

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

Coram  
Shri M.K. Goel, Chairperson

**Review Petition No. 31/2020  
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 18.05.2020 passed by this Hon'ble Commission in the Petition No. 23 of 2019 for approval of True – up of FY 2016-17 & ARR and determination of Retail Supply Tariff for the FY 2020-21

**And in the matter of:**

Aparupa Sands Marina,  
Govind Nagar 2,  
Swaraj Dweep Havelock Island,  
Andaman & Nicobar Islands – 744 211.

.....**Petitioner**

**Versus**

**And in the matter of:**

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

**Respondent.....**

**Present**

**For the Petitioner:**

1. Shri Arshdeep Singh, Advocate,
2. Shri Hitesh Rai, Jr. Advocate

**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 Review Petitioner through this Review Petition has sought the review of the Impugned Tariff Order dated 18.05.2020 in Petition Number 23/2019.



The Commission heard both the Review Petitioner and the Respondent at length.

The learned Council for the Review Petitioner advanced his argument in detail. The brief of the arguments made on behalf of the Review Petitioner are as under: -

- i. That the Petitioner is a Hotel in the A&N Islands operating since 2015 and was issued a Udyog Aadhaar as a "Small Services" establishment by the Ministry of Micro, Small and Medium Enterprises.
- ii. That the Petitioner was declared as a 'Small Service Unit' by the District Industries Centre and was therefore recommended for grant of tariff under industrial category by the Respondent and change of tariff from 'Commercial to 'Industrial Unit.
- iii. That upon a Hotel establishment being recognized under the Industrial laws, it becomes entitled to benefits and tariff rates under the 'Industrial' category.
- iv. That the Small Scale Industry should be categorized under "Industry" and the Review Petitioner ought to have been placed under the said category.
- v. That while passing the Tariff Orders in the Petitions preferred by the Department of Electricity, Govt. of Goa for FY 2019-20 and FY 2020-21, this Hon'ble Commission has categorized Hotels with lodging and boarding facilities under the 'Industrial tariff'. A perusal of the Tariff Orders dated 20.05.2019 and 19.05.2020 of Goa shows that a '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'
- vi. That there is no justification given by this Hon'ble Commission as to the differential treatment being extended to the Hotels in Goa and Union Territory of Andaman & Nicobar Islands, which infringes upon the fundamental rights of the Petitioner under Article 14 of the constitution of India. This is despite the fact that both Goa and A&N Islands being tourist destinations, their economy revolves to a large extent on tourism of which Hotels are a primary part. The tariff Regulations of this Hon'ble Commission, under which the tariff is determined, applies equally to the State of Goa and to A&N Islands. Therefore, the tariff principles ought to also apply equality to both State of Goa and to A&N Islands.
- vii. From the impugned Order, it appears that some of the representatives from the Hotels located in A&N Islands participated in the Public Hearing conducted by this Hon'ble Commission in relation to the Subject Petition No. 23 of 2019 and presented their views / suggestions on inter alia the aspect of categorization of Hotels as Industry, wherein the following suggestions were made by the Respondent Department and this Hon'ble Commission.

#### *2.2.1 Consideration of hotels in Industrial Category*

##### *Stakeholders' comments*



*The representatives from hotel industry has requested the Commission to consider the hotels as part of Industrial category instead of Commercial category as it is the only dominant industry in Andaman & Nicobar Islands.*

*Petitioner's Response*

*It is submitted that the EDA&N has already submitted the tariff proposal for various categories of consumers in the tariff petition. The Hon'ble Commission may decide the matter in view of the submission & tariff structure prevalent in other distribution utilities in India.*

*Commission's view*

*The Commission has noted the concern of the stakeholders. However, the Commission would like to clarify that based on nature of industry, hotel industry should be a part of Commercial category only. Also, hotel industry shall be burdened with huge fixed charges even in lean season, if they are considered in Industrial category, which will be against their interest.*

- viii. That the view taken by this Hon'ble Commission in so far as the applicability of commercial tariff on the hotel Industry based on nature of the industry is concerned, is unreasonable and no justification has been given for the same apart from the "perceived nature of the industry". No reason has been given as to how the perceived nature of the industry led this Hon'ble Commission to come to a conclusion that the hotels be placed in commercial category instead of industrial category.
- ix. That the view taken by this Hon'ble Commission keeping in mind the 'fixed charges' which may be levied on the hotel industry, if kept under the 'Industrial' category, is inconsequential since the conversion of hotel industry from 'Industrial' to 'Commercial' has burdened the Petitioner who has been subjected to a greater tariff shock as explained hereinafter and the same has adversely affected the Petitioner.

