

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
World Trade Centre, Centre No.1, 13th floor, Cuffe Parade, Mumbai 400 005.

CASE Nos. 02 of 2002

**In the matter of applications dated 5th March 2002 filed
by South Indian Education Society
in respect of adjudication of differences
between the licensee (BEST) and the consumer.**

**Shri P. Subrahmanyam, Chairman
Shri Jayant Deo, Member
Dr Pramod Deo, Member**

ORDER

Dated: September 04, 2002

The South Indian Education Society, along with three other co-petitioners namely (i) SIES College of Commerce & Economics, Sion,, Mumbai, (ii) SIES College of Arts, Science and Commerce, Sion, Mumbai and (iii) SIES High School, Matunga, Mumbai have submitted an application invoking Section 22(1)(a) and Section 29 of the ERC Act, 1998, dated 5th March 2002 on affidavit praying:

- (i) That the Commission may please to exercise the jurisdiction vested in it and allow the present petition and hold that the Co-Petitioners are entitled to be charged under Code No.2, Abbreviation S, Particular (i) of the Schedule of Electricity Tariffs as set out by the Respondent (BEST),
- (ii) To direct the Respondents to place the Co-Petitioners and under Code No.2 Abbreviation SN, particulars (i) of the schedule of electricity tariffs as set out by the Respondent
- (iii) To direct the Respondent to calculate the excess tariffs charged from the Petitioners and accordingly grant them credit for the same and adjust the same against the future bills payable by the Petitioners, and
- (iv) To pass such further and other orders as may be necessary in the facts and circumstances of the case.

2. The Commission, under Section 22(2)(e) of the Electricity Regulatory Commissions (ERC) Act, 1998 and such other powers vested in it, invited parawise remarks from the Respondent (BEST Undertaking), which was submitted on 15th May 2002. A copy of the parawise remarks of the Respondent was forwarded to the Applicant for perusal and rejoinder, if any.

3. The Commission decided to hear the petition on the applicant's request, before admission, under Section 22(2)(e) of the Electricity Regulatory Commissions Act, 1998. Therefore, a hearing was held on 6th August 2002.

4. During the hearing held on 6th August 2002, Ms Nandini Menon, Legal Advisor, South Indian Education Society (SIES) submitted that they are a Society registered under the Bombay Public Trusts Act, 1950 and the Societies Registration Act, 1860. They are running educational institutions, co-petitioners in this case, (i) SIES College of Commerce & Economics, Sion, Mumbai, (ii) SIES College of Arts, Science and commerce, Sion, Mumbai and (iii) SIES High School, Matunga, Mumbai, which are recognised and aided by Government grants.

5. The Applicant is a consumer of the Respondent (BEST) since 1990. She further submitted that the Schedule of Electricity Tariffs of Respondent (BEST) as approved, published and made effective from 15th July 1997 governs the Applicant's Schools and Colleges. The said tariff is in force from that date and the Applicant and other co-petitioners are classified and charged as per the said tariffs. The Applicant has been classified under Sr. No.3 Abbreviation 'SN' of the aforesaid tariff schedule and the same are as per the particulars set out [page no.4 of the Petition] below:

“Particulars: Electricity used at low/medium voltage in

- i) Premises (except premises falling within tariff S, RC (LV) and H) exclusively used by Public Trusts or Religious Institutions for their normal activities.*
- ii) Premises (except premises falling within tariff RC (LV) mainly used for residential purposes where a part of the premises are used by lawyers, Advocates, Doctors or residents carrying out small cottage industries and premises used by Charitable Institutions and Societies registered with the Charity Commissioner and who do not run for profit.”*

6. The Applicant submitted that they are seeking to invoke the power of the Commission under Section 22(1)(a) and 29 of the ERC Act, 1998 to determine the applicability of appropriate tariff category.

7. The Applicant further submitted that the institute may be classified under Sr. No.2, Abbreviation 'S' as per the Schedule of Electricity Tariffs [page No.14 of the Petition] on the ground that they are a government aided educational institution. This appeal is made in view of the interpretation of “particulars” clause under category 'S', which is:

“ Particulars: *electricity used at low/medium voltage in premises exclusively used by (i) Public Hospitals & dispensaries, Schools, Colleges and such other Educational Institutions owned or run by Government or local authorities.*”

8. The point of argument is that the categories, which are envisaged in `S' are not confined to Educational Institutions owned or run by Government or local authorities alone. There are broadly two categories envisaged under `S' (i) health and (ii) education. As far as health is concerned, it is fairly limited to public hospitals and public dispensaries run by the Government. As far as educational institutions are concerned, the term “such other” covers educational institutions owned or run by government / local authorities, all schools and colleges whether private or not covered under this category.

9. The Applicant further stated that they have reliably learnt that the Respondents have granted tariff under Sr. No.2 Abbreviation `S' to some similarly placed minority run institutions.

