

**JOINT ELECTRICITY REGULATORY COMMISSION  
FOR THE STATE OF GOA AND UNION TERRITORIES  
GURUGRAM**

**CORAM**

Shri M.K. Goel,  
Chairperson

**Petition No. : 50/2021**  
**Date of Hearing : 02.08.2021**  
**Date of Order : 23.08.2021**

**In the matter of:**

Petition under section 74 of the joint electricity regulatory commission (conduct of business) regulation, 2009 read with section 94 (1) \_({f}), electricity act, 2003 seeking review of the order passed in petition no. 30 of 2020 dated 02/12/2020 and petition no, 31 of 2020 dated 02/12/2020.

**And in the Matter of:**

The Electricity Department,  
Andaman and Nicobar Islands,  
Port Blair- 744101.

.... **Petitioner**

**Versus**

Sea Shell Hotels and Resorts,  
02, Govind Nagar Beach, Havelock Island,  
Andaman and Nicobar Islands- 744211

...**Respondent 1**

T. S. G. Hotels and Resorts,  
No. 25, Moulana Azad Road, Phoenix Bay,  
Port Blair- 744102

...**Respondent 2**

Aparupa Sands Marina,  
Govind Nagar 2, Swaraj Dweep  
Havelock Island,  
Andaman & Nicobar - 744211,

...**Respondent 3**

**Present**

**For the Petitioner**

1. Shri B. Ajit Kumar, Superintending Engineer, Electricity Department, Andaman & Nicobar Islands, Port Blair.

**For the Respondents**

1. Shri Buddy Ranganadhan, Advocate

2. Shri Krishna Datta Multani, Advocate
3. Ms. Devina Sehgal, Advocate
4. Shri Girish Arora, Representative of Sea Shell & Resorts
5. Shri Vikas Lal, Representative of Aparupa Sands Marina

### **ORDER**

The Petitioner through this petition has prayed as under –

- a) Call for the record of proceedings arising from petition no. 274 of 2019.
- b) To call for the record of petition no. 30 of 2020 and petition no. 31 of 2020 disposed of by this Hon'ble Court on 02/12/2020.
- c) To restore the order passed by this Hon'ble Commission dated 20/05/2019 in petition no. 274 of 2019 as per the direction given in serial no. 11.
- d) To pass such other or further orders as this Hon'ble Commission may deem fit and proper in the circumstances of the case and to render justice to the petitioner.

The Commission heard both the Petitioner and the Respondent at length on dt. 02.08.2021. Both the Petitioner and Respondent have advanced their arguments in detail.

The Petitioner's submission in brief are as under: -

1. That the order passed by this Commission in Petition No. 30 of 2020 dated 02/12/2020 and Petition No. 31 of 2020 dated 02/12/2020, wherein the petitioner was directed to charge the hotels having Udhog Aadhaar duly issued to them under MSME in the Industrial category in place of commercial category is bad in law and against the public policy and required to be reviewed.
2. That the impugned direction is overlooking the financial obligation and without considering the facts whether the written objection filed by the petitioners in Petition No. 30 of 2020 and Petition No. 31 of 2020 was with the consent of the competent authority and if the said written objection and the admission made by the respondent without the approval of the competent authority whether the said admission be treated as admission.
3. That the Hon'ble Commission by its Order dated 20/05/2019 and 18/05/2020 put all the hotel establishment under Commercial category and directed the ED A&N for the compliance of its order.
4. That being aggrieved and dissatisfied with the order passed by this Hon'ble Commission dated 20/05/2019 and dated 18/05/2020, the respondents have preferred an appeal before the Hon'ble Appellate Tribunal for electricity (APTEL) being Appeal No. 71 of 2020.
5. That the Hon'ble Appellate Tribunal for Electricity granted liberty to the Respondent to file a review petition under Section 94 of the Electricity Act, 2003.
6. That the petitioner herein had filed written objection to the review application filed by the respondents wherein the petitioner herein had admitted that "while filing the Tariff Petition for F.Y. 2021-22 will incorporate necessary changes in the Tariff Schedule and its applicability to extend the benefit of Industrial Tariff to the Hotels and Restaurants who are registered under Micro, Small & Medium Enterprises Development (MSMED) Act, 2006 with the Directorate of Industries, A&N Administration."

