



Chhattisgarh State Electricity Regulatory Commission

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Petition No. 24/2005(M)

M/s Chhattisgarh Krishi Vaniki Samaj - Petitioner
V/s
Chhattisgarh State Electricity Board, Raipur - Respondent

In the matter of fixation of tariff for plantation of trees - review of the order of the Commission passed on 15.06.05 in Petition No. 5/2005

O R D E R (Passed on 22/03/2006)

Chhattisgarh Krishi Vaniki Samaj, an unregistered association of some persons engaged in raising 'tree crop' of subabool, eucalyptus, jetrofa etc., has submitted a review application under Sec. 94(1)(f) of the Electricity Act, 2003 (hereafter the Act) for review of the order of the Commission passed on 15th June, 2005 regarding determination of retail tariff for the Chhattisgarh State Electricity Board (CSEB or the Board, for short) in petition No.5/2005, in so far as it relates to supply of electricity to 'plantations'. The facts of this case, in brief, are that this Commission passed a tariff order for the year 2005-06 under Sec. 64 of the Act on 15th June, 2005 by which retail tariff of supply of electricity to various consumers of CSEB was determined. In this order there are five LT tariff categories, viz. LV-1 to LV-5. Plantation as a consumer has been included in the LT tariff category 'LV-2 Non-domestic'. The tariff applicable to agriculture is LV-3. There is substantial difference in the tariff of these two categories as would be evident from details given below:

| | | |
|--------------------|---------------------------|---|
| LV-2: Non-domestic | Three phase Connection | Fixed charge Rs.60/KW/month Energy charge Rs.4.30/unit |
| LV-3: Agriculture | Metered supply | Fixed charge Rs.20/HP/month Energy charge Re.1.00/unit |
| | Flat rate supply | |
| | (i) Upto 5 HP | Rs.65/HP/month |
| | (ii) Above 5 HP | Rs.75/HP/month |

For reasons which are well known for repetition here, tariff for supply of electricity to agriculture is the most subsidized tariff, much below the cost of supply of electricity to these consumers. LV-2 Non-domestic tariff, on the other hand, is a category of tariff which is applicable to a large number of consumers who do not come under any of the other LT tariff categories. This is an omnibus category comprising shops, offices, educational institutions, cinema halls, hotels, fisheries, aquaculture, seri-culture, dairy, hatcheries, poultry farms, restaurants, guesthouse, petrol pumps etc. In fact, all small businesses and services and other non-domestic establishments availing electricity supply at 230/400 volts have been clubbed together under this tariff category, by way of rationalisation. The applicant has pleaded for review of the tariff order

on the ground that plantation of trees like subabool, eucalyptus, jetrofa etc. has always been categorized as agriculture and hence such 'tree crop' should be treated as agriculture and placed under the tariff category applicable to agriculture and not treated as plantation. Subsequently, this plea has been amended to clarify that 'tree crops' like subabool, eucalyptus, jetrofa, khamhar, teak and bamboo etc are not plantation and the tariff for supply of electricity for irrigation of such 'tree crop' should appropriately be agriculture tariff. The main ground for review is that the Commission has erred in not including raising of 'tree crop' in agriculture tariff category.

2. We have heard the petitioner as also the respondent in detail. The Board, which has been made the respondent in this case, has pleaded that plantation of trees like subabool and eucalyptus etc. are commercial plantations and the tariff applicable to them has appropriately been fixed by the Commission under the non-domestic tariff category. They have further pleaded that in most cases electricity connection was availed by the members of the petitioner association for 'irrigation of crop' and therefore the tariff charged to them had been agriculture tariff.

3. Before we discuss the merits of the case, it may be pertinent to dwell here on the law and procedure regarding review of a tariff order. Sec. 94 of the Act is an enabling provision which lays down that power of the Commission extends to 'reviewing its decisions, directions and orders'. The Commission has separately framed regulations by the name of CSERC (Details to be furnished by licensee or generating company for determination of tariff and manner of making application) Regulations, 2004 in which the grounds for review of a tariff order have been specifically laid down in clause 33. This clause says: "A petition for review of tariff can be admitted by the Commission under the following conditions – (a) the review petition is filed within 60 days from the date of the tariff order; and (b) *there is an error apparent on the face of the record.*" Thus while the general principles of review may be wider in view of the implications of review of a tariff order, the scope for review has been restricted to an error apparent on the face of the record.

