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

Case No. CGRF(NUZ)/66/2013

Applicant : M/s. Vyankateshwara Farms Pvt.Ltd.,
23, M.I.D.C.,
Hingna Road,
NAGPUR.

Non–applicant : Nodal Officer,
The Executive Engineer,
M.I.D.C. (O&M) DN., NUC,
MSEDCL,
NAGPUR.

Quorum Present : 1) Shri. Shivajirao S. Patil
Chairman,

2) Adv. Subhash Jichkar,
Member,

3) Smt. Kavita K. Gharat
Member Secretary.

ORDER PASSED ON 12.6.2013.

1. The applicant filed present grievance application before this Forum on 15.4.2013 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 / user M/s. D.F.W. Invirotech India Pvt. Ltd. through its Managing

Director Shri Sumedh Shashikamal Rangnekar has purchased said factory and plot on which the said factory is standing as per registered Sale Deed Dt. 8.12.2011 from M/s. Vyankateshwara Farms Pvt. Ltd. Nagpur. On 3.12.2012, Flying Squad of M.S.E.D.C.L. Nagpur Urban inspected the premises of the applicant and came to the conclusion that the activities carried on, in the said factory are commercial in nature and not manufacturing. M.S.E.D.C.L. has issued assessment bill for difference of tariff from L.T. V to L.T. II amounting to Rs. 71756/-, and ordered the change of tariff from L.T.-V to L.T. – II as per spot inspection report. On 5.4.2013, M.S.E.D.C.L. issued a notice under section 56 of Electricity Act 2003 to the applicant to pay an amount of Rs. 79330/- within 15 days failing which supply shall be disconnected. This notice is illegal. Applicant is doing manufacturing work and therefore industrial tariff is applicable and not the commercial tariff. Therefore it be declared that industrial tariff is applicable to the unit of the applicant and notice Dt. 6.5.2013 is illegal. Supply of the applicant shall not be disconnected till disposal of the matter.

3. Non applicant denied applicant's case by filing reply Dt. 20.4.2013. It is submitted that M.S.E.D.C.L. has sanctioned service connection to M/s. Vyankateshwara Farms Pvt. Ltd. Nagpur. But M/s. D.F.W. Invirotech India Pvt. Ltd. owner of such firm Mr. Sumedh Rangnekar is not the consumer of M.S.E.D.C.L. The applicant has used

unauthorized electric supply for commercial purpose L.T. – II. As per spot inspection report of Flying Squad Nagpur, Dy. Executive Engineer, Flying Squad has inspected the said premises on 27.11.2012 and found that electric supply was used for Panel assembling, Dust fuel and Water treatment which is commercial activity as per MERC's order No. 116/08 where the tariff applicability for industries was for industries where there are manufacturing activities. In the unit of the applicant the activities performed were not manufacturing activities but commercial activities and hence tariff applicability was changed. As such there is no manufacturing activities in the process. Therefore L.T.-V (Industrial) tariff can not be applied as per Hon'ble MERC tariff order in Case No. 116/08 decided on 17.8.2009. In view of above, as there is no manufacturing or product in the unit of the applicant the tariff applicable is commercial tariff & assessment charged by Flying Squad from November 2010 to October 2012 of Rs. 71756.47. M.S.E.D.C.L. has issued disconnection notice u/s 56 of Electricity Act 2003 to the applicant for non payment of electricity charges. It is perfectly legal & valid and grievance application may be dismissed.

4. Forum heard the arguments of both the sides and perused the record.

5. We have carefully perused inspection report of Flying Squad Nagpur Dt. 27.11.2012. It is noteworthy that

date of inspection of Flying squad is 27.11.2012. However, the applicant has wrongly mentioned date of inspection of Flying Squad as 3.12.2012. Considering documentary evidence on record we hold that date of inspection of application's factory by Flying Squad is 27.11.2012 and not 3.12.2012.

6. On careful perusal of report of flying squad Dt. 27.11.2012, it appears that in Para No. 16 of the said report of flying squad it is specifically mentioned as under :-

i) Electricity is authorized for Vyankateshwara Farms Pvt. Ltd. Billed according to L.T. – V (Industrial) tariff.

ii) Electricity is used for panel assembling, dust fuel and water treatment which is commercial activity and comes under L.T. – II (Commercial) tariff.

