

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

Coram
Shri M.K. Goel, Chairperson

Petition No. 30/2020
Date of Hearing: 09.09.2020
Date of Order: 02.12.2020

In the matter of:

Petition under Regulation 74 of the JERC (Conduct of Business) Regulations, 2009 read with Section 94(1)(f), Electricity Act, 2003 seeking Review of Tariff Order dated 20.05.2019 passed by this Hon'ble Commission in the Petition No. 274/2019 for approval of True up of FY 2015-16 & ARR for 2nd MYT Control Period (FY 2019-20 to FY 2021-22) & determination of Retail supply Tariff for the FY 2019-20.

And in the matter of:

Sea Shell Hotels & Resorts,
02, Govind Nagar Beach Havelock Island,
Andaman & Nicobar Islands – 744 211.

.....**Petitioner (1)**

TSG Hotels and Resorts,
No. 25, Maulana Azad Road,
Phoenix Bay, Port Blair – 744 102.

..... **Petitioner (2)**

Versus

In the matter of:

The Superintending Engineer,
Electricity Department,
Andaman & Nicobar Islands,
Port Blair – 744 101.

..... **Respondent**

Present

For the Petitioner:

1. Shri Buddy Ranganadhan, Advocate
2. Krishna Dutta Multani, Advocate
3. Ms. Devina Sehgal, Advocate
4. Shri P.B. Arora, Representative of Sea Shell & Resorts



For the Respondent:

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

ORDER

The commission has noted that the Review Petitioners had filed an appeal No. 71/2020 before the Appellate Tribunal of Electricity wherein they challenged the impugned order dated 20.05.2019 passed by the Joint Electricity Regulatory Commission for the State of Goa and Union Territories in petition No. 274/2019. In the said appeal they had challenged a “note” appearing in the last column under the heading “Point of supply news” in Para no. 7.2 of the impugned Order which reads as under: -

S.No	Category	Applicability	Point of supply news
3	Commercial	This schedule will apply to all consumers, using electrical energy for light, fans, and appliances like pumping sets, motors of up to 3 HP used for commercial purpose, central air conditioning plants, lifts welding sets, small lathe machines, electric drills, heaters, battery chargers, embroidery machines, printing presses, ice candy, dry cleaning machines, power presses, small motors in commercial establishments/non-residential private premises such as printing presses, hotels, rest houses, restaurants, hostels, nursing homes, bus stands, clubs, auditoriums, communication, cinema theatres, operas, circus, exhibitions, and bakeries, and grinders and installations for private gains, etc. Commercial supply will also be applicable to multi-consumer complex including commercial complexes as defined in the Electricity Supply Code Regulations notified by JERC. This schedule will also apply to the places of worship like temples, mosques, churches, gurudwaras, Buddhist Pongji Chung (except residential areas), public Pooja celebrations and religious ceremonies. No separate circuit/connection for power load including pumping set/central air conditioning plant, lifts, etc, is permitted	Note: It has come to notice of the Commission that the hotels are being charged industrial tariff though as per the rate schedule approved by the Commission, hotels are put under Commercial Category. Therefore, the Commission directs the Petitioner to charge tariff applicable for Commercial category to all the hotel establishment, failing which, the Commission may take an appropriate view considering the noncompliance of Commission’s direction.”



The Commission further noted that in the judgement the Appellate Tribunal for electricity has observed that the categorization of commercial tariff for hotels seems to have been adopted almost by way of continuity in the impugned Order as the Electricity Department, Andaman & Nicobar Administration had himself requested the Commission to place all the hotels under Commercial Category in their first Tariff Petition filed on 4.06.2012 before the Commission. Thereafter the Electricity Department, Andaman & Nicobar Administration never requested the Commission to change the category of hotels from the Commercial to Industrial category in all the petitions filed by them till November 2019. The Commission has noted for the first time that the billing of hotels under the Industrial Category was wrong and in the teeth of previous determination. It is the said discrepancy which has been adversely commented upon by the impugned note. The Appellants have argued on the grounds of breach of principles of natural justice, their plea being that it is a case of improper re-categorization the procedure for such purposes not having being followed, there being no prior notice given for affording opportunity to submit objections, the direction being illegal as not supported by any reasons, the general prohibition against “tariff shock” not having being kept in mind.

