APPELLATE TRIBUNAL FOR ELECTRICITY AT NEW DELHI
(APPELLATE JURISDICTION)

APPEAL NO. 408 OF 2024 & IA NO. 1530 OF 2024
and
APPEAL NO. 409 OF 2024 & IA NO. 1527 OF 2024

Dated: 22nd January, 2025

Present: Hon'ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon'ble Ms. Seema Gupta, Technical Member (Electricity)

APPEAL NO. 408 OF 2024 & IA NO. 1530 OF 2024

In the matter of:

M/s. CHRISTIAN MEDICAL COLLEGE VELLORE
Through its General Superintend,
Ida Scudder Road,
Vellore – 632004, Tamil Nadu. …Appellant

VERSUS

1. **TAMIL NADU ELECTRICITY REGULATORY COMMISSION**
Through its Secretary
4th Floor, SIDCO Corporate Office Building,
Thiru Vi Ka Industrial Estate,
Guindy, Chennai – 600 032. … Respondent No.1

2. The Chairman and Managing Director
TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION LTD. TANGEDCO)
2nd Floor, No. 144, Anna Salai,
Chennai – 600 002. … Respondent No.2

3. The Superintending Engineer
TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION LTD (TANGEDCO)
Vellore Electricity Distribution Circle,
10th East Main Road, TNEB,
Gandhi Nagar, Vellore – 632006, Chennai. … Respondent No.3

Counsel for the Appellant(s) : Anand K. Ganesan

Swapna Seshadri
Aishwarya Subramani
Harsha V. Rao

Counsel for the Respondent(s) : Anusha Nagarajan for Res.2 & 3

APPEAL NO. 409 OF 2024 & IA NO. 1527 OF 2024

In the matter of:

M/s. CHRISTIAN MEDICAL COLLEGE VELLORE
Through its General Superintend,
Ida Scudder Road,
Vellore – 632004, Tamil Nadu. …Appellant

VERSUS

1. **TAMIL NADU ELECTRICITY REGULATORY COMMISSION**
   Through its Secretary
   4th Floor, SIDCO Corporate Office Building,
   Thiru Vi Ka Industrial Estate,
   Guindy, Chennai – 600 032. … Respondent No.1

2. *The Chairman and Managing Director*
   TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION LTD. TANGEDCO)
   2nd Floor, No. 144, Anna Salai,
   Chennai – 600 002. … Respondent No.2

3. *The Superintending Engineer*
   TAMIL NADU GENERATION AND DISTRIBUTION CORPORATION LTD (TANGEDCO)
   Vellore Electricity Distribution Circle,
   10th East Main Road, TNEB,
   Gandhi Nagar, Vellore – 632006, Chennai. … Respondent No.3

Counsel for the Appellant(s) : Anand K. Ganesan
Swapna Seshadri
Aishwarya Subramani
Harsha V. Rao

Counsel for the Respondent(s) : Anusha Nagarajan for Res.2 & 3

JUDGEMENT

PER HON'BLE MR. JUSTICE RAMESH RANGANATHAN, CHAIRPERSON

I. INTRODUCTION:

The Appellant-Christian Medical College has five HT service connections for its hospitals, which are the subject matter of Appeal Nos. 408 and 409 of 2024, both of which are preferred against the orders passed by the Tamil Nadu Electricity Regulatory Commission ("TNERC" for short). While Appeal No. 409 of 2024 is preferred against the order passed by the TNERC in M.P. No. 24 of 2023 dated 01.08.2024, Appeal No. 408 of 2024 is preferred against the order passed by the TNERC in M.P. No. 23 of 2023 dated 01.08.2024.

The Appellant had earlier filed W.P. No. 38076 of 2002 challenging the proceedings of the Tamil Nadu Electricity Board dated 27.09.2002, and W.P. No. 27161 of 2004 challenging the letter of the 2nd Respondent dated 20.08.2024, before the Madras High Court. Interim orders were passed by the Madras High Court, on 24.09.2002 and 08.10.2002, granting the Appellant-Writ Petitioner interim protection, which interim order remained in force till W.P. Nos. 38076 of 2002 and W.P. No. 27161 of 2004 were, subsequently, disposed of by the Madras High Court by its orders dated 24.03.2023 and 04.07.2023 respectively.

In its Order, in W.P. No. 27161 of 2004 and batch dated 24.03.2023, the Madras High Court observed that the relief sought, in the said Writ Petitions, was to quash the letters dated 27.09.2002 and 20.08.2004; to direct the respondents to classify the power connections in the Appellant's institutions under HT Tariff II(A) instead of HT Tariff III, and to refund the excess amounts collected by the Respondent by wrongly applying HT Tariff III instead of HT Tariff II(A); the Counsel for the Respondent Board

had submitted that there was an alternative remedy of referring the dispute to the Tamil Nadu Electricity Regulatory Commission as per Regulation 26(3) of the Tamil Nadu Electricity Supply Code; and, without availing the efficacious remedy available before the Regulatory Commission, the High Court had been approached. The Madras High Court, while granting the Writ Petitioner (ie the Appellant herein) liberty to file an appropriate petition before the TNERC 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 the order, directed the Regulatory Commission to dispose of the petitions as expeditiously as possible.

Thereafter, on a petition being filed by the Appellant seeking modification of the order dated 24.03.2023 to include that, *"in the meantime the interim order already granted by this Court on 08.10.2002 and 24.09.2002 shall continue",* the Madras High Court, in its order dated 04.07.2023, held that, since the Petitioner (ie the Appellant herein) was similarly placed to that of the Petitioner in W.P. No. 5994 of 2007, the interim injunction granted in the writ petition shall continue till the time the Regulatory Commission disposed of the Petition filed by them.

After the afore-said Writ Petitions were disposed of by the Madras High Court, the Appellant filed M.P. Nos .23 and 24 of 2023 before the TNERC wherein they questioned the very same letters dated 27.09.2002 and 20.08.2004 ie both the letters, the validity of which they had earlier challenged before the Madras High Court.

M.P. No. 24 of 2023 was filed before the TNERC, by the Appellant herein, to set aside and declare as illegal the letter issued by the 2nd Respondent dated 27.09.2002, and to consequently direct the Respondents to classify the Service connections of the Appellant, ie HTSC 1001, 1003, 1007 and 1059, under the tariff for educational institutions

instead of commercial tariff. M.P. No. 23 of 2023 was filed before the TNERC, by the Appellant herein, to set aside and declare as illegal the letter issued by the 2nd Respondent, and to consequently direct the Respondents to classify the Service connection of the Appellant, ie HTSC 1095, under the tariff for educational institutions instead of commercial tariff.

Shri K. Srinivasan and Mr. M. G. Ramachandran, learned Senior Counsel, appearing on behalf of the Appellant, and Mr. P. Wilson, Learned Senior Counsel appearing on behalf of TANGEDCO, would submit that it would suffice, for the disposal of both the appeals, if the facts and contents of the order impugned in Appeal No. 408 of 2024 is alone taken into consideration.

II. CONTENTS OF THE IMPUGNED ORDER:

In its order, in M.P. No. 23 of 2023 dated 01.08.2024, the TNERC, after taking note of the contents of the petitions and counter-affidavits filed by the parties, and the rival contentions urged before it, framed the following issues for consideration: (i) whether the canvass made by the petitioner for Tariff II-B for its hospital services attached to its educational activities is sustainable? and (ii) whether the petitioner is entitled to any relief, if so, to what extent?

On the first issue, the TNERC observed that the subject matter of the petition was similar to M.P. No. 9 of 2020 and M.P. No. 25 of 2020 only in a restrictive sense to the extent of classification under Tariff II-B, but there were certain aspects which were factually different; hence, the said case could not be said to be a covered decision as contended by the Respondent; in any case, it was necessary to decide the issue with reference to the facts of the said cases as well; the canvass made by the petitioners for HT Tariff II from Tariff III was considered in the case of a

similarly placed Trust namely M/s. Raja Muthiah Chettiar Charitable and Educational Trust, but factually there were certain differences between these two cases; the question which arose for consideration in the said case i.e. eligibility to tariff II-B came to be decided with reference to physical segregation; however, there was a thin line of distinction between the said case and the present as, in the said case, the entire consumption was charged under HT tariff III in the absence of physical segregation, unlike the present case where the hospital services alone have been severed out of the total activities of the petitioner (ie the Appellant herein) and charged under Tariff III; the petitioners' (ie the Appellant herein) claim was that its mandate was to maintain a hospital to impart practical training to its medical students under the Rules framed by the National Medical Council, and hence the present petition was filed seeking that the impugned notice should be quashed; the Commission has power to determine tariff or re-fix tariff under the Electricity Act, 2003; this being a case of tariff determination under G.O.Ms. No. 95 dated 28.11.2001, the Commission could not re-visit the tariff on its own as it was determined under a different enactment; and the Madras High Court, having referred the matter for clarification, it was necessary to examine the rival contention of the parties and render a decision in the light of the facts as on date, as the authority to determine or re-fix tariff vests only with the Commission.

