

‘असोसिएशन ऑफ दि मॅनेजमेंट्स ऑफ अन एडेड इंजिनिअरिंग कॉलेजेस (महा.)’ यांनी Appellate Tribunal for Electricity, New Delhi येथे याचिका दाखल केलेली होती. या मध्ये धर्मदाय संस्थांना इतर वर्गाच्या सबसिडीकरिता अधिक दर लावून त्यावर दबाब टाकणे हे अन्यायकारक आहे व त्यांना शॉपींग मॉल व इतर व्यावसायिक ग्राहकासारखे दर लावणे व त्या वर्गात मोडणे हे अन्यायकारक आहे. या कारणाकरिता सदर याचिका दाखल करण्यात आलेली होती. सदर याचिकेमध्ये अॅड. एस.आर. नारगोलकर व दिल्लीतील इतर वकिलांनी असोसिएशनतर्फे युक्तीवाद केला.

सदर याचिकेमध्ये निकाल देतांना धर्मादाय शैक्षणिक संस्थांना व्यावसायिक दर न लावता व त्यांना व्यावसायिक वर्गामध्ये समाविष्ट न करता त्याच्याकरिता एक स्वतंत्र कॅटेगिरी निर्माण करण्याचे आदेश Appellate Tribunal for Electricity, New Delhi यांनी Maharashtra Electricity Regulatory Commission यांना दिलेले आहे. सदर विशेष कॅटेगिरीमध्ये धर्मादाय शिक्षण संस्थांना पुढीलप्रमाणे दर लावलेले आहेत. व्यावसायिक संस्थांना व धर्मादाय शैक्षणिक संस्था यांना लावण्यात आलेल्या विजेच्या दराचा तुलनात्मक तक्ता पुढीलप्रमाणे.

Comparitive Tariff

	SPECIAL CATEGORY FOR EDUCATIONAL INSTITUTIONS AND HOSPITALS	COMMERCIAL CATEGORY
HT Experess Feeder	8.21	10.45
HT Non-Exp. Feeder	7.65	9.83
LT (A) 0-20KW	For first 200 units :5.36 For units above 200 : 7.88	5.85 8.38
LT (B) 20-50 KW	7.79	8.44
Above 50 KW	8.24	10.91

Maharashtra Electricity Regulatory Commission ने सदर धर्मादाय शैक्षणिक संस्थांना चुकीच्या पध्दतीने औद्योगिक वर्गात समाविष्ट केलेले होते. सदर चुक Appellate Tribunal for Electricity, New Delhi ने Maharashtra Electricity Regulatory Commission च्या निर्देशनास या निकाल पत्रात आणून दिलेली आहे.

S. R. NARGOLKAR

Advocate High Court

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Date : 24th August, 2012.

To,

The Secretary,

Association of the Managements of

Un-aided Engineering Colleges, Maharashtra,

Sir,

I am very glad to inform the Members of the Association that the contentions advanced by me on behalf of the Association have been ultimately accepted by the MERC (Maharashtra Electricity Regulatory Authority) in the tariff order made for the Financial Year 2012-2013. My prime contention that the Educational Institutions should be placed in a separate category and should not be clubbed and equated with Commercial establishments has received acceptance and a new and separate category has been created for the us. I am also extremely glad to inform the members that the tariff applicable to this category is much lower than commercial category and hence my second contention that the Educational Institutions should not be charged at the tariff applicable to the commercial establishments has also been accepted. The MSEDCL had proposed that only Govt and Municipal Owned educational Institutions should be charged at a reduced rate and Colleges run by Charitable Trusts should not be placed in the same category. However, I had raised an objection to the same and in the Public Hearing I had vehemently argued that there is no reason to differentiate between Govt. owned Colleges and Colleges owned by charitable institutions as, the purpose for the use of electricity is the same and the charitable institutions also work on "NO-profit, No-Loss-Basis" and hence there is no rational distinction between the two sets of establishments. I had raised all these points in the written Submissions that I had submitted to MERC. The MERC in the tariff order has ruled in our favour and has granted us the equality with Govt. owned Colleges. Thus all our contentions have been accepted. Considering the Average "Cost of Supply", the tariff levied on us appears to be reasonable. The Appeals filed by us in respect of earlier years and the Judgment and Order of the Appellate Tribunal for Electricity have also benefitted us inasmuch as the observations and directions given by the Hon'ble Tribunal have helped us in buttressing our submissions before the MERC. This tariff Order will also be helpful to us in advancing our contentions before the Hon'ble Supreme Court in the Appeals

