

**BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM  
AURANGABAD ZONE, AURANGABAD.**

**Case No. CGRF/ AZ/ AUR/ U / 635/ 2017 / 28  
Registration No. 2017060030**

Date of Admission 13.06.2017  
Date of Decision 08.08.2017

M/s. Nath Biotechnologies Ltd.,  
S. No. 33/2, Etkheda,  
Nath House, Paithan Road,  
Aurangabad 431001  
(Consumer No. 490019003415)

COMPLAINANT

**VERSUS.**

The Executive Engineer (Administration)  
Nodal Officer, O/O Superintending Engineer ,  
Urban Circle, MSEDCL, Aurangabad.

RESPONDENT

**CORAM**

Shri Laxman M. Kakade,

Chairman (I/c)

Shri Laxman M. Kakade,

Member Secretary

Shri Vilaschandra S. Kabra

Member.

**CONSUMER GRIEVANCE REDRESSAL DECISION**

The applicant the M/s. Nath Biotechnologies Ltd., S. No. 33/2, Etkheda, Nath House, Paithan Road, Aurangabad is a consumer of Mahavitaran having Consumer No. 490019003415. The applicant has filed a complaint against the respondent, the Executive Engineer i.e. Nodal Officer, MSEDCL, Urban Circle, Aurangabad under Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 in Annexure(A) on 13.06.2017.

**The brief details of the complaint are as under.**

The petitioner says that, M/s. Nath Biotechnologies Ltd., S. No. 33/2, Etkheda, Nath House, Paithan Road, Aurangabad, the Nath Group of Industries decided to start Tissue Culture unit at Survey No. 33/2, Etkheda, Aurangabad on 04.07.1992. Accordingly submitted application for sanction of electricity connection on 11 KV voltage level with contract demand of 200 KVA and connected load 271 KW respectively. Details of proposed list of machinery and chart showing process of development of plant by tissue culture technology are given in prescribed load sanction form, the purpose of use of electricity was clearly mentioned as Development of plantlets by tissue culture technology.. In sanctioned letter also the purpose of use of electricity was mentioned as “plantlets using tissue culture technology” HT connection thereafter was released on 19.03.1994. There was no charge in the purpose of use of electricity from the date of connection i.e. on 19.03.1994. To get incentive for tissue culture unit petitioner submitted application to Marathwada Development

Corporation, for obtaining incentive under sales tax incentive scheme of Government of Maharashtra. After inspecting the premises and observing activity of tissue culture development, the eligibility certificate. Government of Maharashtra sanctioned special capital incentive of Rs. 15.00 lacs. MSEB/ MSEDCL levied tariff till October 2016 was HT(V). Hon. MERC created a new tariff for tissue culture units and respondent changed tariff from HT(V) to HTV(B).

After release of HT Connection to our tissue culture unit in year 1994, many responsible officers of respondent company visited the premises and carried out inspection & testing. However observing the nature of activity and use of electricity as per purpose authorized, no query or objection was raised till visit of Dy. Executive Engineer, Flying Squad on 17.05.2017. No violation of any of the provision of electricity Act 2003. Spot inspection report dated 17.05.2012 prepared by Dy. Executive Engineer, Flying Squad state that the meter and its seal were found intact, however, the report describes neither connected load inspected nor load test carried out, which is mandatory as per provision of section 126 of Electricity Act 2003. Para 15 of Spot inspection report of Flying Squad dtd 17.05.2017 reads as under.

“Consumer is billed as per HTV(AG) category but during inspection, it is found that prominent connected load of consumer is of R&D process. No agriculture use of power is found hence the consumer is violating section 126 of electricity act 2003. Prominent load is used for R&D purpose shows deliberate intention of giving harassment and extracting money under protect of violation of section 126 of electricity act 2003.

Flying squad unit, executive Engineer, Circle Office with Addl. Executive Engineer(HT) billing. "The consumer was previously inspected on 16.08.2016 and activity is tissue culture and transformation process," it shows there was no change in purpose of use of electricity. These facts disclose that, it is only flying squad unit, which failed to understand the difference between tissue culture development process and R&D activity.

