

(1988) 04 KL CK 0003

In the High Court Of Kerala

Case No : O.P. No"s. 2051 and 4837 etc. of 1987

Social S.G. of Assisi Sisters

APPELLANT

Vs

K.S.E.B.

RESPONDENT

Date of Decision : 05-04-1988

Acts Referred:

Constitution of India, 1950 — Article 14
Electricity (Supply) Act, 1948 — Section 49
Electricity Act, 1910 — Section 22B
Industrial Disputes Act, 1947 — Section 2, 2(15)

Citation : (1988) 1 KLJ 672

Hon'ble Judges : V.S. Malimath, C.J;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : Kurien Joseph, K.J. Joseph and P.N. Ramakrishnan Nair, for the Appellant; Kallada Sukumaran and Mathew P. Mathew, for the Respondent

Judgement

Bhaskaran Nambiar, J.—Are Churches, Convents, Orphanages, Seminaries, Hospitals, Educational Institutions, Hostels etc. "Commercial consumers" liable to pay enhanced electric tariff or are they merely "non-domestic consumers" entitled to pay only at the reduced tariff rates fixed by the Board itself? This is the main question that arises for determination in this batch of writ petitions.

2. In exercise of the powers conferred by Section 49 of the Electricity (supply) Act, 1948 and all other enabling provisions, under the Act, and after taking into account all relevant circumstances, the Kerala State Electricity Board Low Tension (other than Public lighting) Tariff Order 1985, classifying the various categories of consumers of electrical energy and the tariff rates applicable to each category. It is the admitted case that the petitioners in all these writ petitions are Low Tension Consumers governed by this tariff order and they were classified as LT VI - Non domestic (single or 3 phase).

3. LT VI - Non-domestic category was treated under this tariff order of the Board thus:

LT VI - Non-domestic (Single or 3 Phase) -

(a) Applicable to Government or non-Government offices, Aerodromes, Radio Stations, Telephone Exchanges etc., run by State or Central Government or Local Bodies, Technical and other Educational Institutions", Libraries and Hostels Private or run by or affiliated to Universities and Government, Departments, Hospitals, and Nursing Homes - Government, or otherwise, X"rays, Laboratories, Churches, Mosques, Temples, Convents, etc., Commercial Cold Storages, Poultry farms - Government or otherwise printing presses, and all SSI registered units not eligible to come under LT VI tariff.

Fixed charges at Rs. 5/- kw or part thereof connected load/month.

plus

Energy charges upto 5 kw.

(1) at 50 ps/Unit for connected loads.

(2) at 60 ps/unit for connected loads above.

Fixed charge at Rs. 5/kw or part thereof connected load/month.

Energy charges

Plus

(1) @ 60 ps/Unit for connected load upto 1 kw.

(2) @ 65 ps/Unit for connected load above 1 kw and upto 10 kw.

(3) @ 70 ps/Unit for connected load above 10 kw.

Note: 1. Recognised charitable institutions will come under Lt.VI(a) tariff irrespective of nature and purpose of load, but a reduction in energy charge portion of the tariff to the extent of 5 ps. unit (kwh) will be allowed.

Note: 2. - For technical Institutions, Colleges, Laboratories and Hospitals the above tariff will be subject to ceiling of overall per unit rate of Rs. 1.50 per unit or fixed charges corresponding to 75 percent of the total connected load whichever is higher.

4. On account of the delay in the on set of South West Monsoon, the deterioration in the storage position in the hydel reservoirs of the State, and the consequential inability to generate adequate electrical energy and maintain supply, distribution and consumption of electrical energy, and in order to secure equitable distribution of electrical energy, the Government of Kerala issued several orders u/s 22-B of the Indian Electricity Act, regulating the supply, distribution and consumption of electrical energy. The Government thus imposed a 100 percent power cut on High Tension and Extra High Tension consumers, disallowed new connections, prohibited the supply of electrical energy for illumination and display purposes, and limited supply of electrical energy, for

commercial purposes only till 8 p.m. and in some cases restricted the monthly consumption of electrical energy by Low Tension (L.T.) industrial consumers. Orders were thus issued by the Government on 11.6.1986, 5.7.1986 and 1.8.1986. But when the storage and power position improved with a spell of good rainfall, and when imported energy was available for distribution, the Government by order dated 14.8.1986, withdrew several restrictions in the matter of consumption of energy and modified the earlier orders, again resorting to the statutory order, it was provided thus:

Commercial consumers, i.e. shops and establishments may draw power according to their requirement, subject to the condition that 50 percent of their consumption will be paid for at the normal tariff rates and the balance 50 percent will be paid for at Rs. 1.50 per unit.

