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## **J U D G M E N T**

### **PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER**

1. The instant Appeal has been preferred by Delhi Voluntary Hospital Forum (in short the 'Appellant-Petitioner'), against the impugned order, dated 31.07.2013, passed by Delhi Electricity Regulatory Commission (in short, the '**State Commission**') in Petition No. 01/2013 and Petition No. 2/2013 for True-up for FY 2011-12, Review and Provisional True-up for FY 2012-13 and Annual Revenue Requirement (ARR) for Distribution (Wheeling and Retail Supply) Business for FY 2013-14 filed by Respondent No.3 & 4 and Petition No.3/2013 filed by Respondent No.2 for True-up of ROCE for the MYT control period and True-up for FY 2011-12 and ARR for FY 2013-14, whereby, the private hospitals have been placed under the category of Non-Domestic Low Tension (NDLT) for the purpose of imposition of tariff. By the impugned order, the contention of the Appellant-Private Hospital Forum that the private hospitals/clinics/dispensaries should be placed in the category of domestic users along with the hospitals run by the Government of NCT of Delhi or Municipal Corporation or in alternative, a separate category for the hospitals/dispensaries/clinics/educational institutions may be created, has been rejected.

2. The Appellant raised objections before the State Commission regarding seeking exemption from Time of Day (TOD) Tariff in hospitals/ dispensaries/clinics as the same cannot be made applicable to the hospitals because the hospitals cannot defer any diagnostic test or surgical/non surgical operation/procedure from peak hours to non peak hours. The objection has not been favourably considered by the State Commission while passing the impugned order. Further, it has also not been considered in the impugned order that in the hospitals, there is no possibility of shifting of load from peak hours to non peak hours.

3. The main grievance of the Appellant-Delhi Voluntary Hospital Forum, against the impugned order, passed by the State Commission is that the State Commission has failed to appreciate the phrase '*purpose for which the supply is required*' appearing in Section 62 (3) of the Electricity Act, 2003 while fixing the tariff for hospitals/clinics/dispensaries for the period 2013-14 and further, the State Commission has failed to appreciate the principles enunciated by this Appellate Tribunal in Association of Hospitals vs MERC & Ors, in Appeal No. 110/2009. The main ground of challenge of the impugned order by the Appellant is that hospitals/clinics/dispensaries should be treated in separate categories itself, whereas, by the impugned order, the commercial tariff has been made applicable to them without any basis.

4. The relevant facts for deciding this Appeal are as under:

- (a) that the Delhi Voluntary Hospital forum/group is a forum of the Hospitals and most of the members of the Forum are running the hospitals for the need of the society and are rendering essential services to the public. Its President is authorized by way of resolution, dated 9.1.2013, to file the present appeal before this Tribunal.
- (b) that the Respondent Nos. 2 to 4 are licensees under the Electricity Act, 2003 and are in the business of distribution and retail supply of electricity in the NCT of Delhi. The State

Commission/Respondent No.1, has allowed domestic tariff to Hospitals/dispensaries/clinics/Educational Institutions run by the Govt. of NCT of Delhi and Municipal Corporation but allowed non domestic low tension tariff to the privately run Hospitals/dispensaries/clinics/Educational Institutions, whereas the purpose of hospitals run by the Appellant Forum or Government are the same, i.e. to treat the patients and hence two tariffs cannot be charged.

- (c) that the State Commission's impugned order is bad in law because commercial functionaries are paying lesser tariff than as has been charged from Appellant as the commercial establishment like Delhi International Airport Limited (DIAL), which also provides electricity to luxury shops in the Airport being charged at the lower rate i.e. Rs.7.10p/units, similarly lower rate is charged for DMRC and Railway traction, which are the commercial establishments. Hence, Private Hospital cannot be charged more than the commercial establishments/ventures.
- (d) that for the public welfare and good only, the domestic tariff should be levied on the privately run hospitals/clinics/dispensaries/Educational Institutions as they also are the public utility services and they cannot be treated differently from the public utility services but all these factors have not been considered in the impugned order while fixing tariff for private hospitals, etc for FY 2013-14.
- (e) that the objective for introducing the Time of Date (ToD) tariff is to shift the load from peak hours to non-peak hours so that there will be less pressure on the DISCOMs to supply the electricity. This analogy can only be applicable in industries where the load can be shifted from peak hours to non peak hours. But it is not feasible in case of hospitals/clinics/dispensaries because surgical/non-surgical operation/procedure/diagnostic test cannot be postponed/ shifted from

peak hours to non peak hours and thus there is no possibility of shifting the load from peak time to off-peak time. Hence, the hospitals/clinics/ dispensaries may be exempted from the ToD tariff.

