

**BEFORE THE ELECTRICITY OMBUDSMAN**  
**(For the State of Goa and Union Territories)**  
**Under Section 42 (6) of the Electricity Act, 2003**  
**3<sup>rd</sup> Floor, Plot No. 55-56, Udyog Vihar - Phase IV, Sector 18,**  
**Gurugram (Haryana) 122015,**  
**Phone No.:0124-4684708, Email ID: [ombudsman.jercuts@gov.in](mailto:ombudsman.jercuts@gov.in)**

**Appeal No.170 of 2022**

**Date of Hearing: 28.07.2022**

**Date of Order: 10.08.2022**

Shri Ashok Kumar  
C/o-M/s Andaman Cold Chain,  
Andaman & Nicobar Islands  
Port Blair

**.... Appellant**

**Versus**

The Superintending Engineer,  
Electricity Department, and others  
Andaman & Nicobar Islands  
Port Blair

**.... Respondents**

**Parties present:**

**Appellant(s)**

Shri Rahul Aggarwal,  
Appellant's son /Representative

**Respondent(s)**

Smt. Deepa Nair,  
Executive Engineer



**Date of Order: 10.08.2022**

The Appellant has preferred an Appeal against CGRF-A&NI, for not passing the order within the prescribed time limit in Complaint No-ANI/CGRF/239/21-22/27 dated-25.03.2022 .The appeal/representation received in this office on 16.06.2022 by email and the same was admitted for examination and consideration on 17.06.2022. Copy of the same as received was forwarded to the Respondents with a direction to file the counter reply in the required format, to the appeal/representation within 20 days from the date of Admission Notice. The Respondents have filed the counter reply and a copy of the same was supplied to the Appellant to file a Rejoinder.

**Settlement by Mutual Agreement**

Both the parties appeared before the Electricity Ombudsman on 28.07.2022 at Port Blair and were heard. Efforts were made to reach a settlement between the parties through the process of conciliation and mediation. However, no settlement mutually agreeable could be reached. The hearing therefore, continued to provide reasonable opportunity to both the parties to put forth their pleading on the matter.

**(A) Submissions by the Appellant:**

**Appellant submitted the brief facts as under:-**

- (a) Appellant submitted a representation dated-25.03.2022 to CGRF-A&NI, stating that I have allotted a land of 1500 sq. mt. in Dollygunj Industrial Estate for establish a project named as "ANDAMAN COLD CHAIN" promoted by MOFPI (ministry of food processing industries) & we got 3 phase connection on 24.09.20 after completing all formalities like as security deposit & estimate amount & all cost of connection & transformer paid by Directorate of industries.

Sir we were not running our unit in full efficiency due to Covid 19. Now the situation became normal and we running the unit regularly.

Sir our unit is located in industrial area & registered with MSME therefore our unit should be in industrial category instead of Commercial category. Sir already I request to convert the category from commercial to industrial in concern dept. on 13.09.2021 but there is no response by the Electricity Department, Sir already we have paid a huge amount of electric bill because of Commercial category billing.

Sir respectfully I request for convert the category from commercial to industrial as soon as possible without any security deposit. All supporting documents are attached with this application.

- (b) However, the CGRF-A&NI has not passed the order within the prescribed time limit as per Consumer Grievance Redressal Forum and Ombudsman Regulations-2019.



**(B) Submissions by the Respondents :**

Shri. Karuna Jaydhar, working as Superintending Engineer, A&N Administration, Electricity Department submitted on oath as under: -

1. That the deponent is working as Superintending Engineer, A&N Administration, Electricity Department (Licensee) and also looking after the additional charge of Executive Engineer (HQ), A&N Administration, Electricity Department.
2. **That parawise counter reply is as under :-**
  - i. The authorized officer of licensee i.e. Assistant Engineer, Sub-Division-II, HQ Division, has informed that the complainant / appellant has submitted letter vide R.D. No. 1288 dated 11.08.2021, for **CHANGE OF OWNERSHIP** of energy meter under consumer Account No. G1/1611 from Shri. Ashok Kumar to M/s. Andaman Cold Chain (**Annexure‘A’**).
  - ii. In receipt of request for change of ownership of energy meter under consumer Account No. G1/1611, the same was immediately processed.
  - iii. However, on receipt of report from Junior Engineer of concerned site office, the authorized officer of licensee i.e. Assistant Engineer, Sub-Division-II, HQ Division, has issued a demand note vide No. EL/HQ/SD-II/2-5/2020-21/788 dated 27.08.2021 (**Annexure‘B’**), to deposit amount of additional Security Deposit as per present connected load under consumer Account No. G1/1611, so as complete the process of change of ownership at the earliest. But the appellant didn't collected the above demand note from the office of the Junior Engineer, Minnie Bay site office, Electricity Department, till date, even multiple requested made by concerned Junior Engineer over phone as well as in person.
  - iv. Further, the applicant had again submitted a letter to Junior Engineer, Dollygunj site office vide R.D. No. 422 dated 13.09.2021(**Annexure-‘C’**), for **CHANGE IN CATEGORY**.
  - v. However, the file for change in category of consumer Account No. G1/1611, has been processed and accordingly, vide letter No. EL/HQ/SD-II/2-5/2021-22/896 dated 15.09.2021 (**Annexure‘D’**), had requested the applicant to deposit the additional amount of security deposit as per the present connected load as assessed by concerned Junior Engineer during inspection, so as to complete the process of change in category at earliest.
  - vi. But again, the applicant did not turn up for the completion of codal formalities and deposit of additional security amount in lieu of present connected load.