5. The petitioners in all these writ petitions were classified by the Board as "Non-domestic" falling under LT.VI(a) category from 1985 onwards. The petitioners acquiesced in this classification and paid the electrical charges at the normal tariff applicable to this category. When the Government issued the directive u/s 22-B, the same classification was not retained; but a compendious expression was employed - "Commercial consumers" i.e. shops and establishments - to denote the category liable to pay the enhanced tariff. These commercial consumers have to pay for 50 percent of their consumption at the normal rate and 50 percent of the balance at Rs. 1.50 per unit. The Board, unilaterally, treated the petitioners and commercial consumers and demanded from them at the enhanced rate. The petitioners have churches, monasteries, convents, orphanages, seminaries, educational institutions, hostels and hospitals and separate consumer cards were issued for each establishments separately. The petitioners contend that these establishments cannot be treated as shops or commercial establishments and that they are not commercial consumers. They do not challenge the Board's tariff order of 1985 or the Government's directive u/s 22-B, dated 14.8.1986. According to the petitioners, the right to demand enhanced levy in these cases, u/s 22-B order of the Government could be exercised only against commercial consumers and the Board cannot arbitrarily and without any basis, treat the petitioners or any of their establishments as commercial consumers when they do not carry on trade or conduct any business. According to them, a question of jurisdiction to levy the additional tariff arises.

6. The Board, on the other hand, contends that the petitioners and their establishments were correctly classified as commercial consumers and it was not necessary to consider whether the petitioners were in fact, making any profit. They were according to the Board, conducting business in a systematic manner employing persons for the purpose and even if it be that the object was religious or charitable, they still continued to be commercial consumers. It was also stressed that prior to the issuance of the Government directive u/s 22-B on 14.8.1986, the petitioners were classified as non-domestic, liable to pay at a different rate and a slightly higher rate than the domestic consumes and there is

no injustice if the entire class of non-domestic consumers are treated as commercial consumers, and there is nothing wrong in that mode of classification. It was pointed out that this Court cannot go into the minute details of the classification adopted for purpose of electrical tariff rates and the classification should be left only to the Board.

7. We have, in a series of decisions, upheld the validity of the Government orders issued u/s 22-B of the Act. It is true that the Board is the primary authority to fix electricity tariff rates. But, there is statutory power reserved in favour of the Government u/s 22-B to issue, when conditions exist, necessary orders to ensure equitable distribution of electrical energy. When the power is so exercised by the Government, it can also fix the tariff rates, for the fixation of tariff rates incidental to the power to regulate supply, distribution and consumption and use of electrical energy and is also part of the regulatory process of equitable distribution of electrical energy. Rightly, therefore, in these cases, the parties are not in issue on the power of Government to fix tariff rates u/s 22-B.

8. We have held in *Cyriac v. State of Kerala* 1987 (1) KLT 777, thus:

The 1985 order was issued by the Board u/s 49 of the Electricity (Supply) Act for fixing tariff in respect of the Low Tension consumers. It was not necessary for the Government to follow the same classification adopted by the Board when it exercised power u/s 22B of the Electricity Act and the Government was well within its power either to ignore the said classification or to make a fresh classification. The fixation of the tariff rate by the Board in 1985 or the classification made therein cannot, therefore, be a basis to challenge an order passed by the Government under an independent statutory power.

It is thus no longer in dispute before us that the government are free to make their own classification of consumers for fixation of different rates of electricity tariff and they are not bound by the specification, categorization, designation or division made by the Board for purposes of levying electricity charges. So the only question is whether the petitioner's establishments are commercial consumers for the purpose of electricity levy.