The TNERC, thereafter, reproduced the contents of Tariff order No.7 T.P.No.1 of 2022 dated 09.09.2022 wherein Clause 6.1.3.5 related to hospitals accredited by the 'National Accreditation Board for Hospitals and Health care providers' (NABH) situated in Rural areas (Village/ Town Panchayats), and Clause 6.1.4 related to High Tension Tariff II(B): (Private Educational Institutions and its hostels, segregated Medical Colleges). For FY 2023-24 to FY 2026-27, Clause 6.1.4.1 provided that this tariff was applicable to (i) all private educational institutions and hostels run by them;

(ii) all private medical collages and hostels which were physically and electrically segregated from private hospitals, within the same premises.

The TNERC, thereafter, observed that, from the above, it could be seen that HT II (A) was specifically meant for educational institutions and hospitals under the control of the Central/ State Governments/ Local bodies including educational institutions and hostels aided by Government; the petitioner had declared in the petition that it was an unaided educational institution, and hence the question of application of Tariff II-A could be ruled out straightaway; HT II-B was applicable to (i) all private educational institutions and hostels run by them, (ii) all private medical colleges and hostels which were physically and electrically separated from private hospitals within the same premises; the above classification was that HT II-B was primarily meant for private educational institutions and hostels in contra-distinction to HT II(A) which was meant for educational institutions run by the Government including Government aided ones in general; it was to be noted that insofar as private medical colleges and hostels were concerned, there was a further sub-classification *inter se* private educational institutions in terms of physical and electrical segregation; there was a further requirement which had been made in HT II-B of Clause II of para 6.1.4.1 of the tariff order to the effect that there needed to be a physical and electrical segregation between the educational institutions and the hostels on the one hand, and the hospitals on the other hand, within the same premises; at the time of tariff determination, it would have weighed on the Commission that, unlike Government Medical Institutions which do not charge fee for the services rendered at its hospital, the question of similar free service could not be ruled out insofar as private education institutions were concerned; to avoid a largesse being conferred on such private Medical Colleges in terms of tariff, with regard to their hospital services, an intelligible distinction had been carved out in the tariff

order, firstly between Government and Private Institutions, and thereafter between private educational institutions which render hospital services freely and those which do not offer free service and collect charges for the same; Tariff II-A & II-B disclosed the intention of the Commission not to treat the Government educational institutions and private educational institutions alike, ostensibly for the reason that commercial nature of the services could not be ruled out altogether in regard to private hospitals attached to private educational institutions; and such distinction could not be said to be beyond reasonable bounds of discrimination, as the difference in tariff was only to the extent of 50 paise in regard to energy charges with fixed charges remaining the same for both; a blanket extended concession had been given only to hostels, run by both Government and Private Educational Institutions, and not to hospitals presumably for the reason that hostel services were an integral part of educational activity.

The TNERC further observed that the distinction between Government Hospitals and Private Hospitals satisfied the test of a reasonable nexus to the objects it sought to achieve, namely to satisfy the principles of commercial viability of the licensee postulated in Section 61(b) of the Electricity Act, and at the same time to weed out profit centric hospitals from the purview of HT II-B, and group them under HT-III; private educational institutions had not been meted out a discriminatory treatment altogether, and safeguard had been made in such a way that hospitals, which had been physically and electrically segregated from the educational institution and hostels premises, had been saved under HT II-B, and only those which failed the test of segregation were relegated to Tariff III; the plea of the petitioner for classification under Tariff II-B, even without segregation, was absolutely inconceivable; it could not be an automatic presumption that merely because an institution carried on educational

activities, and was mandated to establish a hospital under a law or Rule, it had to be treated as an education institution for all intent and purposes in the determination of tariff; such omnibus presumption would hit the very foundation of Section 62(3) of the Electricity Act which provided for a reasonable classification on the basis of purposes for which supply was required; the presumption that hospital services was incidental to educational purpose, and such hospital services is not profit-driven, was evidently manifest only in the case of Government Educational Institutions or aided Institutions as they were under public scrutiny and subject to audit and legislative gaze; the same could not be thought of blindly to a private medical institution which had an attached hospital; each case had to pass the test of reasonableness; and Clause II of para 6.1.4.1 of Tariff Order No.7 of 2022 dated 09.09.2022, relating to HT II-B classification, provided a reasonable test to achieve the objective of Section 61(b) of the Electricity Act, 2003.

The TNERC also observed that the onus was on the part of a private education institution to establish that all its activities including hospitals were not driven by a profit motive, and it was not for the licensee to carry out a roving exercise to satisfy itself as to the objective of an entity; the petitioner had sought to repudiate the allegations of the respondents that its hospital component was not engaged in charging fee for its service; only a bald statement had been made denying the allegation which was not sufficient to conclude that the entire activity of the hospital was not-for-profit motive; even otherwise, the mere fact that the hospital was part of an educational institution would not entitle it to seek the tariff as applicable to an educational institution; it is only for these reasons that the need for segregation of educational and hospital services were emphasized in the earlier orders making the tariff classification easier; a mere declaration by the petitioner, that it was an educational institution mandated to function

with an attached hospital, was hardly sufficient to conclude that its entire activity would be covered under educational activities, and it was eligible to Tariff II-B; even in such a case, relief, if any, could be granted only to the extent of educational activities and hostel facilities, and not to the attached hospital; hospital services had to pass the test of non-profit motive in the case of private educational institutions; and there could not be an automatic presumption as in the case of Government and Government aided educational institutions.

The TNERC held that, in the case of M/s. Raja Muthiah which was relied upon by the Respondent, the decision rendered therein was the subject matter of appeal before APTEL, and hence they were not examining the merits of the same; the facts of the case in Appeal No. 110 of 2009 filed by the Association of Hospitals against MERC, which culminated in APTEL passing an order dated 20.11.2011, were different from the present case; APTEL was dealing with a classification undertaken by MERC through which certain educational institutions were grouped into commercial category *en masse*; it was a case where a residual category was created, and all the cases which did not fall under the regular categories were grouped in the residuary category; APTEL had directed MERC to create a special category; in the present case, special category had been created for hospitals attached to private educational institutions, and electrical and physical segregation had been stipulated as a requirement to avail HT II-B; only when such segregation had not been done, the same was relegated to Tariff III; the relegation of the petitioner's service connection to Tariff III, as understood by them, was not a residuary category as such; it was only a fall-out of the failure to adhere to the condition attached to the HT II-B special category; in effect, both Tariff II-A and II-B were special categories and satisfied the ratio laid down by APTEL; it is only when an educational institution, having an attached

hospital, fails the test of segregation, is it relegated to tariff III; it was not as if the entire consumption made by the entities were relegated to Tariff III in the first instance itself; and, hence, the prayer for classification of HTSC 1095 of the petitioner, which was under HT III to HT II-B i.e. tariff for educational institutions, had to necessarily fail.

On the second issue, the TNERC held that, in view of the foregoing discussions, they concluded that the prayer for treating consumption from the HTSC No. 1095 for the petitioner's hospital services, which was now under HT-III, to the one under HT II-B, by way of conversion was not sustainable; and the petitioner was not entitled to any relief including the relief of declaration.

III. RIVAL CONTENTIONS:

Except for the submissions urged on behalf of the Appellant that the State Commission erred in placing reliance solely on the tariff categorization and conditions in Tariff Order dated 09.09.2022, as they are only applicable from 10.09.2022 and not prior thereto, and the Respondents contention with respect to Regulation 26(3) of the Supply Code, both of which have relevance to the order we intend passing, all other contentions, put-forth on behalf of the Appellant and the 2nd Respondent, are only being noted, lest we are faulted for not doing so, though, for reasons stated later in this order, we see no reason to burden this judgement with an analysis of such contentions, urged by Learned Senior Counsel on either side, on its merits.

A. SUBMISSIONS URGED ON BEHALF OF THE APPELLANT:

Sri K. Srinivasan and Sri M.G. Ramachandran, Learned Senior Counsel appearing on behalf of the Appellant, would submit that reliance

is placed by the State Commission solely on the tariff categorization, and conditions in Tariff Order dated 09.09.2022, to hold that HT II is applicable only for medical colleges and hospitals that are physically and electrically segregated; this is the basic error which has been committed; the tariff order dated 09.09.2022, and conditions contained therein are only applicable from 10.09.2022, and not prior thereto; none of the earlier tariff orders, before the tariff order dated 09.09.2022, contained any special conditions of segregation for tariff categorisation; the State Commission has not considered or examined the Tariff Notification dated 28.11.2001 pursuant to which the letters dated 27.09.2002 and 20.08.2004 were sought to be issued by Respondent No. 2; the said letter dated 05.12.1992 was issued by the Electricity Board, which was the regulator under the Electricity (Supply) Act, 1948; further, the said letter was acted upon and implemented; the TNERC has also not considered the following; (a) the hospital was a teaching hospital, a mandatory requirement for the purposes of imparting medical education; (b) the Appellant's institution was a charitable institution; that the Appellant is a self-financing institution, which is charging fees to discharge its functions, does not mean that the institution is not charitable; (c) the test of classification under the 1992 notification is the same as in the 28.11.2001 notification; and the change is only brought by the tariff order of 2022, which is applicable prospectively.

