

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.19833 of 2012

M/s. Deep Sun Hatcheries Ltd. Petitioners
Gopalpur on Sea, Ganjam and another

Mr. S. P. Sarangi, Advocate

-versus-

Southern Electricity Supply Company Opposite Parties
of Odisha Limited, Berhampur and
others

Mr. P Mohanty, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

ORDER
03.08.2022

Order No.

04. 1. The challenge in the present petition is to an order dated 30th June, 2012 passed by the Grievances Redressal Forum (GRF), Berhampur in GRF Case No.136 of 2012 and the subsequent order dated 27th September, 2012 passed by the Ombudsman-II, Bhubaneswar in Consumer Representation Case No.Omb(II)S-07 of 2012.
2. The background facts are that Petitioner No.1 is a Company having a hatchery at Gopalpur on Sea, District Ganjam and engaged in the business of production of shrimp seeds. Petitioner No.2 is its Managing Director (MD). On 11th April 1994, Petitioner No.1 entered into an agreement with the Odisha State Electricity Board (OSEB) for supply of 60 KW power to its prawn hatchery for commercial production in terms of the OSEB (General Conditions of Supply) Regulations, 1981 (1981 Regulations). The commercial

production of the hatchery of Petitioner No.1 commenced on 9th March, 1996 and an Industrial Certificate to that effect was issued by the District Industries Centre.

3. On 5th June 1997, Petitioner No.1 wrote to the Chief Engineer (Commerce), GRIDCO, Odisha to treat its unit as an Industrial Unit. On 25th August 1997, Opposite Party No.2 i.e. the Executive Engineer, Ganjam North Electrical Division, Berhampur received a letter from the Superintending Engineer, GRIDCO stating that the application of Petitioner No.1 had been allowed and it had to be billed as per the Industrial Tariff instead of Commercial Tariff. On the above basis, a fresh agreement was entered into on 16th March, 1999 between the Petitioner No.1 and the MD, SOUTHCO for supply of 90 KW power for industrial purpose under the category of 'Medium Industry.'

4. However, Petitioner No.1 received the bill for the period April to December, 1999 on 27th January, 2000 for a sum of Rs.94719.70 treating the unit of Petitioner No.1 as a commercial consumer with a remark "IPR concession withdrawn from 4/99 onwards. Revised from 4/99 to 12/99."

5. Petitioner No.1 then represented to Opposite Party No.1 requesting for revision of the bill by treating the Petitioner No.1 as a Medium Scale Industry as per the OERC Distribution (Conditions of Supply) Code, 1998.

6. It is stated by the Petitioner that on 11th December, 2000 without prior notice, Opposite Party No.1 disconnected the power connection and it had to sustain huge losses.

7. On 11th May 2001, the Assistant Electrical Inspector, Berhampur inspected the unit of Petitioner No.1 and submitted a report on 14th May, 2001 stating that Petitioner No.1 is a medium industry in terms of Chapter-VII of the OERC Distribution Code and, therefore, the bill had to be revised on that basis from the date of the Agreement.

8. This was however not done and on 19th June 2001, Opposite Party No.1 issued a letter to Petitioner No.1 directing it to pay Rs.1,48,848.90 in two instalments. On 3rd July 2001, the MD of Opposite Party No.1 issued a letter to Petitioner No.1 rejecting its claim to be treated as a medium industry.

9. Aggrieved by the above letter, Petitioner No.1 filed OJC No.8640 of 2001, which came to be disposed of by this Court on 13th February, 2012 permitting the Petitioner to file an application before the GRF. On 30th June 2012, the GRF disposed of GRF Case No.136 of 2012 rejecting the claim of the Petitioners.

10. The Petitioners then went before the Ombudsman-II, who *inter alia* held as under in the impugned order:

“Although the agreement dtd. 16.03.99 speaks in its clause number ‘7’ that “the tariff and conditions of supply mentioned in this agreement shall be subject to any revision that may be made by the licensee from time to time” and the Respondent has felt the category of tariff was mentioned in the agreement erroneously and reclassified the tariff suo-moto. The licensee should have acted to re-classify the petitioner’s category by implementing Regulation 82 of “OERC Distribution (Conditions of Supply Code, 1998”, hereinafter to be read as “supply code”. But in this case the Respondent have reclassified Petitioner’s category without following OERC Regulation which is illegal,

arbitrary, bad in law and contrary to the rule and regulations.”

11. This Court has heard the submissions of Mr. S.P. Sarangi, learned counsel for the Petitioners and Mr. P. Mohanty, learned counsel for the Opposite Parties.

12. At the outset, Mr. Mohanty sought to contend that the present writ petition is covered by the order dated 13th August, 2021 passed by this Court in W.P.(C) No.11934 of 2013 (***M/s. Deep Sun Hatcheries Limited v. Orissa Electricity Regulatory Commission***).

13. However on a perusal of the above decision, the Court is of the view that it is distinguishable on facts. The issue arising in the present petition viz., whether the Petitioner No.1's tariff category could be unilaterally changed from Industrial to Commercial without any prior notice to Petitioner No.1 was not a question that arose in that case.

14. Opposite Party No.1 was unable to deny that the Inspector who visited the premises submitted a report on 14th May, 2001 stating as under:

“10) Remarks

The installation has a connected load of 54.458 KW motor load and balance load is other types of load. As the measure load is of electro motive load and as seen from the installation that it is a medium industry as per the meaning of Medium Industry category classified in chapter-VII of O.E.R.C Regulation 3 of 1998. The division has also executed agreement on Medium Industry category but the bill is being prepared on commercial tariff. Hence the bill may be revised from the date of agreement on Medium Industry tariff as the power is directly used for production

of shrimp seed and accordingly the E.D may be revised and realized from the consumer.”

15. Since it is a report by Opposite Party No.1 itself, there is no need to doubt its correctness. No explanation offered as to why the Petitioner No.1 was suddenly treated as a Commercial entity for the purposes of electricity tariff. Merely because at one stage it was classified in the Agricultural category, will not automatically be resulted in the billing category be converted from Industry to Commercial. In any event, that change could not have been made unilaterally without notice to Petitioner No.1.

16. For all of the aforementioned reasons, the Court sets aside the impugned orders of the GRF and Ombudsman and directs that the Petitioner No.1 will be obliged to pay its electricity bill on the basis of it being a Medium Scale Industry and on that basis to pay the Industrial Tariff and not the Commercial Tariff. In the event, the Opposite Party No.1 seeks to revise the category hereafter, it will do so only in accordance with law after notice to the Petitioners. The differential excess payments already made, shall be adjusted against future bills of Petitioner No.1.

17. The writ petition is dispose of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge