

**Maharashtra State Electricity Distribution Co. Ltd.'s  
Consumer Grievance Redressal Forum  
Nagpur Urban Zone, Nagpur**

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**Case No. CGRF(NUZ)/14/2012**

Applicant : M/s. Pankaj Enterprises,  
At Panchbhai Poultry Farm, Fetri,  
Talluka, Distt. Nagpur.

Non-applicant : Nodal Officer,  
The Executive Engineer,  
(O&M) Division No. II,  
Nagpur Rural Circle, MSEDCL,  
Nagpur.

Quorum Present : 1) Shri. Shivajirao S. Patil  
Chairman,  
  
2) Adv. Smt. Gouri Chandrayan,  
Member,  
  
3) Smt. Kavita K. Gharat  
Member Secretary.

**ORDER PASSED ON 26.03.2012.**

The applicant filed present grievance application before this Forum on 3.2.2012 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as Regulations).

1. The applicant's case in brief is that the applicant is doing the business of Hatchery in the name and style as M/s. Pankaj Enterprises, Fetri. Previously, the unit of the

applicant was a Poultry Farm and therefore he was charged with electrical charges applicable to the Poultry Industry. The applicant has SSI certificate since July 2009. The applicant started hatchery since August 2010. On 15.7.2011, the Flying Squad Nagpur, inspected the unit of the applicant and applied Commercial Tariff to the unit of the applicant. Additional bill for Rs. 12,37,485/- was issued to the applicant as per commercial category. Meanwhile, the applicant did not pay the bill. Therefore notice of disconnection was issued U/s 56 of the Electricity Act 2003. Therefore, the applicant filed present Grievance application to set aside the bill of Rs. 12,37,485/- and claimed that poultry tariff be applied to the unit of the applicant.

2. Non-applicant denied the case of the applicant by filing reply Dt. 27.2.2012. It is submitted that on 15.7.2011, the Flying Squad Nagpur has inspected unit of the applicant and found that there is hatchery activity which is commercial activity. Flying Squad issued assessment bill Dt. 16.7.2011 of Rs. 12,37,485/- towards difference between Poultry and Commercial. As per the order of Hon'ble Ombudsman in case of "M/S. BALKRISHNA HATCHERY VS M.S.E.D.C.L.", Hatchery comes under the category of Commercial. According to applicant, machinery is purchased on 14.2.2010, whereas the hatchery is started in August 2010, but no evidence is produced. As per C.P.L., since July 2009 unit consumption is 5000 to 7000 units per month which indicates that some activity is going on since June 2009. Non-applicant issued the

bill of consumption and did not impose any penalty. Application be dismissed.

3. Forum heard arguments from both the sides and perused the record carefully.

4. Applicant admitted in para 1 of Grievance application that the applicant is doing business of hatchery. At various places in the application, the applicant admitted that he is doing the business of hatchery. Therefore, it is an undisputed fact that the applicant is doing the business of hatchery and not poultry.

5. There is spot inspection report of Flying Squad Dt 15.7.2011 on record, in which it is specifically mentioned that-

*i) Consumer is found billed on L.T.-IV – Poultry motive tariff whereas the consumer is utilizing the power supply for hatchery purpose which is commercial activity.*

*ii) Consumers sanctioned load is 0.65 kW, whereas consumer is utilizing load above 20 kW and ever increasing.*

In para 8 of inspection report of flying squad, it is mentioned that –

*i) Since the hatchery is commercial activity, change the tariff of the consumer from L.T.-IV –Poultry to L.T.-II – Commercial*

*(above 20 kW) and recover the charges for difference of tariff for the past period.*

*ii) C.T. Meter is to be provided to the consumer since load is above 20 kW.*

It is pertinent to note that this inspection report of flying squad is not arbitrary as alleged by the applicant. On the contrary, in Column No. 20 of the said inspection report, it is specifically mentioned that **“Abovementioned details and irregularities pointed out have been checked in my presence and I agree with the same”** Below this certification or remark, there is signature of representative of the applicant named Pankaj A. Panchbhai. Therefore, the flying squad has inspected the spot in presence of the representative of the applicant. Not only this, the representative of the applicant certifies that whatever details and irregularities pointed out by the flying squad were checked in his presence and representative of the applicant agrees with the same. Therefore, I find no force in the contention of the applicant that inspection report of flying squad was arbitrary.

6. Column No. 16 and 17 of flying squad report shows that though sanctioned load of the applicant is 0.65 kW, the applicant is utilizing load above 20 kW and ever increasing. It shows height of irregularity and illegality committed by the applicant.

