



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

WRIT PETITION NO.6448/2024

Maharashtra State Electricity Distribution
(Original Company Limited, Through
its Superintending Respondent) Engineer,
O & M Circle, Chandrapur

... PETITIONER

...VERSUS...

Forest Academy, Chandrapur
(Original-Appellant) through
its Director, having its office at
Forest Academy Chandrapur,
Mul Road, Chandrapur - 442401

...RESPONDENT

Shri S.V. Purohit, Advocate for petitioner
Shri B.M. Lonare, AGP for respondent

CORAM : SMT. M. S. JAWALKAR, J.

DATE OF RESERVING THE JUDGMENT : 06/03/2025

DATE OF PRONOUNCING THE JUDGMENT: 16/04/2025

JUDGMENT

. Heard learned Counsel for petitioner and learned AGP
for respondent/State.

2. Being aggrieved by the Order dated 08/08/2024, passed by the Electricity Ombudsman, Nagpur (hereinafter referred as D "EO" for short) directing the Petitioner to reclassify the Respondent-Consumer's tariff category from Public Services HT VIII –(B) to HT VIII - (A) retrospectively from December 2020. The EO has issued other directions as are evident from the operative part of the final order dated 08/08/2024.

3. Respondent is Petitioner's HT consumer bearing Consumer No.450019103230, connected at 11 KV voltage level having a contract demand of 300 KVA and is having a sanctioned load of 300 KW. At the time of granting connection to the Respondent/Consumer, was categorized under Public Services HT VIII (A) category under bonafide/inadvertent mistake. On 28/04/2023, the Flying Squad Personnel of the Petitioner, inspected the connection of the Respondent Consumer and found that, the tariff applied to the consumer was that of Public Services HT VIII-A), though the actual use was by the Academy to which, Public Services HT VIII (B) should have been applied, provisional assessment was done and tariff difference was calculated and the

consumer was asked to pay the tariff difference.

4. Petitioner vide its letter dated 18/09/2023, called upon the Flying Squad to provide an opinion upon the change in tariff categorization of the Respondent-Consumer. The Deputy Director (S & E) NR, Nagpur vide its letter, opined that the Respondent-Consumer was rightly reclassified from Public Services HT VIII -(A) to Public Services HT VIII -(B), therefore, the Petitioner vide its letter dated 24/11/2023, informed the Respondent-Consumer, that the re- classification was rightly done by the Petitioner and was accordingly billed in the Month of December 2023.

5. Respondent/Consumer filed a grievance/complaint before the CGRF and prayed for reclassification of the Consumer from Public Services HT VIII-(A) to Public Services HT VIII-(B) 14/05/2024 CGRF Case No. 38/2024. Members of the CGRF dismissed the grievance of the Respondent and upheld the reclassification of the Respondent/Consumer from Public Services HT VIII (A) to Public Services HT VIII -(B). Being aggrieved by the order dated 14.05.2025 passed by the CGRF/ respondents filed a representation before the Electricity Ombudsman vide

Representation to which Petitioner filed its detailed reply pointing out the correct state of affairs and praying for rejection of the Representation. EO vide its order dated 08/08/2024 passed the impugned order. The aforesaid order is the subject matter of challenge in the present writ petition.

6. Learned counsel for the petitioner contended that the EO has misunderstood the tariff applicable to the case to the effect that Respondent Consumer be reclassified under the Public Services HT VIII -(A), since the Respondent-Academy is 100% funded by the Govt. of Maharashtra. It is further contended that the EO has failed to appreciate that the tariff category-Public Services HT VIII (A) applies only to Government Educational institutions such as Schools and Colleges and not to the Academies established for the training of its employee, like that of the Respondent-Consumer. The direction to reclassify the Respondent- Consumer's tariff category from Public Services HT VIII -(B) to HT VIII (A) retrospectively from December 2020, is therefore perverse which needs interference by this court and which also needs to be set aside.

7. Learned Counsel for petitioner relied on ***Malabar Hills Citizens' Forum Vs. Best Undertaking and others 2016 (4) Mh.L.J. 437.***

8. Learned AGP for the Respondent/State supported the order passed by lower authority and contended that the change of electricity tariff category of the respondent by the petitioner was not based on sound reasoning this fact was rightly taken into consideration by the lower authority and passed an appropriate order which needs no interference and which needs to be confirmed.

