

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

Case No. CGRF(NUZ)/057/2008

- Applicant : Officer Incharge
Shri P.P. Jain
Mahabeej Biotechnology Centre,
Civil Lines, Telengkhedhi,
NAGPUR.
- Non-applicant : MSEDCL represented by
Shri D.M. Mankar
Executive Engineer (Adm.) &
Shri Kamble, Asst. Engineer,
NUC, Nagpur.
- Quorum Present : 1) Shri S.D. Jahagirdar,
Chairman,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.
- 2) Smt. Gouri Chandrayan,
Member,
Consumer Grievance Redressal
Forum,
Nagpur Urban Zone,
Nagpur.
- 3) Shri S.F. Lanjewar
Executive Engineer &
Member Secretary,
Consumer Grievance Redressal
Forum, Nagpur Urban Zone,
Nagpur.

ORDER (Passed on 20.12.2008)

This grievance application is filed on 05.11.2008 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 here-in-after referred-to-as the said Regulations.

The applicant's grievance is in respect of erroneous application of commercial tariff rate i.e. HT-II commercial category tariff rate to Mahabeej Biotechnology Centre, Nagpur which is a unit of Maharashtra State Seeds Corporation Akola resulting in recovery of excess amount. He has requested this Forum to direct the non-applicant to bill the applicant for the aforesaid Unit at the old rate w.e.f. 01.06.2008 meant for agricultural use and accordingly revise the energy bills.

Before approaching this Forum the applicant had approached the Internal Grievance Redressal Cell (in short, the Cell) by filing his complaint on the same subject-matter on 03.10.2008 under the said Regulations. The Cell, upon inquiry and hearing, informed the applicant by its letter, being letter no. 6277 dated 24.10.2008, that the commercial tariff rate applied to the applicant is correct and that the non-applicant may issue power disconnection notice since the applicant has not paid the energy bill amounts as per revised tariff w.e.f. 01.06.2008.

The applicant is not satisfied with the Cell's decision and hence the present grievance application.

The matter was heard on 25.11.2008, 02.12.2008, 15.12.2008 and 20.12.2008.

The applicant's contention is that the Cell's order is not only unjust and improper but it is also illegal. He added that there is no commercial activity carried out at the Mahabeej Biotechnology Centre at Nagpur. The usage of electricity is for agricultural purpose in as much as the applicant's Centre is purely a Research & Development Unit in agriculture sector and it is working for the betterment of the farmers. The Centre is a plant Tissue Culture Centre for which funds have been allocated by Govt. of India, Govt. of Maharashtra, National Horticulture Mission and Vidarbha Vaidhanik Vikas Mahamandal, Nagpur for the purpose of setting up of Tissue Culture facilities and use of biotechnology in agriculture, for construction of Tissue culture laboratory at Nagpur and for strengthening of existing Tissue culture laboratory for the benefit of farmers. The funds are allocated with the objective of the development of high, advanced and new technologies like Tissue Culture and Biotechnology (Genetically modified crop) and the end products are provided to the farmers for their progress in Agriculture. The activities at the Centre are purely based for Research and Development and they are not commercial in nature. The Government Schemes like National Horticultural Mission, National Foods Security Mission etc. are providing subsidy directly to the farmers to whom the applicant's Centre supply seed to promote the farmers to adopt the high-technology and use of quality seed for their betterment and ultimately for progress in Agriculture.

The applicant has filed on record the Government of India, Ministry of Agriculture, Department of Agriculture & Corporation's letter, being letter no. F-252 dated 14.12.2005, addressed to the Pay & Accounts Officer, Ministry of Agriculture, New Delhi on the subject of

use of Biotechnology in Agriculture – assistance for setting up of tissue culture facilities sanctioning Rs. 50 Lakhs to the Maharashtra State Seeds Corporation Ltd, Akola for expansion and strengthening of tissue culture laboratory facilities for research activities and production of planting material of elite Geno type of Banana, Sugarcane and medicine plants towards the scheme “Development & Strengthening of Infrastructure Facilities for Production and Distribution of Seeds” under the components of application of Biotechnology in Agriculture. Likewise, the applicant has also submitted several other Govt.’s Order / Resolutions to show that the activities being carried out at the Centre are only agricultural activities and they not commercial activities.

The applicant further contended that since inception of the Centre, the activities are the same and there is no change at all therein. As per tariff approved by MERC w.e.f. 01.06.2008, the tariff rate applicable for HT-V Agriculture tariff category is also the same i.e. @ Rs. 1.60 per unit. The non-applicant has also been charging in the past the tariff rate meant for agriculture but suddenly w.e.f. 01.06.2008, it started erroneously charging commercial tariff rate meant for HT-II commercial category. This, according to him, is wrong and improper.