- (f) that the Respondent No. 2, 3 & 4/Distribution Licensees have filed ARR Petitions, dated 10.12.2012, before the State Commission for FY 2013-14 for approval of True-up of FY 2011-12, Review of FY 2012-13, Aggregate Revenue Requirement (ARR) and corresponding Tariff adjustments for FY 2013-14.
- (g) that the State commission took the ARR Petitions bearing No. 01/2013, 02/2013 and 03/2013 filed by the Respondents Nos.2 to 4 and admitted the said Petitions.
- (h) that on 2.2.2013, a public notice was published in newspapers inviting objections from the general public on the said ARR Petitions by 4.3.2013, and lastly, extended up to 1.4.2013. In the said public notice, objectors were advised to file their objections and on 4.3.2013, the objections to the ARR Petition were filed by the Appellant, contending that the private hospitals should be placed in the category of domestic users along with hospitals run by the Government.
- (i) that on 17.5.2013, 3.6.2013 and 4.6.2013, the public hearings were held by the State Commission.
- (j) that on 31.7.2013, the impugned order was passed by the State Commission w.e.f. 1.8.2013, placing the private hospitals under the category of Non-Domestic Low Tension for the purpose of tariff fixation.
- (k) that the stakeholders took the following plea before the State Commission:
  - (i) that to differentiate private hospitals or educational institutions from Government hospitals or educational institutions on the ground that private institutions are

having the capacity to pay the higher tariff is against the judgment passed by the Divisional Bench of Kerala High Court in the matter of SR Celine, Manager, Karikkamata Convent vs. State of Kerala and others reported in WA No. 1064 of 2009 dated 17.08.2009 based on the judgment passed by the Supreme Court in the matter of M/s Rohtas Industries Limited vs. Chairman BSES reported in AIR 1984 SC 657. The High Court held that the capacity to pay cannot be a differentiating factor under section 62(3) of the Electricity Act, 2003 and held that categorization of Self Financial Educational Institutions under LT VII(A) as commercial is bad in law in so far as such differentiation is not for any of the other grounds specified under section 62(3) of the Act.

- (ii) that the Appellate Tribunal for Electricity in the matter of Association of Hospitals vs. Maharashtra Electricity Regulatory Commission and others in Appeal No. 110/2009, in its judgment, dated 20.11.2011, held that the State Commission classified wrongly all the consumers, including appellants, who are neither domestic nor industrial nor falling under any of the categories, under commercial category. The appellants are seeking separate categorization on the basis of purpose for which supply is required by the appellants rendering essential services.
- (iii) that the real meaning of expression “purpose for which the supply is required as used in section 62(3) of the Act does not merely relate to the nature of the activity carried out by a consumer but has to be necessarily determined from the objects sought to be achieved through such activity. The railway and Delhi Metro Rail Corporation have been differentiated as separate category as they are providing essential services. The same would apply to

private hospitals as well. The stakeholders have stated that the judgment, dated 20.11.2011, mentioned above, passed by the Appellant Tribunal is binding upon all the Electricity Regulatory Commissions.

- (iv) that the Government hospitals are kept under domestic category but the private hospitals are kept under non-domestic category which amounts to discrimination and hence private hospitals are also required to be kept under domestic category. Alternatively, a separate category can be created for private hospitals having lower tariff than non-domestic tariff.
- (l) that the State Commission in the tariff order, dated 26.8.2011, had observed that it would be ideal to fix electricity tariff for all consumers on cost to serve basis and any subsidy based on Socio-economic factors or otherwise should be extended by the State Government. The Commission was of the view that extending any concession would be a retrograde step and increase the cross subsidy element.
- (m) that after hearing the rival submissions, the State Commission, in para 2.199 of the impugned order, has observed as under:

*"2.199 The Commission is of the view that extending domestic tariff for educational institutions, hospitals etc. run by private parties would be a retrograde step and will increase the cross subsidy element. It would be ideal to fix electricity tariff for all consumers on a cost to serve basis and any subsidy based on socio-economic factors or otherwise should be extended by the State Govt. The Commission also feels that the State Govt. should bear the expenses for supporting the weaker sections of society and this responsibility should not be thrust upon another section of consumers."*

- (n) that the State Commission in paras 5.91 & 5.92 of the impugned order, has stated as under:

*"5.91 The Commission in its MYT Order for second Control Period dated July 13<sup>th</sup>, 2012 had decided to introduce ToD Tariff on a pilot basis for large industrial and non domestic consumers (300 kW and above). This was targeted to the consumer segment which has capacity to bear a higher burden for peak hour consumption and also at least partly (if not fully) offset the impact of this increase through higher off-peak consumption at lower rates. The Commission as a progressive step in this direction and to further encourage demand shift from peak hours to off-peak hours has decided to lower the applicability limit for ToD Tariff."*

5.92 *Time of Day (ToD) Tariff – ToD Tariff shall now be applicable on all consumers (other than domestic) whose sanctioned load/MDI (whichever is higher) is 100 kW/108kVA and above.....”*

5. We have heard Mr. B.P. Agarwal, the learned counsel for the Appellant-Petitioner and Mr. Pradeep Misra, Mr. Sunny Choudhary and Mr. Buddy A. Ranganadhan, the learned counsel for the Respondent No. 1, 2 & 3 respectively. We have also perused the written submissions filed by the Appellant as well as on behalf of the Respondent No. 2 /distribution licensee. We have also gone through the material available on record including the impugned order.

6. The contentions raised on behalf of the Appellant Forum are as under:

- (a) that the State Commission has not acted consistent with the provisions of the Electricity Act, 2003, the policies notified by the Central Government under Section 3 of the Electricity Act, 2003, Tariff Regulations, 2007 and the binding precedents of the Appellate Tribunal of Electricity in determining the tariff order for the period 2013-14 for fixing the tariff for the hospitals/clinics/dispensaries/Educational Institutions run by the private parties including the judgment, dated 20.10.2011, passed in the matter of Association of Hospitals vs Maharashtra Electricity Regulatory Commission in Appeal No. 110/2009 by this Appellate Tribunal.
- (b) that the State Commission has ignored the phrase '*purpose for which the supply is required*' appearing in Section 62 (3) of the Electricity Act, 2003 while fixing the tariff for Hospitals/dispensaries/clinics/ Educational Institutions for the period 2013-14 and arbitrarily allowed the distribution licensees (Respondent No.2 to 4) to charge the non domestic tariff for the Hospitals/dispensaries/clinics/Educational Institutions run by the private parties. The tariff fixed for the private hospitals, etc. for FY 2013-14 is at par with the tariff

applicable to the mall, shopping hub, Multiplexes, Cinema Theatres, Hotels and other like commercial entities, etc.

- (c) that the State Commission, while deciding the tariff, has discriminated between the Hospitals/dispensaries/clinics/Educational Institutions run by the Govt. of NCT of Delhi/Municipal Corporation and the Hospitals/dispensaries/clinics/Educational Institutions run by the Charitable Institution or private parties.
- (d) that the State Commission, on the one hand, has observed that extending domestic tariff for Hospitals/dispensaries/clinics/Educational Institutions run by private parties would be a retrograde step and will increase the cross subsidy element, but on the other hand, the State Commission has allowed the lower tariff for the Commercial Establishment like Delhi International Airport Limited, etc. which amounts to discrimination.
- (e) that the impugned tariff order of the State Commission is arbitrary as the private hospitals or educational institutions cannot be treated at par with the commercial establishments like mall, shopping hub, Multiplexes, Cinema Theatres, Hotels, etc. as the hospitals/clinics/dispensaries/educational institutions have never rendered the entertainment services nor have any profit making endeavors. In fact, the private hospitals/clinics/dispensaries/Educational Institutions are working for the welfare of the society by providing the amenities to the public and development of the society, which is not the luxury or the centre of entertainment. The private hospitals or private educational institutions cannot by any stretch of imagination, be categorized as commercial venture or establishment.
- (f) that the provision provided under Section 62(3) of the Electricity Act, 2003 have not been complied in the impugned order. The scheme of the Electricity Act provides that, while determining the tariff, the Commission shall not show undue