7. Considering various admissions of the applicant in Grievance application itself, it is an admitted fact that the applicant is doing business of hatchery. SSI certificate of the applicant is Dt. 1.7.2009. According to the applicant, he purchased machinery in the month of August 2010 and started hatchery. However, the applicant failed to produce any documentary evidence on record to prove that he purchased the machinery in August 2010. Therefore, I find no force in the contention of the applicant.

8. Evidence on record shows that the applicant is doing the "Hatchery" and electric supply is utilized by the applicant for "Hatchery". In representation No. 112/10 in the matter of "M/S. BALKRISHNA VS. M.S.E.D.C.L.", Hon'ble Electricity Ombudsman Mumbai, in order dated 15.9.2010 in para 16 & 17 held as under :-

"16) It is evidently clear from the above that chicks cannot be quoted as goods and article or things and the process of hatching eggs into chicks cannot be equated with manufacturing or production. It is also held that assessee in that case, was neither an industrial undertaking nor engaged in process of producing articles of things. The Hon'ble Supreme Court in that case has not only observed on the entitlement of the assessee for development allowance but also examined the process of hatchery and concluded that it cannot be called as industrial undertaking or that the hatchery is engaged in the process of producing article or things".

"17) The applicant argued that the Forum wrongly relied on the above Hon'ble Supreme Court, but not on the Commission's tariff order of 17<sup>th</sup> August 2009. This argument

appears to be misplaced. Even the Commission, in the tariff order of 17<sup>th</sup> August 2009, has clarified that industrial tariff would be applicable to activities which entail 'manufacture'. In the present case, there is no 'manufacture' as such. Therefore, the Appellant is not entitled for benefit of industrial tariff HT 1. The Forum has made similar observations. The Appellant has not been able to make out any case nor did it bring out any error or infirmity in the impugned order".

9. Relying on above cited order of Hon'ble Electricity Ombudsman, the Forum holds that hatchery is not manufacture or industrial or production activity, but it is purely commercial activity and therefore the tariff applied by flying squad is perfectly justified and needs no interference.

10. The applicant produced zerox copies of order passed by Hon'ble High Court in "**Writ Petition No. 7884/10 - Bharat Sanchar Nigam Ltd. (B.S.N.L.) Vs. M.S.E.D.C.L.**" decided on 23.11.2010. However, facts of this matter are totally different and distinguishable. It is a matter of "BSNL" regarding case No. 72/07 by MERC. However, facts of the present case are totally different and distinguishable. Furthermore, the applicant also produced zerox copy of order passed by Hon'ble High Court in Writ Petition No. 2358/2011 decided on 19.10.2011. However, facts of this matter are also totally different and distinguishable from the facts of the present case. Furthermore, it is Interim order and it is not final order passed by Hon'ble High Court. Therefore this authority is not applicable to the case in hand. In the present case in hand, it is admitted fact that since April 2011, the applicant paid electrical bills of six months as per commercial

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tariff. Furthermore, there is nothing on record to show that Hon'ble High Court has set aside and cancelled order passed by Hon'ble Electricity Ombudsman Mumbai, Dt. 15.9.2010 in representation No. 112/10 in the matter of "M/S. BALKRISHNA HATCHERY VS. M.S.E.D.C.L.". Therefore unless & until order of Hon'ble Electricity Ombudsman is not cancelled by superior authority on merits, it is binding on both the parties and it is the ruling to be followed.

11. Considering the evidence on record, in our opinion, commercial tariff is applicable to the unit of the applicant and therefore the tariff applied by Non-applicant and the assessment billed, both are valid, legal and proper and needs no interference. For these reasons, we find no force in present grievance application and grievance application deserves to be dismissed.

12. We must mention here that during the pendency of main grievance application, this Forum has passed Interim order Dt. 17.2.2012 by way of time gap arrangement till final disposal of the matter. Now we are dismissing grievance application on merits. Therefore, it is necessary to modify and set aside the Interim Order Dt. 17.2.2012 passed by this Forum. Hence Forum proceeds to pass following order :-

ORDER

1. The Grievance Application is dismissed.
2. Interim order Dt. 17.2.2012 passed by this Forum is hereby set aside and cancelled.

Sd/-	Sd/-	Sd/-
(Smt.K.K.Gharat)	(Adv.Smt.GauriChandrayan)	(ShriShivajirao S.Patil)
MEMBER	MEMBER	CHAIRMAN
SECRETARY		