IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.2054/2017

PETITIONER	M/s. Maharashtra State Electricity Distribution Company Limited- Through The Nodal Officer, Superintending Engineer (D/F), MSEDCL, Nagpur Urban Circle, Nagpur.
...VERSUS...	
RESPONDENTS	1. M/s. Ankur Seeds Private Limited, Plot No.27, New Cotton Market, Opposite Bus Stand, Nagpur 440 018. 2. Electricity Ombudsman, Plot No.12, "SHRIKRUPA", Vijay Nagar, Chhaoni, Nagpur – 440 013.
Mr. S.V. Purohit, Advocate for petitioner Mr. A.A. Naik, and Abhishekh Bhoot, Advocates for respondent no.1	

WITH

WRIT PETITION NO.5377/2018

PETITIONER	M/s Ankur Seeds Private Limited, Plot No.27, New Cotton Market Layout, Opposite Bus Stand, Nagpur – 440001, through its authorized representative Shri Vishal Balwantrao Umalkar.
...VERSUS...	
RESPONDENTS	1. Maharashtra State Electricity Distribution Company Limited (Nodal Officer), through Superintending Engineer (NUC), Prakash Bhawan, Link Road, Sadar, Nagpur- 440 001.

	2. Maharashtra State Electricity Distribution Company Limited, through Chief Engineer (NUZ), Prakash Bhawan, Link Road, Sadar, Nagpur – 440 001.
Mr. A.A. Naik, & Abhishekh Bhoot petitioner Mr. S.V. Purohit, Advocate for respondents	

CORAM : AVINASH G. GHAROTE, J.

Date of reserving the judgment : 04/08/2023
Date of pronouncing the judgment : 04/12/2023

J U D G M E N T

1. Heard. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsels for the rival parties.

2. The parties shall be referred to in their status which they possess in Writ Petition No.2054/2017, in which the Maharashtra State Electricity Distribution Company Limited (MSEDCL) is the petitioner and M/s Ankur Seeds Private Ltd., is the respondent no.1.

3. The respondent No.1 is a consumer, who has been granted an electric connection for the purpose of Biotech Research Laboratory under which the respondent no.1 treats and

processes seeds and sells it commercially to the consumers. In the initial stage the electricity supply to the respondent no.1 was categorized as industrial. An application came to be filed by the respondent no.1, contending that the supply to the establishment of the respondent no.1 be categorized as agricultural, as agriculture activity was being done.

4. In view of the tariff categorization by the Maharashtra Electricity Regulatory Commission [MERC] by its order dated 16/08/2012 (pg.60), the supply to the respondent no.1 was categorized as commercial, as a result of which, a supplementary bill was raised in 2016. This categorization and the bill was challenged by the respondent no.1 before the Consumer Grievance Redressal Forum [CGRF]. The CGRF by the aforesaid judgment dated 10/08/2016 dismissed the complaint by the respondent no.1. In a representation before the Electricity Ombudsman, by the impugned order, though the categorization of the supply to the respondent no.1 has been maintained as commercial, the recovery sought to be effected from 2012 to 2016, has been interdicted by holding that the petitioners are not entitled to claim the arrears. It is this direction which is sought to

be challenged in Writ Petition No.2054/2017 which is by the MSEDCL.

5. Writ Petition No.5377/2018 is by Ankur Seeds Private Ltd., which has challenged the order dated 10/08/2016 by the CGRF and the order dated 30/11/2016 by the Electricity Ombudsman and seeking categorization as HT-II, Commercial to HT-V and correction of the electricity bills accordingly.

6. The factual position availing from the record is as under :

6.1. The respondent no.1 claims to undertake a research and development activity in agricultural seeds which is then put into a green house, developed for a period of time and then planted in open fields the produce out of which, is ultimately sold commercially. As indicated above, this research and development activity of the respondent no.1 was imposed industrial electricity tariff, as a result of which, by application dated 14/05/2015, a request for change of categorization from industrial to agricultural was made (pg. 45). A report was called regarding the nature of the activity of the petitioner in pursuance to which, the Deputy Executive Engineer of the petitioner on 18/06/2015 submitted a report stating that the usage of the electricity at the research and development site of the respondent no.1 was for extensive research work in the field of agriculture, under various laboratories, including tissue culture laboratory. There were also 4 to 5 green houses where various crops were grown for research activity. There are two number of conference/meeting halls, which were used by the company staff. Thus, the main usage was HI – Tech Agricultural Research Work (pg. 47).