The Appellants pressed the additional arguments of the impugned note suffering from the vice of arbitrariness referring in this context to a different dispensation by the same Commission vis-à-vis hotels operating in the state of Goa which is also under the regulatory jurisdiction of the Commission. It is the submission of the learned council for the Appellants that hotels in Goa with HT connections have all along availed the benefit of Industrial Tariff whereas, by the Order dated 23.05.2017, hotels with LT connections have also been conferred with similar privilege of industrial tariff. The Appellants seek to pursue such course craving for revisit/review on the subject of categorization of hotels in Andaman & Nicobar Islands on the plea of the impugned direction being arbitrary owing to a different dispensation by the same Commission vis-à-vis hotels in the state of Goa.

The intendment also being to rely in context of such argument upon the views expressed by JERC vis-à-vis establishments in the business of Bakery drawing its attention to its tariff order dated 31.03.2015 passed in Petition nos. 152/2014 and 155/2014. While pressing the modified prayer limited to grant of liberty as aforesaid, the learned counsel for the Appellants confirmed that the Appellants understand that by withdrawing the appeal they are forfeiting the grounds on which the appeal was presented and further that when they approach the JERC by petition for review or revisit to the subject, they would be entitled to press only on the ground of arbitrariness with reference to dispensation for hotels operating in State of Goa and the views expressed by JERC vis-à-vis hotels operating in the Andaman and Nicobar Islands.

The Appellate Tribunal for Electricity has observed that prima-facie however they find some contrast in the approach of JERC to the subject of tariff category for hotels in the state of Goa as against those operating in Andaman & Nicobar Islands. This, they find, is a ground sufficient enough to grant the liberty prayed for by the appellants to file a petition under Section 94 read with Section 62 of the Electricity Act and any other enabling power under the law or the regulations framed thereunder, for revision of the subject of tariff categorization of hotels in Andaman & Nicobar Islands for FY 2019-20 (and periods subsequent thereto, if deemed proper by the Commission). Further the grant of such liberty will not be construed as permitting reopening the subject of categorization or leviable tariff for purposes of any period anterior to FY 2019-20 the tariff determination for which was sought to be impugned before us by the appeal at hand.

Keeping the above in mind the Commission heard both the Petitioner and the Respondent at length.