- vii. The above-mentioned demand notes are pending with Junior Engineer, Minnie Bay site office, till date.
- viii. The site office of Junior Engineer, Minnie Bay site office, is situated within the 200 mtrs. distance from the premises of appellant. Due to the non-completion codal formalities the demand notice dated 27.08.2021 and dated 15.09.20221, are pending with Minnie Bay site office till date.
- ix. The department is keen to consider the request of change of ownership and category, but it is also an equal responsibility of consumer to complete the codal formalities for consideration of their case.

**(C) Ld CGRF-A&NI, preferred for Appeal**

(i) After registering the complaint on 25.03.2022, Ld. CGRF-A&NI, has neither heard the matter nor has passed any order within the stipulated time as required as per Consumer Grievance Redressal Forum and Ombudsman Regulations-2019, as the appointment to the vacant posts of Chairman and Member of CGRF have not finalized by the Distribution Licensee/Andaman & Nicobar Islands Administration till date.

**(D) Deliberations during hearing on 28.07.2022 at Port Blair :-**

**1. Appellant's Submission:-**

- (a) Shri Rahul Aggarwal –Appellant representative, reiterated his version as submitted in the Appeal and requested for change of category from Commercial to Industrial tariff.
- (b) On being asked by this Court as to, is there any provision in the Tariff Order duly approved by the Hon'ble Regulatory Commission that Industrial tariff should be charged to Cold Storage Chains/Plants, he pleaded ignorance. However, he submitted that since Industrial plot has been allotted to them by the Industries Department and his unit is duly registered with the MSME and promoted by MOFPI (Ministry of food processing industries), therefore they should be charged Industrial Tariff instead of Commercial Tariff.

**2. Respondent's Submission:-**

- (a) Smt. Deepa Nair -Executive Engineer for the Respondent reiterated her version as submitted in the counter reply to the Appeal.



- (b) On being asked by this Court as to where it is written in the Tariff Order duly approved by the Hon'ble Regulatory Commission that Industrial tariff should be charged to Cold Storage Chains/Plants, she also pleaded ignorance.

**(E) Findings & Analysis:-**

1. I have perused the documents on record and pleadings of the parties.
2. The documents submitted by the parties have been believed to be true and if any party submitted a fake/forged document, then they are liable to be prosecuted under relevant Indian Penal Code/Rules/Regulations.
3. The issues which have arisen for considerations in the present Appeal is as under: -
  - i. Whether the Appellant is entitled to relief for changing the Commercial Tariff to Industrial tariff for his Cold Chain Unit, as prayed for?
4. (a) Regarding issue no 3(i) as above, as to whether the Appellant is entitled to relief for changing the Commercial Tariff to Industrial tariff for his Cold Chain Unit, as prayed for?
 

(b) Following provisions have been notified by the Hon'ble Joint Electricity Regulatory Commission in Tariff Order dated -31.05.2021 regarding Tariff and Applicability in respect of Commercial and Industrial categories:-

**"7. Chapter 7: Tariff Schedule**

**7.1. Tariff Schedule**

Sl. No	Category	Fixed Charges	Energy Charge(INR/kWh)
3.	<b>Commercial</b>		
	0-200 Units	INR30/- per connection per month or part thereof for single phase INR 125/-per connection per month or part thereof for three phase	7.50
	201 to 500 Units		9.50
	501 and above		12.75
5.	<b>Industrial</b>		
	0-500 Units	INR 50/- per KVA per month or part thereof	6.00
	501 Units & above		9.00



## 7.2-Applicability:-

Sl. No	Category	Applicability	Point of Supply news
5.	<b>Industrial Supply</b>	The schedule will apply for supply of energy for lighting, fan and power to industrial establishments & industries such as wood-based, cottage, small scale, medium scale, finishing shell based and any other establishments/organizations engaged in the manufacturing and processing of goods for sale, rice, mills, flour mills, workshops, dry docks, factories base repair organizations, public water works & gem cutting units	The supply will be given through a single delivery and metering point and at a single voltage.

(c) Joint Electricity Regulatory Commission (JERC) is a quasi judicial body functioning as per the first proviso to the Section 82 of the Electricity Act, 2003.