10. The Commission, after hearing her arguments, directed the Applicant, to furnish proof to substantiate her above claim. The applicant agreed to submit such proof against its claims under affidavit within next seven days.

Response from the BEST Undertaking.

11. The Respondent vide its parawise remarks dated 15th May 2002 [refer para 5] submitted that *“the Maharashtra Electricity Regulatory Commissions Act came into force with effect from 25th April 1998. All actions taken under the erstwhile Act viz. Indian electricity Act and other Acts would not be nullified. The applicability of the Act, therefore, has got only prospective effect and not retrospective effect as will be clear from the opening para of the MERC Act. The Respondents therefore state and submit that all tariff revisions, policies regarding subsidies and other prospective acts would be fully governed by the MERC Act. In view of the above, the challenge now raised in this petition is without any merit and deserves to be rejected.”*

12. Smt V.S. Salvi, AGM (Legal), representing BEST Undertaking submitted that the BEST has been formed and functions under the BEST Act of the Bombay Municipal Corporation. The BEST Committee, which is the Governing Body of the BEST, takes the decision on fixing the tariff. The Applicant is its consumer and has been regularly paying the bill since 1990. The whole controversy, which is raised before the Honourable Commission by the Applicant that they should be given the concessional tariff under `S' category, whereas the institute is presently being charged under `SN' category, which incidentally also is a concessional tariff. Their contention is

that they are eligible for `S` categorisation irrespective of the status whether it is owned and controlled by the State Government or Local Bodies or otherwise, as they fall under the category school/college. The Respondent further submitted that it had informed (No.ESD/GEDN/7/17255/01 dated 16th April 2001 - Exhibit-G of the petition) the Institute that: *“Educational institutions owned and run by government or local authorities are only eligible for `S` tariff. Private colleges getting grant from government are not covered under `S` tariff. Hence, your request for concessional `S` tariff cannot be acceded to.”*

13. On a query from the Commission as to (i) whether the BEST is charging minority institutions under category `S` as alleged and (ii) what is the classification of premises run by Public Trust such as Bombay Hospitals, the Respondent submitted that they were giving the benefit under Sr No.3 (SN) (iii) to Bombay Hospitals as they were exempted from General Tax u/s 143(1)(a) of the BMC Act. However, since 1997 they are being charged under Sr. No.4 (H), since such tax exemption is withdrawn by the BMC. The matter is, therefore, subjudice now due to such change of category. On the query (i) mentioned above, Smt Salvi submitted that para (2) of Exhibit-G of the petition as referred above, is self-explanatory.

14. As a rejoinder to the remarks of the BEST, the Applicant submitted that the matter is taken up with the Respondent as early as on 16.11.1999 and not now as being projected by the Respondent's officer. The Applicant further submitted that under `S` tariff, there are two categories: (i) Public Hospitals and dispensaries and (ii) Schools & Colleges. The Applicant further emphasized that there are two sub-categories under `schools & colleges` (a) owned or run by the Government / local authorities and (ii) which are not owned / run by the government/local authorities. In our case, she further emphasized that `the schools & colleges` are one category of which there are two more sub-categories (i) owned by the government/local bodies on the basis of donations and (ii) not owned by the government / local bodies. The Applicant further submitted that while for the first category `S` tariff is applied whereas for the other `SN` tariff is made applicable, which is totally incorrect. The schools and colleges are not governed by the word `owned / run` by the government / local authorities. Since the BEST used the word “educational institution” it should be read with `such other educational institution`. In `SN` tariff there is no separate category for education whereas in `S` category, `health and education` have been given greater importance. Another point which was stressed upon by the applicant is that while the government aided educational institutions are not permitted to charge higher fees or take donations, it is required to meet other obligations like Payment of Fifth Pay Commission to the staff, etc.

15. The Commission wanted to know from the Applicant the rationale behind the creation of another category, namely `SN`, assuming the correctness of her interpretation of category `S` as narrated in para 14 above.

16. In response, the counsel of the Applicant read out the applicability of tariff categorisation `SN` clause (i), (ii) and (iii) and submitted that in this category we do not find education categorised separately and that is why the same is included in the category `S` underlying the importance of `health and education`.

17. The Commission observed that the Applicants' effort to interpret the applicability clause of a legally valid approved tariff schedule as above is nothing but an attempt to get a further reduction in tariff. Therefore, the application is devoid of merit to be considered under Section 22(1)(a) or Section 29 of the Electricity Regulatory Commissions (ERC) Act, 1998.

18. Further, the failure of the applicant to submit an affidavit as mentioned in para 10 means that the allegation made above [reference para 9 above] cannot be substantiated.

19. Therefore, the application does not even merit consideration under Section 22(2)(e) of the ERC Act, 1998. The petition is rejected. Thus ordered.

Sd/-
(Jayant Deo)
Member

Sd/-
(Dr Pramod Deo)
Member

Sd/-
(P. Subrahmanyam)
Chairman, MERC

Sd/-
(Sanjay Kumar)
Secretary, MERC