4. The main pleadings of the petitioner are the following:

- (i) Raising 'tree crop' is an agricultural operation and such operation has been treated as agriculture for the purposes of income tax. In a landmark judgement in the case CIT Vs. Raja Vinay Kumar Sahasroy (AIR 1957 SC Page 768), the Hon'ble Supreme Court has held that raising of tree crops and performing of operations like ploughing, tilling of soil, pruning, manuring, planting of seed or taking care of the plants etc. are agriculture operations and income derived from such operations is agriculture income and exempt from income tax. The raising of tree crop by the members of the petitioner association is agriculture operation and hence the agriculture tariff should apply to them.
- (ii) They have been placed in agriculture tariff category for years and now placing them in a non-agriculture tariff category would adversely affect their viability. Safeguarding of consumer's interest being one of the duties enjoined upon the Commission under Section 61 of the Act, the Commission should protect the interest of this group of consumers. They have pleaded that the financial impact of new tariff is such that their electricity

charges will go up many-fold rendering the whole operation of raising of tree crops economically unviable.

- (iii) They have also pleaded that in most States plantation is treated as agriculture for the purpose of tariff. They have cited the example of Madhya Pradesh, Andhra Pradesh, Gujrat, Kerala, Orissa etc.

5. We have carefully gone through the judgement of the Hon'ble Supreme Court regarding what constitutes agricultural income for the purpose of exemption from income tax under the Income Tax Act. The landmark judgement is regarding liability for payment of income tax. The context of this judgement is thus totally different. Electricity tariff is determined under the provisions of the Act. Sec. 174 lays down that this Act "shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act". The only exceptions to this over-riding effect of this statute are contained in Sec. 173 and these are the provisions of the Consumer's Protection Act, the Atomic Energy Act and the Railways Act. What is agriculture for the Income Tax Act need not be so for the purpose of this Act in the matter of determination of tariff.

6. The Commission has been guided in determination of tariff by the principles laid down in Sec. 61 of the Act. Sub-section 3 of Sec. 62 of the Act mandates as under:-

"(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*" (emphasis ours).

The Commission has taken a conscious decision to differentiate between the tariff applicable to agriculture, as it is commonly understood i.e. raising of food and non-food crop, and has placed other operations, even those relating to land and akin to agriculture, in the 'non-domestic' tariff category. Thus plantation is clubbed with nurseries, mushroom growing, sericulture, aquaculture and agriculture related activities like fisheries, hatchery poultry farming, cattle breeding farms etc in this category. The applicability of 'LV-3 LT Agriculture' is quite clear. The tariff is applicable to agriculture pump connections and not to all pump connections for irrigation. From a plain reading of the applicability of 'LV-3 LT Agriculture' and 'LV-2 Non-domestic' tariff, it would be clear that a differentiation has been made between two kinds of economic activities. There is a long and well-known history of agriculture tariff being kept low and subsidized. Subsidized tariff for agriculture is a phenomenon which is not peculiar to this State and is prevalent in most States of the country. In the State of Chhattisgarh barely 21% of agriculture land receives irrigation and the crop intensity is low at only 102% and hence it has been the policy of the State Government to encourage private irrigation facilities for agriculture. Plantation or growing of trees is not a crop like any food crop or even what are commonly known as cash crop such as sugarcane, growing of vegetables and other horticulture crop or even 'plantation crops' like tea and coffee etc. The main purpose of plantation of the kind of trees which has been mentioned by the petitioner, such as subabool, eucalyptus and also teak,

Khamhar, bamboo etc. are grown mainly for commercial purposes. The wood stock of subabool, eucalyptus and bamboos are used in industries for manufacturing paper and plywood. Teak and Khamhar which have been added by the petitioner as 'tree crop' subsequently in the petition through an amendment, are, in fact, expensive timber trees. Supply of electricity for the purpose of irrigation of such trees cannot be placed in the same class as, say, growing paddy or pulses and oil seeds. In fact, growing of nurseries and sericulture which in this State is meant primarily for the poor landless labourers, are much closer to agriculture than plantation.

7. In fact, the petitioner initially pleaded that growing of subabool, eucalyptus etc should not be treated as 'plantation' at all. When the question as to what constitutes plantation came up they shifted their argument to treating growing of the so-called 'tree crop' as agriculture. The meaning of plantation as given in the Concise Oxford English Dictionary is "1. a large estate on which crops such as coffee, sugar and tobacco are grown, 2. an area in which trees have been planted especially for commercial purposes". The so-called tree crop is nothing but plantation. The Commission has made a deliberate distinction between provisions of electricity for irrigation of agriculture crop as opposed to irrigation for other allied economic activities on land such as plantation, raising of nurseries, sericulture etc. which may be akin to agriculture but are not agriculture as is commonly understood and are mainly commercial activities. There is no error apparent on the face of the record which warrants review of the impugned order of this Commission.