9. Heard learned Counsel for petitioner and learned AGP for the State. Perused impugned order and documents placed on record. Considered the citations relied on by the petitioner. The appellant before the Electricity Ombudsman, Nagpur filed Representation against the order passed by the Consumer Grievance Redressal Forum, Nagpur in Case No.38 of 2024 dated 14.05.2024 under the Regulation 19.1 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity

Ombudsman) Regulations, 2020 (in short CGRF Regulations 2020). The petitioner herein charged the tariff of the Appellant's Training Academy from Public Service HT VII – (A) to Public Service HT VIII – (B) and charged tariff difference retrospectively for the duration December 2020 to June 2023 amounting to Rs.25,84,207.84. The CGRF after hearing dismissed the grievance application. On the said dismissal, the respondents Academy i.e. Chandrapur Forest Academy of Administration, Development and Management (hereinafter referred as 'Academy') preferred representation. This Academy has been constituted by the Revenue and Forest Department, Government of Maharashtra vide Government Resolution dated 04.12.2014 as declared the Academy as an apex training institution of the Government of Maharashtra for the subject of Forestry and Wildlife Management. This Academy imparts induction training as well as in-service training to Forest Officers and other staff of Forest Department. The Academy has also been recognized as Regional Administrative Training Institute (RATI) by Government of Maharashtra vide Government Resolution dated 04.07.2022. The petitioner herein vide letter dated 02.08.2023 informed the appellant that for Academy's electrical supply the

tariff category Public Service HT VII- (B) is applicable instead of tariff category Public Service HT VII- (A) as earlier billed. The amount of Rs.25,84,207.84 is billed to the respondents by the present petitioner.

10. The claim of the respondents before the ombudsman was that Yashwantrao Chavan Academy of Development Administration (YASHADA), Pune is the Apex State Level Administrative Training Insititute of Government of Maharashtra. The YASHADA and Chandrapur Forest Academy has similar area of operation though both work at different levels i.e. YASHADA at State Level and Chandrapur Forest Academy at the Revenue Division level. Therefore both the institutions should be placed in the same power tariff category.

11. It is claimed that it is Government Educational Institutions and therefore as per MERC Tariff order dated 31.03.2023 in Case No.226/2022 applicable to Chandrapur Forest Academy is HT VIII (A). The petitioner charged respondents Academy on the basis of risk proposal of the Flying Squad the tariff

category of the respondents were charged from HT VIII – (A) to HT VIII – (B) and tariff difference bill is claimed. The petitioner relied on MERC Tariff Order dated 31.03.2023 in Case No.226/2022 which reads as under:

“HT VIII: HT Public Services

HT VIII - (A): HT - Government Educational Institutions and Hospitals

Applicability:

This tariff category is applicable for electricity supply at High Voltage for Educational Institutions, such as Schools and Colleges; Health Care facilities, such as Hospitals, Dispensaries, Clinics, Primary Health Care Centres, Diagnostic Centres, Blood Banks and Pathology Laboratories; Libraries and public reading rooms of the State or Central Government, Local Self-Government bodies such as Municipalities, Zilla Parishads, Panchayat Samitis, Gram Panchayats, etc;

It shall also be applicable for electricity used for Hostels/Sports Clubs and facilities / Health Clubs and facilities / Gymnasium / Swimming Pools attached to such Educational Institutions / Health Care facilities, provided that they are situated in the same premises and are meant primarily for the students/faculty/employees/patients of such Educational Institutions and Hospitals.