1. The Learned Counsel for the Petitioner advanced his arguments in detail. That the present Petition is being preferred by the Petitioner, in furtherance of the liberty granted by the Hon'ble Appellate Tribunal for Electricity ("APTEL") to the Petitioners vide Order dated 21.05.2020 in Appeal No. 71 of 2020, titled "Sea Shell & Anr. vs. JERC Ors". The said Appeal was preferred by the Petitioners against the impugned Tariff Order dated 20.05.2019 passed by this Hon'ble Commission in Petition No. 274 of 2019 filed by the Electricity Department of Andaman & Nicobar Islands (A&N Islands) for the approval of True up of FY 2015-16 & Aggregate Revenue Requirement (ARR) for 2nd MYT Control Period (FY 2019-20 to FY 2021-22) & determination of retail supply tariff for the FY 2019-20 in so far as it directs the Electricity Department to charge tariff applicable for Commercial category to all the hotel establishments, including the Petitioners (herein after referred to as "Impugned Direction".
- 2 That the present Petition raises the following issues for adjudication:
 - I. Whether the Impugned Direction is arbitrary, having been passed contrary to the decision of this Hon'ble Commission with regard to the category of tariff for 'hotels' in the State of Goa, as stated in Tariff Orders of FY 2017-18 (Dated 23.05.2017 in Petition No. 228/2017), 2018-19 (Dated 28.03.2018 in Petition No. 249/2017) and 2019-20 (Dated 20.05.2019 in Petition No. 266/2018);
 - II. Whether the Impugned Direction is arbitrary and overlooking the stand taken by this Hon'ble Commission vis-a-vis other similar establishments (such as a Bakery) situated in Andaman and Nicobar Islands, wherein the said establishments have been accorded the benefit of tariff under 'Industrial' category upon fulfillment of the requisite criteria, as stated in the Tariff Order dated 31.03.2015 passed in Petition nos. 152/2014 and 155/2014?
- 3 The facts leading to the filing of the present Petition are given below:
 - (i) The Andaman and Nicobar Administration ("Administration") in the year 1987 had passed an Administrative Order ("A.O.") 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) Para 2(v) of the said A.O. further 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 realizing 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 ("A.O. dt. 27.05.2011").
- (v) The aforesaid A.O. appears to be on a similar footing as of Circular No. F No. EL/PL/10-1/2011/1522 dated 04.03.2011 ("Circular dt. 04.03.2011") which was issued by the Respondent Department under the signatures of Assistant Engineer (PU) wherein both the Petitioners have categorically been identified as 'Industry' (at S.No.3 and 6) for the purposes of extending such Industrial tariff benefits.
- (vi) That on 28.11.2011 the first Tariff Petition came to be filed by the Respondent Department before this Hon'ble Commission seeking Approval of ARR & Tariff Proposal for FY 2012-13 wherein 'Hotels' were sought to be categorized under "Commercial" category.
- (vii) It is submitted that the Respondent Department filed the said Tariff Petition in complete derogation of and disregard to the directions and recommendations made by the Administration in A.O. dt. 06.04.1987 as well as the A.O. dt. 27.05.2011, wherein it is categorically stated that 'Industrial Tariff is to be raised from Hotels which were registered under 'Industrial' category by the Administration. However, the said Tariff Petition sought to place all Hotels under the 'Commercial' category without mentioning any placeholders or conditions in terms of the aforesaid A.O.s with regard to the category of hotels registered as an Industry.
- (viii) Accordingly, all "Hotels" were classified under "Commercial" category in the first Tariff Order dated 04.06.2012, without any distinction between those registered as an 'Industry'.
- (ix) It is further pertinent to mention that between 2008-2012, the Petitioners were issued Udyog Aadhaar by MSME for their properties. As such, they are recognized as "Industry".
- (x) Accordingly, by virtue of the aforesaid A.O. dt. 27.05.2011, and Circular dt. 04.03.2011, the Petitioners 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 Respondent Department and since then, the Petitioners have been charged electricity tariff under the "Industrial" category.
- (xi) It is therefore evident that the position remained unchanged even after the first tariff order dated 04.06.2012, till the impugned direction was passed in the Impugned order.
- (xii) In this regard, attention may also be drawn to Letter dt. 10.10.2014 issued by the Directorate of Industries, A&N Administration to the Respondent Department recommending extension of benefits under 'Industrial' tariff to the hotels managed by

Petitioner No. 1. According to this Letter, the Petitioner No. 1's hotel was declared as Small Service enterprise and also recommended the extension of benefits under Industrial Tariff.

- (xiii) It is pertinent to mention here that the above mentioned circular/ letter appears to have been issued in response to a Letter dated 08.01.2014 (reference of which is made in the circular dated 10.10.2014) issued by the Respondent Department itself, both of which have been issued post the first tariff order of this Hon'ble Commission dated 04.06.2012. This prima facie demonstrates the intention of the Respondent Department to recognize certain Hotels, including those of the Petitioner, as an Industry and thereby continue to extend the benefit of Industrial Tariff to them.
- (xiv) Similarly, a request for conversion was also made by a Hotel located at Dollygunj, Port Blair, Andaman, which is being managed by Petitioner No. 2, which was considered by the Respondent Department and benefits under the Industrial Tariff were also extended to the said Hotel, as reflected in the Electricity bills issued thereafter.
- (xv) Without prejudice to the Petitioner's contentions and submissions, it is submitted that pursuant to the Tariff Order dated 04.06.2012 coming into force the Electricity Department & this Hon'ble Commission ought to have adhered to the procedure stipulated under the JERC Regulations for any rectification and/or reclassification of category by affording an opportunity of hearing to the affected parties.
- (xvi) 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, Andaman and Nicobar Administration, a communication in this regard is addressed to the Respondent 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 Petitioners by the Respondent Department.
- (xvii) That on or about 30.01.2019, the Respondent Department filed Petition in question being Petition No.274/2019 before this Hon'ble Commission for approval of True up for FY 2015-16 & Approval of Aggregate Revenue Requirement for the 2nd MYT Control Period (FY 2019-20 to FY 2021-22) & Retail Supply Tariff for FY 2019-20. A prima facie perusal of the Petition would show that the revenue computed therein was based inter alia on the tariffs imposed on various consumers, including the hotels, and the truing up was being undertaken on the basis thereof. There is no specific pleading, proposal or prayer seeking recategorization of Hotel establishments nor for any directions for charging the Hotel establishments under Commercial category, in view of the on-going practice of realizing tariff under 'industrial' category from certain category of hotels. The said Petition raised issues such as framework for calculating tariff, components of ARR, data of expenses and debt and calculations for ARR, parameters of MYT etc. Therefore, the scope of the said Petition at no point warranted directions for fixation of tariff qua a particular Industry.
- (xviii) However, to the utter shock and surprise of the Hotel establishments including the Petitioners, this Hon'ble Commission passed the Impugned Order dated 20.05.2019 inter-alia making the following observation (at Page 93), without giving any opportunity to the relevant stakeholders of being heard: "It has come to notice of the Commission that the hotels are being charged industrial tariff though as per the rate schedule approved by the