7. That the Hon'ble Commission by its order dated 20/05/2019 on 09/09/2020 in review petition 30 of 2020 and 31 of 2020 directed the respondent to charge the hotels in the industrial category in place of Commercial category.
8. That due to the said direction passed by this Hon'ble Commission the tariff has come down remarkably thereby causing immense financial loss to the A&N Administration.

Commercial		Industrial		Percentage Loss
Slab	Unit Rate	Slab	Unit Rate	
0-200	7.5	0-500	6.00	20%
201-500	9.5			39%
501 above	12.00	501 above	8.00	33%

9. That while filing the written objection by the petitioners to the review application of the respondents, the petitioner herein failed to consider the financial implications which will cause severe financial loss to the Administration.
10. That the petitioner has not published any notification by incorporating the hotels under the category of Industrial establishment.
11. That the hotel business is the commercial establishment and the same cannot be treated under the industrial establishment.
12. That mere getting their name under the MSME Scheme cannot be automatically treated as Industrial Establishment as MSME Scheme is applicable to the commercial business as well as Industrial establishment.

The submissions of the Respondent are as under: -

1. That through the captioned Review Petition the Petitioner seeks review of the Impugned Orders passed by this Hon'ble Commission while exercising its review jurisdiction, and hence is barred under law.
2. That the captioned Petition is nothing but an abuse of the process of law and an attempt to reagitate the same issues already adjudicated by this Hon'ble Commission in Review Petitions No. 30 and 31 vide a detailed orders dt. 02.12.2020 on merits, by affording an opportunity of hearing to all the parties, wherein the petitioner was duly represented.
3. That section 114 read with Order 47 Rule 9 of the CPC, 1908 which is applicable to the Ld. Commission by virtue of Section 94 of the Electricity Act, 2003, makes it abundantly clear that: "No application to review an order made on an application for a review or a decree or order passed or made on a review shall be entertained."
4. That without prejudice, in any event, it is submitted that even as per Order 47 Rule 1 of the CPC, an application for review of judgment may be made upon *(a) discovery of a new and important matter or evidence, which after the exercise of due diligence was not within the department's knowledge or; (b) could not be produced at the time when*

*the matter was before the Hon'ble Commission and the order was made or; (c) on account of some mistake or error apparent on the face of record.*

However, in the instant case, the Petitioner has been unable to demonstrate how the grounds seeking review of the Impugned Order of this Hon'ble Commission fulfil the aforementioned legal criteria for review of the order. The Petitioner merely states vague grounds irrelevant to seeking review, all of which were well within their domain of knowledge at the time when the proceedings were being conducted and the impugned order was passed.

5. That pursuant to the passing of the impugned order, the Petitioner had in fact filed a Petition for Tariff Proposal for the FY 2021-22 on 21.04.2021 before this Hon'ble Commission wherein they proposed inter alia the enhancement of charges for Industrial Consumers by 87.5% from Rs.8 per kWh (existing) to Rs.15 per kWh, by the EDA&N. It is pertinent to note that this proposal by the Department was capped equivalent to that of Commercial, i.e. @ Rs.15 per kWh for having usage of 1001 units and above. As such, despite having categorized an Industry by the A&N Administration and also being registered under MSME, the hotels (falling under the MSME Act) were expected to pay charges, equivalent to that of commercial category, also capped at Rs.15 per kWh.
6. That tariff is a sensitive subject having substantial impact on social, economic and financial well-being of the public at large as well as the viability and growth of power sector. Further, it also notes the hardship caused due to COVID-19 which would impact the recovery and therefore, proposed partial recovery of the revenue gap.
7. That throughout the relevant period, the Petitioner had been well aware of the implications of the impugned order, however they chose not to raise any issue with respect to the older tariff orders but instead clandestinely raised the Industrial charges at par with commercial rates, making the previous orders passed by this Hon'ble Commission completely redundant.
8. That nonetheless, the aforesaid proposal was not accepted by this Hon'ble Commission in so far as the tariff hike of Industrial category is concerned and this Hon'ble Commission took note of the contemporaneous conduct of the Department and issued New Directives, which is as follows:

***“8.2.1. Billing the Hotel Industry Consumers under the Industrial Category*** *It has come to Commission's notice that the Hotels are being charged Commercial tariff by EDA&N in violation of Commission's Review Order dated December 2, 2020 which categorises Hotel Establishments under the Industrial Category. Therefore, the Commission directs the Petitioner to strictly comply with the Commissions said review order dated December 2, 2020”.*

9. That it was only after the tariff hike proposed by the Department was not accepted by this Ld. Commission while determining the Tariff Order for FY 2021-22, that the Petitioner Department approached this Ld. Commission on the same day, i.e. 31.05.2021 seeking review of an Order passed in a Review petition, which is impermissible as per law and abuse of the process of law.

10. That the impugned orders were passed after a detailed hearing, considering the oral and written submissions made by all the parties, including the Petitioner herein who had placed on record their Written Objections and an Affidavit executed by the concerned officer.
11. That in the Reply/Written Objections filed by the Petitioner on oath in both the earlier Review Petitions, the Petitioner has taken a stand contrary to what is being stated in the instant Petition, whereby the Petitioner has defended its position of charging Hotels as per the commercial category instead of Industrial category. It has been categorically stated therein that:
  6. *That in terms of the letter of the District Industries Centre, the Hotel and Restaurants are registered as MSME under Service Sector and eligible for all facilities and incentives available to the MSME's and coming under the Industrial Category and thus in the circumstances the tariff can be charged against the petitioners under the Industrial Establishment instead of Commercial Establishment.*
  7. *That the respondent further submits that appropriate order may be passed by modifying the direction no. 11 of order dated 20.05.2019 by directing the respondent herein to ensure the applicability of tariff of Industrial Category instead of Commercial Category to all the Hotels and Restaurants.*
12. It is also pertinent to highlight the fact that the Petitioner herein have only placed one of the Written Objections (mentioned in Para III (ii) above) along with the Review Petition filed before this Hon'ble Commission and have intentionally concealed the first Written Objections filed on 24.09.2020 in the said Review Petition – wherein the Department had categorically stated that they intent to incorporate necessary changes in the Tariff Schedule for FY 2021-22 to extend the benefit the industrial tariff to hotels and restaurants registered under MSME Act. This only goes on to show the malicious conduct of the Department. However, the Petitioner then took a completely contrary stand in the Tariff Petition filed for FY 2021-22 by seeking categorization of hotels under “commercial category”, contrary to their averments made under oath, stating therein that that it *“intends to include Hotel Establishments under Commercial Category as considering Hotels under industrial category would have large financial implications on the state exchequers. This is in line with the categorisation of Hotel Establishments under Commercial Categories as considered in the UTs under the jurisdiction of JERC and other States.”*
13. That the concerned authority herein i.e. the Supt. Engineer of the Electricity Department, A&N, has been the authority for presenting the Tariff Petitions on an yearly basis before this Ld. Commission. Further, the aforesaid Reply/ Written Objections were also duly signed and approved by the same officer, i.e. i.e. B. Ajit Kumar, Superintending engineer, Electricity Department, A&N, thereby showing that they were aware of the facts and implications of the issues at hand and also affirmed the same by way of an Affidavit. It is further pertinent to highlight that even the captioned review petition has been signed by the same officer, i.e. B. Ajit Kumar, Superintending engineer, Electricity Department, A&N, who now claims to be oblivious of the financial implications of the impugned Order passed by the Ld. JERC.
14. Therefore, the stand taken by the Petitioner that they were not aware of the implications etc. is wholly misconceived, and is an attempt to resile from their own averments made under oath in earlier proceedings and an attempt to abuse the process of law and the same deserves to be out rightly be rejected.