filed by us in respect of earlier financial years. Our efforts of the last few months have therefore, fructified. I, therefore, heartily congratulate all of you.

I am enclosing herewith a note containing relevant excerpts from the said Tariff Order and a comparative chart showing the substantial relief we have received. May I also take this opportunity to remind you to process my Memo of Fees / Invoices at the earliest. I am also enclosing herewith a fresh Invoice quoting all arrears.

Thanking You,

Yours sincerely,

(S.R.Nargolkar)

Advocate

Relevant excerpts from the Tariff Order passed by MERC

- ❖ " submitted that forcing public charitable institutions to contribute towards subsidy for other category of consumers is unreasonable and unjustified. It also expressed concerns over the burdening of the weaker consumers to extract the subsidy amount as it would render the Institutions unsustainable.

MSEDCL's reply

MSEDCL replied that the average cost of supply has consistently increased from FY 2006-07 to FY 2011-12 which has been approved by the Commission. Power Purchase cost comprises of 82% to 84% of the total cost and it has increased with the increase in purchase of electricity. MSEDCL procures 95% of electricity from long-term sources, the Tariff for which is already approved by the Commission. Remaining 5% is procured from short-term sources by means of tendering process or via power exchanges. Therefore, MSEDCL cannot maintain control over the cost of power purchased. Hence, alleging that MSEDCL has acted against the spirit of EA 2003 and the Tariff Policy is unjustified.

MSEDCL submitted that as per the provisions of the Electricity Act 2003, cross subsidies shall be progressively reduced. As per the Tariff Policy, it is expected that Tariff should progressively reflect the efficient and prudent average cost of supply and shall be within $\pm 20\%$ of average cost of supply. It is also stated that the Commission is also actively considering to reduce the cross subsidy progressively and is contemplating to come up with Guidelines/Regulations very soon.

The present status of finalizing the road map is absolutely in initial stage and MSEDCL feels that the cross subsidy reduction in tariffs through a transparent road map can be taken up only after due consultative process of all stake holders including the State Government. As such, cross subsidy is directly linked with Aggregate Revenue Requirement and is directly impacted by various uncontrollable factors and all these issues need to be looked into while deciding the tariffs for various categories.

In view of the fact that the Commission is yet to finalize the road map and its philosophy on cross subsidy, MSEDCL is unable to make any comments on the same.

As a first step to have a tariff within $\pm 20\%$ of the average cost of supply, MSEDCL has proposed that the energy charge payable by domestic consumers in the tariff slab of zero to hundred unit per month may be increased from 282 paise per kWh to 390 paise per kWh which is less by 10% than the landed cost of power purchase. Similarly the energy charge payable by the agriculture consumers may be increased to from 176 paise per kWh to 205 paise per kWh. This shall be considered an initiative by MSEDCL to rationalize the tariff in line with the Tariff Policy objective of tariff having a direct linkage to cost of service.

2.6

Commission's ruling

The Commission notes that one of the major reasons for the rise in the average cost of supply is the increase in power purchase costs. In the present Order the Commission has undertaken detailed analysis for MSEDCL's proposed power purchase plan and cost before approving the same. As would be evident, the Commission's analysis shows that MSEDCL's power purchase plan is too

optimistic. Therefore, the Commission has approved power purchase plan and cost based on the Commission's own analysis. However, regarding other components of Tariff, the Commission has analysed the same in sections relating to determination of ARR for FY 2011-12 and FY 2012-13, before approving the same.