(d) (i) As per the Section 86 (1) (a) of the Electricity Act, 2003 read along with the Section 61, 62 and 64 of the Electricity Act, 2003, determination of tariff is one of the statutory functions of the Commission. Section 86(1) (a) of the EA-2003 is extracted below for ready reference.

*"86. (1) 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"*

(ii) Section 64 of the Electricity act, 2003 prescribe the procedure for issuing tariff order by the Commission, which is extracted below for ready reference.

*"64. (1) An application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations.*

*(2) Every applicant shall publish the application, in such abridged form and manner, as may be specified by the Appropriate Commission.*

*(3) The Appropriate Commission shall, within one hundred and twenty days from receipt of an application under sub-section (1) and after considering all suggestions and objections received from the public, -*

(a) Issue a tariff order accepting the application with such modifications or such conditions as may be specified in that order;

(b) Reject the application for reasons to be recorded in writing if such application is not in accordance with the provisions of this Act and the rules and regulations made there under or the provisions of any other law for the time being in force:

Provided that an applicant shall be given a reasonable opportunity of being heard before rejecting his application.

(4) The Appropriate Commission shall, within seven days of making the order, send a copy of the order to the Appropriate Government, the Authority, and the concerned licensees and to the person concerned.

(5) Notwithstanding anything contained in Part X, the tariff for any inter-State supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor:

(6) A tariff order shall, unless amended or revoked, shall continue to be in force for such period as may be specified in the tariff order.

(iii) Section 62(3) of the EA-2003 empowers the Commission to differentiate the electricity consumers based on the purpose of the usage of electricity etc. The relevant Section is extracted below.

*"62(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.*

(e) After the constitution of Commission (JERC), Electricity Department-Andaman and Nicobar Island is regularly filing a detailed proposal for revision and recategorization of tariff in its jurisdiction and last tariff petition was filed on 23.04.2021. The Commission admitted the petition as Petition No-44/2021 and published its abstract in Hindi, Bengali and English dailies. The Commission conducted the virtual Public Hearing on the Petition on 18.05.2021, duly considering the deliberations during the Public Hearing, written comments as well as voiced by the stake holders as per the provisions of the Electricity Act, 2003. The Commission on 31.05.2021, approved the retail tariff applicable to all consumers with effect from 01.06.2021. The Commission uploaded the tariff order at its website and directed the licensees also to upload it at their website as well as published the abstract in newspapers.

(f) As per the Section 111 of the Electricity Act, 2003, any person aggrieved by the tariff order of the Commission dated 31.05.2021 has to prefer an appeal before Hon'ble Appellate Tribunal for Electricity, New Delhi. The relevant Section of the Electricity Act, 2003 is extracted below.

*"111. (1) Any person aggrieved by an order by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity."*

(g) As per the Section 45 of the Electricity Act, 2003, the distribution licensee has to levy the electricity charges from the consumers at the Tariff determined by the Commission from time to time. The relevant Section is extracted below for ready reference.

*"45. (1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his license.*

*(2) The charges for electricity supplied by a distribution licensee shall be –*

*(a) Fixed in accordance with the methods and the principles as may be specified by the concerned State Commission:*

*(b) Published in such manner so as to give adequate publicity for such charges and prices.*

*(3) The charges for electricity supplied by a distribution licensee may include –*

*(a) a fixed charge in addition to the charge for the actual electricity supplied;*

*(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee."*

*(4) Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.*

*(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.*

(h) Therefore the Hon'ble Commission (JERC) after following due process of law has determined the tariff to be charged from different categories of the consumers. Hon'ble Commission in the Tariff Order dated 31.05.2021, has nowhere in the Industrial Category has determined that Industrial Tariff should be charged to Cold Storage Chain/Plants. The CGRF or the Ombudsman has no authority to determine the tariff to be charged to any category of consumers.

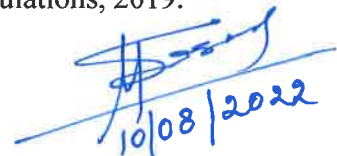




(i) In view of the above submissions, I am of the considered views that CGRF or the Electricity Ombudsman has no jurisdiction to determine whether Commercial tariff or Industrial tariff is to be charged to the Cold Storage Chain/Plant of the Appellant.

**(E) DECISION**

1. For the reasons discussed above, the appeal of the Appellant is dismissed for lack of jurisdiction.
2. Therefore, for lack jurisdiction, I do not propose to take up the grounds raised by Appellant/Respondents in this Appeal.
3. The Appellant is at liberty to approach the competent authority for redressal of his grievances.
4. In case, the Appellant or the Respondents are not satisfied with the above decision, they are at liberty to seek appropriate remedy against this order from the appropriate bodies in accordance with Regulation 37(7) of the Joint Electricity Regulatory Commission (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2019.
5. The appeal is disposed of accordingly.

A handwritten signature in blue ink, followed by the date '10/08/2022' written below it.

(M.P. Singh Wasal)  
Electricity Ombudsman  
For Goa & UTs (except Delhi)

**Dated: 10.08.2022**