Commission, categorizes it under Commercial Category. Therefore, the Commission directs the Petitioner to charge tariff applicable for Commercial category to all the hotel establishment, failing which, the Commission may take an appropriate view considering the non-compliance of Commission's direction.

4. The said direction caused a sudden, steep rise in tariff from Rs.7.5 Per kWh to Rs.12.0 Per kWh, i.e. more than 60%, thereby impacting the sustainability of the business of hotels.
5. In this regard, it is also pertinent to highlight another Tariff Order for A&N Islands, wherein the Respondent Department, while responding to a query raised by similar establishment of a 'bakery', i.e. whether their enterprise would fall under the Industrial category or not, had stated that "The issue of conversion from commercial to industrial category is being considered by the department based on the certificate issued by industries department". Pursuant to which, this Hon'ble Commission submitted its view stating that "The objector may obtain certificate from Industrial Department stating that Bakery comes under "Industry", so as to consider it under industrial category.
6. Therefore, were it not for the said Clarification by this Hon'ble Commission, the bakery would still have been treated as a "restaurant" and be liable to be billed under the "commercial" category.
7. Further, this Hon'ble Commission, in another Tariff Order passed on a Petition preferred by the Dept. of Electricity, Govt. of Goa for FY 2017-18, had categorically stated that that 'Hotels with lodging and boarding facilities' would be classified under Industrial tariff. It has been specifically provided that 'hotel industry consumers intending to avail the facility of this tariff should produce a certificate from the Tourism Department stating that the intending applicant is registered under Goa Registration of Tourist Trade Act. 1982 and in the Hotel business on the regular basis. On the receipt of the certificate, such tariff shall be made effective from the date of original validity of certificate. It is pertinent to note that this Hon'ble Commission has confirmed the aforesaid treatment of hotels with boarding and lodging facilities as Industries, subject to the fulfillment of the same conditions as substantiated in its Tariff Orders passed for FY 2018-19 and 2019-20. The said dispensation for FY 2017-18 was carried forth by this Commission in FY 2018-19 as also in FY2019-20. Interestingly, the Order for FY2019-20 (for the State of Goa) was passed on the same day as the Impugned Tariff Order for A&N.
8. It is also pertinent to mention here that pursuant to the Impugned Order for the year 2019-20, the Hotelier's Association wherein the Petitioners are members in March 2020 on its own accord submitted its submissions to this Hon'ble Commission on the issue of categorization of 'hotels' during the public hearing conducted on 04.03.2020 in the Petition for the tariff year 2020-21. It may be noted that even the said Petition does not discuss any issue of the categorization of commercial and industrial establishments.
9. It is submitted that the Petitioners have been registered with the Directorate of Industries, Ministry of Micro, Small and Medium Enterprises (MSME), Andaman and Nicobar administration and are recognized as an 'Industry' in the Union Territory and accordingly, are extended subsidies, including electricity tariff payable under the category of 'Industry', for promotion and growth of the tourism in the islands, which is the backbone of its economy.