The Commission is aware of the fact that there is a need to reduce cross subsidy. The Govt of Maharashtra (GoM) had issued specific instructions to the Commission in this respect under Section 108 of the EA 2003. The Commission has already submitted a draft report to the GoM, which proposes to lay down a roadmap for reducing cross subsidies in Maharashtra. At present the report is under consideration of the GoM.

However, the Commission has noted the objections in this regard and also MSEDCL's response to these objections. In the present Order the Commission has effected reduction in cross subsidy to some extent, which can be seen in the table on cross-subsidy at existing and proposed tariffs in the Tariff philosophy section of this Order.

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- ❖ Akhil Bharatiya Grahak Panchayat (Nashik) and Shri S.R Nargolkar requested that the benefit of ToD incentive be provided to the domestic consumers and educational institutions too.
- ❖ Shri S.R. Nargolkar submitted that it was unfair to club „for profit organisations“ like malls with „not for profit organisations“ like educational institutes, etc. paying Tariff more than the industries in HT-I category. Hence, he objected including these educational institutes as commercial consumer. He suggested that the Tariff for such institutions should be either at the cost of supply if not at a subsidy. The differential treatment given to Government hospitals and educational institutes as against those run by charitable trust is objectionable as both have same goals. He also mentioned that forcing public charitable institutions to contribute towards subsidy amount for other category of consumers is unreasonable and unjustified. Burdening the weaker consumers to extract the subsidy amount would make the institutions unsustainable. The objector stated the Commission is expected to follow sub-Section 3 of Section 62 of EA 2003 and the differentiation has to be made according to the purpose for which the supply is required. This inherently means that the proposed use is a relevant criterion for determining the Tariff rates. He referred to the Judgement of the Hon'ble ATE in Appeal No. 202 of 2009, dated 20 October 2011, wherein the Hon'ble Tribunal held that educational institutes and hospitals which are run and operated by public charitable trusts / societies cannot and should not be classified into the same category as commercial establishments. He submitted that the Commission is expected to exercise powers under Section 64(2) of the Electricity Act, 2003 in Order to ensure that there is appropriate categorization of consumers on the basis of criteria laid down in the said Section, which includes the purpose for which the supply is sought. Shri S.R Nargolkar requested that the benefit of ToD incentive be provided to the domestic consumers and educational institutions too.

❖ “.....Shri S. R. Nargolkar, representing the Association of Hospitals in Pune, submitted that charitable institutions run without any motive for profits. Also, the purpose of a Government hospital and charitable hospital is the same. He objected to the Tariff category proposed by MSEDCL for hospitals and schools, engineering colleges run by charitable institutions.”

❖ The Association of Hospitals, submitted that the proposed Tariff for HT & LT supply is different for Govt. Hospitals and non-Govt. hospitals. It objected this differentiation and reasoned that the non-Govt. hospitals are Charitable Trust Hospitals providing free and least cost medical treatment to poor patients and moreover they are non-profit organizations. The organisations suggested that the Charitable Trust Hospitals should be treated at par with Govt. hospitals and the Tariff for both should be the same. It also suggested the State Commission to separately classify the Hospitals, Educational Institutional and spiritual organizations which are service oriented and put them in a separate category for the purpose of determination of Tariff. ____

❖ “..... submitted that the educational institutions render public utility services for the benefit of the society at large and are organized on a non-profit making basis. It highlighted that MSEDCL has proposed a Tariff structure whereby separate category has been proposed for educational institutes and hospitals owned by Government and a separate category is proposed for educational institutes and hospitals not owned by the Government. Mahamumbai Shikshan Sanstha Sanghatna objected this discrimination for the lack of rational nexus between the differentiation and the purpose sought to achieve. It explained that educational institutions and hospitals owned by charitable institutions are not different from the educational institutions and hospitals owned by the Government as both these categories have the public health and education as their objective, both operate on no profit, no loss basis and both strive to provide essential services to the masses. Thus, Mahamumbai Shikshan Sanstha Sanghatna requested the Commission to establish parity between Government and Non Government Educational Institutions and Hospitals.