preference to any consumer but, at the same time, it may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity, nature and purpose for which the electricity is required and the same provisions have been enshrined in Section 62 (3) of the Electricity Act, 2003. The Hospitals run by the Private Parties/Charitable Organizations do not amount to render commercial services. In fact, it is a public utility service, which runs for the welfare of the society, whereas the other commercial categories are simply profit making establishments catering to the luxury of elite class. Clubbing such two groups together for the purpose of the determination of the tariff is not correct because the purposes of Hospitals and malls, hotels, etc. are quite different.

- (g) that the Supreme Court, in the case of Association of Industrial Electricity Users vs. State of AP & Ors reported in (2002) 3 SCC 711 held that on the basis of the Act, the classification of consumers, according to the purpose for which the electricity is used, is permissible and the Supreme Court in the case of State of AP Vs. Nallamilli Rami Reddi & Ors, reported in (2001) 7 SCC 708 further held that charitable or religious institutions or endowments fall into a separate category and form a class by themselves. The State Commission, in the impugned order, has not considered the purpose for which electricity is supplied in view of Section 62 (3) of the Electricity Act, 2003.
- (h) that the impugned tariff order is also bad in law as in many states, private hospitals/clinics/dispensaries/educational institutions are kept under either the domestic category or a separate category was created which is less than the commercial tariff.

7. **Per-contra**, the learned counsel for the Respondents have raised the following contentions:

- (a) that the objections to the ARR petitions filed by the Appellant-Hospital Forum before the State Commission contending that the private hospital should be placed in the category of domestic users along with the hospitals run by the Government or Delhi Municipal Corporation, has been rightly rejected by the State Commission through the impugned order. The private hospitals have been rightly placed under the category of Non-Domestic Low Tension (NDLT) for the purpose of imposition of tariff.
- (b) that the Appellant's contention, that the tariff for the private run hospitals and the hospitals run by the Government of NCT of Delhi and Municipal Corporation should be similar, is without any rationale and reasoning.
- (c) that Section 62(3) of the Electricity Act, 2003, clearly provides that the Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the purpose for which the supply is required. Thus, the Commission is empowered to fix different tariff for different consumers considering various factors as provided therein including the purpose for which the supply of electricity is required.
- (d) that the nature and purpose of supply for which the Appellant Private Hospital Forum procures electricity is private in nature. Hence, cannot be compared on the same footing to that of hospitals/dispensaries /clinics run by the Government of NCT of Delhi and Municipal Corporation. While considering the aspect of fixation of tariff, the Commission is empowered to categorize/re-categorize any section of consumers, on principles of cost to serve basis, which has been done in the present case of the Appellant, considering the fact that grant of subsidy to the Appellant at par with the hospitals/institutions run by government/municipal corporations would lead to imposition of

increased financial burden on other categories of consumers, solely to meet the deficit resulting from such subsidy being granted to Hospitals/institutions run by private bodies.

- (e) that the list of Delhi Voluntary Hospital Form – Member Hospitals in Delhi, as furnished on behalf of the Appellant with the affidavit, shows that the Appellant Association has as many as 36 voluntary hospital members including St. Stephen’s Hospital, Holy Family Hospital, Dr. B.L. Kapoor Memorial Hospital, Batra Hospital & Medical Research Centre, Escort Heart Institute & Research Centre, Sir Ganga Ram Hospital, Vinayak Hospital, Rajiv Gandhi Cancer Institute & Research Centre, Shroff Eye Centre, National Heart Institute and many of them are specialty and super-specialty hospitals. It is well known fact that such hospitals are private hospitals run by private bodies or persons, who charged exorbitant rates from the patients which is beyond the reach of common man, thus the case sought to be canvassed by the Appellant Hospital Forum does not justify extending domestic tariff in any way.
- (f) that the Appellant is a profit making organization and cannot be compared with the subsidized government organs discharging its functions for the social upliftment of the poor and the needy. The Appellant Forum cannot merely take shelter of running institutions for public welfare and claim domestic tariff as it is a privately run institution and its member hospitals are owned and controlled by a body of private individuals.
- (g) that the State Commission considering the above stated factors has observed in the impugned order, dated 31.7.2013, that “it would be ideal to fix electricity tariff for all consumers on a cost to serve basis and any subsidy based on socio-economic factors or otherwise should be extended by the State Government” and hence, the State Commission has placed the private run