- 10. 12.** It is further submitted that the Impugned Order has had a direct impact on the sustainability of businesses, including that of Petitioners. In this regard, it is submitted that the fixed operational costs such as electricity form a component of daily room tariffs of the hotels and thus are passed on to the customers. The steep hike in electricity tariff would therefore lead to a steep increase in the tariffs and thus directly impact the business and sustainability of the Hotel industry in Andaman and Nicobar Islands. It would also affect tourism, which is the backbone of the economy of the islands, for the growth of which the administration provides financial assistance.
- 11.** It is further pertinent to bring to light a Representation which was addressed in this regard on 20.09.2019 by the Union Minister of State (I/C) for Culture and Union Minister of State (I/C) for Tourism, Sh. Prahlad Singh Patel to the Administrator, Andaman and Nicobar Islands, Port Blair raising concern over the upcoming series of developmental projects to give boost to tourism in the islands to make them major tourist attraction like Maldives and Mauritius. He also stated that these projects are expected to bring huge investments to the tune of more than Rs.650 Crores having built in capacity of generating 60% local employment and that the Government has also taken various steps to pave the way for 'Ease of Tourism' in the islands. He has also advised the administrator that the Commission be asked to give concession to the hotel industry, treating it under industrial category.
- 12.** That the Petitioners' Hotels also carry out various ancillary activities on a daily basis such as procurement and treatment of water in order to make it potable and fit for consumption due to lack of supply from the authorities, undertaking treatment of sewage due to lack of sewage system etc. This too requires substantial electricity consumption which is constant overhead all through the year, irrespective of hotel occupation. As a result, the overall impact of the sudden substantial increase in electricity tariff is exponential on the entire hotel industry, thereby making sustenance in the tourism industry difficult and unviable in the long run.
- 13.** That it is further pertinent to highlight that the high electricity production costs incurred by the Respondent Department is due to the ineffective methods of production adopted by the department viz. using high cost raw material such as diesel as against other, more cost-effective material. It is submitted that it is this high production cost which would create a revenue gap and eventually pass on to the consumers, especially in an industry which supports and provides maximum employment in the islands, would wreak havoc to the entire industry, and hence the entire economy, as the islands are already competing with other popular neighboring tourist destinations.
- 14.** In light of the aforesaid facts and circumstances and being aggrieved by the Impugned Order dated 20.05.2019 of this Hon'ble Commission, the Petitioners had preferred an Appeal before the Hon'ble APTEL (Appeal No. 71 of 2020), wherein the Hon'ble Tribunal has been pleased to grant liberty to the Petitioners to raise the aforesaid issues before this Hon'ble Commission.

The brief of the arguments advanced on behalf of the Respondent are as under: -



1. That the Respondent has requested the Commission to set aside the directions given at Sl. No. 11 of the impugned Tariff Order dated 20.05.2020 in Petition No. 274/2019 wherein the Commission has recorded that it had come in its notice that the Hotels are being charged Industrial tariff though as per the rates schedule approved by the Commission Hotels should be charged under Commercial category. The Commission had directed the Petitioner to charge tariff from the hotel industry under Commercial category, failing which Commission might take an appropriate view considering the non compliance of the Commission's direction.
2. That the Joint Secretary of the District Industries Centre, Andaman & Nicobar Administration, Port Blair vide its Letter No. 1-6/DIC/Accts/Exp/2006/164 dated 02.03.2010 requested the Superintending Engineer, Electricity Department, Port Blair that the electricity charges from Hotel and Restaurants may kindly be levied as per the rates applicable to the Industrial Sector.
3. 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.
4. It is further pertinent to bring to light a Representation which was addressed in this regard on 20.09.2019 by the Union Minister of State (I/C) for Culture and Union Minister of State (I/C) for Tourism , Sh. Prahlad Singh Patel to the Administrator, Andaman and Nicobar Islands, Port Blair raising concern over the upcoming series of developmental projects to give boost to tourism in the islands to make them major tourist attraction like Maldives and Mauritius. He also stated that these projects are expected to bring huge investments to the tune of more than Rs.650 Crores having built in capacity of generating 60% local employment and that the Government has also taken various steps to pave the way for 'Ease of Tourism' in the islands.
5. That the Respondent further submits that appropriate order may be passed by modifying the direction No. 11 of Order dated 20.03.2019 by directing the Respondent herein to ensure the applicability of Tariff of Industrial Category instead of Commercial Category to all the Hotels and Restaurants.
6. That the non-inclusion of the applicability of Industrial Tariff to the Hotels and Restaurants in the earlier Tariff Petitions may kindly be condoned.