7. In Para No. 19 of report of flying squad remedial action is proposed as under :-

i) Change the tariff from L.T. – V to L.T. – II.

ii) Recover the tariff difference for past period.

8. It is noteworthy that in Column No. 20 of report of flying squad there is signature of representative of applicant that too, in English. In Column No. 20, it is specifically written that "Above mentioned details and irregularities

pointed out have been checked in my presence and I agree with the same". Below the endorsement there is signature of representative of the applicant who signed the document in English. Therefore report of flying squad is not arbitrary and exparte. On the contrary, all principals of natural justice are followed and thereafter inspection report is prepared. Relying on the inspection report of flying squad we hold that no industrial work or manufacturing work is going on in the unit of the applicant and there is no manufacturing or production. On the contrary, only commercial activities are going on and supply is used for commercial activities.

9. In case no. 116/2008 Hon. MERC has clarified in its tariff order applicable from August 2009 that broadly the categorization of the industry is applicable to such activity **which entails manufacture**.

In this order in case no. 116/2008 it is held as under.:

"*A similar impression is conveyed as regards the 'Industry' categorization, with the Commission receiving several representations during and after the Public Hearings, from the hotel industry, leisure and travel industry, etc., stating that they have also been classified as 'industry' for the purpose of taxation and / or other benefits being extended by the Central Government or State Government, and hence, they should also be classified as 'industry' for the purpose of tariff*

determination. In this regard, it is clarified that classification under Industry for tax purposes and other purposes by the Central or State Government shall apply to matters within their jurisdiction and have no bearing on the tariffs determined by the Commission under the EA 2003, and the import of the categorization under Industry under other specific laws cannot be applied to seek relief under other statues. Broadly, the categorization of 'Industry' is applicable to such activities, which entail 'manufacture'.

10. 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. <u>Similar view is taken by Hon. Electricity Ombudsman Mumbai in case of representation no. 140/2009. In the matter of M/s. Atul Impex Pvt. Limited V/s. MSEDCL decided on 02.02.2010 it is held that……</u>

"Here the word 'industrial' is not specifically defined in the tariff order. Therefore, it has to be understood in its natural, ordinary and popular sense, meaning thereby the industry should have some manufacturing activities. As is seen, from the above that the Appellant is a research and development establishment which can be clearly distinguished from the industrial / manufacturing purpose. Therefore, the Appellant's prayer that it should be categorized under the HT I – Industrial tariff (which is

meant for industrial purpose / consumers) does not sound to reason, especially when read with the provisions of the tariff orders, effective from 1st June, 2008 onwards".

12. In appeal no. 116/2006 decided on 04.10.2007 Hon. Appellate Tribunal for Electricity (Appellate Jurisdiction) held as under…..

"It will not be correct to borrow the definition of "Industry" from 'other statutes' for the purpose of holding that the appellant ought to be billed as per Industrial Tariff. In Union of India Vs. Shri R.C. Jain (AIR 1981 SC 951), the Hon. Supreme Court refused to borrow the meaning of the words 'local fund' as defined in the General Clauses Act on the ground that it is not a sound rule of interpretation to seek the meaning of the words used in an Act, in the definition clause of 'other statutes'. In this regard it was held that definition of an expression in one Statute must not be imported into another."

13. In representation no. 5/2011 before Hon. Electricity Ombudsman Mumbai in the matter of the Automotive Research Association of India Vs. MSEDCL decided on 15.03.2011 it is held that as under. ….

"Now in order to appreciate the Appellant's argument, it will be necessary to understand as to which category of consumers can be considered as industrial. Documents and submissions made by the Appellant

undisputedly show that it is a Research and Development Association. The Appellant has also not claiming that it is doing mass production of items and sells them. Instead, the Appellant carries out R & D, testing, certification, service and management support and makes prototypes which in turn, is used by Automotive manufactures for mass production and sale. The Appellant, therefore, cannot logically claim that it manufactures the products. The word "manufacture" as is defined in the Oxford dictionary means "make something on a large scale using machinery, making of goods on a large scale using machinery". The Appellant has not produced anything to show that it has a licence to manufacture and sell the products. Therefore, it is difficult to accept the contention that it should be classified as an activity to get the HT Industrial tariff. The Commission has also clarified that the 'Commercial' category actually refers all categories using electricity for non industrial purpose or which have not been classified under any other specific category."