*2.2.4 Separate category for Hotel Industry*

*Stakeholder's response*

*Stakeholders have requested the Commission to introduce a separate category for hotel industry with tariff in between the Industrial category and Commercial category as proposed by the Hon'ble Commission in the State of Goa.*

*Petitioner's response*

*It is submitted that the EDA&N has already submitted the tariff proposal for various categories of consumers in the tariff petition; however, deciding on the tariff category is the prerogative of the Hon'ble Commission and the same may be decided in view of our submissions in the petition & retail structure prevalent in other distribution utilities in India.*



*Commission's view*

*The Commission has noted the submission of all the stakeholders. The Commission has discussed the principles adopted for approving the Tariff in Chapter 6 of the Tariff Order.*

- x. That apart from the above generic observations and comments, there has been no detailed discussion or reasoning assigned by this Hon'ble Commission on the aforesaid comments and suggestions presented by the stakeholders including by those from the hotel industry. As such, this Hon'ble Commission has not assigned any reasons in support of its eventual decision to retain all hotel establishments under the category of 'Commercial' tariff. There has been no finding as to why the suggestions of the stakeholders are not viable. This Hon'ble Commission has also not stated its reasons for not introducing a separate category of tariff, as done for the hotels in the State of Goa by this Hon'ble Commission itself, for Andaman & Nicobar Islands as well, when both these economies are driven primarily by tourism.
- xi. That prior to the reclassification under the Tariff Order for FY 2019-20 passed by this Hon'ble Commission, the Petitioner Hotel was being charged at the industrial rate which was at Rs 7.50 per /KWh. With the reclassification under "Commercial" category, the rate has shot up to above Rs 12.00 per / kWh, thereby causing a sudden and steep hike of more than 60% and causing a Tariff shock to the Hotel industry.
- xii. That this sudden hike is in clear violation of Regulation 67(4)(e) of the JERC Multi Year Tariff Regulations, 2018 which stipulates that the "tariff shall be set by the Commission in such a manner that it may not present a tariff shock to any category of consumers' Emphasis supplied.
- xiii. That the Commission, in its impugned Tariff Order has further enumerated the general principles which they have adopted while determining the Tariff, which inter-alia includes:
- "6 Avoiding tariff shocks: Tariff shocks should be prevented and consumers should be kept informed about the future trends in tariffs"*
- xiv. A comparative table of tariffs showing the difference between 'Industrial' and 'Commercial' Tariff being paid by the Petitioner is given below:

Sl. No.	Period	Industrial	Period	Commercial
1.	05.06.2018-26.06	Units/Avg – 10600 Amt Rs 79,230/-	-	-
2.	05.07.2016-26.07	Units/Avg – 7040 Amt Rs 52,080/-	08.07.2019- 29.07.2019	Units/Avg –7840 Amt Rs 92,585/-
3.	05.08.2018-24.08	Units/Avg –6600 Amt Rs 49,230/-	01.08.2019- 22.08.2019	Units/Avg –6320 Amt Rs 74,345/-
4.	05.09.2018-26.09	Units/Avg – 5880 Amt Rs 43,380/-	-	-
5.	05.10.2018-26.10	Units/Avg – 9180 Amt Rs 68,130/-	08.10.2019- 24.10.2019	Units/Avg –8240 Amt Rs 97,385/-

6.	06.11.2018- 26.11.2018	Units/Avg – 10200 Amt Rs 75,780/-	06.11.2019- 27.11.2019	Units/Avg –10840 Amt Rs 1,28,585/-
7.	06.12.2018- 26.12.2018	Units/Avg – 10960 Amt Rs 81,480/-	-	-
8.	02.01.2019- 23.01.2019	Units/Avg – 10360 Amt Rs 76,980/-	06.01.2020- 27.01.2020	Units/Avg –13940 Amt Rs 1,65,785/-
9.	06.02.2019- 26.02.2019	Units/Avg – 13040 Amt Rs 97,080/-	05.02.2020- 26.02.2020	Units/Avg –13460 Amt Rs 1,60,025/-
10	04.04.2019- 25.04.2019	Units/Avg – 138800 Amt Rs 1,03,380/-	-	-
11	06.05.2019- 27.05.2019	Units/Avg – 8140 Amt Rs 60,330/-	-	-

- xv. That the Hotel establishments form a vital part of the tourism sector in the Andaman and Nicobar Islands. Tourism being the biggest pillar of the economy of the Islands also facilitates large scale employment and other related economic development. The Govt. of India has also planned a series of developmental projects to give boost to the tourism sector in the Andaman and Nicobar Islands to make it a major tourist attraction like Maldives and Mauritius. Therefore, since travelling to the Andaman and Nicobar Islands already involves a huge cost (air travel being the only mode of travel), the imposition of 'Commercial' tariff on the hotel industry has been a major setback.
- xvi. That recognizing the major contribution of the tourism sector to the socio-economic development, the Administration has time and again over the years extended various benefits and incentives to the key players of the tourism sector, including hotel establishments.