15. That it is also submitted that the said Orders were not only based on the averments made by the Petition, but was also based on the standard being applied to the Hotels in the State of Goa by this Ld. Commission itself. It was therefore on the ground of parity that the impugned orders came to be passed.
16. That, Furthermore, there is no publication of any Notification have been found to be made on any earlier occasion to bring into force the directions of this Hon'ble Commission including when the tariff was implemented from 'industrial' to 'commercial' pursuant to the Tariff Order passed on 20.05.2019.
17. That the department has approached this hon'ble commission with unclean hands after wilful non-compliance of the subject orders which amounts to contempt of court:
  - i. That despite of specific directions issued to the Petitioner-Department to charge Hotels under Industrial rates, the Petitioner – in complete defiance of the impugned Orders – continues to charge Hotels at Commercial rates.
  - ii. That the Respondents have on multiple occasions requested the Petitioner Department as well as the Administration to implement the impugned orders and rectify the electricity bills by levying 'industrial' rate.
  - iii. That the conduct of the Petitioner was also brought to the notice of this Ld. Commission by the Respondents during the public hearing conducted for determining the Tariff Order for 2021-22 and this Hon'ble Commission also directed the Petitioner to levy electricity charges at industrial rates.
  - iv. That instead of complying with the directions of the Hon'ble Commission, the Department continued to charge Respondents at Commercial rates, and when the same was not paid, the Petitioner served a Notice to the Respondents asking for payment of the outstanding amount, failing which the electricity connection would be disconnected. These issues of non-compliance of the Orders dated 02.12.2020 passed by the Ld. JERC were assailed by Respondents No. 1 and 2 through Writ Petition No. 148 of 2021 and the Notice for disconnection dt. 08.05.2021 issued by the Petitioner was challenged by Respondent No. 1 through Writ Petition No. 172/2021 before the Hon'ble High Court of Calcutta, respectively. It is submitted that when WP No. 148 of 2021 was taken up for hearing on 12.04.2021, the Counsel appearing for all the concerned authorities, i.e. (i) Lt. Governor, A&N, (ii) Secretary (Power), A&N and (iii) Petitioner Department sought time to take instructions from the concerned authorities and the matter was adjourned on this ground, directing it to be listed before the next available Circuit Bench which was to commence from 7th June 2021. However, both the said Writ Petitions, i.e., No. 148 and No. 172 could not be listed for hearing on account of COVID-19 pandemic restrictions and the same are still pending adjudication before the Hon'ble High Court. However, the Petitioner instead preferred the instant Review Petition before this Hon'ble Commission, that too at a much belated stage, and clearly as an afterthought, thereby demonstrating their mala fide conduct, since the Writ Petition seeking compliance of this Ld. Commission's orders is still pending.
18. That Due to the pandemic, the sales of the hotel industry, including the Respondent Hotels, have dropped to 0% occupancy, and looking at the ongoing spike in the COVID

cases across the country there is only a negligible hope of this recuperating in the near future.

19. That due to the 2nd unprecedented wave of COVID-19 and a spike in the number of cases and deaths, most of the States in the country have either imposed a lockdown or have levied strict restrictions and curfews causing hardly any inter-state movement. As such, the island is not expecting any tourist traffic/revenue even in 2021, as was the situation in 2020.
20. That In light of the above, even domestic flight movements have been restricted and the passenger traffic is at bare minimal. Currently, the Islands have 5-6 flights a day as compared to 22 per day pre-pandemic. Further, international travel has also been suspended. Lastly, various countries, such as USA, Australia etc. have banned travel to and-from India amid the 2nd wave of COVID-19 in India, as a result of which the hotel industry in Islands is crippled and rather needs financial and administrative support from the Government in order to sustain and survive during these tough times.
21. That It is further pertinent to note that last year, to prevent and check the spread of COVID-19 in the Island, the District Disaster Management Authority vide Order No. 422 dated 24.03.2020 directed 39 Hotels (which included most of our member hotels) to provide more than 1100 rooms to be treated as quarantine facilities for treatment of COVID patients / suspect cases at a nominal rate of Rs.975/- per room (which also included three meals, tea/refreshments and all other electronically supported facilities such as AC, TV, Wifi etc.).
22. That Amid the 2nd wave, a similar direction has now been passed in 2021 to 10 such hotels asking to provide 240 rooms with Double occupancy for the said purpose.
23. That in light of the aforesaid facts and circumstances, the conduct of the Petitioner-Electricity Department of A&N is highly arbitrary, illegal and pure act of harassment to the consumers such as the Respondents, who continue to suffer due to the inactions of the Administration and yet are offering COVID relief facilities in the islands.
24. That hotels falling under the MSME Act are to be given the benefit of industrial tariff:
  - i. That the Andaman and Nicobar Administration in 1987 had passed an Administrative Order No. 1055 dated 06.03.1987 ("A.O. dt. 06.03.1987") inter alia directing 'Tourism' to be treated as an 'Industry' in the A&N islands. This direction was based on the recommendation of the Ministry of Tourism, Govt. of India, with a view to develop tourism which has been the mainstay of its economy. The objective behind the said categorization, as mentioned in the A.O., was *"to enable those that are engaged in tourism promotional activities in the whole of Union Territory of Andaman and Nicobar Islands to become eligible for the concessions/incentives as applicable to the Industrial Sector from time to time wherever such schemes are relevant to Tourism activities."*
  - ii. That the said A.O. also states that "concession may be made available to the Tourism Sector under relevant schemes operated by different Departments", including Industries, such as "Concessions in electricity and water charges". Further, the said concessions were stated to be made available to inter-alia "Classified Hotels (1 to 5 Star)" and "Hotels which conform to the specifications of the Department of Tourism, Andaman and Nicobar Administration/ Government of India".

- iii. That till the year 2008, the electricity tariff in A&N Islands used to be determined by the Administration and it was only in August 2008 that this Hon'ble Commission started functioning. It is submitted that the tariff determined in 2008 continued without enhancement till 2011-12.
  - iv. That on 27.05.2011, the Administration granted approval for realising the power tariff from the 'Hotels' which were registered as an industry under 'Industrial Category' vide their A.O. No. 3-20(2)/2007-Power dated 27.05.2011 passed by the Assistant Secretary (Power) Administrative.
  - v. That between 2008-2012, the Respondent Hotels were issued Udyog Aadhaar by MSME by the A&N Administration for their properties. As such, they are recognised as "Industry".
  - vi. Accordingly, by virtue of the circulars issued by the Administration, the Respondents became eligible for the benefit sought to be extended in the aforementioned A.O. dt. 27.05.2011 by seeking conversion of category with the Petitioner Department and since then, the Respondent have been charged electricity tariff under the "industrial" category.
  - vii. That the aforesaid facts and documents make it evident that as a matter of practice, once a Hotel establishment had been successfully registered as an 'Industry' under the Directorate of Industries, Andamans and Nicobar Administration, a communication in this regard is addressed to the Department by the said Hotel and the Administration, informing them about such conversion. It is only after the Department is satisfied that it would extend the benefits under 'industrial' tariff to such hotels, as it was being extended to the Respondent by the Petitioner Department.
  - viii. It is therefore evident that the position remained unchanged even after the first tariff order dated 04.06.2012, till the direction was passed by this Ld. Commission vide Tariff Order dated 20.05.2019 directing the Petitioner to levy tariff under commercial category on the hotels. It is pertinent to mention here that at no point during the said years did the Petitioner raise any objections to the levy under the 'industrial category'.
  - ix. It is pertinent to mention here that pursuant to the Order of this Ld. Commission dated 02.12.2020 passed in the Respondents' Review Petition to levy tariff under 'industrial' category and subsequent non-compliance thereto by the Petitioner, the Union Ministry of Tourism, vide its communication dated 28.06.2021 to the Lt. Governor, Andaman & Nicobar Islands, has urged the administration to implement the said order of this Ld. *Commission "in the right spirit for the betterment of the distressed and beleaguered tourism and hospitality industry"*, especially in view of the hardships faced owing to the Covid-19 pandemic.
25. That It is stated that while not all hotels were extended the benefit, once a hotel establishment had been successfully registered as an 'Industry' under the Directorate of Industries, Andamans and Nicobar Administration, a communication in this regard was addressed to the Petitioner Department and the Administration, informing them about such conversion. It was only after the Department's satisfaction that the benefits under 'industrial' tariff was extended to such hotels, including the Respondents herein.

26. Further the issue of difference in tariff rates between the 'commercial' and 'industrial' rates causing tariff shock in violation of Regulation 67(4)(e) of the JERC Multi-Year Tariff Regulations, 2018 has been categorically stated in the Respondents' Review Petition and is one of the main grounds of challenge therein. The Petitioner has been well aware of this aspect as they have undisputedly admitted to this position in their own reply thereto by being in consensus with the Respondents' averment, and therefore cannot now seek to urge this as a ground for setting aside of the impugned order in view of purported financial loss.
27. That the Petitioner Department, in complete violation of the directions of this Ld. Commission, continues to charge the Respondent Hotels according to commercial tariff and the said action is liable for punishment for contempt as per Contempt of Courts Act, 1971.
28. Therefore, it is humbly prayed that the captioned Petition filed by the Department ought to be dismissed with costs for being not maintainable as per law.
29. That it is further prayed that their Reply filed before this Ld. Commission shall be treated as a Complaint under Section 142 of Electricity Act, 2003 against the Petitioner Department seeking for strict penal action as per Section 142 of the Act for wilful noncompliance of the directions of this Hon'ble Commission.

The Commission has considered the submissions of both Petitioner and Respondent in depth. It has also examined the Petition and the entire records placed before it along with reply of the Respondents, rejoinder and written submission of the respondents. The Commission also examined the specific relevant provisions of the Electricity Act, 2003 and the rules and regulations made thereunder. Section 62 of the Electricity Act, 2003 empowers the appropriate Commission to determine the tariff of a generating company, transmission and distribution licensee. The said section provides as under:

*Section 62 (1)*

*"The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for –*

- (a) supply of electricity by a generating company to a distribution licensee: Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;*
- (b) transmission of electricity;*
- (c) wheeling of electricity;*
- (d) retail sale of electricity: Provided that in case of distribution of electricity in the same area by two or more distribution licensees, the Appropriate Commission may, for promoting competition among distribution licensees, fix only maximum ceiling of tariff for retail sale of electricity."*

Section 62 (6)

*“If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee.”*

Section 63 of the Electricity Act, 2003 provide as under:

*“Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”*

Section 86 of the Electricity Act, 2003 provide as under:

*“The State Commission shall discharge the following functions, namely: -*

- (a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:*

*Provided that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;*

- (b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;*

- (c) facilitate intra-State transmission and wheeling of electricity;*

- (k) discharge such other functions as may be assigned to it under this Act.”*

Section 142 Provides as under:

*“In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.”*

Section 146 Provides as under:

*“Whoever, fails to comply with any order or direction given under this Act, within such time as may be specified in the said order or direction or contravenes or attempts or abets the contravention of any of the provisions of this Act or any rules or regulations made thereunder,*

*shall be punishable with imprisonment for a term which may extend to three months or with fine, which may extend to one lakh rupees, or with both in respect of each offence and in the case of a continuing failure, with an additional fine which may extend to five thousand rupees for every day during which the failure continues after conviction of the first such offence:*

*1[Provided that nothing contained in this section shall apply to the orders, instructions or directions issued under section 121.]”*

Section 173 Provides as under:

*“Nothing contained in this Act or any rule or regulation made thereunder or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989.”*

Section 174 Provides as under:

*“Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”*

The Commission has noted that the Petitioner has filed this review petition challenging the review order dated 02.12.2020 in review petition no 30/2020 and review petition no 31/2020 which were filed before the Commission on the direction of the Hon'ble appellate tribunal of electricity in appeal no 71 of 2020. Thus, it is crystal clear that the petitioner is seeking review of the impugned order pass by the Commission by exercising its review jurisdiction under section 94 of the Electricity Act, 2003. It is the settled law that review of a review order is not permissible and is barred under law.

The Commission 's Power to review its own Orders flow from Section 94(1)(f) of the Electricity Act, 2003 and are the same as those conferred on a Civil Court under Order 47, Rule 1 of the Code of Civil Procedure (CPC).