14. On close scrutiny of the entire record it appears that applicant is doing only commercial work and not doing any manufacturing work. Therefore relying on these authorities cited supra, we hold that commercial tariff i.e. L.T. – II is applicable to the unit of the applicant and not industrial tariff L.V.-V. Therefore commercial tariff applied by

M.S.E.D.C.L. is perfectly correct, legal and valid and needs no interference.

15. It is an admitted fact that assessment was raised by flying squad amounting to Rs. 71756.47 for the period November 2010 to October 2012. Date of inspection of flying squad is 27.11.2012. According to Section 56 (2) of Electricity Act 2003, there is two years limitation from the date when such sum became first due. This sum became due on the date of giving supply. However, M.S.E.D.C.L. claimed amount of arrears of only for two years which is within limitation on 27.11.2012 i.e. on the date of inspection of flying squad and therefore assessment of Rs. 71756.47 is well within limitation of two years and not barred by limitation. According to Limitation Act, there is limitation of 3 years to recover arrears of difference of tariff and therefore assessment of Rs. 71756.47 is perfectly correct, legal and valid and within limitation, & therefore needs no interference.

16. It is another contention of the applicant that he purchased this premises alongwith factory standing thereon as per sale deed Dt. 8.12.2011 and therefore the applicant is liable to pay electricity bill only since 8.12.2011. The applicant is not responsible for electricity bill of predecessor in title (Previous Owner) and hence arrears from November 2010 till date of sale deed dt. 8.12.2011 can not be recovered from the applicant. However, this argument of the applicant is

incorrect, improper and illegal because Regulation No. 10.5 of MERC (Electricity Supply Code & Other Conditions of Supply) Regulations 2005 reads as under :-

"Any charge for electricity or any sum other than a charge for electricity due to the Distribution Licensee which remains unpaid by a deceased consumer or the erstwhile owner / occupier of any premises, as the case may be, shall be a charge on the premises transmitted to the legal representatives / successors-in-law or transferred to the new owner / occupier of the premises, as the case may be, and the same shall be recoverable by the Distribution Licensee as due from such legal representatives or successors-in-law or new owner / occupier of the premises, as the case may be.

Provided that, except in the case of transfer of connection to a legal heir, the liabilities transferred under this Regulation 10.5 shall be restricted to a maximum period of six months of the unpaid charges for electricity supplied to such premises".

17. It is an admitted fact that it is not the case of transfer of connection to legal heir but the applicant is the purchaser of the property and successor - in - law and new owner and occupier of the premises and therefore the arrears due and outstanding are the arrears against the property and premises and not against person. Therefore arrears since

November 2010 to October 2012 amounting to Rs. 71756.47 are legally recoverable from the applicant.

18. Hon'ble Electricity Ombudsman Nagpur in Representation No. 110/12 Maharashtra Industries Association Vs. Executive Engineer decided on 14.2.2013 held in para 11 of the order as under:-

"A perusal of the impugned order of the Forum reveals that the Forum took great pains in relying on the Tariff order dated 17.8.2009 passed by MERC in Case No. 116/08 applicable w.e.f. 1.8.2009. The Forum has also considered the order of Electricity Ombudsman, Mumbai in Representation No. 5/2011 (Automotive Research Association of India Vs. M.S.E.D.C.L.) decided on 15.3.2011. After considering the relevant factors, the Forum came to the conclusion that the Flying Squad rightly suggested that the tariff category of the appellant should be changed from LT-V (Industrial) to LT-II (Commercial). In view of the detailed discussion by the Forum in this behalf, I do not think it necessary to dwell upon this point any more. I am satisfied that the Forum was fully justified in holding that the appellant was correctly categorized as LT-II (Commercial)".