This Tariff is also applicable for electricity supply at Public Sanitary Conveniences

HT VIII - (B): Public Service - Others

Applicability:

This tariff category is applicable for electricity supply at High Voltage for:

a. Educational Institutions, such as Schools and Colleges; Health Care facilities, such as Hospitals, Dispensaries, Clinics, Primary Health Care Centres, Diagnostic Centres, Blood Banks and Pathology Laboratories; Libraries and public reading rooms- other than those of the State or Central Government, Local Self-Government bodies such as Municipalities, Zilla Parishads, Panchayat Samitties, Gram Panchayats, etc.

b. Sports Clubs and facilities / Health Clubs, Student / working Men /Women Hostel and facilities / Gymnasium / Swimming Pools attached to such Educational Institutions / Health Care facilities, provided that they are situated in the same premises and are meant primarily for their students / faculty/employees/patients;

c. All offices of Government and Municipal/ Local Authorities/ Local Self-Government bodies, such as Municipalities, Zilla Parishads, Panchayat Samitis, Gram Panchayats; Police Stations and Police Chowkies; Post Offices, Armed Forces/Defense and Para-Military establishments;

d. Service-oriented Spiritual Organisations;

e. Accommodation facilities provided by religious trusts registered under Maharashtra Public Trust Act for devotees. State or Municipal/Local Authority Transport establishments, including their Workshops;

f. Fire Service Stations; Jails, Prisons; Courts.

g. Airports

h. Ports, Jetties and provision for Shore Power Supply

- i. Waste processing units and Water ATM not covered under HT IV category;*
- j. Dam operation including Lighting and other activities, etc.”*

12. Thus it can be seen that it applies to the Government Educational Institutions such as Schools and Colleges and not the Academy established for the training of its employees and others. The petitioner drawn my attention to the Section 62 (3) of the Maharashtra Electricity Act which reproduced as below:

“Section 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”.

13. Thus, the real meaning of expression ‘purpose for which the supply is required’ as used in Section 62(3) of the Act does not merely relate to the nature of the activity carried out by a consumer but has to be necessarily determined from the objects sought to be achieved through such activity.

14. Learned Counsel for petitioner relied on ***Malbar Hills Citizens' Forum (supra)***, wherein this Court held as under:

“8. ...As we have noted above, the categorization of electricity tariff is on the basis of 'usage' and not 'the terms of usage'. If a gymnasium uses electricity, it is usage for running a gymnasium, irrespective of the terms of such usage, namely, whether for a charge or not and whether on a profit motive or no profit principle. It is usage clearly falling within 'Non-residential or Commercial' usage. A non-residential or commercial establishment for the purposes of electricity tariff does not cease to be non-residential or commercial if it is run on a no profit basis. Even the usage of electricity categorized as commercial is not because there is a profit motive but because the activity is commercial as opposed to residential or individual.”

15. Learned Ombudsman without considering categorization by MERC in Case No.226/2022 held that respondents category imparts induction training as well as in service training to Forest officers and other staff of Forest department and it also conducts training in the field of environmental education, nature appreciation etc for NGOs, Joint Forest Management Committee Members, Tribals, Common citizens etc.

16. Considering the facts that the Academy is 100% funded by the Government of Maharashtra and name of the Academy is earlier Forest Guard Mahavidyalaya which was changed to Chandrapur Forest Academy. It is held that the activity going on in the premises of the respondents Academy should be termed under the Government Educational Institute and accordingly it is eligible for the Public Service HT VIII- (A) tariff.

17. Though, learned ombudsman compared the Academy YASHADA, it fails to consider that HT VIII- (A) applies to only Government Institutions such as Schools and Colleges not to the Academy established for the training of its employee like that of respondent's Academy. Thus, in my considered opinion, the learned ombudsman has himself incorporated and misunderstood the tariff applicable to the case in hand and recorded perverse finding to the fact that respondent Academy be classified under the Public Service HT VIII- (A) as Academy is 100% funded by the Government of Maharashtra. In fact, the order passed by Consumer Grievance Redressal Forum dated 14.05.2024 is perfectly justified. As such,

impugned order is liable to be set aside. Accordingly, I proceed to pass the following order:

ORDER

- i) The Writ Petition is allowed.
- ii) The impugned order dated 08.08.2024 passed in EO Representation No.33/2024, by the Electricity Ombudsman, Nagpur is hereby quashed and set aside.
- iii) The order passed by Consumer Grievance Redressal Forum MSEDCL, Nagpur dated 14.05.2024 is hereby confirmed.

18. The Writ Petition is disposed of in above terms. No order as to the costs.

R.S. Sahare

(Smt. M.S. Jawalkar, J.)