The machineries required for development of plantlets by tissue culture process are temperature, humidity control units, laminar air flow, green house, culture lights, auto claves etc. Many industries engaged in production needs its products to be tested before actual use. e.g. Steel plants setup their own testing units for testing of carbon contents, tensile and compressive strength etc. Seeds manufacturing industries, tests sample of seeds, which are required in field as well as in factory premises for improving product quality.

In additional reply of petitioner say that It is pertinent to note that in the agreement also, the purpose of use of electricity is mentioned as for "Tissue culture" plants. There is no change in machineries installed and the purpose of use of electricity from date of connection i.e. from 19.03.1994.

If it is considered that petitioner are carrying out R&D activity, the activity is carried out within manufacturing premises & MERC directed to MSEDCL not to charge separate tariff for R&D units situated within same manufacturing premises, hence separate tariff not applicable.

**Say of Executive Engineer, Nodal Officer, Aurangabad Urban Circle.**

M/s Nath Biotechnologies Ltd., has applied for HT connection for purpose to produce plantlets using tissue culture technology in banana, cardamoms, potato & ornamental plants for domestic market as well as for export. M/s Nath Biotechnologies Ltd., to produce one million disease free banana plantlets, one million elite high yielding cardamom plantlets and 50 tons of virus free potatoes. Process chart shows end product of their activity is "mini tubers and plants" ready for distribution. Accordingly connection was released on 19.03.1994.

On 17.05.2017 Flying squad, Aurangabad has visited the site of M/s. Nath Biotechnologies Ltd., It was observed by Flying Squad that no tissue culture activity is used for production of plantlets. Whereas R&D activity is carried out for production of seeds. Seeds are developed which are genetically modified by introducing BT genes and study is done for modified variety for the purpose of increase in Crop productivity, resistance to various plant diseases, less water requirement etc.

As per commercial circular No. 275 dtd. 18.11.2016 HT VB – HT agriculture others i.e. the applied tariff to the consumer is applicable for use of electricity power supply at high voltage level for high technologies agriculture ( i.e. tissue culture, green home, mushroom cultivation activities) provided the supply is exclusively utilized for the purpose directly concerned with the crop cultivation process & not for any Engineering of Industrial process. Flying squad, Aurangabad informed that there are no any agricultural crop products are produced or activity is not

concerned with crop cultivation and no tissue culture process is observed. Observed photographs are submitted.

Considering above activity of consumer comes under Biotechnology Unit engaged in R&D or manufacture of products which are derived by using Bio Transformation (The introduction of one or more genes conferring potential useful traits in to plants). It can be covered the Biotechnology policy of Government of Maharashtra for which certificates from appropriate authority is must.

The consumer informed that they have produced last year i.e. 2016-17, the seeds of cotton (200kg) Brinjal (5Kg) Tomato (5Kg) other crops (20kg). Considering the production & purpose given in application, production is too less and different from plantlets. This shows consumer is engaged in research and development activity.

Thus considering activity & tariff to this concern is HT-II commercial due to R&D activity. As R&D not covered under any other category. As per Indian Electricity act 2003, Section 126 "If on an inspection of any place or premises or after inspection of equipment, gadgets, machines, devices found connected or used or after inspection of records maintained by any person the assessing officer comes to conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person.

Unauthorized use of electricity means the usage of electricity other than for which the usage of electricity was authorized.

Considering this assessing officer in this case Superintending Engineer, Urban Circle, Aurangabad come to consideration that said consumer has changed the purpose for which electricity was authorized and involved in R&D activity. Accordingly, provisional bill of Rs. 1,67,86,061/- was issued to consumer on 20.05.2017. Hearing has been conducted by Superintending Engineer, Aurangabad Urban Circle on 12.06.2017 for which consumer representatives were present. They submitted their actual production in 2016-17 Cotton 200 Kg, Bringal 5 Kg, Tomato 5 Kg. This reflects purpose of use of premises changed by consumer activity to R&D without permission of MSEDCL. Final assessment bill issued on 23.06.2017. Case is unauthorized use of electricity involving loss to the company due to change in purpose & action against consumer is taken as per Section 126 of Electricity Act 2003. Consumer has given opportunity of hearing.