Section 94 of the Electricity Act, 2003 provides that:

*“The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code or Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely: -*

*.... (f) reviewing its decisions, directions and orders;”*

Order 47, Rule 2 of CPC mandate that a Court of review may allow a review on three specific grounds which are as under:

*a. If there are mistakes or errors apparent on the face of the record, or*

- b. On discovery of new and important matter or evidence which, after due diligence was not within knowledge of the aggrieved person or evidence could not be produced at the time of making the order, or*
- c. For any other sufficient reasons which are analogous to the above two grounds.*

Under Order 47, Rule 1, CPC Order / judgment may be opened to review inter-alia, if there is a mistake or an error apparent on the face of record. An error which is not self-evident has to be detected by process of reasoning and such an error can hardly be said to be an error apparent on the face of the record, justifying the Court to exercise its power of review under the above said provisions. However, an error must be one which speaks for itself and is glaring and difficult to be ignored. A review Petition has a limited purpose and cannot be allowed to be an appeal in disguise and it cannot be exercised on the ground that the decision was erroneous on merits. But simultaneously the materials on record, which on proper consideration may justify the claim, cannot be ignored. The law has made clear the distinction between what is an erroneous decision and an error apparent on the face of the record.

The Commission after examining the above mentioned submissions of the petitioner is of the considered view that the said submissions raised by the petitioner are totally irrelevant and vague and do not fulfil the aforementioned legal criteria for review of the impugned order.

The Commission has noticed that the petitioner has neither pointed out any error which is apparent on the face of the impugned order nor mentioned any evidence which after the due diligence was not within the petitioner's knowledge or could not be produced at the time when the matter was before the Commission and the said impugned order was made.

It is not out of place to mention here that the Commission has observed that from FY 2012-2013 when the Commission first time determined the tariff on the petition filed by the petitioner wherein the Commission put the hotels under commercial category but the petitioner kept on charging industrial tariff from hotels till FY 2018-19 in gross violation of the Commission's tariff orders. However, when the Commission directed the petitioner by its order dated 02.12.2020 to charge the hotels the industrial tariff again in gross violation of Commission's said order the petitioner charged the commercial tariff from the hotels. The petitioner did not stop here and on the protest of the respondents issued notice to them to disconnect their electricity connection in case they fail to pay the commercial tariff. Such action on the part of the petitioner forced the Commission to realise that the petitioner is deliberately defying the Commission's order dated 02.12.2020 without realising the legal implications of such gross violation of the said order of the Commission.

It is pertinent to mention here that the Electricity Act, 2003 has empowered the appropriate commission to determine the tariff of generating company, transmission/distribution licensees etc. under section 86 & section 62. From the above it is clear that the appropriate Commission is the sole competent authority to determine the tariff of the regulated entities within its jurisdiction and it is mandatory for the regulated entities to charge the tariff as determined by the Commission. Any violation by the regulated entities of the order/ direction of the Commission attracts penal action under section 142 and section 146 of the Electricity Act, 2003. Further it is also the contempt of the Commission's order.

The Commission intends to apprise the petitioner that one of the primary objects of the Electricity Act, 2003 is distancing of government from determination of tariffs because earlier the state electricity boards created under Electricity Act 1948 have generally been unable to take decisions on tariff in a professional and independent manner and tariff determination in

practise has been done by the state governments. Thus the petitioner should understand that the tariff fixed by the Commission ought to be charged by the petitioner without its violation as the functions of the deemed distribution licensee are commercial in nature and not one of the sovereign functions of the government. At the same time Section 174 of the Electricity Act, 2003 provides that the Electricity Act shall have overriding effect on all other acts/ laws for the time being enforce.

The Commission is of the considered opinion that petitioner has erred in filing this review petition and it appears that there is no application of mind on the part of the petitioner.

The Commission is not inclined to accept any submissions of the petitioner as they are baseless and invalid. At the same time the said submissions also lacks in merit. The Commission is convinced with the submissions and the legal position taken by the respondents. The commission is of the considered view that this petition needs to be dismissed.

The Commission hereby dismiss this petition with the direction to petitioner to comply with the impugned order dated 02.12.2020, the violation of which would attract appropriate legal action.

Ordered accordingly.

**-Sd-**

**(M.K. GOEL)**

**Chairperson**

Place: Gurugram

Date: 23rd August 2021

(Certified Copy)



**(Rakesh Kumar)**

**Secretary**