6.2. This position was again found to be correct by the Executive Engineer as is indicated from communication 22/06/2015 addressed to the Superintending Engineer (pg. 48). The Superintending Engineer by his communication dated 21/07/2015 asked the respondent no.1 to submit a confirmation/certification of High-Tech crop cultivation activities from the District Superintending Agriculture Officer, Nagpur so that proposal for change in tariff to HT-V : HT- Agriculture could be processed to the Competent Authority (pg.49). The report of the District Superintending Officer dated 30/07/2015 thereafter (pg. 52) indicates that there were various laboratories including tissue culture laboratory; 4 to 5 green houses in which research, development, production of various crops were undergoing (pg.52). This report was duly submitted to the petitioner authorities, whereupon the Superintending Engineer by his communication dated 01/08/2015 (pg.53) addressed to the Chief Engineer (Commercial) MSEDCL requested for issuance of necessary guidelines for change of tariff from HT-IC (HT-Industrial Express Feeder) to HT-V (HT-Agriculture). Reminders in that regard where sent on 09/09/2015 31/10/2015. On 31/10/2015, the Chief Engineer (Commercial) issued a communication to Superintending Engineer, MSEDCL (pg. 56) asking him again to verify the purpose as per the MERC provisions as to whether the predominant use of the power supply in the premises was for high tech agricultural and research. The MERC tariff order dated 26/06/2015, according to the said communication, defined applicability of agricultural tariff to High Tech Agriculture as follows :

> *"For High Tech Agricultural (i.e. Tissue Culture, Green House, Mushroom activities), provided the power supply is exclusively utilized by such Hi-Tech Agriculture Consumers for purpose directly concerned with crop cultivation process and further provided that the power is not utilized for any engineering or industrial process."*

6.3. By the communication dated 29/12/2015 a joint inspection was proposed to be conducted to verify the predominant use of power supply (pg. 57). It is contended that though a joint inspection was done, a copy of the report was never supplied to the respondent no.1 and an application made for a copy of the same was turned down by the communication dated 05/04/2016 (pg. 67).

6.4. By the communication dated 05/03/2016 (pg. 60), the request for change of tariff was turned down on the ground that the MERC tariff orders dated 16/08/2012 and 26/06/2015 indicate that if the research and development units are situated outside the industrial premises then they are to be categorized as HT – II (HT commercial) tariff category, though it was found that the main purpose of electric supply was for Hi-tech agriculture Research and Development Laboratories and allied activities (pg. 60).

6.5. A representation by the respondent no.1 dated 19/03/2016 seeking to clarify the position had no effect (pg. 62) and by the order dated 28/03/2016 (pg. 65) the existing tariff category HT-IC (HT Industrial Express Feeder) was changed to HT-II (HT Commercial Express Feeder) and this change was to be effected from 01/08/2012 and accordingly bill was to be sent.

6.6. Proceedings initiated before the Internal Grievance Redressal Cell [IGRC] was rejected by the order dated 13/06/2016. An appeal before the CGRF was also turned down by the order 10/08/2016 (page 106). A representation before the Ombudsman resulted in modification of the orders of the IGRC and CGRF by doing away with the recovery on account of change in tariff, prior to passing of the order. The change of tariff was continued to be maintained.

7. Mr. Purohit, learned counsel for the petitioner submits that though research and development activity in agriculture is being carried out by the respondent no.1, however, since that activity was not situated inside the industry, tariff as contemplated under clause (n) of the order dated 16/08/2012 by the MERC in Case No.19/2012 was permissible and the tariff leviable was commercial (pg.31). The learned counsel also relies upon certain portions of the MERC order to support his contention.

7.1. Mr. Purohit, learned counsel for the petitioner vehemently contends that the activity of the respondent no.1 is not a research and development but is a commercial/industrial activity inasmuch as by use of the electricity in the laboratory, seeds are being prepared which are then mass produced which are being then sold in the open market and therefore the tariff plan applied considering the activity as a commercial/industrial one is correct. He submits that, citing an example of the cement industry that if there is a research and development unit in the factory premises itself then the tariff applied is not commercial or industrial but if the research and development activity is being carried out outside the factory premises it has then to be necessarily considered as a commercial/industrial activity and the according tariff plan is applicable, which in the present case has rightly been so done. He, therefore, justifies the tariff plan applied to the respondent no.1. In support of his contentions, he relies upon ***Maharashtra State Electricity Distribution Co. Ltd., O & M Division, through its Executive Engineer, Gondia Vs. M/s Gupta Rice Industries at Tumkheda Tahsil Goregaon, District Gondia, through its Proprietor (Writ Petition No.872/2018, decided on 10/08/2022) ; Assistant Engineer (D1) Ajmer Vidyut Vitran Nigam Limited and another Vs. Rahamatullah Khan Alias Rahamjulla (2020) 4 SCC 650*** and ***Prem Cottex Vs. Uttar***