B. SUBMISSIONS URGED ON BEHALF OF THE 2ND RESPONDENT:

Sri P. Wilson, Learned Senior Counsel appearing on behalf of Respondents 2 and 3, would submit that the TNERC has given detailed reasons justifying the differentiation between Government and Private institutions and hospitals; it has also given reasons for rejecting the primary contention of the Appellant that a hospital be treated as an educational institution for the purpose of determination of tariff; the further contention

of the Appellant that it provides free treatment has also been rejected by the TNERC holding that it is unsubstantiated; the only issue raised in the petition by the Appellant was the tariff classification under G.O. 95 of 2001; the Appellant did not challenge or put in issue any of the tariff orders that were passed by the TNERC right from 2003 up to 2022; the TNERC has thus rightly held, in the Impugned Order, that the Commission cannot re-visit the tariff that was determined in G.O. 95 of 2001 under a different enactment; and this position has been upheld by the Supreme Court.

Sri P. Wilson, Learned Senior Counsel appearing on behalf of Respondents 2 and 3, would further submit that the TNERC has rightly applied the test of segregation of connections between educational institutions and hospitals, and has held that, in the absence of such segregation, the Appellant was not entitled to be classified under HT Tariff II-B (as per the prevailing tariff order); this test of segregation is consistent with the tariff classification adopted under the Tariff Orders 2003, 2010, 2012, 2013, 2014, 2017 and 2022; it is evident that, without segregation, a hospital cannot fall under the HT Tariff II-B Category, merely by being attached to an educational institution; in ***PSG Institute of Medical Sciences and Research v. Superintending Engineer (WP No. 3698 of 2024)*** and **Srinivasan Charitable and Educational Trust v. The Superintending Engineer (WP No. 6804 of 2024),** the Madras High Court held that TNERC's decision to treat Hospitals attached with Medical Institutions as commercial Hospitals or Private Hospitals does not suffer from any infirmity; the Madras High Court, in fact, held that it would serve no useful purpose to refer such matters to the TNERC; and this Tribunal and the Supreme Court have upheld tariff classification that differentiates between private and Government owned institutes/ hospitals [APL No. 39 of 2012 in matter of "*Rajasthan Engineering College Society vs RERC & Anr*; APL No. 300 of 2013 titled as "*Delhi Voluntary Hospital Forum vs*

DERC & Ors; *Kerala State Electricity Board vs Principal, Sir Syed Institute of Technical Studies & Ors*., (2021) 14 SCC 118;

IV. ANALYSIS:

As noted hereinabove, MP No. 23 of 2023 was filed by the Appellant before the TNERC requesting the Commission to set aside and declare as illegal the letter issued by the Superintending Engineer, Vellore Electricity Distribution Circle dated 20.08.2004, and consequently direct the Respondents to classify the Appellant under the Tariff for Educational Institutions instead of Commercial Tariff. The relief sought by the Appellant, in M.P. No. 24 of 2023 filed by them before the TNERC, was for a direction to set aside and declare as illegal the letter issued by the 2nd Respondent on 27.09.2002, and consequently direct the Respondents to classify the Appellant under the Tariff for Educational Institutions instead of Commercial Tariff.

As all the Govt Orders, as well as the correspondence between the Appellant and the Second Respondent, related to a period prior even to the Tariff Order dated 15.03.2003, it is useful to refer, albeit in brief, to their contents to understand the scope of the MPs filed by the Appellant before the TNERC.

G.O.Ms. No. 102 dated 24.01.1992 was issued by the Government of Tamil Nadu, in exercise of the powers conferred by Section 4 of the Tamil Nadu Revision of Rates and supply of Electrical Energy Act, 1978, amending the Schedule to the said Act relating to electricity tariff. The said amendment was to come into force on 01.02.1992. Recognized educational institutions, hospitals run by recognized education institutions, Government hospitals, actual places of public worship, orphanages, public libraries etc. were brought under High Tension Tarif Category II under the said G.O. dated 24.01.1992. HT Tarif VII category was the residuary

category which brought within its ambit such categories of consumers not covered under HT Tariff-I, II, III, IV, V and VI.