8. The main issue here is whether highly subsidized electricity tariff should be made applicable to an activity which is largely commercial. As already mentioned, there may be a case for subsidizing tariff for agriculture in a State like Chhattisgarh where not only the total crop area under irrigation is very small but agriculture yields are also much below the national average. The Act mandates that tariff should progressively reflect the cost of supply of electricity and also that cross subsidy should be reduced and eliminated over a period of time (Sec. 61). That being the objective and the mandate of the law, there is no scope for applying subsidized tariff to a largely commercial activity even if it is broadly categorized as agriculture. The average cost of supply of electricity in the State is Rs.3.45 per unit while the average tariff for agriculture is less than Re.1 per unit. The petitioners have sought to draw upon the past to justify their plea. Apparently most of the members of the petitioner association have been provided electricity connection for agriculture purpose even though the Board was aware that they intended to/are growing trees. The Board has controverted this statement by saying that the initial electricity connection was taken for irrigation for agriculture and the field staff of the Board may not have made a difference between agriculture per se and plantation. In any case, as already mentioned, the Commission has made a difference between supply of electricity for irrigation of crops and irrigation for growing trees. The Commission would not like to go into the manner in which, and the statement on the basis of which electricity connections were obtained by the members of the petitioner association initially for the simple reason that it would not have affected the tariff design in the impugned tariff order.

9. Although the tariff prevailing in other States is not of direct relevance to determination of electricity tariff in this State, they are relevant by way of examples and as an indicator of the general practice followed. However, in taking these examples into account it would be worthwhile to take into consideration the fact that in most States large tracts of fallow land are

not available for plantation as it is in Chhattisgarh. Kerala is an example. The petitioner has drawn the conclusion that plantation of trees is treated as agriculture in these States because of the absence of specific inclusion of plantation in any tariff category. Their conclusion on that basis that plantation attracts agriculture tariff in these States has no basis. Plantation is not mentioned in the agriculture tariff category either. The only case which has some relevance is that of Madhya Pradesh, since Chhattisgarh was a part of Madhya Pradesh not long ago. In Madhya Pradesh plantation was included in non-domestic tariff in the tariff order for the year 2002-03 to 2004-05 but was excluded from non-domestic category in the tariff order for the year 2005-06. The petitioner has averred that this has been done specifically to exclude plantation from commercial tariff category and include it in agriculture. It would be pertinent to mention here, without prejudice to what category of consumers are included or not included in the Madhya Pradesh tariff design, that a tariff order does not include an exhaustive list of consumers under a tariff category. This is not practicable and is the reason why the applicability of tariff specifically mentions the supply voltage and load so that all categories of consumers who avail electricity supply of that voltage and load are covered. As far as we are aware, Madhya Pradesh has no plantation of the kind under consideration in this case and hence inclusion or non-inclusion of plantation in any of the tariff categories is of little consequence.

10. The other plea of the petitioner that plantations help the environment and that it has been the Government's policy to encourage growing of trees in the interest of environment is no doubt valid. Looking to the provisions of the Act, the Commission, however, is of the view that such encouragement can not be at the cost of the power utility or other subsidizing consumers. The State Government has not sought to provide subsidy to the Board for keeping tariff for plantation below cost of supply in the interest of environment. Hence this plea is not tenable.

11. The only other ground which has been pleaded is the high incidence of the electricity charges as a result of the change over from agriculture tariff to non-domestic category. It is pleaded that the average electricity expenses presently on application of agriculture tariff is Rs.450 per acre per year which will go up substantially to Rs.5100 per acre when 'plantation' tariff is applied. This has been worked out on the basis of an average motor of 5HP running for eight hours per day for eight months. No proof has been submitted to show that the projected quantum of electricity is required for irrigation of plantation. During arguments in this case it was stated by the petitioner that irrigation through out the year (except for the months of rainy season) is required only in the initial 2 to 3 years of plantation, depending on the kind of trees grown and thereafter no irrigation is required. Therefore, the basis on which the charges have been arrived at are not clear.

In view of the above discussion the review application has no merit and is rejected.

Sd/-
Member

Sd/-
Chairman