hospitals of the Appellant body in the category of 'Non-Domestic Low Tension' for the purpose of determination of tariff.

- (h) that the State Commission considering the purpose for which the supply of electricity required by the privately run hospital has put the hospital in the 'Non-Domestic Low Tension', which is itself a sub-category under the non-domestic category.

7.1 Regarding application of Time of Day (TOD) Tariff, the distribution licensee have raised the following submissions:

- (a) that the Time of Day (TOD) is an important Demand Side Management (DSM) measure to give a tariff signal so that peak hour consumption is charged at higher rates which reflects the higher cost of power purchase during peak hours. At the same time, a rebate is being offered on consumption during off-peak hours.
- (b) that the Appellant has not mentioned the exact position applicable to TOD. TOD tariff is only applicable to consumers having a sanctioned load above 100 KW. The State Commission itself in the impugned order has mentioned that TOD tariff is aimed at optimizing the cost of power purchase, which constitutes over 80% of the tariff charged from the consumers.
- (c) that the Commission has notified the slab of TOD as under for the period April-September, 2013:

<b>Time Duration</b>	<b>Surcharge</b>
3 PM to 12 PM	Plus 15%
12 AM - 6 AM	15% Rebate
6 AM - 3 PM	No surcharge

Further, the Commission again revised the said slab as under for the period October, 2013 – March, 2014:

<b>Time Duration</b>	<b>Surcharge</b>
5 PM to 11 PM	Plus 10%
11 PM - 6 AM	Negative 15% Rebate
6 AM - 5 PM	No surcharge

- (d) that the whole contention of the Appellant is rather misplaced as TOD is only meant to provide benefit to the Appellant. Moreover, in the present circumstances, the TOD which is applicable only extends benefit to the hospitals etc during day time. The TOD minimizes the effect by giving ample amount of rebate for the surcharge so charged hence the whole claim of the Appellant is rather misplaced and misrepresented as it would not affect the Appellant in any adverse manner.

7.2 Regarding discrimination in rate of tariff between Delhi Metro, Delhi International Airport and the Private Run Hospitals, the following submissions have been made on behalf of the Distribution Licensees:

- (a) that the Distribution Licensees clearly deny charging of lower rates of electricity to Delhi International Airport and Railways except the traction load which is the essence of public transport, the commercial units of Delhi Metro and Railways are charged as per prevailing commercial tariff applicable to the Appellant Forum.
- (b) that Railways being a statutory body has been exempted and granted special status under the Indian Railways Act, 1989 and hence the Appellant cannot in any manner, be placed on the same footing.
- (c) that this Appellate Tribunal in its judgment in Appeal No. 110/2009, clearly held in para 47 that different tariff can be fixed for railways and DMRC as they stand on different footings than other class of consumers.
- (d) that this Appellate Tribunal in Appeal No. 110/2009 was dealing with the case of putting the charitable hospital in the commercial category along with the shopping malls, multiplexes, etc. But, in the present case, the Appellant is not the charitable hospital which has been placed in the commercial category.

- (e) that, in case, the claim of the Appellant is allowed, the same would not only cause a loss to the distribution companies but would open a new uncalled avenue for other private institutions claiming similar benefit, which would only negatively impact the overall tariff for the public at large.
- (f) that, lastly, this Appellate Tribunal in its judgment, dated 28.8.2012, in Appeal No.39/2012 passed in the matter of Rajasthan Engineering College Society vs. Rajasthan Electricity Regulatory Commission & Ors. held as under:

*"In view of above, we are of the opinion that the Commission has rightly distinguished the Government run educational institutes from the institutes run by the members of the Appellant Society and that the Commission has not shown any undue preference to the government run institutes over the institutes of the Appellant Society. Accordingly the Commission has not violated the provisions of Section 62(3) of the Act."*