❖ MSEDCL stated that the Hon'ble ATE in its Judgment dated 20 October, 2011 in Appeal No. 110,111,170,171,201 & 202 of 2009 & Appeal No. 70, 71, 78,79,80,81 & 82 of 2010 in the matter of Association of Hospitals, Educational Institutes & Others passed its Judgment directing the Commission to classify the hospitals; educational institutions and spiritual organizations which are service oriented and put them in a separate category for the purpose of determination of Tariff. MSEDCL has proposed to introduce a new consumer sub-category within Low Tension / High Tension non-domestic (Commercial) category consisting of all Government owned,

managed and operated educational institutions including higher educational institutes (viz., Zilla Parishad/Municipal Council or Corporation Schools, Govt. Medical/Engineering Colleges, etc) but excluding Government aided educational institutes. Similarly, the said sub-categories are proposed for Government owned, managed and operated hospitals (viz., District Civil Hospitals, Primary Health Centres, etc.). MSEDCL also proposed that hospitals and educational institutes apart from the Government owned shall not be subjected to any Tariff hike and it is proposed to permit MSEDCL to charge existing Tariff to these Educational Institutions/Hospitals. MSEDCL also clarified that the new categories in the HT/LT Commercial are not subjected to any Tariff hike but it had proposed to charge Tariff at current level of Average Cost of Supply. It also mentioned that it has made the categorisation in public interest of the society and has submitted the same to the Commission. The final decision on these categories shall be taken by the Commission.

MSEDCL also highlighted that non express feeders were subjected to limited duration load shedding as and when power situation in the State necessitates the same. The Express Feeders were charged a 10% premium for continuous supply. MSEDCL would be trying to minimize the load shedding to the extent possible which would be a gradual process. Even after commencement of supply from various new sources, MSEDCL would further require some time for stabilization. Till the entire system gets stabilized and all possible lacunae in the system were resolved, MSEDCL maintained that such categorization would be required to continue for another year. Further, MSEDCL submitted that the consumers had an option to switch to non-express feeders within one month of the Tariff Order of the Commission.

Regarding the introduction to sub-category in LT Commercial/ LT Commercial Public and Government, agricultural Tariff for hatcheries/ poultry, categorization for R&D and IT Industries in Industrial Tariffs and HT IV categorization for Common effluent Treatment Plant, MSEDCL replied that it has examined various issues regarding the classification of a consumer and litigations arising from wrong categorization and based on the feedback received during interaction with field officers, MSEDCL has proposed applicability of Tariff to different category of consumer in exhaustive manner, to the extent possible.

❖ **Commission's ruling**

The Commission noted that applicability of Tariff was one of the major objections during the public process initiated by the Commission. In the section covering Tariff Philosophy the Commission has spelt out its view regarding consumer categorisation and applicability of Tariff for different categories

It is important to note the Hon^{ble} ATE, in its Judgement dated 20 October, 2011, in Appeal No.110,111,170,171,201 & 202 of 2009 and 70,71,78,79,80,81 & 82 of 2010, has clarified that the consumer categories can be created based on the intent or purpose of use by the consumer. Therefore, the Commission has made the categories applicable keeping this Judgement in view.

The Commission has examined the Tariff proposal of MSEDCL and also examined all the suggestions/objections made by the consumers. Based on the suggestions received and also after considering the Judgement of the Hon^{ble} ATE in relation to categorisation of consumers, the Commission has created a new category of consumers in this Tariff Order based on the purpose of use.

Mahamumbai Shikshan Sanstha Sanghatna and Shri S. R. Nargolkar submitted that the operation and maintenance expenses seemed to be inflated unreasonably. It also observed that the employee expenses also appeared to be highly inflated resulting in an unrealistic gap in the revenue requirement. It suggested a proper audit into the accounts of MSEDCL and called for the rationalization of the costs to bring down the extra-ordinarily high Tariff structure.