9. It is necessary to dispose of a minor point even at the outset. Though it was faintly argued by the petitioners that the Board was wrong in classifying them as "non-domestic" pursuant to the 1985 tariff order, it is not possible to accept the contention for the purposes of these writ petitions. They accepted the classification, acquiesced in the categorization made by the Board, and paid electricity charges on that basis without demur. They have been treated as "non-domestic" since 1985. Their claim to domestic status arose only when the Board classified them as commercial consumers. We are satisfied that their claim now, belated as it is, is not bona fide. It has also to be remembered that there is no case that a consumer classified as domestic earlier is treated later as commercial consumer. The only complaint is that the "non-domestic consumer" has been wrongly; treated as "commercial consumer".

10. True, the Board is bound to collect from the commercial consumers and those consumers are bound to pay to the Board electric charges at the rates fixed by the Government u/s 22-B. It follows that the statutory levy u/s 22-B cannot be exempted or waived by the Board. As this incidence of enhanced levy falls on commercial consumers, the Board has a duty to decide objectively whether a particular establishment is commercial or non-commercial. All non-domestic consumers cannot be treated as commercial consumers as has been done by the Board in these cases. Non-domestic may still be non-commercial. The complaint is therefore, rightly made that the Board has in these cases, arbitrarily treated non-commercial institutions as commercial establishments and made demands at the enhanced rates. Most of these difficulties would not have arisen if only the Government had followed the same classification made by the Board earlier for fixing the normal tariff. While the Government's jurisdiction to make its own classification of consumers in exercise of its regulatory powers u/s 22-B cannot be doubted, it is necessary to remember that the classification so adopted should as far as possible, be plain, precise, clear and intelligible to the common man. A classification adopted and accepted by the authority can always be a reasonable basis for categorization of that group either for preferential treatment or for enhanced levy. If the intention of the Government was to treat non-consumers as commercial consumers there was no necessity to call the same class by a different name and the Government could very well have retained the expression non-domestic consumers for purposes of enhanced levy.

11. It is, therefore, necessary for us to consider whether the establishments of the petitioners are commercial consumers to attract the enhanced levy of electricity tariff for, on this question depends the jurisdiction to demand the increased rate.

12. Commercial consumers i.e. shops and establishments, as the classification denotes, thus take in commercial establishments, not establishments simpliciter. We were taken through the definition of "commercial establishment" occurring in the Kerala Shops and Commercial Establishments Act and other allied Acts; but we think we cannot "import by analogy, the concept applied in analogous or parallel statutes" to understand the true meaning of the expression "commercial establishment" for the purposes of electricity tariff. Nor are we prepared to be involved in the discussion regarding "industry" to understand the true import of "commercial establishment" for the purposes of electricity tariff. Nor are we prepared to be involved in the discussion regarding "industry" to understand the true import of "commercial establishment" in these cases.

13. In fact, this Court had to consider whether a "firm of lawyers" is a commercial establishment under the Shops Act, in *Sasidharan v. Peter & Karunakaran* (1978) KLT 613. Reiterating that "the principle of the decisions dealing with industry under the Industrial Disputes Act does not have any direct impact on the definition of commercial establishment" under the provisions of the Shops and Establishments Act; this Court held: "It still goes with the well

accepted professional usage to regard a lawyer, engaged in doing research into his cases or in arguing them in the courts, as being engaged in the office work of a commercial establishment" and "the expression in question should be limited to organised work of manual or physical type and not one involving predominantly, if not exclusively intellectual pursuit or activity". Affirming this decision in *V. Sasidharan Vs. Peter and Karunakar and Others*, the Supreme Court held thus:

It does not require any strong argument to justify the conclusion that the office of a lawyer or a firm of lawyers is not a "shop" within the meaning of Section 2(15). Whatever may be the popular conception or misconception regarding the role of today's lawyers and the alleged narrowing of the gap between a profession on one hand and a trade or business on the other part, it is trite that, traditionally, lawyers do not carry on a trade or business nor do they render services to "consumers". The context as well as the phraseology of the definition in Section 2(15) is in opposite in the case of a lawyer's office or the office of a firm of lawyers.

