

**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,  
, Email ID: [ombudsman.jercuts@gov.in](mailto:ombudsman.jercuts@gov.in)  
Phone No.:0124-4684708

**Appeal No-201 of 2023**

**Date of Video Conferencing: 21.09.2023**

**Date of Order: 27.09.2023**

M/s Icy Spicy Foods Pvt. Ltd.  
Andaman & Nicobar Islands,  
Port Blair

**.... Appellant**

**Versus**

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

**.... Respondent**

**Parties present:**

**Appellant(s)**

1. Shri A. Ganapathy,  
Appellant Representative

**Respondent(s)**

1. Smt. Madhuri Shukla,  
Executive Engineer



**Date of Order: 27.09.2023**

The Appellant has preferred an Appeal No-201 of 2023 against Non-implementation of CGRF-A&NI order in Complaint no-ANI/CGRF/270/23-24/02 dated-31.07.2023 filed by M/s Icy Spicy Foods Pvt. Ltd. The Appeal was admitted on 25.08.2023, as Appeal No.201 of 2023. Copy of the same as received was forwarded to the Respondents with a direction to submit their remarks/ counter reply on each of the points. The counter reply received from the Respondents was supplied to the Appellant for filing the Rejoinder.

**(A) Submissions by the Appellant**

**FACTS OF THE CASE: -**

1. That the CGRF (Forum) agreed for change of Consumer Category from Hotel to Industry with effect from June. 2023 recorded in the Order of the Forum dated 31/7/2023
2. That The Applicant (M/s Icy Spicy Foods Pvt. Ltd.) did not apply for change in Consumer Category to the Respondent (Electricity Department).
3. That the Applicant (M/s Icy Spicy Foods PVT Ltd.) was not asked to pay the difference amount of Security Deposit and Estimate Charges by the Respondent (Electricity Department).
4. That no official communication was made to the applicant (M/s Icy Spicy Foods Pvt. Ltd.) by the Respondent (Electricity Department) while changing Consumer Category from Industry to Hotel.
5. That Forum's Observation recorded in Para II that the category from Industrial to Hotel that changed/ modified by the Respondent (electricity Department) was correct/wrong which was forcefully imposed by the Licensee/ Respondent. Such willful modification in category was done by the Respondent (Electricity Department) during October, 2022. As such the applicant (M/s Icy Spicy Food Pvt. Ltd.) deserve the right to get back surplus amount that the Respondent (Electricity Department) claimed by raising bills in Hotel Category and received from the Applicant (M/s Icy Spicy Foods Pvt. Ltd.) The Applicant being a Consumer of Industrial Category, had to pay tariff amount for hotel Category and that is only because of willful act in the part of

the Respondent. (Electricity Department) Para IV of Forum's Observation – Exbt-4).

6. That para-V of the Forum's Observation is not in accordance to the Para Iv since documentary evidence (Exbt-4) in para IV reveals that from October, 2022 onwards the category was changed Industrial to Hotel. As such rectification in category pertaining to the Consumer No- J/8006 should have to be done from October, 2022 Instead of June, 2023.
7. That the Applicant (M/s Icy Spicy Foods Pvt. Ltd.) has sustained monetary losses since October, 2022 due to wrongfully change of category of Consumer No. J/8006 from Industrial to Hotel by the Respondent (Electricity Department)
8. That the Applicant (IM/s Icy Spicy Foods Pvt. Ltd.) in the petition submitted before the Forum requested for relief to the extent of reimbursement of surplus amount collected by the Respondent (Electricity Department) by wrongfully change of consumer's category from Industry to Hotel in lieu of Consumer No. J/8006 since October, 2022.
9. The Forum in its Order dated 31/07/2023 and in its Serial No- 3 directed the Respondent (Electricity Department) to change/ revise category of consumer bearing No. J/8006 with effect from June, 2023. As such the Forum has failed to provide justice to the Applicant (M/s icy Spicy Foods Pvt. Ltd.) by delivering order to the Respondent (Electricity Department) to change category of Consumer bearing no J/8006 with effect from October, 2022.
10. That the Applicant (M/s Icy Spicy Foods Pvt. Ltd.) most humbly request for necessary direction to the competent authorities including Forum as well as Respondent (Electricity Department) for reimbursement of surplus amount collected from the Applicant from October, 2022.
11. That Further the Applicant (M/s Icy Spicy Foods Pvt. Ltd) Also requested that the surplus amount of reimbursement can be adjusted with the bills that are to be raised by Respondent (Electricity Department) in future for the Consumer No. J/8006.
12. Nature of relief sought from the Ombudsman
  1. Effect of changing category from Hotel to Industry should be from October, 2022



2. Reimbursement of surplus amount collected by the Electricity Department in time of adjustment with the future bills to be raised after change of category with effect from October, 2022.

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

Smt. Madhuri Shukla, working as Executive Engineer, HQ Division, A&N Administration, Electricity Department, A&N Administration, do hereby solemnly affirm and state on oath as under: -

1. That the deponent is working as Executive Engineer, A&N Administration, Electricity Department (License).
2. That para-wise counter reply is as under: -
  - i. The complaint/ appellant is The Director, M/s Icy Spicy Foods Pvt. Ltd., Birdline, Port Blair under consumer Account No. J/8006 requesting for change in category.
  - ii. The consumer is presently placed under Hotel & Restaurant category in accordance to JERC Order dated 01.08.2022 prior to that the consumer was under Industrial category since January 2018.
  - iii. The Consumer being aggrieved by the actions of Electricity Department in change of category from Industrial to Hotel & Restaurant, filed a complaint with CGRF bearing No. ANI/CGRF/270/23-24/02 dated 18.05.2023.
  - iv. Hon'ble CGRF passed an order dated 31.07.2023 (**Annexure-1**) with the order at para no. 6 "***the respondent/ licensee is directed to submit compliance report with 15 days from the date of issue of receipt of this order as per JERC Regulation No. 26/2019 under clause 27(1). The compliance report should be show the change of category as Industrial to the bearing Consumer No. J/8006***".
  - v. The Executive Engineer (HQ) vide Letter No. EE/HQ/Tech/29B/2023/2111 dated 18.08.2023 (**Annexure-2**) requested the SE Electricity for necessary direction for compliance of

CGRF order dated 31.07.2023. The SE Electricity vide letter no. EL/PL/17-6(e)/2023/2204 dated 28.08.2023 (**Annexure-3**) directed the EE (HQ) to file an appeal before Electricity Ombudsman with the prescribed time frame.

- vi. Before the Executive Engineer HQ could file an appeal with the Electricity Ombudsman, the Director, M/s Icy Spicy Foods Pvt. Ltd. filed a complaint with Electricity Ombudsman vide appeal no. 201 of 2023 dated 24.08.2023 against Non-Implementation of CGRF-A&NI Order dated 31.07.2023 (**Annexure-1**).
- vii. It is pertinent to draw your kind attention to the Order dated 10.08.2022 in the matter of appeal no. 170 of 2022 wherein the Hon'ble Electricity Ombudsman at point no. h has clearly stated that ***“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”.***
- viii. Further, the tariff order dated 28.08.2023 of JERC also categorizes 'Bakeries' under commercial category, hence, the CGRF Order dated 31.07.2023 couldn't be complied with for change in category from Hotel & Restaurant to Industry.
- ix. As per the point no. 6(iv) of the Admission Notice 25.08.2023, the consumption data of consumer no. J/8006 from 01.01.2022 to 01.06.2023 in the prescribed format is attached as **Annexure-4**.
- x. The Superintending Engineer, Electricity Department Vide Letter No. EL/PL/10-I/2022/4871 Dated 14.10.2023 (Annexure-5) has circulated list of 154 licensed Hotels and 591 Restaurants Functioning in Andaman & Nicobar Islands along with necessary direction to all

concerned officials to identify hotels, resorts & restaurants and accordingly classify such establishment under their respective category as notified by JERC.

**(C) Order of Ld. CGRF-Puducherry dated-31.07.2023 in CC No-ANI/CGRF/270/23-24/02, preferred for Appeal:**

**ORDER**

*“ After detailed deliberations, submissions, site inspection, documents produced before the Forum, and on the basis of the observation so reached, the following Order is passed: -*

1. *The Respondent/Licensee (ED) is directed to instruct the Assistant Engineer (Wks.), Nodal Officer (CGRF), Electricity Department to follow the instruction/direction as and when given by the Forum in future.*
2. *The Respondent/Licensee (ED) is directed to issue a prior ‘Notice’ before any alternation/change of the electric meter to the consumer as per JERC Regulation, which was not done in this instant case.*
3. *The Respondent/Licensee (ED) is directed to change the category from Hotel to Industrial from the month of June 2023 to the Consumer bearing No. J/8006 and accordingly, revise the bill from June 2023 onwards and collect the amount ‘late fee before due date’, if any, bills issued by the Respondent/Licensee (ED) to the consumer.*
4. *The Respondent/Licensee (ED) is directed to take up the issue with JERC for issuing a addendum to the existing tariff order to include all the industrial and manufacturing activities in the Andaman and Nicobar Islands for clarity in the classification of consumers category for providing connection by the field officers.*
5. *The Complainant is directed to make the arrear payment within one month, if any, bills issued by the Respondent/Licensee (ED) prior to this Order.*



6. *The Respondent/Licensee (ED) is directed to submit compliance report within 15 days from the date of issue of receipt of this order as per JERC Regulation No. 26/2019 under Clause 27(1). The compliance report should be show the change of category as Industrial to the bearing consumer No. J/8006.*
7. *As per JERC Regulation No. 26/2019 under Chapter-IV of 27, non-compliance of the Forum Order shall be treated as violation of the Regulations of the Commission and accordingly liable for action under Section 142 of the Electricity Act 2003.*
8. *The complainant shall not be harassed overtly or covertly in any manner whatsoever in future for exercising his right, by availing the redressal within his jurisdiction.*

“The complainant, if aggrieved, by non-redressal of his / her grievance by the Forum or non-implementation of CGRF order by the Licensee, may make an Appeal prescribed Annexure-IV, to the **Electricity Ombudsman, Joint Electricity Regulatory Commission for the State of Goa and UTs**, 3<sup>rd</sup> Floor, Plot No. 55-56, Service Road, Udyog Vihar, Phase-IV, Sector-18, Gurugram - 122015 (Haryana). Phone - 0124-4684708, E-mail : ombudsman.jercuts@gov.in **within one month from the date of receipt of this order**”.

**[Annexure – IV Appeal Form can be collected from this Forum in any of the working days].**

**(D) Deliberation during e-hearing on 21.09.2023:-**

**1. Appellant's Submission:**

- a. Shri A. Ganapathy-Appellant Representative for M/s Icy Spicy foods Pvt.Ltd reiterated his version as submitted in the Appeal.
- b. He informed that they are registered as Industries under Ministry of MSME.



- c. He informed that they are manufacturing sweets, foods and dishes, bakeries etc. in their establishment and accordingly charged under Industrial Tariff since 2018.
- d. The Respondents unilaterally charged their establishment under Hotel & Restaurants tariff from October,2022.
- e. He prays that they should be charged as per CGRF Order since October,2022 and difference of tariff be paid/adjusted in future bills.

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

- a. Smt. Madhuri Shukla, Executive Engineer, reiterated their stand as submitted in the counter reply.
- b. She submitted that as per tariff notified by the JERC for FY-2022-23, Superintending Engineer has issued instructions dated-14.10.2022 to change the tariff to Hotel and Restaurant of many establishments including the Appellant.
- c. She further submitted that as per tariff notified by the JERC for FY-2023-24, the Bakeries are classified under Commercial category.
- d. On specific query by this court that on one side the Respondents state that Bakeries are under Commercial Category, on the other side they are categorizing the Appellant under Hotel and Restaurant category. She has no answer except that they are following the Superintending Engineer instructions.
- e. On being asked whether the Respondents/Licensee can file Appeal before the Electricity Ombudsman as per Electricity Act/Regulations, she pleaded ignorance.

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

1. I have perused the documents on record, in Appeal No-201/2023 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 issue which has arisen for considerations in the present Appeal is as under:-

i. Whether the order of Ld. CGRF in directing the Respondents to change the tariff of the Appellant to Industry is in order and whether this order is required to be implemented by the Respondents?

ii. Whether Electricity Department can file Appeal before the Electricity Ombudsman, against the orders of Ld. CGRF?

4. Regarding the issue as at 3(i) above, as to whether the order of Ld. CGRF dated-31.07.2023 in directing the Respondents to change the tariff of the Appellant to Industry is in order and whether this order is required to be implemented by the Respondents?

4.1 Following provisions have been provided in the Supply Code Regulations-2018, notified by the Hon'ble Commission: -

**(a) Reclassification of Consumer Category**

*"5.94 If it is found that a consumer has been wrongly classified in a particular category, or the purpose of supply as mentioned in Agreement has changed to other Tariff Category, or the consumption of power has exceeded the limit of that category as per the Commission's Order, the Licensee may consider reclassifying the consumer under appropriate category. The consumer shall be informed of the proposed reclassification through a notice and duly given a 30-day notice period to file objections, if any. The Licensee, after due consideration of the consumer's reply, if any, may alter the classification within 10 days from the date of receipt of reply. In case of any dispute, the consumer may approach the Consumer Grievance Redressal Forum.*

*5.95 If a consumer wishes to change his consumer category, the consumer shall submit an application form to the Licensee in the format given in **Annexure VI** to this Supply Code, 2018. The Licensee shall process the application form in accordance with Regulations of this Supply Code, 2018. For site inspection and issuance and payment of demand note for the estimated cost of works, both*

*the Licensee and applicant shall follow the procedure and timelines as laid down in Regulations of this Supply Code, 2018. The Licensee shall also note down the meter reading at the time of inspection. If on inspection, the consumer's request for reclassification is found valid, the Licensee shall change the category within 10 days of receipt of the application.*

*5.96 If the Licensee does not find the request for reclassification valid, it shall inform the applicant in writing, giving reason(s) for the same, within 10 days from date of inspection.*

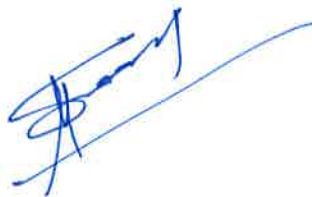
*5.97 For the period in which the consumer's application for reclassification is pending, the consumer shall not be liable for any action on grounds of unauthorized use of electricity."*

(b) 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. 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.*



*(iv) Section 62(3) of the EA-2003 empower 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.*

(c) After the constitution of Commission (JERC), Electricity Department- Andaman and Nicobar Island is regularly filing a detailed proposal for revision of tariff and recategorization in its jurisdiction and every year tariff petition are filed. The Commission admit the petition and publish its abstract in newspapers for wider publicity. The Commission conducted public hearings on the petition in the Andaman and Nicobar Island. After duly considering the deliberations during the public hearing, written comments of the stake holders as per the provisions of the Electricity Act, 2003, the Commission approved the retail tariff applicable to all consumers. The Commission uploaded the order at its website, published its abstract through dailies, directed the licensees also to upload it at their website.

(d) *As per the Section 111 of the Electricity Act, 2003, any person aggrieved by the tariff order of the Commission 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."*

(e) As per the Section 45 of the Electricity Act, 2003, the distribution licensees have 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.”*

*(f) Therefore, the Hon’ble Commission (JERC) after following due process of law has determined the tariff to be charged from different categories of consumers, The CGRF or the Ombudsman has no authority to determine the tariff to be charged to any consumer.*

(g) In view of the above submissions, I am of the considered views that Ld. CGRF has no jurisdiction to determine whether Industrial tariff is to be charged to the Appellant or not and Ld. CGRF has grossly erred in this regard. The CGRF powers under section-5.94 of the Supply Code Regulations-2018, is limited to interruption in respect reclassification only as per Commission’s Tariff Order. Also, the Respondents have not adopted proper procedure as required as per section 5.94 to 5.97 of Supply Code Regulations-2018. They should have issued proper notice/public notice and after reply of the Appellant



necessary action should have been taken to reclassify any category as per Tariff Order.