MSEDCL's reply

MSEDCL replied that as compared to the increase in Sales, the increase in O&M Expenses is nominal. MSEDCL distributes electricity in the largest geographical area in India as compared to other Distribution Utilities. Considering the large geographical spread, huge Distribution Network, no. of Employees, the O&M Expenses of MSEDCL are bound to increase. MSEDCL has already given the detailed reasoning as well as methodology adopted to project the O&M Expenses in the Main Petition. MSEDCL also submitted that the O&M expenses appear to be increased because the base figures approved by the Commission are generally determined on the lower side and are approved based on the increase in Consumer Price Index (CPI) and wholesale Price Index (WPI). MSEDCL has challenged the Methodology of the Commission before the Hon^{ble} ATE and the said Appeal is pending.

Regarding Employee Expenses, MSEDCL replied that the dearness allowance given to MSEDCL employees is based on the DA declared by State Government which in turn depends on DA declared by Central Government depending on the All India Consumer Price Index Numbers.

Regarding the number of Employee expected to be added, MSEDCL replied that it is not planning to add any new employee in FY 2011-12 and FY 2012-13. However, vacant positions against the sanctioned posts would be filled in and vacancies arising due to retirements would also be filled.

Regarding A&G Expenses, MSEDCL replied that the A&G Expenses are duly audited by the Statutory Auditors of the MSEDCL which is legitimate and genuine and are directly related to the day to day administration and general operations of MSEDCL. MSEDCL has projected the A&G Expenses with a nominal increase of 10 % per annum (for maximum heads of A&G Expense) over previous year considering the present trend of inflation. Further details have been provided in the main Petition.

Commission's ruling

The Commission has a specific methodology guided by the Tariff Regulations, 2005 for approving the Administrative and General expense for the ARR and Tariff determination. The Commission has been guided by the same methodology for approval of Administrative and General Expense for the current Petition of ARR and Tariff determination. However, during the True up process, the Commission will consider the deviation in the actual and approved Administrative and General Expense and accordingly perform prudence check in allowing/disallowing the deviations.

- ❖ MSEDCL has proposed to introduce a new consumer sub-category within Low Tension / High Tension Non-domestic (Commercial) category consisting all Government owned, managed and operated educational institutions including higher

educational institutes (viz., Zilla Parishad/Municipal Council or Corporation Schools, Govt. Medical/Engineering Colleges, etc.) but excluding Government aided educational institutes. Similar approach has been proposed for Government owned, managed and operated hospitals (viz., District Civil Hospitals, Primary Health Centre etc.).

MSEDCL submitted that the data pertaining to this category of consumers is currently not available separately and need not be a precondition for carving out a new sub-category so as to address the practical issue at hand. Since, the data on the same is not available, the revenue calculation for these categories has not been

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shown. However, MSEDCL submitted that on being granted approval for sub-categories as proposed and identifying the consumers of these categories, the revenue calculation shall be shown in subsequent Tariff filings.

MSEDCL submitted that the Hon'ble ATE in its Judgment dated October 20, 2011 (Appeal No. 110,111,170,171,201 & 202 of 2009) & Appeal No. 70, 71, 78,79,80,81 & 82 of 2010 in the matter of Association of Hospitals, Educational Institutes & Others and the Commission passed its judgment that the purpose for which the supply is required by the aforesaid categories cannot be equated at par with other consumer categories in the Commercial Category as was the case. The Hon'ble ATE further avers that the re-categorization of the Charitable Hospitals and Charitable Organizations and grouping them with other consumers of the Category is patently wrong. MSEDCL further stated that:

"Further, the ATE in its judgment also mentioned that such classification by the Hon'ble Commission was done on the grounds that the appellants were neither under industrial, agricultural nor residential category which is not the correct approach. As such, the Hon'ble Tribunal directed that Hon'ble Commission may classify the hospitals; educational institutions and spiritual organisations which are service oriented and put them in a separate category for the purpose of determination of Tariff. Thus, it is proposed by MSEDCL to introduce a separate category for Govt. aided Educational Institutes and Hospitals."