14. "Commercial" in ordinary parlance, means "engaged in commerce" and "commercialize" in Webster's Third New International Dictionary means:

to engage in, conduct, practice, or make use of for profit seeking purposes as distinguished from participation, practice, or use for spiritual or recreational purposes or for other non-pecuniary satisfactions.

15. The attributes of an "undertaking", analogous to trade or business came to be considered in the *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, , thus:

We have yet to decide which are the attributes the presence of which makes an activity an undertaking within Section 2(j), on the ground that it is analogous to trade or business. It is difficult to state these possible attributes definitely or exhaustively; as to working principle it may be sated that an activity systematically or habitually undertaken for the production or distribution of goods or for the rendering of material services to the community at large or a part of such community with the help of employees is an undertaking. Such activity generally involves the cooperation of the employer and the employees; and its object is the satisfaction f material human needs. It must be organised or arranged in a manner in which trade or business is generally organised or arranged. It must not be casual nor must it be for oneself nor for pleasure. Thus the manner in which the activity in question is organised or arranged, the condition of the cooperation between employer and the employee necessary for its success and its object to render material service to the community can be regarded as some of the features which are distinctive of activities to which Section 2(j) applies. Judged by this test there would be no difficulty in holding that the State is carrying on an undertaking when it runs the group of Hospitals in question.

In our opinion, in deciding the question as to whether any activity in question is

an undertaking u/s 2(j) the doctrine of quid pro quo can have no application.

16. We are satisfied that Government described "commercial consumers" as a class for levying enhanced electrical charges, the expression was used as it was understood in common parlance, by the common man. The consumer of electricity in a commercial establishment is a commercial consumer for the purpose of electricity levy in these cases. Commercial establishments invariably undertake an economic activity, not casual, but systematically or habitually conducted for the production or distribution of goods or for rendering material services to the community, and organising or arranging in a manner in which trade or business is generally organised or arranged. It envisages a cooperative endeavour between the employer and employee and it may be a charitable organisation or purely a profit making business enterprise.

17. In this background, we shall now consider whether the following establishments are "commercial consumers" for the purpose of additional levy under the Government Order dated 14.8.1986.

18. Churches/Temples/Mosques are places set apart for public worship according to established religious practices. People may gather for prayers, meditation, worship, or to perform religious rituals. These sacred precincts are said to be "nurseries" of man's moral life" and have a totally different orientation distinct from a commercial organisation. They have no eye on competitive efficiency and no heart for material advancement. These holy abodes cannot be treated as places of economic activity and classified as commercial consumers.

19. We shall refer to an unreported judgment of a Division Bench of this Court in O.P. No. 6019 of 1983. Their Lordships were considering the question whether temple can be considered as an "industry" and a "poojary" a workman. It held thus:

Broadly speaking, places of worship do not cater to the material waste of the society or any section thereof. It may be that articles of food like nivedyam, ada or appam are made in temples and the devotees pay for them in kind or cash; but they go there in search of spiritual bliss, and not for satisfying hunger. That they can do by resort to hotels or restaurant. The predominant nature of the activity is not the production of goods or the rendering of services necessary for meeting material waste; the activity is basically geared to spiritual aspirations. It is therefore difficult to hold that the temples of the Devaswom Board are all engaged in industrial activities and that the Poojaris are engaged for doing unskilled, skilled, clerical, technical, or supervisory work so as to qualify for being treated as workmen.

These observations also lend considerable weight to the conclusion we have already reached.

20. Convents, are "association of persons secluded from the world and denoted to a religious life" and Monastery constitute the residence of monks living under

religious vows. Spiritual fascination has brought these persons - men and women, under common roofs. Economic activity is thus not the dominant aspect of the institutional life in these establishments. Convents and monasteries are thus outside the pale of commercial establishments.