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 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 MSMEs 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. 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.
5. That the non-inclusion of the applicability of Industrial Tariff to the Hotels and Restaurants in the earlier Tariff Petitions may kindly be condoned.
6. That the reply of the Respondent i.e. Electricity Department, Andaman & Nicobar Islands, Port Blair was filed through e-mail dated 10.08.2020 with the prayer that the Hon'ble Commission may be pleased to pass appropriate order by modifying the direction No. 11 of the Tariff Order dated 20.05.2019 to extend the applicability of tariff of Industrial Category instead of Commercial Category to all the Hotels and Restaurants.

The Commission has considered the submissions made by the Review Petitioner and the Respondent, Commission has also examined the entire set of 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 particular portion of the impugned tariff order dated 18.05.2020.

The Commission's Power to review its own Orders flows 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 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 but needs to be detected by process of reasoning 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. To qualify under this provision, 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 is inclined to accept the following pleas made by the Respondent and the Review Petitioner as mentioned below –

- a) 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 very unlawful act on their part they kept very close to their chest till they filed this affidavit.
- b) That the Respondent requested the Commission to set aside the impugned directions given at serial No. 11 in impugned tariff order dated 25.05.2020'
- c) That the non-inclusion of applicability of industrial tariff to the hotels and restaurants in the earlier tariff petitions may kindly be condoned.
- d) 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 is the main business activity in the Andaman & Nicobar Islands like it is in the State of Goa and hotel industry in both the places, being an important part of the tourism ecosystem, is 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.
- e) Review Petitioner is a small services establishment, having a Udyog Adhaar, a status conferred on them by the Ministry of Micro, Small and Medium Enterprises (**MSME**) and on that basis the district industry centre declared them as a small services unit and recommended their case for granting tariff under industrial category by the Respondent. The Review Petitioner has requested the Commission to review its impugned tariff order dated 28.05.2020 and set aside the impugned note in that Order which gave direction to the Respondent to charge Commercial tariff from all hotel establishments in Andaman & Nicobar Islands.

The Commission has also noted that Central Government is also making serious efforts to boost up the tourism in the Andaman & Nicobar Islands.

*Planners*

In support of the above mentioned views, the Commission is relying on Section 62(3) of the Electricity Act, 2003 which provides that:

*“(1) “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. “*

In this particular case the Commission is convinced by the arguments made by the Review Petitioner that for the reasons cited in the Petition and discussed above and in the best interest of economic development of the Andaman & Nicobar Islands, the hotels need to be considered under industrial category for application of electricity tariff. 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 Respondent and allowed this Review Petition on this limited issue. The Commission further direct the Respondent to charge the hotels having Udyog Adhaar duly issued to them under MSME in the Industrial category in place of Commercial Category as directed by the Commission through its note in the impugned Order dated 18.05.2020.

However, while allowing the Review Petition, the Commission, at the same time, cannot but feel that it is unfortunate that the matter has unnecessarily escalated to the present state due to lack of due alertness on the part of Respondent who has totally failed all along in discharging its duty in seeking the right categorisation of the hotel industry in its Tariff Petition, in keeping with the directions of the UT Administration. Besides, the Respondent also violates Section 62 and 64 of the Electricity Act by totally ignoring the tariff determined by the Commission by arbitrarily charging industrial tariff from hotels in place of commercial tariff, which was determined by the Commission on the basis of the Tariff Petition filed by the Respondent itself. The Respondent is duty bound as per the Act to charge tariff to all the consumers strictly as per the Approved Tariff Order of the Commission and therefore this very act of the Respondent, in the teeth of Approved Tariff Order, is ground enough to attract penal action against them under Section 142 of the Electricity Act. However, keeping in mind the submissions of the Respondent and admission of mistake committed, the Commission decides against invoking penal action but advises the Respondent to adhere strictly to the tariff determined by the Commission in future to avoid repetition of such blunder on their part attracting penal action.

Ordered accordingly

**Sd/-**

**(M.K. GOEL)  
CHAIRPERSON**

**Certified Copy**  
*Rakesh Kumar*

**(Rakesh Kumar)  
Secretary, JERC**