

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal no. 56 of 2014

Dated: 14th January, 2015

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice Surendra Kumar, Judicial Member**

In the matter of:

**M/s. BSCPL Infrastrictire Limited ...Appellant(s)
M.No. 8-2-502/1/A,
Jivi Towers
Road No, 7, Banjara Hills
Hyderabad – 500 004**

Versus

- 1. Chhattisgarh State Power ...Respondent(s)
Distribution Company Limited
Danganiya, Raipur – 492 013**
- 2. Chhattisgarh State Electricity
Regulatory Commission
Irrigation Colony, Shanty Nagar
Raipur – 492 001**

**Counsel for the Appellant(s): Mr. Matrugupta Mishra
Ms. Shikha Ohri
Ms. Ruth Elwin
Ms. Meghna Aggarwal**

**Counsel for the Respondent(s): Ms. Suparna Srivastava for R-1
Mr. C.K. Rai for R-2**

JUDGMENT

RAKESH NATH, TECHNICAL MEMBER

The present Appeal has been preferred by M/s. BSCPL Infrastructure Ltd. against the impugned order dated 26.09.2013 passed by the Chhatisgarh State Electricity Regulatory Commission (“State Commission”) whereby the change of tariff category of the Appellant from HV-6.1 to HV-3.1 was denied by the State Commission.

2. Chhattisgarh State Power Distribution Co. is the Respondent no.1. The State Commission is the Respondent no.2.
3. The brief facts of the case are as under:

- a) The State Commission passed tariff order dated 31.03.2011 for the FY 2011-12 approving the tariff schedule applicable to HT consumers of the Respondent no. 1. The tariff order was made applicable from 09.04.2011.

- b) The Appellant had executed a Concession Agreement for four laning of Orissa Border-Arang section of NH-6 in the State of Chhattisgarh to be executed as BOT (Toll). The Appellant on 28.03.2012 applied to the Respondent no.1 for sanction of 1200 KVA HT power supply connection at 33 KV for its processing unit constituting stone crusher, Hot Mix Plant and Wet Mix Plant for execution of work pertaining to the Concession Agreement. The Respondent no.1 sanctioned the Appellant's power supply connection vide letter dated 16.07.2012 for 1200 KV load at 33 KV under HV 6.1 tariff category.

- c) The Appellant made a request to the Respondent no.1 to change the category from HV-6.1 to HV-3.1 stating that the unit of the Appellant is a processing industry. However, the request of the Appellant was not accepted by the Respondent no.1.

- d) Thereafter, the Appellant filed a petition before the State Commission praying for direction to the Respondent no.1 to change the category applicable to the Appellant from HV-6.1 to HV-3.1.

- e) The State Commission passed the impugned order dated 26.09.2013 rejecting the prayer of the Appellant. Aggrieved by the impugned order dated 26.09.2013, the Appellant has filed the present Appeal.

4. The Appellant has made the following submissions:
 - a) The Appellant's firm is registered as an industry in the Industry's Department and, therefore, the tariff under HV-3 category should be applicable.
 - b) The Appellant's electrical load comprises of loads of stone crusher unit, hot mix unit and wet mix unit which are industrial activities. The Appellant's unit is an industry like a cement, steel, bitumen, etc. The material produced in this unit is used for building of roads like cement and bitumen which are also used in road works and which are obtained from other industrial units.
5. We have heard Shri Matrugupta Mishra, Learned Counsel for the Appellant, Shri C.K. Rai, Learned Counsel for the State Commission and Mrs. Suparna Srivastava, Learned

Counsel for the Respondent no.1 and have carefully considered their contentions. **The only issue that arises for our consideration in the present Appeal is whether the State Commission was correct in rejecting the claim of the Appellant for categorization of its plant under HV-3 category instead of HV-6 category?**

6. Let us first examine the activities carried out in the Appellant's unit. The processes carried out in the Appellant's unit are crushing the boulders of different sizes through crusher and mixing of aggregate metal with bitumen through Hot Mix Plant and Wet Mix Plant. The load of the Appellant is motive load. There is no other load except the motors used for running the crusher and Mixing Plants.

7. The findings given by the State Commission in the impugned order are summarized as under:

- i) According to the tariff order of the State Commission any non-industrial load or non-residential load which has a mix of different loads, then HV-6 category should be made applicable.

- ii) The Appellant's firm is utilizing electricity for mixed load. A part of electricity is consumed for crushing the stone and the other part is for Hot Mix Plant and Wet Mix Plant unit. Even if crushing of stones is considered as industrial activity, the hot and wet mixing units cannot be considered as industrial activity.

- iii) The Petitioner is using electricity for mixed load and therefore HV-6 tariff should be applicable.

8. Let us examine the categories of High Tension consumers in the tariff schedule decided by the State Commission by its order dated 31.03.2011.
 - 8.1 HV-1 Steel Industries category is applicable to various steel industries for power, light, fans, cooling, ventilation, etc., which shall include all energy consumption in factory and consumption for residential and general use therein including offices, stores, canteen, compounding lighting, etc.
 - 8.2 HV-2 Mines and Cement Industries category is applicable to mines and cement industries for power light, fans, cooling ventilation, etc., which shall also include all energy consumption in factory and consumption for residential and general use therein including offices, stores, canteen, yard lighting, etc.
 - 8.3 HV-3: Other industries category is applicable to all the industries not covered under categories HV-1, HV-2, and HV-4 for power, lights, fans, cooling, ventilation, etc., which

shall also include all energy consumption in factory and consumption for residential and general use therein including stores, canteen, yard lighting, etc., HV-3.1 tariff is applicable to HT industries at 33 KV.

- 8.4 HV-4: Low load factor industries category is applicable to HT industries to whom tariff category HV-1 and HV-3 apply but working in day time only.
- 8.5 HV-5: Residential purpose category is applicable primarily for bulk supply at one point to colonies, multi-stories residential buildings, townships, etc.
- 8.6 HV-6: General Purpose Non-Industrial category is applicable for supply to establishment such as Railways (other than traction), hospitals, offices, hotels, shopping malls, educational institutions and other institutions, etc., having mixed load or non-industrial and/or non-residential load. This tariff is also applicable to all types of construction load and all other HT consumers not covered specifically in any other

HV tariff category. HV-6.1 tariff is applicable to General Purpose Non-industrial consumer supplied at 33 KV.

9. Thus, the HV 3 tariff is applicable to industries not covered under HV-1, HV-2 and HV-4 for power, light fans cooling ventilations etc. and includes all energy consumption in a factory. HV-6 tariff is applicable to railways (other than traction), hospitals, offices, hotels, shopping malls, educational institution and other institution, etc., having a mixed load or non-industrial and/or non-residential load. HV-6 tariff is also applicable to all HT consumers not covered specifically in any other HV tariff category.

10. The State Commission has come to the conclusion that the Appellant's load is a mixed load which falls under HV-6 only because the Appellant's plant has Hot Mix Plant and Wet Mix Plant. The State Commission has stated that the

distribution company has clarified that HV 6 category has not been applied for the reason that the petitioners load is construction load but HV 6 category has been applied because the petitioner's electrical load comprise of loads of stone crusher unit, hot mix plant unit and wet mix plant unit which is in the nature of mixed type of load. According to the State Commission any non-industrial load or non-residential load which has mix of different loads, then HV 6 category should be made applicable.

11. Shri C.K. Rai, Learned Counsel for the State Commission submitted that the tariff category of electricity consumer is defined in accordance with the provisions of the Electricity Act, 2003. The tariff category is designed taking into consideration various factors indicated in the Electricity Act one of which is the nature of supply. The State Industry Department registers a firm as industrial unit according to

applicable laws for purpose other than the matters of electricity. Therefore, any matter arising regarding the interpretation of the order of the Commission has to be clarified under the ambit of the Electricity Act, 2003, relevant tariff regulations and tariff order issued by the Commission. In the Appellant's unit, part of electricity is consumed for crushing the stone and the other part is for Hot Mix Plant and Wet Mix Plant unit. It was further submitted by the Learned Counsel for the State Commission that hot and wet mixing units cannot be considered as industrial activity.

12. Ms. Suparna Srivastava, Learned Counsel for the Respondent no.1, argued that what is contemplated under HV-3 category is an industrial establishment of the nature where there is energy consumption in manufacturing unit such as factory as also for residential and general use including offices, storages, canteen, etc., which are

appurtenant to and/or incidental to the manufacturing unit. HV-3 category thus contemplates an industrial establishment where industrial activity requiring premises such as factory and supporting residential set up takes place. The nature of activity in the Appellant's plant is not the kind of industrial activity contemplated for the purpose of applicability of HV-3 category, rather the Appellant's activity is such which utilizes mixed type of load and type of load which is non-industrial and non-residential in nature. According to the tariff order, any non-industrial load or non-residential load which has a mix of different loads is covered under HV-6 tariff category. Considering that the Appellant uses electricity for mixed load, the general purpose HV-6 tariff category has rightly been applied to it.

13. Sub-Section 3 of Section 62 of the Electricity Act, 2003 provides that the Appropriate Commission shall not while

determining the tariff, shown undue preference to any consumer but may differentiate according to consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or time at which the supply is required or the geographical position of any area, the nature of supply and purpose for which supply is required. Thus, one of the factors on which the tariffs can be differentiated is purpose for which supply is required.

14. We agree with the State Commission and the Respondent no.1 that the consumer category has to be interpreted by considering the provisions of the Electricity Act, and the tariff order of the State Commission. Just because the plant of the Appellant is registered by the State industrial Department as an industry, it cannot be entitled to tariff under HV-3.1 category.

15. Let us examine the purpose for which supply is required by the Appellant's plant. We find that the Appellant is using the power for crushing of boulders through a crusher, mixing the aggregate with bitumen through Hot Mix Plant and Wet Mix Plant. There is no load except the motors used for running the crusher and Hot Mix/Wet Mix plants. The mixture produced by the Appellant's plant is supplied for building of road. The purpose for which electricity is required in the Appellant's premises is for industrial use.

16. The State Commission in the impugned order admits that the crushing of stone is an industrial activity, but hot and wet mixing units have not been considered as industrial activity. Therefore, the Appellant has been categorized mixed load under HV-6.1 category.

17. We are not in agreement with the findings of the State Commission that just because the Appellant's plant uses hot mixing and wet mixing plants which is considered by the Commission a non-industrial activity, the Appellant plant is categorized under Mixed Load and hence tariff under HV-6.1 would be applicable. The Crusher Plant, Hot Mix Plant and Wet Mix Plants are having motive loads and are processing plants for preparing construction material for roads by mixing the aggregate material obtained by crushing of boulders in the crusher and bitumen. An industry may have different types of processes involving crushing, mixing, heating, cooling, welding, cutting, turning, painting, packaging, etc. A combination of processes may be carried out in an industry in manufacturing or producing a product. If two or more processes are carried out in an industry, it would not be a mixed load. A mixed load would be a combination of two categories of load in a consumer's

premises, e.g. industrial and non-industrial activities in one premises. For example, bakery where bread and biscuits are made also has a retail supply outlet/shop in the same premises, then it may fall under the mixed load category.

18. The Appellant's plant is having an industrial process wherein from the raw material of boulders and bitumen, a different product used in construction of roads is produced, by crushing of boulders in different sizes of aggregate through a crusher and mixing aggregate metal with bitumen through Hot Mix Plant and Wet Mix Plant. The entire process forms part of one industry. Just because one process of the plant is using Hot Mix and Wet Mix Plants, the load cannot be categorized as 'Mixed Load'. Mixing is an industrial activity and is used in many industries as a part of the industrial process. Just because an industry used a mixing plant, it does not become a Mixed Load. The Hot Mix

Plant and Wet Mix Plants are also industrial activity like crushing plant.

19. HV-3 tariff is applicable to all industries not covered in categories HV-1 (Steel Industries), HV-2 (Mines and Cement industries) and HV-4 (Low Load factor industries) for power, lights, fan, cooling, ventilation, etc. The Appellant's plant is an industry not covered under HV-1, HV-2 and HV-4. In the Appellant's plant the power supply is used for power and lighting. Thus, HV-3 tariff would apply to the Appellant's plant.

20. HV-6 a tariff is applicable for non-industrial establishments such as railways load other than traction supply, hospitals, offices, shopping malls, educational institutions, etc., having mixed load or non-industrial, etc., having mixed load or non-industrial and/or non-residential load. This tariff is also

applicable to HT consumers not covered specifically in any other HV tariff category. The types of consumers included in HV-6 category are having non-industrial activities and/or non-residential loads like shopping malls, educational institutions, hospitals, etc. The purpose of electricity used in Appellant's plant does not have a nexus with the purpose for which electricity is required by consumers such as shopping malls, educational institutions, hospitals, etc. falling under HV-6 category. The activities carried out in the Appellant's plant are industrial in nature the purpose for which electricity is used in Appellant's premises has a nexus with the purpose for which electricity is used by industries falling under HV-3.1 category. Accordingly, HV-3.1 category should be made applicable to the Appellant's plant.

21. We do not accept the argument of Ms. Suparna Srivastava, Learned Counsel for the Respondent no.1 that industrial

establishment under HV-3 category should have manufacturing unit and also residential and general use of electricity in offices, storage, canteen, etc., which are appurtenant or incidental to the manufacturing unit. The tariff schedule for HV-3 category is applicable to the industries not covered under HV-1, HV-2 and HV-4 for power, lights and fans, cooling, ventilation, etc. However, the consumption of electricity in residential and general use such as offices appurtenant to the industry will also be included in industrial consumption. However, if an industry does not have a residential unit/office appurtenant or incidental to the manufacturing unit then it does not disentitle an industry to be covered in HV-3 category. If the main purpose of use of electricity in an industry is for industrial purpose, the consumption of electricity in offices staff canteen, staff colony etc., which is appurtenant or incidental to the industry is allowed to be included in the

industrial consumption. It does not mean that an industry which does not have a staff colony or office in the industrial premises will not be covered in industrial category.

22. In view of above, the Appeal is allowed and the impugned order is set aside. The Respondent no.1 will revise the bills of the Appellant accordingly and reimburse the excess amount charged within 30 days of communication of this judgment. Delay in reimbursement of the amount will attract interest @ 1% per month.
23. Pronounced in the open court on this **14th day of January, 2015.**

(Justice Surendra Kumar)
Judicial Member

(Rakesh Nath)
Technical Member

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