8. The similar contentions have been raised on behalf of the Appellant which were raised earlier before the State Commission in the instant matter. The following issues arise for our consideration:

- (A) whether the tariff applicable to private hospitals/dispensaries/clinics shall be equivalent to that of hospitals/dispensaries/clinics run by the Government of NCT of Delhi and Municipal Corporation?
- (B) whether application of Time of Day (TOD) Tariff on the private run hospitals is without any basis or reasoning and therefore, is illegal?
- (C) whether lower rates of electricity are charged from Delhi Metro and Delhi International Airport Limited thereby discriminating with the private run hospitals?

9. Since all the issues are inter-connected, therefore, we are taking them up together and deciding simultaneously.

10. This Appellate Tribunal, vide its judgment, dated 28.8.2012, in Appeal No. 39/2012 captioned as Rajasthan Engineering College Society vs Rajasthan Electricity Regulatory Commission and Anr. held as under"

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

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

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

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

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

11. This Appellate Tribunal, in its judgment, dated 20.5.2012, in Appeal No. 88/2012, titled as Tata Teleservices Limited vs. Rajasthan Electricity Regulatory Commission and Ors., while considering the judgment, dated 20.10.2010, passed by this Appellate Tribunal in Appeal No. 110 & 111/2009, captioned as Association of Hospitals vs. MERC, has noted as under:

"55. The above judgment would indicate that this Tribunal has held that re-categorization of the charitable trust hospitals which run on no profit motive with commercial entities is not reasonable."

12. The Hon'ble Supreme Court, in the matter of Indian Medical Association vs. V.P. Shantha And Others reported in (1995) 6 Supreme Court Cases 651, while dealing with the question whether the services rendered to a patient free of charge by the doctors and hospitals in category 'III', is excluded by virtue of the exclusionary class in Section

2(1)(o) of the Consumer Protection Act, 1986, in para 55 thereof, had observed as under:

"55. On the basis of the above discussion, we arrive at the following conclusions:

(1) Service rendered to a patient by a medical practitioner (except where the doctor renders service free of charge to every patient or under a contract of personal service), by way of consultation, diagnosis and treatment, both medicinal and surgical, would fall within the ambit of 'service' as defined in Section 2(1)(o) of the Act.

(2) The fact that medical practitioners belong to the medical profession and are subject to the disciplinary control of the Medical Council of India and/or State Medical Councils constituted under the provisions of the Indian Medical Council Act would not exclude the services rendered by them from the ambit of the Act.

(3) A "contract of personal service" has to be distinguished from a "contract for personal services". In the absence of a relationship of master and servant between the patient and medical practitioner, the service rendered by a medical practitioner to the patient cannot be regarded as service rendered under a 'contract of personal service'. Such service is service rendered under a "contract for personal services" and is not covered by exclusionary clause of the definition of 'service' contained in Section 2(1)(o) of the Act.

(4) The expression "contract of personal service" in Section 2(1)(o) of the Act cannot be confined to contracts for employment of domestic servants only and the said expression would include the employment of a medical officer for the purpose of rendering medical service to the employer. The service rendered by a medical officer to his employer under the contract of employment would be outside the purview of 'service' as defined in Section 2(1)(o) of the Act.

(5) Service rendered free of charge by a medical practitioner attached to a hospital/nursing home or a medical officer employed in a hospital/nursing home where such services are rendered free of charge to everybody, would not be 'service' as defined in Section 2(1)(o) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.

(6) Service rendered at a non-government hospital/nursing home where no charge whatsoever is made from any person availing of the service and all patients (rich and poor) are given free service – is outside the purview of the expression 'service' as defined in Section 2(1)(o) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.

(7) Service rendered at a non-government hospital/nursing home where charges are required to be paid by the persons availing of such services falls within the purview of the expression 'service' as defined in Section 2(1)(o) of the Act.

(8) Service rendered at a non-government hospital/nursing home where charges are required to be paid by persons who are in a position to pay and persons who cannot afford to pay are rendered service free of charge would fall within the ambit of the expression 'service' as defined in Section 2(1)(o) of the Act irrespective of the fact that the service is rendered free of charge to persons who are not in a position to pay for such services. Free service, would also be 'service' and the recipient a 'consumer' under the Act.