He vehemently contended that the commercial tariff rate made applicable to the applicant’s Centre is without any basis. He requested this Forum to direct MSEDCL to apply the tariff rate of Rs.1.60 per unit meant for agriculture category w.e.f. 01.06.2008 since the activities are totally agriculture based and not commercial.

The non-applicant has filed his parawise reply dated 28.11.2008 which is on record. It has been stated in this report as well as in the oral submissions of the non-applicant’s representatives Shri

Mankar and Shri Kamble that the Mahabeej Biotechnology Centre is a unit of Maharashtra State Seeds Corporation. Development of B.T. cotton and plant tissue culture project activities are going on there on day-to-day basis. He drew our attention to the submission of the applicant that these activities are based on research and development with laboratory in their office premises only. Inspection was carried out by the non-applicant on 07.10.2008 in which it transpired that the applicant is having his office established in ten rooms out of which room nos. 1 to 5 are used for research work and room no. 6 used for office. Room no. 7 is used for inoculation. Room no. 8 is used for storage of medium (solvent) and room nos. 9 to 10 are used for storage of tissues under specific temperature. It was also found that there is no agricultural use like growing of crops or any horticultural use in the premises of the Centre.

He added that considering the nature of activities being carried out by the applicant they are rightly treated as non-agricultural activities and charged for energy consumption as per MERC's revised tariff rate w.e.f. 01.06.2008 and that the HT- II commercial tariff category has rightly been made applicable to the applicant w.e.f. 01.06.2008 irrespective of whether it is a govt. owned or operated scheme. According to him, the HT commercial tariff rate made applicable w.e.f. 01.06.2008 is appropriate and it needs no change.

He relied upon MSEDCL's Commercial Circular no. 80 dated 10.06.2008 and another no. 81 dated 07.07.2008 copies of which are produced on record. It is contended that they fully support the stand taken by the local officials of MSEDCL.

He lastly prayed that the grievance application may be rejected.

While denying the claims and submissions made by the non-applicant in his parawise report, the applicant argued that the interpretation drawn in respect of commercial circular nos. 80 and 81 relied upon by the non-applicant is not correct. It is also not in tune with the MERC's mandate. There are no guidelines issued in these circulars to say that HT-II commercial category tariff rate should be applied for agriculture based research and development activities. The commercial tariff rate made applicable by the non-applicant is not at all justified. Specifically commenting upon the non-applicant's say that there is no agriculture or horticulture like use of growing of crops etc, the applicant contended that the Centre raises seedlings of TC Banana, Hy. Papaya etc. which are totally agricultural and horticultural in nature and that raising / producing of seedlings amounts to growing of crops. He added that the farmers also raise the seeds / seedlings and sell their agricultural products to earn money for his family. On the same lines, the applicant is producing /raising high tech seedlings which are supplied to farmers under government schemes in the sector of Agriculture under subsidy schemes.

It has also been submitted by the applicant that he has paid the amount of energy bills issued after 01.06.2008 under protest with a view to avoid the threatened power disconnection.

He strongly relied upon Govt. of Maharashtra Agriculture Department's Resolution dated 05.07.2002 a copy of which is produced on record. According to him, this Govt. Resolution amply clarifies that

the Tissue Culture activities should be treated as Agriculture based activities.

The basic question to be decided in this case is as to which tariff category the present applicant belongs. In other words, whether the tariff rate meant for agriculture is to be made applicable to the applicant or whether HT-II commercial tariff category rate should be applied to him w.e.f. 01.06.2008.

The applicant' claim is that since activities being carried out at the applicant's Centre are agriculture in nature, the tariff rate meant for agriculture needs to be continued to be applied w.e.f. 01.06.2008 while the non-applicant has stated that in terms of the Commercial Circular no. 81 dated 07.07.2008 issued by the Director Operations, MSEDCL based on the MERC's tariff order operative from 01.06.2008, the Commercial tariff rate is rightly made applicable to the present consumer.