19. Hon'ble Electricity Ombudsman Nagpur in representation No. 43/12 Midland Diesel Services Pvt. Ltd.

Vs. Executive Engineer, decided on 16.8.2012 held in Para 10 of the order as under :-

"I have carefully gone through the impugned order of the Forum. It shows that the Forum has properly considered the Tariff Orders passed by the MERC while coming to the conclusion that the respondent was justified in changing the tariff category of the appellant from LT-V to LT-II. I also found that the Forum has rightly placed reliance on the orders passed by the Electricity Ombudsman in Representation Nos. 140/2009 and 5/2011. I see no reason to interfere with the conclusions drawn by the Forum about change in the categorization of the appellant from LT-V to LT-II"..

20. Relying on the authorities cited supra, we hold that commercial tariff is applicable to the unit of applicant.

21. Record shows that though applicant purchased the property as per sale deed Dt. 8.12.2011, even then he did not file application for change of name at the earliest opportunity. It is true that applicant filed an application for change of name for first time on 3.2.2012.. However, unless and until the arrears are not paid by the applicant, it is technically difficult to take action for change of name. The applicant is at liberty to deposit the outstanding amount and to file a fresh application for change of name by complying other formalities as per rules and regulations.

22. The applicant is relying on one work order alleged to have been issued by Bhusawal Thermal Power Station, Deepnagar, Bhusawal dated 1.11.2002. However, it is noteworthy that this document No.1 is not complete one. Only Page No. 1 & 2 of the document are produced on record, there is no signature at the bottom of the document by any authorized person. Other pages of the document are intentionally suppressed. Document is completely (Specially Page 2) unreadable one. Even if for the sake of arguments it is presumed that these partial papers of the document are true, even then it is mentioned in these two papers that is a contract to supply the material. In other words, it can be said that applicant can purchase these articles from the market and can supply to Bhusawal Power Station, Deepnagar, Bhusawal on contract basis. However, it does not mean that applicant is manufacturer of these articles. On page No. 2 of the document, specially in Column of **"Accepted Rate in Rs."** is kept blank as against Column No. 4,5,6,7 & 8. In Column No. 7 of the document, it is mentioned about **"Inland Transportation".** In Column 4 also, in the Column of Equipment price, it is mentioned **"Inland Transportation".** Surprisingly the place for price against Column No. 4,5,6,7 & 8 is kept blank in the price schedule. Therefore it is clear that it fabricated and unbelievable document. Therefore this document can not be acted upon. Even believing this document, it can not be said that applicant is personally

manufacturing these items. The applicant can purchase these items from any other manufacturer on contract basis and only can play role of supplier to Bhusawal Thermal Power Station. Furthermore, the applicant did not produce any vouchers or bills to show that actually he initially manufactured certain items and then actually sold them to Bhusawal Thermal Power Station, Deepnagar, Bhusawal during that period, specially after purchase of this property by applicant on Dt. 8.12.2011, because date of work order is 1.11.2002.

23. There is also another surprise in this document of applicant alleged to have issued by Bhusawal Thermal Power Station, Deepnagar, Bhusawal vide document No. 1. It is noteworthy that date of this document is `1.11.2002. Furthermore, the address of the applicant is mentioned in this document of Bhusawal Thermal Power Station as under :-

"To,

M/s. D.F.W. Invirotech India Pvt. Ltd.,
53/6, West Park Road, Dhantoli,
Nagpur – 12".

However, it is noteworthy that address of applicant of the present unit is as under :-

"M/s. D.F.W. Invirotech India Pvt. Ltd.,
27, M.I.D.C., Nagpur".

24. Applicant admittedly purchased the plot and factory as per sale deed Dt. 8.12.2011 and therefore this document alleged to have issued by Bhusawal Thermal Power Station, Deepnagar, Bhusawal on 1.11.2002 i.e. prior to about 9 years of purchasing the property is absolutely not relevant, and admissible to this case. Even if for the sake of argument, it is presumed that any such type of order was issued by Bhusawal Thermal Power Station, even then it was issued to another unit of the applicant situated on the address "53/6, West Park Road, Dhantoli, Nagpur".