The Appellant submitted a representation to the Superintending Engineer, Tamil Nadu Electricity Board on 07.11.1992 wherein they highlighted the nature of the main activities and subsidiary activities of their institution. In the said letter dated 07.11.1992, the Appellant stated that attached to their Medical Collage and the College of Nursing, and as an integral part of these educational institutions, there was a hospital known as the Christian Medical College Hospital with a branch Eye Hospital etc. where students of the Medical College, and the College of Nursing and Allied Health Science courses, obtained practical training throughout the educational course; the practical training in the hospital was an essential and integral part of the educational training for the students of all the above courses; treatment of the patients in the hospital was part of the medical training, and the hospital was a teaching institution; this had been upheld by the Supreme Court in CA No. 8818 of 1983 dated 20.10.1987; the hospital was recognised as a charitable institution and 10% of the in-patients and 40% of the out-patients were treated free every year; Christian Medical College, Vellore was administered on a non-profit basis; and, in view of the above, it was requested that the tariff for electricity charges may be kindly made at H.T. Tariff II provided for educational institutions, instead of the commercial H.T. Tariff VII which was being charged as at present.

In reply thereto, the Chairman of the Tamil Nadu Electricity Board, vide letter dated 05.12.1992, informed the Appellant that instructions were being issued to the Superintending Engineer/ Vellore Electricity Distribution Circle that the five HT services of Christian Medical College, and the hospitals attached to the said College, may be brought under HT Tariff-II, and to give effect to the change of Tariff prospectively from the date of taking a revised test report.

G.O.Ms. No. 95 dated 28.11.2001, published in the Tamil Nadu Government Gazette, was issued in the exercise of the powers conferred by Section 4 of the Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act, 1978 amending the Schedule to the said Act. The amendment was to come into force from 01.12. 2001. HT Tariff II(A), in terms of the said G.O., related to recognised educational institutions, hostels run by recognised educational institutions, Government hospitals, hospitals under the control of Panchayat Unions, Municipalities or Corporations, Veterinary hospitals, leprosy sub-centres, primary health centres etc. The actual places of public worship were brought under HT Tariff II(B), and the residuary category was under the HT Tariff III. Thereunder commercial consumers, and all categories of consumers not covered under High Tension Tariff I(A), I(B), II(A), II(B), IV and V, were brought under HT Tariff III.

Thereafter, by letter dated 27.09.2002, the Chairman of the Tamil Nadu Electricity Board informed the Appellant that, as per the Tariff Notification in vogue, recognised educational institutions and Government Hospitals were only classified under H.T. Tariff II(A); based on the above nomenclature, the H.T. services of Christian Medical College alone was to be classified under H.T. Tariff II(A), and hospitals of the Christian Medical College would be brought under H.T. Tariff III as their establishment was a private hospital where most of the in-patients and out-patients were given treatment on chargeable basis.

By their letter dated 20.08.2004, the Superintending Engineer, Vellore Electricity Distribution Circle informed the Appellant that, as per the Chairman's instruction dated 04.07.2002, the hospitals attached to the recognised self-financing Medical College/ Institution were to be charged under HT Tariff-III and not in Tariff II(A); it was clear that their hospital was a self-financing one; hence the tariff was revised from Tariff II(A) to III, and

the bills from December 2001 till date were revised under Tariff III; and the difference amounted to Rs.10,10,398/- as short levy. The Appellant was requested to pay the said amount immediately, and was informed that further bills would be rendered only under Tariff-III instead of II(A).

While the proceedings dated 27.09.2002, which was under challenge in M.P. No. 24 of 2023 (the order passed in which is the subject matter of challenge in Appeal No. 409 of 2024), was prior to the order passed by the TNERC in TP No.1 of 2002 dated 15.03.2003, it is evident from the contents of the proceedings dated 20.08.2004, which was under challenge in M.P. No. 23 of 2023, that it also related to a period prior to when the first tariff order was passed by the TNERC in T.P. No.1 of 2002 dated 15.03.2003. The fact remains that, neither in its order in M.P. No. 23 of 2023 nor in its order in M.P. No. 24 of 2023 (both dated 01.08.2024), has the TNERC examined the Appellant's claim in the context of the Govt orders, and the law applicable at the relevant time.

The letter dated 27.09.2002 which was the subject matter of challenge in M.P. No. 24 of 2023 (the order passed in which is the subject matter of challenge in Appeal No. 409 of 2024) only refers to the tariff notification in vogue in terms of which recognized educational institutions and Government hospitals are classified under HT tariff II-A. By the letter dated 20.08.2004, the Appellant was informed of the Chairman's instruction dated 04.07.2002. The contents of both the letters dated 27.09.2002 and 20.08.2004 show that they relate to a period prior to when the first tariff order dated 15.03.2003 was issued; and, consequently, the action taken in terms thereof ought to have been examined only in the light of the Government orders or statutory provisions in force when the said proceedings were issued, and not on the basis of either the tariff order dated 15.03.2003 or any of the tariff orders issued thereafter.