(9) Service rendered at a government hospital/health centre/ dispensary where no charge whatsoever is made from any person availing of the services and all patients (rich and poor) are given free service – is outside the purview of the expression 'service' as defined in Section 2(1)(o) of the Act. The payment of a token amount for registration purpose only at the hospital/nursing home would not alter the position.

(10) Service rendered at a government hospital/health centre/dispensary where services are rendered on payment of charges and also rendered free of charge to other persons availing of such services would fall within the ambit of the expression 'service' as defined in Section 2(1)(o) of the Act, irrespective of the fact that the service is rendered free of charge to persons who do not pay for such service. Free service would also be 'service' and the recipient a 'consumer' under the Act.

(11) Service rendered by a medical practitioner or hospital/nursing home cannot be regarded as service rendered free of charge, if the person availing of the service has taken an insurance policy for medical care whereunder the charges for consultation, diagnosis and medical treatment are borne by the insurance company and such service would fall within the ambit of 'service' as defined in Section 2(1)(o) of the Act.

(12) Similarly, where, as a part of the conditions of service, the employer bears the expenses of medical treatment of an employee and his family members dependent on him, the service rendered to such an employee and his family members by a medical practitioner or a hospital/nursing home would not be free of charge and would constitute 'service' under Section 2(1)(o) of the Act."

13. It is true that the private hospitals/dispensaries/clinics are running for the need of the society and are rendering essential services to the public at large and their purpose is to treat the patients after charging the consultation fees, laboratory tests and other surgical or non-surgical procedure from the patients at the rate as they like whereas, hospitals/dispensaries/clinics run by the Government of NCT of Delhi and Municipal Corporations, are run to provide medical aid or treatment to the needy persons or patients as the right to health is a fundamental right under Article 21 of the Constitution of India and Government has constitutional obligation to provide the health facilities to all citizens of India. Therefore, hospital run by the State giving almost free treatment to all the sections of society cannot be treated at par with a private hospital which charges hefty fees even for seeing a general physician. The private hospitals charge high room rent in the name of air-conditioned rooms and for every visit of the doctors to the patients to ask about his ailment and progress therein.

14. The purpose and motive of the Government run hospitals or institutions is to provide the medical aid and other health facilities to all the citizens of India including poor and wealthiest. To the contrary, the purpose of the private hospitals or dispensaries run by the private bodies or trust is to provide facilities and treatment to the patients after charging

high and hefty fees which are totally beyond the reach of the common man of the country and, their aim is to earn profits there from.

15. The State Commission is fully empowered under Section 62(3) of the Electricity Act, 2003 to categorize or re-categorize the class of persons considering the purposes provided therein including the purpose for which the supply of electricity is required. The Government run hospitals are controlled by the Government and run on budgetary support on the other hand private hospitals/institutions are run by the private bodies and operate on commercial principles. The survival of the Government run hospitals very often depends upon the budgetary provisions and not on the private resources, which are available to the private hospitals/institutions, etc.

16. Here we are dealing with the private hospitals and dispensaries/clinics run by the private bodies having no charitable or social purpose. The Appellant Forum consists of very renowned and specialty/super-specialty hospitals in Delhi NCR, which are absolutely beyond the reach of the common man or poor or needy persons for treatment and such poor and deprived patients cannot even dream of visiting such private hospitals.