The Commission has perused the judgement passed in appeal no 71/2020 by the hon'ble APTEL, considered the submissions made by the Review Petitioners and the Respondent. The Commission has also examined the entire records placed before it along with specific relevant provisions of the Electricity Act, 2003, Rules and Regulations made thereunder. At the same time Commission also revisited the specific part of the impugned tariff order dated 18.05.2020, challenged herein by the Review Petitioners.



The Commission's Powers 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 of 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 open 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 has noted that the Review Petitioners have contended that Industrial Tariff be allowed for the hotels in Andaman & Nicobar islands primarily based on the following pleas:-

1. Hotel Industry was being charged industrial tariff as per the O.M. dated 06.03.1987 and AO dated 25.05.2011.
2. Regarding Bakery the Commission in the impugned Tariff Order dated 20.05.2019 has held that "the Objector may obtain certificate from industrial department stating therein that Bakery comes under Industry so as to consider it under Industry Category".
3. Letter dated 20.09.2019 of Shri Prahalad Singh Patel, Union Minister of State (I/C) for Culture and Union Minister of State (I/C) for Tourism, Government of India to the Administrator that for development of tourism in Andaman and Nicobar the Commission be asked to give concession to the hotel industry, treating it under Industrial Category.



4. Commission's Order regarding State of Goa for 2017-18 wherein hotels have been made eligible for Industrial category tariff based on certificate to be issued by the Tourism department as per Goa Registration of Tourist Trade Act, 1982.
5. Tariff shock by restoring the category from Industrial to Commercial by the Electricity Department, A&N based on the impugned directions of the Commission.

The Commission is not inclined to accept the Plea No.1 above as the ground given is not tenable as both these orders of A&N Administration were issued prior to the date when the Commission started fixing tariff for Andaman & Nicobar Electricity Department. From the very first Tariff Order issued by the Commission, hotels were put under Commercial category, and consistently so, in all Tariff Orders which followed, as per the request made in all such Tariff Petitions by the Electricity Department, Andaman & Nicobar Islands.

The Commission is also not inclined to accept the Plea No.2 as the ground given here is again not tenable because the Commission has asked the concerned bakery to produce a certificate from Industries department which would show that bakery is doing production like an industry whereas there can be a small bakery which is manufacturing product on retail basis and selling the same. Hence the later would come under Commercial category in the absence of any certification from the Industries department.

The Commission is also not inclined to accept the above mentioned plea No.3 because the letter of the Hon'ble Minister, Government of India as it is only advisory in nature and therefore not binding on the Commission. However, if the Respondent had placed the said letter of the Hon'ble Minister along with its petition before the Commission or raised this issue in public hearing or by filing additional information before the Commission passing the Tariff Order for FY 20-21, the Commission would have considered it appropriately in its Tariff Order.

The plea No.4 is also not acceptable to the Commission because the ground taken by the Review Petitioner is not tenable since ED, Goa, unlike ED, A&N, had specifically sought Industrial status for hotels registered under Goa Tourist Trade Act. The Commission had accepted the same and reflected Industrial status for such registered hotels in its Tariff Order. It is pertinent to mention that in the state of Goa hotels come under two categories, i.e. those which are registered under Goa Tourist Trade Act, 1982 and doing hotel businesses on regular basis and therefore come under Industrial Category and others which are not registered under the said Goa State Act and come under Commercial Category. At the same time, however, there is no such Act in Andaman & Nicobar Islands for hotels.

The Plea No.5 is also not acceptable to the Commission as again ground is legally not tenable as the Commission, right from the FY 2012, has all along consistently categorized the hotel industry under Commercial category, based on the Tariff Petitions submitted by the ED, A&N and therefore it is not a case that hotel industry was shifted from Industrial to Commercial category by the Commission. The issue of review of categorisation for the hotel industry was never raised by the ED, A&N in any of its Tariff Petitions.