As is evident, from its contents, it is only the present tariff order dated 09.09.2022 which has been referred to in the impugned order, and none of the previous tariff orders. The impugned order passed by the TNERC does not make any reference to either the Govt Orders or the law in force when the said letters were issued. Reference to the tariff order dated 15.03.2003 and the tariff orders issued thereafter, but prior to the tariff order dated 09.09.2022, is made only by the 2nd Respondent, and is not reflected in the impugned order.

As all the facts stated and the contentions raised in both the afore-said M.Ps, filed by the Appellant, related to the period prior to the Tariff Order dated 15.03.2003, the TNERC was required to consider the Appellant's claim on the basis of the Government Orders and the law then prevalent, and not the tariff order passed on 09.09.2022. The fact, however, remains that the impugned order is based entirely on Tariff Order No.7 T.P. No.1 of 2022 dated 09.09.2022, which was passed 18 years after the 2nd Respondent issued letter dated 20.08.2004, and the classification, in terms thereof, related to the Financial Years FY 2023-24 to FY 2026-27, and not for the period with reference to which the Petitions were instituted by the Appellant before the TNERC.

The challenge in both the MPs was to the letters referred to hereinabove, and it was only as a consequential relief that the Appellant sought a direction to the Respondents to classify them under the Tariff for Educational Institutions instead of Commercial Tariff. Without adjudicating the issues relating to the main relief, the TNERC was not justified in confining its examination to the Appellant's claim with respect to the consequential relief sought by them, that too on the basis of the tariff order dated 09.09.2022, which did not relate to the period with respect to which the proceedings were instituted before the TNERC. It goes without saying, that the subsequent tariff orders passed by TNERC in the years 2003,

2010, 2012, 2013, 2014, 2017 and 2022, to which reference is made on behalf of the 2nd Respondent, would apply only to the period specified therein, and would have no application to a period prior thereto.

As noted hereinabove, the only tariff order referred to in the impugned order is the tariff order No.7 in T.P.1 of 2022 dated 09.09.2022 which order was not even in existence during the period to which the proceedings, impugned in both the petitions filed before the TNERC, related to. As the TNERC has not even examined the law or Government orders in force during the period to which the letters, impugned in M.P. Nos. 23 and 24 of 2023, relate to, the impugned order must be, and is accordingly set aside, and the matter is remanded to the TNERC for its consideration of the issues raised in M.P. Nos. 23 and 24 of 2023 in the light of the law which prevailed, and the Government Orders which were in force, during the period to which the said letters relate.

Further, except to state that it cannot re-visit the tariff that was determined in G.O. 95 of 2001 under a different enactment, no reasons have been assigned by the TNERC for arriving at such a conclusion. It is also not clear whether the TNERC was of the view that it lacked jurisdiction to adjudicate a dispute under the Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act, 1978. If it was of such a view, the TNERC ought to have explicitly stated so assigning reasons for its conclusions. As we intend remanding the matter to the TNERC, we have refrained from expressing any opinion in this regard, for these and other matters are required to be considered by the TNERC afresh and in accordance with law.

V. REGULATION 26(3) OF THE SUPPLY CODE:

The submission, urged on behalf of the Respondent, is that, in the light of the liberty granted by the Madras High Court, it is only within the

ambit of Regulation 26(3) of the Supply Code could the Appellant have put-forth their submissions before the TNERC, and not beyond. Regulation 26(3) of the Tamil Nadu Supply Code stipulates that, where any dispute arises as to the application or interpretation of any provision of the Supply Code, it shall be referred to the Commission whose decision shall be final and binding on the parties concerned. The submission, in short, is that it is only with respect to the application or interpretation of the Supply Code could the Appellant have invoked the jurisdiction of the TNERC, and not on other grounds. What this submission overlooks is that the Tamil Nadu Electricity Supply Code, made by the TNERC in the exercise of its powers under Section 50 read with Section 181 of the Electricity Act 2003, was first made and notified only on 21.07.2004. It is settled law that Regulations, made under plenary legislation, has only prospective operation and cannot be applied respectively unless the parent statute confers power to make Regulations with retrospective effect. It is not even the case of the Respondents that the Tamil Nadu Supply Code would apply retrospectively and consequently, for the period prior to 21.07.2004 when the Tamil Nadu Electricity Supply Code was first made, the said Code would have no application.