5. Regarding the issue as at 3(ii) above, as to whether the Electricity Department /Licensee can file Appeal before the Electricity Ombudsman, against the orders of Ld. CGRF?

5.1. Following provisions have been provided in the Consumer Grievances Redressal Forum and Ombudsman Regulation-2019, notified by the Hon'ble Commission: -

***"28. Representation against the Forum's order. - (1) A complainant may prefer a representation before the Ombudsman appointed/ designated by the Commission under the following circumstances: -***

*(a) if the complainant is aggrieved by the non-redressal of the grievance by the Forum within the period specified,*

*(b) if the complainant is not satisfied with the order passed by the Forum, and*

*(c) if the complainant is aggrieved by the non-implementation of the Forum's order, by the licensee*

*(2) The representation under sub-regulation (1) shall be made-*

*(a) in case the complainant is aggrieved by the non-redressal of the grievance by the Forum within 30 days after the time limit specified for the issuance of the Forum's Order;*

*(b) in case the complainant is not satisfied with the Order passed by the Forum, within 30 days after issuance of the Order by the Forum;*

*(c) if the complainant is aggrieved by the non-implementation of the Forum's Order, by the licensee, within 30 days after the time limit specified for the implementation of the Order.*

*(3) The Forum may settle any grievance in terms of an agreement reached between the parties at any stage of the proceedings before it*

*and there shall be no right of representation before the Ombudsman against such an order.”*

5.2 Hon'ble Allahabad High Court in the case of Kisan Cold Storage and Ice Factory vs Paschimanchal Vidyut Vitran Nigam Ltd. and others , in Special Appeal No-20 of 2016, decided on 03.04.2019 that section 42(5) of the Act,2003 , which is neither an extension of the Distribution Licensee nor under its control and it being an independent Forum, the Distribution Licensee must be given an opportunity to approach the Electricity Ombudsman is also patently misconceived in as much as, as already discussed above , the Act,2003 only gives a remedy to a consumer to approach the Electricity Ombudsman. The said remedy provided to the Consumer being a creation of statue, as such, the Distribution Licensee cannot be expected to have a remedy in this regard of approaching the Electricity Ombudsman.

5.3 In view of the above explicit provisions in the Electricity Act/Regulations and dictum of the Hon'ble Courts, the Electricity Department /Licensee cannot approach the Electricity Ombudsman against the decision of the Ld. CGRF. The Electricity Department-Andaman and Nicobar Islands needs to organize seminars for its officers in understanding the Electricity Act and Regulations framed by the Hon'ble Joint Electricity Regulatory Commission, so that electricity consumers are professionally served by them.


#### **(F) DECISION**

1. For the reasons discussed above, the Appeal is hereby dismissed for lack of jurisdiction.
2. The orders passed by the Ld. CGRF-ANI in complaint no-ANI/CGRF/270/23-24/02 dated-31.07.2023 are hereby set aside.
3. The Respondents are directed to follow the procedure as per section 5.94 to 5.97 of the Supply Code Regulations -2018 and effect the change in Tariff (if applicable) after hearing the Appellant within 45 days from the date of issue of this order through email.
4. It is further ordered that if on account of difference in Tariff as per Commission's Order, any amount is required to be paid by the Appellant, no late payment surcharge should be charged to the



Appellant and if the Appellant requests for instalments, the same be considered favorably.

5. Non-compliance of the orders of the Electricity Ombudsman by the Electricity Department/Licensee shall be deemed to be a violation of Regulations and shall be liable for appropriate action by the Hon'ble Commission under Section -142 of the Electricity Act, 2003.
6. 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.
7. The appeal is disposed of accordingly.

A handwritten signature in blue ink is written above a horizontal line. Below the line, the date '27-09-23' is written in blue ink.

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

**Dated: 27.09.2023**