

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

Case No. CGRF(NUZ)/018/2012

Applicant : M/s. Prathmesh Poultries,
At 54, Saisneha Apartment,
Suyognagar,
Ring Road,
NAGPUR.

Non-applicant : Nodal Officer,
The Executive Engineer,
Division No. II,
Nagpur Urban Zone,
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.

- 1) The applicant filed this grievance application on 24.02.2011 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as Regulations).

- 2) The applicant's case in brief is that applicant is running his hatchery in the name and style M/s. Prathmesh Poultries. Since July 2011. Applicant has registration under SSI on 30.06.2011 and has commences hatchery activity from July 2011. Till 24.11.2011, applicant paid electricity bill as per commercial Tariff since the date of connection. When the consumer came to know that charges are levied as per commercial rate on 24.11.2011, applicant submitted representation to the non-applicant. However, the non-applicant had issued a bill of Rs.3,10,740/- for the period of one month i.e. since 27.12.2011 to 27.01.2012, without deciding objection in respect of commercial charges. Now the non-applicant had issued notice under section 56 of Electricity Act, 2003 dated 13.02.2012 calling upon the applicant to deposit amount of Rs.23,350/- on or before 28.02.2012. Failing which the non-applicant shall disconnect electric supply. Applicant claim that commercial tariff is not applicable to unit of applicant.
- 3) Therefore applicant also claim interim relief not to disconnect electric supply till disposal of main application under Regulation 8.3 of the said Regulation. Applicant claim following relief namely.

- a. Direction may be given to the non-applicant to issue electric bill as per poultries tariff.
 - b. Recovery of Rs.23,350/- may be cancelled.
 - c. Notice under Section 56 (2) of the Electricity Act, 2003 may be stayed till disposal of the matter.
- 4) The non-applicant denied the case of the applicant by filing reply dated 27.02.12. It is submitted that applicant is a consumer having power supply of poultries hatchery since 05.02.2011 and billed under LT-II (commercial tariff). Applicant paid energy bills as per LT-II (commercial) till 24.11.2011. Jr. Engineer inspected the spot and found that consumer is running a hatchery. In the matter of M/s. Balkrishna Hatchery V/s. MSEDCL Hon. Electricity Ombudsman Mumbai as per order dated 15.09.2010 hold that hatchery comes under the category of commercial tariff. CGRF Nagpur Urban Zone in the matter of M/s. Hamida Amnat Khokar in case no. 60/2011 as per order dated 12.12.2011 hold that commercial tariff is applicable for hatchery. In case no. 14/2012 in the matter of M/s. Pankaj Enterprises V/s. MSEDCL CGRF NUZ in the interim order dated 22.02.2012 hold that hatchery is commercial activity. Applicant did not pay electric bills, therefore notice under section 56 of Electricity Act, 2003 is issued for disconnection. Application deserves to be dismissed.

- 5) On 28.02.2012 when the matter was for hearing on interim application both the parties filed pursis on record dated 28.02.12 to the effect that matter be heard finally on merits and it be decide on merits. Applicant had given his willingness in writing that he is ready for final argument and prayed that matter be heard today finally on merits. Therefore as per request of both the parties, Forum heard final argument in this matter from both the side and perusal entire record.

- 6) It is noteworthy that in entire application, applicant admitted that he is doing business of hatchery activity. Therefore it is an admitted fact that applicant is doing hatchery activity. Record shows that applicant is getting supply for hatchery since 05.02.2011. It is noteworthy that since the date of connection dated 05.02.2011 till 24.11.2011 for a period of about 9 months all the bills were issued by MSEDCL in LT-II (commercial tariff). There is specific endorsement on each and every bill since the date of connection that LT-II commercial tariff is applied. It is pertinent to note that since the date of connection 05.02.2011, applicant paid all bills in commercial tariff without any complaint till 24.11.2011. It is noteworthy that it is not matter in which previously any other tariff was applied and suddenly the tariff is change as a commercial. On the

contrary since the date of connection 05.02.2011 commercial tariff is applied and applicant paid all bills as per commercial tariff till 24.11.2011.

- 7) For the first time on 24.11.2011, applicant submitted representation to the non-applicant that commercial tariff is not applicable. There was spot inspection by Jr. Engineer Butibori and it is found that consumer is running hatchery business.
- 8) Therefore evidence on record shows that applicant is doing hatchery and electric supply is utilized by the applicant for hatchery. In the representation No. 112/10 in the matter of M/s. Balkrishna Hatchery Vs MSEDCL, Hon'ble Electricity Ombudsman Mumbai, in the order Dt. 15.9.2010 in Para 16 & 17 held as under :-

“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”.

“The appellant argued that the Forum wrongly relied on the above Hon'ble Supreme Court, but not on the

Commission's tariff order of 17th August 2009. This argument appears to be misplaced. Even the Commission, in the tariff order of 17th 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".

Relying on above cited order of Hon'ble Electricity Ombudsman, Forum hold that hatchery is not manufacturing or industrial or production activity but it is purely Commercial activity.

- 9) This Forum has also decided similar case no. 60/2011 in the matter of Hamida Amanat Khokar V/s. MSEDCL and as per order dated 12.12.2011. This Forum hold that so far as hatchery is concerned commercial tariff is applicable.
- 10) It is noteworthy that so far as hatchery business is concerned, it is not industrial or production undertaking. There is no separate tariff for hatchery. Hon. MERC in order dated 30.12.2009 in case no. 11/2009 Hon. Commission has clarified the commercial activity actual refers to all category which have not been classified into any specific category. In this order Hon. Commission hold that, in order dated 30.12.2009 in case no. 11/2009, The Commission has

clarified the commercial category actual refers to all category which have not been classified into any specific category. In this order Hon. Commission held that

“It is further clarified that the ‘commercial’ category actually refers to all categories using electricity for ‘non-residential, non-industrial’ purpose, or which have not been classified under any other specific category. For instance, all office establishments (whether Government or private), hospitals educational institutions, airports, bust-stands multiplexes, shopping malls small and big stores, automobiles showrooms, etc, are covered under this categorization. Clearly, they cannot be turned as residential or industrial. As regards the documents submitted by the Petitioners to justify their contention that they are ‘Charitable Institutions’ the same are not germane to the issue here, since the Electricity Act, 2003 does not permit any differentiation on the basis of the ownership. As regards the parallel drawn by the Petitioners’ between the nature and purpose for which supply is required by Government Hospitals. ESIS Hospitals, etc, and Public Charitable Trust hospitals, the Commission clarifies that it has been attempting to correct historical anomalies in the tariff categorization in a gradual manner. In the impugned Order, the Commission had ruled that Government Hospitals, ESIS Hospitals, etc; would be charged under LT I

category, even though they may be supplied at HT voltages. This anomaly has been corrected in the subsequent Tariff Order, and all hospitals, irrespective of ownership, have been classified under HT II Commercial category”.

- 11) Therefore as there is no specific tariff for hatchery commercial tariff is applicable.
- 12) According to the applicant, tariff for poultries is applicable to unit of the applicant. However, in our opinion poultries is totally different from hatchery. Applicant pleaded in grievance application that he is doing hatchery business and therefore relying on the order passed by the Hon. Electricity Ombudsman in representation no. 112/2010 M/s. Balkrishna Hatchery V/s. MSEDCL decided on 15.09.2010 we hold that commercial tariff is applicable to hatchery business. We also placed our reliance on the case law of Hon. Supreme Court AIR 1999 Supreme Court no. 1225. It is noteworthy that Hon. Electricity Ombudsman also referred this case of Hon. Supreme Court in para 5 of the judgment.
- 13) Applicant submitted that in writ petition no. 2358/2011 Hon. Bombay High Court passed interim order in the matter of M/s. Balkrishna Hatchery V/s. MSEDCL and therefore it is necessary to stay commercial tariff. However, we do not agree with this

agreement of the applicant because fact of the present case are totally different and distinguishable from the fact of writ petition no. 2358/2011 and therefore this authorities is not applicable to the present case. In case in hand applicant himself admitted that he is doing hatchery business since the date of connection. Applicant is paying the bills as per commercial tariff. It is not the facts of the present case that previously any other tariff was applied and suddenly tariff is change as a commercial tariff. Therefore fact of the present case are totally different and distinguishable from the fact of the ruling cited by the applicant. It is noteworthy that even in the matter of M/s. Balkrishana Hatchery as per the facts, MSEDCL applied HT-I tariff upto April-2009 and since May 2009 tariff HT-II was applied. Therefore Hon. High Court granted interim relief in terms of prayer cause (b), (c) of the writ petition. However as per the fact of the present case since being MSEDCL applied HT-II commercial tariff and there is no change in tariff at any time, therefore authority cited by the applicant is not applicable to the case in hand as the facts are different and distinguishable.

- 14) Further more up till now Hon. High Court had not set-aside and cancel order passed by Hon. Electricity Ombudsman in representation no. 112/2010 M/s. Balkrishna Hatchery V/s. MSEDCL on merits.

Further more in the order passed by Hon. High Court in writ petition no. 2358/2011 dated 19.10.2011 M/s. Balkrishna Hatchery V/s. MSEDCL there is reference of the order passed by Hon. High Court in writ petition no. 7884/2010 dated 23.11.2010 Bharat Sanchar (BSNL) V/s. MSEDCL. We have also carefully perused order of Hon. Divisional Bench of Hon. Bombay High Court in writ petition no. 7884/2010 BSNL V/s. MSEDCL dated 23.11.2010. However, fact of this matter are also totally different and distinguishable from the fact of the present case. BSNL is not doing the business of Hatchery however applicant in this case is doing business of Hatchery and therefore fact of the present case are totally different and distinguishable from the fact of the rulling cited by the applicant. Therefore in our opinion these authorities are not applicable to the case in hand.

- 15) Up till now order of Hon. Ombudsman in case no. 112/2010 M/s. Balkrishna Hatchery V/s. MSEDCL is not finally set-aside and cancel by Hon. High Court. In the opinion of the Forum it is only Hon. MERC who is authorized to order separate tariff for Hatchery if any. Till today there is no separate tariff for Hatchery and therefore as per various orders of Hon. MERC commercial tariff is applicable to the unit of the applicant.

- 16) We have decided the application on merits and therefore there is no necessity for passing any interim order. It is also not justify to stay notice issued by MSEDCL under section 56 of the Electricity Act, 2003 because since beginning applicant is paying the bills as per commercial tariff and since 24.11.2011, applicant did not pay. Therefore MSEDCL has right to disconnect the Electricity Supply of the applicant for non-payment of electric charges.
- 17) For these reason, Forum hold that commercial tariff is applicable to Unit of the applicant. Therefore we find no force in the present grievance application and application deserves to be dismissed. Resultantly Forum proceed to pass the following order.

ORDER

Grievance application is dismissed.

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