As noted hereinabove, the entire dispute, raised both before the Madras High Court and subsequently before the TNERC, related to a period prior to the first of the tariff orders passed by the TNERC on 15.03.2003 i.e. a period long prior to when the Tamil Nadu Electricity Supply Code was first notified on 21.07.2004. Consequently, the question of application or interpretation of the Supply Code, to disputes relating to a period prior to when it was first made, would not arise. As the Supply Code was not even made, the question of its application or interpretation would not arise in the facts and circumstances of the dispute raised by the Appellant.

As noted earlier in this order, the Madras High Court, in its order in W.P. No. 27161 of 2004 and Batch dated 24.03.2003, observed that the relief sought in the said Writ Petitions was to quash the letters dated 27.09.2002 and 28.02.2004. The said order of the Madras High Court records that it is only the Counsel for the Respondents who had submitted that the Appellant had an alternate remedy of referring the dispute before the TNERC under Regulation 26(3) of the Supply Code, and without availing the efficacious remedy before the Regulatory Commission, the High Court had been approached. It is in such circumstances, though it was not even called upon to consider whether Regulation 26(3) of the Supply Code had any application, that the Madras High Court granted the Appellant liberty to file a petition before the TNERC under Regulation 26(3).

It is not as if the Appellant had sought liberty to approach the TNERC only under Regulation 26(3) of the Supply Code. Having relied on the Supply Code, which had no application to the dispute on hand since the entire disputed related to a period prior to 21.07.2004 when the Supply Code was first notified, the Respondents cannot take advantage of their own wrong, and now be heard to contend that the Appellant cannot raise any grounds other than those relating to the application and interpretation of the Supply Code. Accepting such a contention would mean that the Appellant has been relegated to avail a non-existent remedy, since the dispute before the Madras High Court did not relate either to the application or to the interpretation of the Supply Code.

Further, the TNERC has not non-suited the Appellant on the ground that the claims raised by them did not fall within the ambit of the Supply Code. As the order of remand now passed is but a continuation of the earlier proceedings, we see no reason now to restrict the scope of enquiry by the TNERC only to those related to the application or interpretation of

the Supply Code. The submission, urged on behalf of the Respondents on the scope and extent of liberty granted by the Madras High Court, therefore necessitates rejection.

VI. CONCLUSION:

The TNERC shall, after giving both the Appellant and the 2nd Respondent a reasonable opportunity of being heard, pass orders afresh in accordance with law, and in the light of the afore-said directions. Since the dispute has been pending adjudication for the past more than two decades, we request the Commission to pass appropriate orders afresh with utmost expedition preferably within four months from the date of receipt of a copy of this order.

It does appear that it is only in view of the interim order of the Madras High Court, which order was directed to be continued till disposal of the proceedings before the TNERC, that the 2nd Respondent chose not to apply the classification of consumers into different HT Tariff categories, in terms of the Tariff orders issued by the TNERC from time to time, to the Appellant herein, though their claim in the Writ Petitions filed before the Madras High Court, and in the Petitions filed before the TNERC, related to a period prior to when the first tariff order was passed by the Commission on 15.03.2003.

It is settled law that interim relief is granted in aid of, and as ancillary to, the main relief which may be available to the party on the final determination of his rights in a suit or proceedings. (**State of Orissa Vs. Madan Gopal Rungta : AIR 1952 SC 12; Cotton Corporation of India Vs. United Industrial Bank, (1983) 4 SCC 625).** Consequently, the interim order passed earlier cannot be understood as extending beyond the period to which the main dispute, which is pending final adjudication, relates to.

We make it clear, therefore, that the order of remand now passed by us shall not disable the 2nd Respondent from taking such action against the appellant, as is permissible in law, for the period subsequent to the first Tariff order passed by the TNERC dated 15.03.2003, and the Tariff Orders which followed thereafter, as the dispute in both the MPs relate to an earlier period ie before 15.03.2003.

Needless to state that the order now passed by us shall also not disable the Appellant, in case any such action is taken against them by the 2nd Respondent, from instituting appropriate legal proceedings before the TNERC. In case any such proceedings are instituted, the TNERC shall consider the same on its merits and in accordance with law without being influenced by any observation made in this order, and notwithstanding pendency of proceedings before it consequent on remand.

The impugned orders are set aside, and both the appeals stand disposed of accordingly. All the IAs therein shall, consequently, stand disposed of.

Pronounced in the open court on this the **22nd day of January, 2025**.

(Seema Gupta) Technical Member	(Justice Ramesh Ranganathan) Chairperson

REPORTABLE / ~~NON-REPORTABLE~~

tpd