At the same time, the Commission is inclined to accept the following submissions of the Respondent and the Review Petitioner as mentioned below:



That the Review Petitioner has sought comparison with the State of Goa because both the places have tourism oriented economy where hotels and tourism activities serve as the mainstay of business and commerce. The Commission has noted that the Review Petitioner has put emphasis on getting Industrial Tariff because tourism in the State of Goa and Andaman & Nicobar Islands is the main business activity and hotels in both the places are most essential ingredient to boost up tourism. The Review Petitioner is making a sincere plea to convince the Commission that hotel industry is the mainstay and backbone of the economy of the Andaman & Nicobar Islands as it is so in the State of Goa. The hotels at both these places generate substantial employment at various levels for local population; therefore, both be treated in similar manner with respect to tariff i.e. in the Industrial Category. The Review Petitioner contends that differential treatment in tariff for hotel industry between Andaman & Nicobar and the State of Goa lacks reasonable justification and in turn violates Article 14 relating to Fundamental Rights in the Constitution of India. Such submission of the Review Petitioner is based on the grounds of unique geographical conditions of Andaman & Nicobar Islands different from the mainland and also the fact that tourism is the main activity in Andaman & Nicobar Islands like in the State of Goa, which to a large extent is facilitated by hotels and which at the same time has a big potential to generate local employment.

That this (comparison with Goa) is indeed the limited issue for which this Review Petition has been mandated by the Hon'ble APTEL. Strictly speaking, the Commission would have expected the Respondent to do some fact checking and due diligence at their end before submission of Tariff Petition earlier and like Goa, should have sought appropriate categorization for hotels as per the industry policy of the A&N Administration, obviating the need for the matter to come to such a pass, draining time and resources of the stakeholders. Nevertheless, the Commission has noted with due empathy, the geographical constraints and economic similarity with Goa. The tourism ecosystems at both the places are critically dependent on economic viability of hotels. Also hotels at both this places are significant employment generators for the local populace.

That the Respondent on an affidavit unconditionally accepted its mistake that since the first tariff petition filed by them they never requested the Commission to place hotels in industrial category but always asked to place the hotels in commercial category. Though in total violation of Commission's orders they charged the hotels in industrial category. This is a very unlawful act on their part which they kept very close to their chest till they filed this Affidavit. The Respondent has sought the Hon'ble Commission's indulgence for condoning such act of omission.

In support of the above mentioned views, the Commission is putting reliance on Section 62 of the Electricity Act, 2003 which provides that:

“(1 The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for - narrating 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*

(3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.

At the same time the Commission has noted that the Respondent did not oppose any contention of the Review Petitioner rather they requested the Commission to modify the Impugned Tariff Order to bring the hotels under industrial category.

In view of the above, the Commission has accepted the submissions of the Review Petitioner and the Respondent pertaining to grant of Industrial Tariff as is granted to hotels in the state of Goa and allows this Review Petition on this limited issue. The Commission further directs the Respondent to charge the hotels in the Industrial Category in place of Commercial Category as directed by the Commission through its impugned note in the impugned Order dated 20.05.2019.

However at the same time Commission feels that it is pertinent to mention here that the Respondent has totally failed in discharging its duty. The Review Petitioner has at this stage made a mention about a letter dated 20.09.2019 from Sh. Prahalad Singh Patel, Union Minister of State (I/C) for Culture and Union Minister of State (I/C) for Tourism, addressed to the Lt. Governor of A&N, asking to give concession to the hotel industry in A&N by placing the hotels in Industrial category for the purpose of development of tourism in the island. This letter ought to have been brought to the notice of the Commission by the Respondent and request made, corroborating this plea in the Tariff Petition filed in Nov., 2019 by the Respondent, since this information was available at the time of filing the Tariff Petition.

The Respondent also violates Section 62 and 64 of the Electricity Act. The Commission is empowered under section 62 to determine the tariff of the various categories of the consumers and no utility is allowed to deviate from such tariff, as determined by the Commission while charging the consumers. The Commission notes with displeasure that the Respondent totally ignored the tariff determined by the Commission by charging Industrial Tariff from hotels in place of Commercial tariff determined by the Commission on the basis of the Petition filed by the Respondent itself. This very act of the Respondent attracts penal action against them under Section 142 of the Electricity Act. However, keeping in mind the submissions of the Respondent the Commission advises the



Respondent to adhere strictly to the tariff determined by the Commission in future to avoid repetition of such blunder on their part and penal consequences.

Ordered accordingly

Sd/-

**(M.K.GOEL)
Chairperson**

Certified Copy



**(Rakesh Kumar)
Secretary, JERC**