21. Orphanage, an institution for orphans, as the name implies is intended as a place for retreat and security, as an establishment for the reception and upbringing of destitute orphans. These institutions too are not "patterned on commercial basis" and have no "imprint of commerciality".

22. Bishop's house to be characterized as a commercial establishment requires remarkable ingenuity. A Bishop is a clergyman of the highest order in Christian Churches, ranking next below the Archbishop and consecrated for the spiritual government of a diocese. His functions are more spiritual than temporal. The Bishop is consecrated for the spiritual government of the diocese and his house is his ecclesiastical establishment and for residence of himself and his followers and attendant priests. The predominant spiritual atmosphere and activity which should prevail in the Bishop's house, overshadow the incidental economic activity required to maintain and support the institution. Bishop's house is thus essentially noncommercial.

23. Educational institutions and Nursing schools. The educational institutions run by the petitioners are either aided or recognised by the State. Those petitioners functions as Managers, appoint Headmasters, teachers and the non-teaching staff of their institution, admit students, collect fees from them conduct classes according to the curriculum prescribed by the Government and prepare the students to appear for the annual examinations and eventually the public examinations conducted by the State. Nursing schools are also institutions teaching and training nurses. There is thus an organised, systematic economic activity and rendering of material services to the community. The success of the institution depends on the wholehearted cooperation of the management, the headmaster, the teachers, the staff and the students. The Board was therefore, not wrong in classifying the educational institutions as commercial consumers for levying additional rates.

24. We may in this connection refer to the weighty observation of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, , where Justice Krishna Iyer speaking for the majority, stated thus:

It may well be said by realists in the cultural field that educational managements depend so much on government support and some of them charge such high fees that schools have become trade and managers merchants. Whether this will apply to universities or not, schools and colleges have been accused, at least in the private sector of being tarnished with trade motives.

Let us trade romantics for realities and see. With evening classes, correspondence courses, admissions unlimited, fees and government grants escalating, and certificates and degrees for prices, education-legal, medical,

technological, school level or collegiate education is riskless trade for cultural entrepreneurs and hapless posts of campus (industrial) unrest. Imaginary assumptions are experiments with untruth.

25. The famous dissent of Isaacs. J. in the "landmark Australian case", *The Federated State School Teachers, Association of Australia v. The State of Victoria* and Ors. 41 CLR 569, which has the approval of our Supreme Court in *Bangalore Sewerage Board* case, is worth repeating.

The theory was that society is industrially organised for the production and distribution of wealth in the sense of tangible, ponderable, corpuscular wealth, and therefore an "industrial dispute" cannot possibly occur except where there is furnished to the public - the consumers - by the combined efforts of employers and employed, wealth of that nature. Consequently, say the employers, "education" not being "wealth" in that sense, there never can be an "industrial dispute" between employers and employees engaged in the avocation of education, regardless of the wealth derived by the employers from the joint cooperation.

The contention sounds like an echo from the dark ages of industry and political economy. It not merely ignores the constant currents of life around us, which is the real danger in deciding questions of this nature, but it also forgets the memorable industrial organisation of the nations, not for the production or distribution of material wealth, but for service, national service, as the service of organised industry must always be.

First of all, there is cooperation of capital" and "labour". Everyone knows that means. In the context, the cooperation of employer, and employed the words "capital and labour" being representative of the two classes of co-operators. The next feature to observe is that it has reference to the cooperation of the two groups "for the satisfaction of human wants and desires". As appears from the *Municipal Employees* case (2) the wants and desires referred] to are "material", that is, not spiritual."

If music or acting or personal transportation is admitted to be "industrial" because each is productive of wealth to the employer as his business undertaking, then an educational establishment stands on the same footing.

If parrots are taught to say "Pretty Polly" and to dance on their perch, that is, by concession, industrial, because it is the production of wealth. But if Australian youths are trained to read and write their language correctly and in other necessary elements of culture and vocation making them ore efficient citizens, fitting them with more or I less directness to take their place in the general industrial ranks of the f nation and to rend the services required by the community, that training is said not to be wealth and the work done by teachers employed is; said not be industrial. The consequence, it is said, is that employment in the service rendered to the community by education is not one which can give rise to Commonwealth Arbitration. That is certainly not my view

and is legally, economically and historically opposed to a vast and formidable array of recorded opinion.