As per CGRF Regulations 2006. Clause 6.8, if Grievance falls within the purview of unauthorized use of electricity as provided under Section 126 same shall be excluded from jurisdiction of the Forum, hence requested to dismiss the grievance.

..8/-

**Observations of the I/c Chairperson & Member Secretary**

- 1) The Dy. Executive Engineer, Flying Squad, Aurangabad visited to site of M/s. Nath Biotechnologies Limited and observed, no tissue culture activity is used for production of plantlets, at the time of taking new connection purpose of HT connection is used to produce plantlets using tissue culture technology in Banana, Cardamoms, Potato and Ornamental plants for domestic market as well as export. Also HTVB Agriculture others i.e. applied tariff to consumer is for use of electricity power at High Voltage for High technologies agriculture (Tissue culture, Green Home, mushroom cultivation) provided the power supply is exclusively utilized to for purpose directly concerned with crop cultivation process and not for engineering or industrial process,
- 2) Detail production of M/s. Nath Biotechnologies Ltd., during the year 2016-2017 are seeds of cotton 200kg, Bingil 5kg, Tomato 5kg. Which are clearly less & different as production given by consumer in his application i.e. to produce one million disease free banana plantlets, one million elite high yielding cardamom plantlets and 50 tons of virus free potatoes. Process chart shows end product of their activity is “mini tubers and plants”
- 3) It can be covered under the Biotechnology policy of Government of Maharashtra for which certification from appropriate authority is must but consumer not submitted such documents, finally tariff deciding authority is MERC only.



- 4) Consumer submitted certificate of Department of Botany of Dr. Babasaheb Marathwada University, Aurangabad saying company is engaged in tissue culture work of developing plantlets. But during visit of Forum alongwith representatives of respondent and complainant on 08.08.2017, plantlets as actual production not observed, only poly house is used to formation of breeder seed and after breeder seed, actual seeds production are produce at other place before going to the end user farmer. During the visit R&D activity and direct crop cultivation process is not found combined. They are producing breeder seeds. Also no comment on R&D and seeds developed genetically modified by introducing BT genes, R&D is not carried out within manufacturing process. Here direct crop cultivation is not found, it may be at other places.
- 5) Assessing Officer Superintending Engineer, Urban Circle, Aurangabad issued provisional bill as per Indian electricity act 2003 & Section 126 on dt. 20.05.2017 amount of Rs. 1,67,86,061/-. Hearing is conducted on 12.06.2017 and issued final bill on 23.06.2017 consumer has given opportunity as per provision in Section 126.
- 6) Also Writ Petition No. 596 of 2017 “ Executive Vs Suresh Shivram Sawant , High Judicature at Bombay, (9) if any notice and order passed by the petition under Section 126 of Electricity Act, that cannot challenge before Redressal Forum.

As per CGRF Regulations 2006 Regulation 6.8 grievance falls within purview of unauthorized use of electricity as provided under Section 126 of the act is excluded from jurisdiction of CGRF. Hence the following order 1) The application of the consumer is rejected. 2) Recover arrears as per Rules of MSEDCL. 3) The compliance shall be reported within 30 days.

**Differ Opinion of Shri V. S. Kabra, Member(CPO), CGRF, Aurangabad Zone is given as under :**

**Observations :**

In this case, issue is regarding the assessment of Rs. 16786061.00 due to erroneous categorization of the Consumer

This case is purely agro base co, engaged in tissue culture activity. It's not case of section 126 under electricity act, 2003. In this case complainant is avail demand based tariff since 19.03.1994 for tissue culture development.

In this case, cause of grievance started after visit of Dy. Executive Engineer, Flying Squad on dtd. 17.05.2017.

Complainant submitted that, on dtd. 16.08.2016, the Superintending Engineer, Urban Circle, Aurangabad visited our unit & inspected the activity and purpose of use of use of electricity nothing abnormal was observed & nor any change in purpose of use of electricity was found. & During his visit he asked to submit certain documents which they had submitted to his office.