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

18. We find that the State Commission has introduced Time of Day (TOD) tariff for all consumers (other than domestic) whose sanctioned load/MDI is 100 KW/108 KVA and above as a demand side management measure to give commercial signal to the consumers to curb peak hour consumption. The higher tariff during the peak hours reflects the higher cost of power purchase during the peak hours. At the same time rebate is offered on consumption during off-peak hours. This is meant to incentivise the consumers to shift a portion of their loads from peak hours to off-peak hours thus improving system load factor filling up the valleys and flattening the peaks in the load curve. TOD tariff is aimed at optimizing the cost of power purchase which constitutes a major cost of the distribution licensee. It also assumes importance in implementing Demand Side Management and achieving energy efficiency. So far as, the Time of Day (TOD) tariff option to the private hospitals, etc is concerned, it is a scheme applicable to all the consumers except domestic consumers and the private hospitals are not entitled to any kind of concession on this aspect. The impugned order of the State Commission cannot be said to be arbitrary and the private hospitals, etc. have been correctly, legally and reasonably placed under the Non-Domestic Low Tension (NDLT) category for the purpose of tariff imposition and the same is based on the principle of intelligible intelligentsia. The private hospitals/clinics/ dispensaries have been rightly distinguished from the Government run hospitals or hospitals run by the Municipal Corporation of Delhi. The creation of a separate category for private hospitals, etc., is not warranted in the facts and circumstances discussed above by us hereinbefore. The learned State Commission has recorded cogent and solid reasoning in the impugned order while differentiating the private hospitals, etc from the Government hospitals by placing them under Non-Domestic Low Tension (NDLT) category and Domestic User category respectively.

19. The nature and purpose of supply for which the Appellant/Private Hospital Forum procures electricity is private as well as commercial in

nature. Grant of tariff to the Appellant Forum at par with the hospital/institution run by the Government or Municipal Corporation of Delhi would lead to imposition of increased financial burden on the other categories of consumers solely to meet the deficit resulting from such reduction being granted to the hospitals/institutions run by the private bodies. The pleas sought to be canvassed by the Appellant Forum, do not at all justify extending domestic tariff in any way to the private hospitals, etc. The Appellant Hospital Forum is an organization working on commercial principles and cannot be compared with the Government hospitals discharging functions for the treatment of poor and needy as the private run hospitals and its member hospitals are owned and controlled by a body of private individuals.

20. We may further note that it has been submitted on behalf of the distribution licensees that they are not charging lower rates of electricity from Delhi International Airport and Railways except the traction load, and the commercial units of DMRC and Railways are charged as per prevailing commercial tariff applicable to the Appellant Forum. When the commercial tariff is applicable to DMRC and Railways, then the Appellant Forum has no grievance in true sense. Apart from it, there is judgment of this Appellate Tribunal in Appeal No. 110/2009 which clearly held in para 47 that different tariff can be fixed for Railways and DMRC as they stand on different footings than the other class of consumers. The purpose of usage of electricity in the Airport and Railways/DMRC is different from that of the Appellant Forum and the State Commission has given reasons allowing a different tariff scheme for the Airport, Railways and DMRC.

21. On consideration of the above factors, we decide all the three issues against the Appellant as there is no force and merit in the contention of the Appellant Forum and we agree to all the findings recorded in the impugned order and we approve the same findings. The impugned order is legally correct, just and perfect-one requiring no

interference at this stage by this Appellate Tribunal and the impugned order suffers from no perversity or infirmity.

22. **SUMMARY OF OUR FINDINGS:**

22.1 The hospitals/dispensaries/clinics run by the private bodies or private parties on commercial basis for the purpose of earning profits, cannot be treated at par with the hospitals/dispensaries/clinics run by the Government of NCT of Delhi and Municipal Corporations of Delhi as the Government is under a constitutional mandate to provide medical aid or facilities of treatment to all the citizens of the country irrespective of their social or economic status.

22.2 The proper justification with reasoning has been given by the State Commission in the impugned order for application of the Time of Day tariff on all consumers except domestic with connected load above a specified limit and private hospitals cannot be an exception to the TOD tariff introduced as Demand Side Management measure to give correct commercial signal to the consumers.

22.3 The proper justification has been made in the impugned order for fixing tariff for DMRC and Delhi International Airport and the said discrimination is legally justified as per directions given by this Appellate Tribunal.

23. Consequently, the instant Appeal has no merits and is accordingly dismissed and the impugned order, dated 31.07.2013, passed by Delhi Electricity Regulatory Commission is hereby affirmed. No order as to costs.

**PRONOUNCED IN THE OPEN COURT ON THIS 12<sup>TH</sup> DAY OF AUGUST, 2014.**

**(Justice Surendra Kumar)  
Judicial Member**

**(Rakesh Nath)  
Technical Member**

√ **REPORTABLE/NON-REPORTABLE**  
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