The documentary evidence produced on record by the applicant goes to show that the applicant's Mahabeej Biotechnology Centre at Nagpur is a government approved Tissue culture Centre. Tissue culture laboratory is established for raising of high tech seeds / seedlings and supplying them to the farmers under various Government schemes. The activities being carried out at the Centre are based on research and development in Agriculture sector and they cannot be treated as commercial in nature. Government funds have been allotted to this Centre with the objective of development of high, advanced and new technologies like Tissue Culture and Biotechnology (Genetically modified crop) and the end products are provided to the farmers for their progress in Agriculture. The State Government

Resolution dated 05.07.2002 issued by the Agriculture, Animal Development, Dairy Development and Fisheries Development makes it abundantly clear that the tissue culture activities are agricultural activities. There is also no element of profit making by the applicant in the running of the Mahabeej Biotechnology Centre at Nagpur. The income and expenditure account statement of the Centre for the year 2007-08 produced on record by the applicant amply demonstrates that the total sale proceeds of the plant are of Rs. 25,18,219/- while the expenditure quantum is of Rs.32,24,959/-. The Centre is obviously running in financial loss.

As regards the non-applicant's placement of reliance on commercial circular no. 80 and 81 produced on record, it is to be seen that there is no mention made in it of agriculture based activities in the HT-II commercial category. Paragraph 8.1 of the commercial circular no. 81 dated 07.07.2008 stipulates that the Commission has created a new tariff category viz. HT-II Commercial, to cater to all commercial category consumers availing supply at HT-voltages and currently classified under the existing Ht-I Industrial or LT-IX (multiplexes and shopping malls). It is a matter of record that the applicant's Centre was not currently classified under HT-I industrial or LT-IX multiplexes and shopping malls tariff category. Therefore, it is not understood as to how the HT-II commercial category tariff rate was suddenly made applicable to the applicant w.e.f. 01.06.2008.

In this respect, this Forum has carefully gone through the relevant text of MERC's tariff order dated 20.06.2008 passed in case no. 72 / 2007 in the matter of MSEDCL's petition for approval of annual performance review for financial year 2007-08 and tariff for financial

year 2008-09. Under the caption of HT-V (HT Agriculture), the Commission has stated that this tariff rate is applicable w.e.f. 01.06.2008 for High Tension Agricultural Pumping loads including HT Lift Irrigation Scheme (LIS) irrespective of ownership and also for

- 1) Poultry (exclusively for Layer & Broiler Activities).
- 2) High Tech Agricultural (i.e. Green Houses, Tissue Culture, Mushroom, etc) purpose;
- 3) Pre-cooling & Cold Storage for Agricultural Produce of Farmer's Co-operative Societies.

The Commission has clearly categorized high tech tissue culture purpose as agriculture and hence the stand taken by the non-applicant changing the tariff category of the applicant from HT-Agriculture to HT-II commercial tariff category w.e.f. 01.06.2008 is without any basis. The non-applicant's action is thus not in tune with the Commission's tariff order.

The non-applicant Company's local officials have not carefully interpreted the non-applicant Company's commercial circulars and also the MERC's mandate.

The applicant's Centre was throughout categorized as agricultural consumer and there was no reason for the non-applicant to have arbitrarily changed the applicant's tariff category. In fact, the Commercial Circular no. 80 dated 10.06.2008 in its paragraph 7 clearly states that the consumers need to be classified under the new category of HT-II commercial w.e.f. 01.06.2008 based on the usage of electricity for those availing supply at HT voltages. By no stretch of imagination, the applicant can be classified as HT-II commercial category tariff consumer. The applicant has convincingly proved with the support of

cogent and corroboratory documentary evidence that the tariff rate meant for HT-V Agricultural should have been applied to him w.e.f. 01.06.2008.

There is no force in the contentions raised by the non-applicant. The Centre in question is basically agriculture based and as such the non-applicant's action of billing the applicant w.e.f. 01.06.2008 as HT-II Commercial category consumer is devoid of any logic and merit. The applicant deserves to be charged for energy consumption as HT-V agricultural tariff category consumer w.e.f. 01.06.2008.

The grievance application is, therefore, allowed. The non-applicant is directed to treat the applicant as HT-V Agriculture tariff category consumer and the tariff rate meant for this category should be applied w.e.f. 01.06.2008. The energy bills already issued w.e.f. 01.06.2008 should be revised accordingly.

The non-applicant should carry out this order immediately and report compliance to this Forum on or before 20.01.2008.

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| Sd/- | Sd/- | Sd/- |
| (S.F. Lanjewar) | (Smt. Gauri Chandrayan) | (S.D. Jahagirdar) |
| Member-Secretary | MEMBER | CHAIRMAN |

**CONSUMER GRIEVANCE REDRESSAL FORUM
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO LTD's
NAGPUR URBAN ZONE, NAGPUR.**