MSEDCL further proposed that Tariff for such consumers shall be at par with the current level of Average Cost of Supply. In addition, it has also proposed that educational institutes and hospitals other than the Government owned educational institutes and hospitals shall not be subjected to any Tariff hike, which inter – alia mean that the Tariff applicable to such Educational Institutions & Hospitals shall not be increased.

Commission's Ruling:

In the public hearings, some of the consumers/consumer representatives have objected that a lower Tariff by way of a new category should not be allowed to Government owned agencies as these are generally defaulting consumers. The Commission would like to clarify that maintaining high collection efficiency is a responsibility of MSEDCL. If MSEDCL has not been able to collect its dues from certain agencies, the same should not deprive needy consumers from availing power at reasonable Tariffs. Some consumers have also suggested that the Commission should decrease the number of consumer categories for simplification of Tariff Schedule.

In this context the Commission is fortified by the Judgement of the Hon'ble ATE dated 20 October, 2011. in Appeal No.110.111,170.171,201 & 202 of 2009 and 70,71,78,79,80,81 & 82 of 2010, in which the Tribunal ruled as under:

"57. Summary of Our Findings

(i) The State Commission in the present case wrongly placed all the consumers including the Appellants who were neither domestic nor industrial nor falling under any of the categories under the Commercial Category. The purpose for which the supply is required by the Appellants can not be equated at par with other consumers in the Commercial Category. The Appellants are seeking separate categorisation on the basis of purpose for which the supply is required by the Appellants i.e. rendering essential services.

(ii) 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. The Railways and Delhi Metro Rail Corporation have been differentiated as separate category as they are providing essential services. The same would apply to the Appellants as well.

(iii) The application of mind should be on identifying the categories of the consumers who should be subjected to bear the excess Tariff recoverable based on a valid reason and justification. The re-categorisation of Charitable Hospitals and Charitable Organisations and grouping them with the consumers of the category such as Shopping Malls, Multiplexes, Cinema Theatres, Hotels and other like commercial entities is patently wrong.

(iv) By the impugned order, the State Commission classified the members of the Appellants into „Commercial“ category following a mechanical approach. This has been done only because the Appellants cannot fall under either in the industrial or agricultural or residential category and therefore, the Appellant would automatically fall in the Commercial Category. This is not a proper approach. In case the State commission felt that the Appellants are not falling under any particular existing category, then the State Commission ought to have applied its mind and provided for a new category and given them a competitive Tariff having regard to the purpose for which the electricity is used by them.

(v) The State Commission may classify the hospitals, educational institutions and spiritual organisations which are service oriented and put them in a separate category for the purpose of determination of Tariff.

(vi) We feel that the re-categorisation should be implemented by the State Commission in the next Tariff Order which is yet to be passed for the following reasons:

(i) FY 2008-09 and FY 2009-10 are already over and Tariff has been collected by the Distribution Licensees as per the respective Tariff Orders.

(ii) The Hon^{ble} Supreme Court has granted stay on some of the judgements issued by this Tribunal for the FY 2008-09 in similar matters.

(iii) The Tariff shock and increase in cross subsidy for FY 2009-10 for the above consumer categories will depend on the outcome of the above Appeals pending before the Hon^{ble} Supreme Court for Tariff for FY 2008-09. “

As per the ruling mentioned above, it is imperative that the Commission create new a category based on the “purpose of use” of electricity under the provisions of the Section 62 of the EA, 2003. Therefore, as against MSEDCL's proposal of creation of a separate category for Government owned, managed and operated hospitals and educational institutes, the Commission has decided to introduce a new category called "Public Services". This consumer category is applicable to entities which are essentially providing public services. The Commission has designed the Tariff for

this category in a manner so that the average billing rate for this category is higher than the average cost of supply, but below that of the Commercial category.

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COMPARITIVE TARIFF

	SPECIAL CATEGORY FOR EDUCATIONAL INSITUTIONS AND HOSPITALS	COMMERCIAL CATEGORY
HT Express Feeder	8.21	10.45
HT Non-Exp. Feeder	7.65	9.83
LT (A) 0-20KW	For first 200 units : 5.36 For units above 200 : 7.88	5.85 8.38
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