25. It is pertinent to note that applicant produced one another copy of purchase order issued by Chief General Manager, Maharashtra State Power Generation Company, Ltd. N.T.P.S. Eklahare, Nasik. However, it is rather surprising to note that date of this purchase order is 22.7.2009. Admittedly the applicant purchased present plot and factory as per sale deed Dt. 8.12.2011 and therefore this order issued by MAHAGENCO is prior to two years of establishment of present unit of the applicant on 8.12.2011. Another important point is the address given by MAHAGENCO in this purchase order. It is noteworthy that this purchase order is addressed to :-

"M/s. D.F.W. Invirotech India Pvt. Ltd.,
102/41, Kokil Apartments, L.I.C. Col. Ajni Square,
Nagpur".

However, address of the present unit of the applicant is Plot No. 27, M.I.D.C. Nagpur. Therefore it is clear that this order issued by MAHAGENCO on 22.7.2009 and issued on the address of the applicant at his another unit situated at Ajni Square Nagpur is not relevant and pertaining to present unit of the applicant and hence it is not useful for the applicant to prove that manufacturing or production activities took place after date of sale deed Dt. 8.12.2011 in the present unit.

26. It is rather surprising to note that applicant did not produce any other order on record to show that after 2002, or 2009 at any time either Bhusawal Thermal Power Station or any other person issued any such type of order to the applicant specially after purchase of property on 8.12.2011. Therefore this document of Bhusawal Thermal Power Station is absolutely not applicable to the present unit of the applicant situated on Plot No. 27, M.I.D.C. Nagpur.

27. Thirdly, in this order of MAHAGENCO Dt. 22.7.2009 it is specifically mentioned as under : -

"Dear Sirs,

With reference to your above mentioned offer for supply of material, you are requested to supply the material as per schedule overleaf on firm rate basis under standard terms and conditions subject to specific terms below".

Therefore this order issued by MAHAGENCO in the year 2009 to another unit of the applicant at Ajni Square Nagpur was even for supply of material and therefore it is crystal clear that supply of material does not amount to manufacture or production work. Anybody can purchase any material from another manufacturer or supplier and can supply on contract basis to gain the profit to MAHAGENCO or any other authority. Fourthly, applicant did not produce any vouchers to show that actually applicant supplied any material and for how much price and in which year to MAHAGENCO. Therefore this document is also not useful to the applicant at any cost.

28. Applicant produced copy of one document alleged to be SSI certificate. However, it is a settled law according to the authorities cited supra that mere pocketing SSI certificate is not enough to prove that manufacturing work is going on but it is necessary that there must be actual manufacturing or production work. Therefore no value can be attached to simple paper of SSI certificate.

29. In sale deed / deed of assignment dated 8.12.2011 it is specifically mentioned that applicant purchased this plot along with factory standing on the plot. Therefore present unit of applicant is separate unit of applicant newly purchased on 8.12.2011 and it is not the mere case of change of address. Old units of applicant are separate and present unit is

separate. Therefore work order dated 1.11.2002 and 88.7.2009 are not regarding present unit purchased on 8.12.2011.

30. For these reasons, it is our considered opinion that applicant is doing commercial work and applicant is not doing any manufacturing or industrial work and hence commercial tariff is applicable to the unit of the applicant. Therefore flying squad, M.S.E.D.C.L. Nagpur has legally and correctly ordered to change the tariff from L.T.-V to L.T. –II which needs no interference. Further more, assessment bill amounting to Rs. 71756.47 is well within limitation for the period November 2010 to October 2012 which is legal and proper and needs no interference. We find no merits and no substance in the present grievance application and application deserves to be dismissed.

31. Before reaching to the final order, we must mention here that on 23.4.2013, it was ordered by this Forum by way of interim relief that without going to the merits of the matter, it is ordered that applicant shall deposit current monthly bills as per commercial tariff till disposal of the matter and on such deposits regularly by the applicant, M.S.E.D.C.L. shall not disconnect the electricity supply of the applicant till disposal of this matter on merits. This order was passed under regulation 8.3 of the said regulations and was in force till disposal of the matter. Now this Forum is going to dismiss the grievance application on merits.

Therefore it is necessary to cancel this Interim Order. In our opinion, notice of disconnection Dt. 5.4.2013 is perfectly legal and valid according to Section 56 of Electricity Act 2003. Hence we proceed to pass the following order :-

ORDER

1) Grievance application is dismissed.

2) Interim order Dt. 23.4.2013 passed by this Forum is hereby modified and cancelled.

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