Above facts alternatively disclose that there was no misuse of electricity till dtd. 16.08.2016. "The report discloses that neither connected load was inspected load test was carried out which is mandatory as per provision of section 126 or Electricity Act 2003.

The complainant consumer is billed as per HTV(AG) category but during inspection it is found that, the remark of Flying Squad is prominent connected load is used for R&D purpose shows deliberate intention of harassment & extracting money under pretext of violation of Section 126 of Electricity Act 2003.

Forum also visited on spot of complainant consumer alongwith both parties complainant, representative & opponent Engineer of MSEDCL. During that visit all see that the tissue culture procedure & development process shown by tissue expert Bio-Chemist Mr. Kamlakar. N in laboratory.

Legally it is observed that, Hon'ble MERC while passing MYT order for the year 2016-17 to for the year 2019-20, directed MSEDCL not to change separate tariff for R&D units situated within manufacturing premises.

In view of above, even if it is considered that, complainant carrying out R&D activity & such activity is carried out within manufacturing premises & therefore cannot be separated from original tariff.

As per Hon'ble MERC (Maharashtra Electricity Regulatory Commission, Mumbai) passed order in case No. 24/2001 – That, no retrospective recovery or arrears can be allowed on basis or any abrupt reclassification of consumer even though same might have been pointed out by auditor.

We go through certificate issued by heads of Botany Department on dtd. 10.06.2017 confirms that the activity being carried out in unit or complainant is Tissue Culture process. Again, due to failure in understanding difference between process of Tissue Culture & R&D activity – tariff also - HTV & HTV (B).

In this case, opponent submitted that, as per commercial circular no.275 dated- 18.11. 2016 HT v(b) the applied tariff to consumer, is applicable for use of electricity / power supply at high voltage for high technologies of agriculture i.e. tissue culture, green house, cultivation activities. Provided the power supply is exclusively utilized for the purpose directly concerned with the crop cultivation process & not for any engineering or industrial process.

This above submission of opponent clearly indicates that, tissue culture & biotechnologies are used for agricultural seed development is not applicable, not attract for section 126 of electricity act 2003.

We go through certificate issued by heads of Botany Department on dtd. 10.06.2017 confirms that the activity being carried out in unit or complainant is Tissue Culture process. Again, due to failure in understanding difference between process of Tissue Culture & R&D activity – tariff also - HTV & HTV (B).

As per Indian Electricity act 2003, Section 126 “If on an inspection of any place or premises or after inspection of equipment, gadgets, machines, devices found connected or used or after inspection of records maintained by any person the assessing officer comes to conclusion that such person is indulging in unauthorized use of electricity .

Hence this case is not come under section 126 of electricity act, 2003.in view of MERC rules & regulations

Hence Differ order 1) Forum is directed to opponent MSEDCL that, withdraw provisional bill issued under section 126 of Electricity Act 2003, & Quashed. 2) Opponent is directed that, not to disconnect electricity supply till order in appeal at Ombudsman. 3) Opponent distribution Licensee is directed that, issue revised bill from may 2017 & all future bills as per HT V (B) tariff only. 4) As per conclusion i came to conclusion that, complainants use for Tissue Culture, so it's not case of section 126 under ELECTRICITY ACT 2003, - In view of Hon'ble MERC Regulation. 5) No other cost.

Sd/-  
Vilaschandra S.Kabra  
Member

In view of the majority as Member Secretary has a charge of Chairperson and Chairperson have a casting vote, the grievance falls within purview of unauthorized use of electricity as provided under Section 126 of Electricity Act 2003 and it is excluded from Jurisdiction of CGRF as per CGRF Regulation clause 6.8.

Therefore we proceed to pass the following order **on majority**.

**ORDER**

- 1) The application of the consumer is rejected.**
- 2) Recover arrears as per Rules of MSEDCL.**
- 3) The compliance shall be reported within 30 days**

Sd/-  
Laxman M. Kakade  
Chairman I/c

Sd/-  
Laxman M. Kakade  
Member / Secretary

Differ opinion  
Vilaschandra S.Kabra  
Member