Haryana Bijli Vitran Nigam Ltd. and others 2021 SCC OnLine SC 870.

8. Mr. Naik, learned counsel for the respondent no.1 submits that the inspection reports as indicated from the communications dated 18/06/2015 (pg.47), 22/06/2015 (pg.48), 21/07/2015 (pg.49); inspection report dated 30/07/2015 (pg.52), communications dated 01/08/2015 (pg.53), 09/09/2015 (pg.54) and 31/10/2015 (pg. 55), all indicated the activity which is done by the petitioner was a research and development activity and therefore was entitled to HT – V: HT Agriculture, on account of the activity of the respondent no.1 falling under criterion (iii) for applicability thereof for which he places reliance upon MERC order 16/08/2012 in Case No.19/2012 (pg. 34). Even as per the earlier order dated 17/08/2009 in Case No. 116/2008, the activity of the petitioner, according to him, fell in High Tech Agriculture Activity (pg.23 and 24) and therefore was liable to be billed accordingly.

8.1. It is also contended that in reference to the MERC order dated 16/08/2012 for the applicability of HT-II : HT commercial tariff as per clause (n) a research and development unit situated outside the industrial premises is liable for commercial tariff, however, for the applicability of the same, it is necessary for such research and development unit to be related to the industry, which is not the case in the present matter (pg. 32).

8.2. The subsequent commercial circular dated 09/07/2005, the orders dated 26/06/2015 in Case No.121/2014 of MERC and the commercial circular dated 03/07/2015 (pg. 45, 47 and 49) according to him, does not change the situation regarding the activity of the respondent no.1 and therefore, the agricultural tariff was required to be applied. It is further contended that the imposition of tariff is based upon the activity and not the location. He, therefore, submits that considering the activity of research was being done by the respondent no.1 merely because the end result of production of high quality seeds which was commercially exploited that would not entail the imposition of a commercial tariff upon research and development activity on account of which the impugned orders were liable to be quashed and set aside and tariff imposition by the petitioner was liable to be changed to HT -V : HT Agriculture.

8.3. It is the contention of the respondent no.1 that the activity which is been carried out by the respondent no.1 is of research and development, and therefore, cannot be categorized as industrial or commercial and the tariff plan/billing ought to have been accordingly. It is also submitted that what was being done by use of the electricity was in fact research and development and not any commercial/industrial or other activity has been observed, verified and attested to, by the officials of the petitioner which is reflected from the inspection reports, in spite of which, the respondent no.1 has been billed as a commercial/industrial activity which is not sustainable according to them.

9. Having heard the learned counsels for the parties and having perused the record with their assistance, the moot question which arises for determination is whether the activity conducted by the respondent no.1 can be categorized into a commercial activity or an activity of research so as to apply the appropriate tariff plan for the purpose of billing of the electricity consumed by the respondent no.1 in such activity.

10. Admittedly, the various reports obtained by the petitioner through its various inspections as indicated by the communications dated 18/06/2015 (pg.47), 22/6/2015 (pg. 48), 21/7/2015 (pg.49); inspection report dated 30/07/2015 (pg. 52), the communications dated 01/08/2015 (pg. 53), 09/09/2015 (pg.54) and 31/10/2015 (pg.55), all demonstrate the activity which is done by the respondent no.1 was a research and development activity and therefore was entitled to HT – V: HT Agriculture, which is so for the reason that the activity carried on by the respondent no.1 in the premises in question where the tariff plan imposed has been questioned, is a research and development activity, where research on the seeds is being carried out. These seeds are then planted in the attached agricultural field to test their effectiveness, consequent to its modifications in the research laboratory and in case found to be effective are then grown in large scale so as to market them. Thus, the activity carried out in the laboratory is clearly one of research and development and not a commercial/industrial or other activity.

11. The contention of Mr. Purohit, learned counsel for the petitioner that since the activity of growing the seeds for their testing is outside the laboratory and therefore the activity ought to be considered as a commercial/industrial one, according to me, is clearly misconceived for the reason that the activity of growing the seeds in the field cannot be segregated from the processing done on them in the laboratory since such growing is for the purpose of testing their efficacy pursuant to the processing activity done in the laboratory and thus would be a part of the process of research and development. No research and development can be completed without it being tested actually in the field and thus there cannot be any segregation as is being suggested.

12. So also the contention that if the research and development activity is being carried out in the factory it would be so and not one if outside also does not appeal to me as what is material is the activity of research and development and not the place where it is carried out.

13. A perusal of the various circulars would indicate that there is a separate tariff plan to be made applicable for research and development activities as that is obviously with a view to promote such activities by granting them a lower tariff plan. The petitioner thus while making a tariff plan applicable cannot indulge into discrimination on the basis of the place where the activity is being carried out, as that has no nexus with the purpose sought to be achieved which is of promoting research and development. The petitioner, therefore, has to adopt a more pragmatic and relief oriented approach when it comes to applying the various tariff plans to different activities so that such activities are promoted and not to adopt an approach so as to defeat the purpose.

14. There is also no reason discernible from the material on record as to why and when the various inspection reports classified the activities of the respondent no.1 as that of research and development, ultimately what has been applied is a commercial/industrial tariff to the research and development activity carried out by the respondent no.1 in its laboratory.

15. It is also material to note that the nature of activities being carried out by the respondent no.1 in the premises where the tariff plan has been applied is not disputed by the petitioner, which admittedly is a laboratory.

16. Commercial Circular No.175 dated 05/09/2012 as well as Commercial Circular No.243 dated 03/07/2015 also in respect of the Category HT V: HT-Agricultural vide Item No.iii holds that it is applicable to High Tech Agricultural use such as Tissue Culture, Green House, Mushroom activities, provided the power supply is exclusively utilized by such Hi-Tech Agriculture Consumers for purpose directly concerned with crop cultivation process and further provided that the power is not utilized for any engineering or industrial purpose. Similar is the position as is spelt out from the orders of the MERC in Case No.116/2008 decided on 17/08/2009; Case No.19/2012, decided on 16/08/2012 and Case No.121/2014 decided on 26/06/2015.

17. It would be also material to note that the order dated 26/04/2013 by the Electricity Ombudsman in Representation No.26/2013, in the matter of agricultural tariff

and load shedding considering the use of electricity for Tissue Culture laboratory in para 8 thereof notes the Maharashtra Biotechnology Policy, 2001 and the notification dated 29/01/2001 issued by the Industry, Energy and Labour department and specifically item no.4.13 therein which stipulates that High Tech Agricultural Biotechnology Industries shall be charged agricultural tariff. Similar is the position as recorded in the order of the Electricity Ombudsman dated 26/04/2013 in Representation No.27/2013. This would clearly substantiate the position that since the activity of the respondent no.1 is admittedly covered under the expression “High Tech Agricultural Activity”, it would be categorized as HT-V: HT-Agricultural and would therefore entitled to according tariff plan.

18. The contention that HT-II: HT-Commercial Item-n would be applicable, is clearly misconceived for the reason that the activity being performed by the respondent no.1 is clearly not an industrial activity.

19. ***Maharashtra State Electricity Distribution Co. Ltd. Vs. M/s Gupta Rice Industries (Writ Petition No.872/2018***

decided on 10/08/2022; Rahamatullah Khan and ***Prem Cottex*** (supra) relied upon by Mr. Purohit, learned counsel for the petitioner do not consider the proposition as canvassed above, regarding categorization and the applicability of the appropriate tariff on that count and are therefore of no assistance.

20. In view of the above discussion, it will have to be held that the activity carried out by the respondent no.1 being of High Tech Agricultural activity of research and development, the tariff plan applicable would be HT-V : HT Agriculture. The petitioner in consequence of the above will have to take appropriate steps and grant necessary adjustments to the respondent no.1. The impugned orders, which take a contrary view, are therefore liable to be quashed and set aside and are hereby quashed and set aside. Writ Petition No.5377/2018 is allowed in the above terms and Writ Petition No.2054/2017 is dismissed accordingly.

21. Rule accordingly. No order as to costs.

(AVINASH G. GHAROTE, J.)

Wadkar