I have already indicated my view that education so provided constitutes in itself an independent industrial operation as a service rendered to the community. Charles Dickens evidently thought so when ninety years ago Squeers called his school "the shop" and prided himself on Nickleby's being "cheap" at ? 5 a year and commensurate living conditions. The world has not turned back since then.

26. Hostel is a house of residence for students and is thus part of an educational institution taking its colour as a commercial consumer.

27. Seminary run by the petitioners, are mainly institutions for the training of candidates for the priesthood or ministry. Webster's Third International Dictionary states that it is a "a Roman Catholic" institution preparing young men for diocesan priesthood or for membership in a religious order and having a course of study comprising typically twelve years of secondary, collegiate and theological training; a professional school giving training in religion cap, for men preparing for ordination as church persons. Seminary is thus an educational institution and should, therefore, partake the same character as ordinary educational institution for consumer classification for electricity purposes.

28. Hospital is an "elemental need" of the society, the care of the sick being closely linked with the economic and social development of the people. Hospital is built, staffed and equipped mainly for diagnosis of disease, treatment of the sick and injured, cure of mental abnormality, prevention of health and physical well being. Hospitals successfully play the role of community health and family planning centres. It cannot therefore be doubted that as far as hospitals are concerned, material service is rendered to the community, there is economic activity systematically organised, and there is cooperative effort between the participating units and therefore the irresistible conclusion follows that hospitals are commercial establishments.

29. Even then, we are afraid that the Board is not competent to recover enhanced electricity charges from hospitals; but this is on a different ground peculiar to hospitals. It has to be remembered that when the Government imposed 100 percent electricity cut on high tension and extra high tension consumers, it specifically exempted hospitals and for good reason, namely, it is an essential service. A hospital does not cease to be an essential service simply because it is only a low tension consumer. Hospitals, whether they are high tension or extra high tension or low tension consumers, have to be treated alike as they constitute essential services. The express exemption granted by the Government itself in favour of high tension and extra high tension hospitals is an indication that the hospitals have to be treated as a separate class to which the rigour of the Government directive u/s 22-B cannot apply. If low tension hospitals are directed to pay enhanced duty, it is naturally discriminative violating the constitutional guarantee under Article 14. In fact, this identical

contention was practically upheld by us in O.P. No. 8128 of 1986 series. After noting that the State, when it is issued several orders u/s 22-B to ensure equitable distribution of power, did not clamp any power cut on public utility concerns like hospitals, Telephone exchanges, aerodromes etc. and there was uninterrupted supply of electrical energy to hospitals it was observed:

It is also to be remembered that hospitals, aerodromes, telephone exchange etc. have been treated as a public utility consumers and rightly too by the Board, when it classified consumers and fixed uniform tariff for each class. This public utility concerns, mainly essential services, were justifiably excluded from the operation of the power cut provision. There is no dispute and there can be none that hospitals are essential services and electricity supply has to be assured in public interest. To ignore this classification may be to invite a successful challenge under Article 14 of the Constitution.

30. These writ petitions related to hospitals having high tension connection. The same principle was applied in the case of hospitals having only low tension connection in subsequent judgment in O.P. No. 1271 of 1987, where we held thus:

Though the petitioner in this case is a low tension consumer, he having a hospital, the decision rendered by us in O.P. Nos. 8128/86, and connected cases govern this case as well, the only difference being that the particular item of tariff which is applicable to this case is L.T.-VI(a). Except for this modification all other directions in the said decision govern this case as well.

31. It was thus held that these hospitals are liable to pay only the normal tariff under L.T.-VI(a) classification adopted by the Board and not the enhanced levy fixed by the Board. This judgment was accepted without demur by the Board. That was also a judgment by the same Division Bench and the Board is bound by that judgment which has become final. Thus, even though hospitals are commercial consumers, they are essential services and no distinction can be drawn between a hospital having high tension connection and hospital having low tension connection. If hospital having high tension connection is liable to pay only the normal tariff, there is no reason why hospital with low tension should pay at a higher rate. To compel them to do so would be hostile discrimination. It is also to be noted that when the power cut was originally imposed and the restrictions were relaxed, extra high tension and high tension consumers were "permitted to draw" energy. Permission was not contemplated for hospitals and other exempted categories because there was no restriction imposed on them earlier. So far as hospitals are concerned, therefore, their right to consume electrical energy did not arise on account of any permission given under any orders of the Government issued u/s 22-B. This right existed even earlier and continued uninterrupted. On this account also we had held in O.P. No. 8128 of 1986 etc. that high tension hospitals could not be made liable to pay the higher rate fixed and that was the intent that could be gathered from the scheme and the sequence of the order issued u/s 22-B. On the same reasoning also we have

to hold that low tension hospitals were entitled to consume energy without any restriction, unhampered by the orders of the Government u/s 22-B and thus the order which directs payment at the enhanced rate is not applicable to low tension hospitals also. We, therefore, hold that the Board can only collect the normal tariff from hospitals.

32. Dispensaries, places where medicines etc. are sold and dispensed are essentially commercial establishments. But as attached to a hospital, it is part of a public utility concern providing essential service and thus entitled to the same privileges as a hospital for payment of electric charges.

33. We have not examined the price structure as we are aware as laid down by the Supreme Court in Kerala State Electricity Board Vs. S.N. Govinda Prabhu and Bros. and Others, , that it is not within our province to examine the price structure in minute detail. We are, however, bound to consider whether the revision or enhancement of tariff is arbitrary and whether the Board attempts to collect from any consumer of electricity charges on a wrong principle ignoring even the classification made for the purpose. It has been our attempt to show that at least in some cases specifically referred to by us, certain establishments have been wrongly treated as commercial consumers.

34. In the result, we hold that the Board was wrong in treating Churches, Temples and Mosques, Convents, Monasteries and Orphanages as commercial consumers and claiming from them enhanced electric charges under the Government order dated 14.8.1986. The Board will, therefore, issue revised bills in respect of these establishments and collect charges only at the normal tariff fixed by the Board in 1985 treating them as non-domestic L.T. VI(a) category. We uphold the classification as commercial consumers made by the Board in respect of Educational Institutions, Nursing Schools Hostels, Seminaries and Hospitals and Dispensaries. However, regarding hospitals, the Board shall collect from them electricity tariff only at the normal rate and where the dispensary is attached to a hospital, it shall be treated as part of the hospital and dealt with "accordingly.

35. In the large number of writ petitions, there are several establishments in respect of which the Board has issued separate consumer cards. We have not dealt with all of them as the averments made in the writ petitions are vague and insufficient and no proper conclusion could be reached on that basis. It is sufficient to observe that regarding the other non domestic categories of consumers in L.T.VI(a) category, who are now treated as commercial consumers, the petitioners may move the Board giving the necessary particulars to re-classify them as non-domestic and the Board may consider the claim on the basis of the principles stated in this judgment and issue necessary orders within a reasonable time. The pendency of any such application will not prevent the Board from collecting charges on the basis that they are commercial consumers till a decision is rendered.

36. We, however, make it clear that nothing said in this judgment shall prevent the Government or the Board making a fresh classification or imposing new additional levy on the existing class of consumers, in accordance with law.

37. In some of these writ petitions, Municipalities who have been collecting electric charges are parties before us. It is made clear that when revision of tariff rate is called for in respect of any consumer or class of consumers in accordance with the principles stated in this judgment, the Board may either refund the excess amount if any, to the local bodies or make suitable adjustment in future receipts.

38. Before we part, we would like to make a special mention of the excellent preparation of the cases by Sri Kurian Joseph who lead the arguments on behalf of the petitioners. He placed all necessary facts, referred to all relevant decisions and dictionaries, gave a lucid analysis of the different facets requiring examination and submitted his arguments with clarity and precision.

The original Petitioners are disposed of as above. No costs.