

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

Case No. CGRF(NUZ)/60/2011

Applicant : Smt. Hamida Amanat Khokar,
Resident of 62-A, Gandhi Layout,
Katol Road, Nagpur.

Non-applicant : MSEDCL represented by
Executive Engineer,
MIDC O&M Division No. II,
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 12.12.2011)

The applicant, Smt. Hamida Amanat Khokar, resident of 62-A, Gandhi Layout, Katol Road, Nagpur, filed present Grievance Application on Dt. 14.10.2011 before this Forum under regulation 6.4 of Maharashtra Electricity Regulatory Commission (Consumers Grievance Redressal Forum & Electricity Ombudsman) Regulations 2006 (hereinafter referred as Regulations).

- 1) Applicant's case in brief is that she is conducting agricultural activities of Poultry form situated at Kodadongri, Taluka Saoner, District Nagpur. The applicant applied for electricity connection to Non-applicant in the year 2005 for the purpose of Poultry Hatchery, Poultry farming and Breeder farm. This applicant is a consumer of Non-applicant since 2005-06. The Non-applicant had done billing of connection of the applicant according to L.T. IV Category since the year of connection & applicant is paying the same regularly.

- 2) The Flying Squad of Non-applicant had inspected the connection of the applicant on 18th July 2011 and prepared the report. The Flying Squad held that the applicant is having Poultry Hatchery. Therefore, the applicant is liable to pay the bill according to the Tariff mentioned under the head of Commercial. Flying Squad assessed the bill according to Commercial Tariff & had issued recovery assessment amounting to Rs. 2,69,297/-. This assessment was done on the grounds that Hatchery activity is not included in the Poultry activity.

- 3) The applicant challenged this assessment before MSEDCL but in vain. Therefore the applicant filed present Grievance application and claimed following reliefs namely –
 - i) The Non-applicant be directed to cancel the order of recovery of assessment amount of Rs.269297/-.

- ii) Non-applicant be directed to reconnect the connection which was disconnected by the Non-applicant forthwith.
 - iii) Non-applicant be directed to pay compensation of Rs. 2.00 lacs to the applicant for mental harassment & loss caused to the applicant due to disconnection.
- 4) Non-applicant denied the claim of the applicant by filing detail reply Dt. 11.11.2011. It is submitted that the applicant had applied for new connection for poultry farm on Dt. 21.2.2005. The demand for new connection was issued on Dt. 9.11.2005 after getting sanction from the Superintending Engineer, Nagpur Rural Circle vide sanction Dt. 12.8.2005. The applicant had submitted the Test Report and connection was released on 6.6.2006. The applicant had asked for Poultry Farm connection and hence the billing of the said connection was done as per applicable tariff at that time i.e. L.T.-IV category.
- 5) Flying Squad inspected the premises of the applicant on Dt. 18.7.2011 and noticed that though the connection given for Poultry Farm purpose, the applicant is utilizing the power supply for Power Hatchery purpose which is a Commercial activity. As per the letter from Flying Squad Nagpur (R) Dt. 19.7.2011, provisional bill of assessment for difference in two categories amounting to Rs. 269297/- was issued to the applicant on Dt. 4.8.2011.
- 6) The order in the matter of tariff for Hatchery in the case of M/s. Balkrishna Hatchery Vs. M.S.E.D.C.L. before

Electricity Ombudsman, it is held that Hatchery comes under Commercial activity. Therefore, there is no force in the application of the applicant and the application deserves to be dismissed.

7) Forum heard the arguments of both the sides & perused the record.

8) Forum had carefully perused spot inspection report of Flying Squad Dt. 18.7.2011. In this report, it is specifically mentioned in Para 7 that type of installation and nature of work carried out is "HATCHERY". It is noteworthy that this spot inspection report of Flying Squad is duly signed by representative of the applicant. Therefore, evidence on record shows that the applicant is doing "Hatchery" and electricity 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 :-

"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 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”.

9) 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 and therefore the tariff applied by the Flying Squad is perfectly justified.

10) In para 4 (VII) of the Grievance application, the applicant place her reliance in the matter decided by Hon’ble Supreme Court of India in the case of Commissioner of Income Tax Bangalore Vs Vyankateshwara Hatchery Pvt. Ltd. However, it is noteworthy that this ruling of Hon’ble apex court of the land is referred, discussed and explained by Hon’ble Electricity Ombudsman in above discussed case No. 112/10, M/s. Balkrishna Hatchery Vs MSEDCL, decided on Dt. 15.9.2010 in Para 15 of the Judgement.

11) 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 can not called as industrial undertaking or that the hatchery is engaged in the process of producing articles or things. Therefore, relying on above cited judgement of Hon'ble Supreme Court of India & the classic pronouncement of Hon'ble electricity Ombudsman in case No. 112/10, this Forum is of the considered opinion that the applicant is doing hatchery business & therefore it is commercial. Therefore, M.S.E.D.C.L. has correctly applied Commercial Tariff.

12) For these reasons, we find no merits & no substance in the present Grievance application and it deserves to be dismissed. Resultantly, Forum proceed to pass the following order :-

ORDER

I) The Grievance application is hereby dismissed.

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