institutions which are having an attached hospital and each case has to pass the test of reasonableness and rightly the clause II of para 6.1.4.1. of the Tariff Order No.7 of 2022 dated.09.09.2022 relating to HT IIB classification provides a reasonable test to achieve the objective of Section 61(b) of Electricity Act, 2003.

6.10. The onus is on the part of a private educational institution to establish that all of its activities including hospitals are not driven by profit motive and it is not for the licensee to carry out a roving exercise to satisfy itself as to the objective of an entity. Nowhere, the petitioner has sought to repudiate the allegations of the

respondent by means of records that its hospital component is not engaged in charging fee for its service. Only a bald statement has been made denying the allegation which is not sufficient to conclude that the entire activity of the hospital is not-for-profit motive. Even otherwise, the mere fact that the hospital is part of an educational institution will not entitle it to seek the tariff as applicable to an educational institution. It is only for the said reason that we impressed upon the need for segregation of educational and hospital service in our earlier orders to make the tariff classification much easier. A mere declaration by the petitioner that it is an educational institution mandated to function with an attached hospital, in our view, is hardly sufficient to conclude that its entire activity would be covered under educational activities and eligible to Tariff II B. Even in such case, relief, if any, can be granted only to the extent of the educational activities and hostels facilities and not to the hospital attached. The hospital service has to pass the test of non-profit motive in the case of private educational institutions and there cannot be an automatic presumption as in the case of Govt., and Govt., aided education institutions.

5.7. It may be seen from the above that while there can be a natural presumption as to service motive in regard to the hospitals attached to the Government run Educational Institution, the same cannot be taken for granted in the case of hospital attached to the private run Educational Institutions and in the case a private educational institution, having an attached hospital, it has to establish beyond doubt that there is no fee collection for the services rendered in the hospital unit for claiming tariff II-B.

5.8. As stated above, in the period prior to 25.09.2013, the institution was in private hands and it is therefore necessary on the part of the petitioner to establish that there was no commercial element of collection of fees during the period prior to 25.09.2013 and all such transactions concerning collection of fee for hospital services need to be beyond a pale of doubt for claiming tariff II-B. Even if there is a faintest doubt as to the absence of pure service motive, the service connection shall be billed only under tariff – III and only in case of physical segregation of hospital and educational institutions, the

service connection shall be billed under IIB. Hence, either it should be proved beyond doubt that the hospital services are purely not for profit or there must be a physical segregation of hospital and educational premises for making out a case for Tariff IIB by way of discernible distinction failing which the entire service connection shall be billed under Tariff III.

5.9. It is seen from the material evidence that the petitioner has not established that the hospital component was doing free service before 25-09-2013, the period under which it was under private management. Hence, there is no infirmity in the impugned notice as it pertains to the period 12/2001 to 7/2013 when it was in the hands of private of management, much before the takeover by Govt on 25.09.2013.

5.10. An argument may be advanced to the effect that the present management controlled by the Government cannot be made liable for the acts of the erstwhile private management. But we cannot be of any help for the reason that the issue has to be settled within the contours of the Electricity Act 2003, and if at all the present management is of the view that it cannot be made liable for the omissions and commissions of the former management, it has to work out its remedy in a manner known to law.

5.11. On a conspectus evaluation of all facts and circumstances emanating from the evidence available on record and an application of the settled principles of law on the subject this Commission decides that the contention of the respondents that the

petitioner is liable to pay the respondents at Tariff III rates as revised by the 2nd respondent for the energy consumed during the period 01.12.2001 to 31.07.2004 vide the impugned communication dated 24.08.2004 based on Audit objection is legally sustainable.

Accordingly this issue is decided.

6. Findings of the Commission on issue No.2 :-

6.1. The twin relief claimed by the petitioner in the petition are (i) to set aside the impugned communication dated 24.08.2004 issued by the 2nd respondent and declare the same as illegal and (ii) to direct the 2nd respondent to classify HTSC No.95 provided to the petitioner under Tariff IIA applicable to Educational Institutions instead of Commercial Tariff.

6.2. The relief of declaration prayed for by the petitioner primarily rests upon the success of the petitioner to have the impugned communication dated 24.08.2004 issued by the 2nd respondent whereby the service connection bearing number 95 provided to the petitioner was changed from Tariff IIA to Tariff III consequent upon Audit objection set aside. Having considered the rival contentions, on evaluation of the evidence available on record in the back drop of settled principles of law delineated by the Hon'ble High Court, Madras and Hon'ble APTEL on the subject, this Commission as a consequence of endorsing the contention of the respondents that the petitioner is liable to pay the respondents at Tariff III rates as revised by the 2nd respondent for the energy

consumed during the period 01.12.2001 to 31.07.2004 vide the impugned communication dated 24.08.2004 has categorically held that the impugned communication is very much sustainable under law. In the light of the above said findings, the conclusion that the petitioner is not entitled to any relief claimed in the petition much less the relief to have the impugned communication set aside is imperative.

Accordingly this issue is decided.

7. In the result the petition is dismissed. However parties are directed to bear their respective costs.

(Sd.....)
Member (Legal)

(Sd.....)
Member

/True Copy /

**Secretary
Tamil Nadu Electricity
Regulatory Commission**