

BEFORE THE ELECTRICITY OMBUDSMAN
(For the State of Goa and Union Territories)
Under Section 42 (6) of the Electricity Act, 2003
3rd Floor, Plot No. 55-56, Udyog Vihar - Phase IV, Sector 18
Gurugram (Haryana) 122015,
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Appeal No-230 of 2024

Date of Video Conferencing: 02.01.2025

Date of Order: 06.01.2025

Shri Ramesh Kr Choubey,
M/s Ramesh Ice Plant,
R/o Babu Lane, Sri Vijaya Puram,
South Andaman

... Appellant

Versus

The Executive Engineer,
Electricity Department,
A&Ni Administration, Vijaya Puram

... Respondent

Parties present:

Appellant(s)

Shri Ramesh Kr Choubey,

Respondent(s)

Mrs. Madhuri Shukla,
Executive Engineer (Hq),
Electricity Department,
A & Ni Administration.



ORDER

The Appellant has preferred an Appeal No-230/2024 against CGRF order in Complaint No-ANI/C.G. No. 36/2024 dated 5.11.2024 filed by Shri Ramesh Kumar Choubey. The Appeal was admitted on 03.12.2024, as Appeal No. 230/2024. Copy of the same as received was forwarded to the Respondents with a direction to submit their remarks/ counter reply on each of the points. The counter reply received from the Respondents vide letter No EE/HQ/Tech/29B/2024/2074/Sri Vijaya Puram, Dated 21.12.2024.

Submissions by the Appellant

The Appellant, Shri Ramesh Kumar Choubey, operates a business under the name "Ramesh Ice Plant," which has been in operation for the past 30 to 40 years. The business has been registered with the MSME under Udyog Aadhar Registration Certificate No. AN01A0001898, recognizing it as a Micro Manufacturing unit. The Appellant also holds a valid license under the Food Safety and Standards Act, 2006, bearing License No. 129211101000293, which categorizes the business as a manufacturing enterprise **Exhibit-A**

The Appellant's business primarily involves the manufacturing of ice candy, Ice cream and ice-related products. The goods produced are sold daily to hawkers for resale. There is no direct counter sale to customers at the premises, and the remaining products are stored in deep freezers for further use. Therefore, it is evident that the business operates as a manufacturing unit and not as a commercial retail outlet.

For over three decades, the electricity connection under Consumer No. D1/2414 has been categorized under the Industrial category, and the Appellant has been consistently paying electricity charges based on the industrial tariff. However, the Respondent attempted to change the category of the connection to Commercial on the basis of Tariff Order for the year 2024-25, a decision that is disputed by the Appellant.

The Respondent's attempt to reclassify the Appellant's electricity connection from Industrial category to Commercial category is erroneous and unjustified. The core basis of the reclassification appears to be the assumption that the ice candy manufactured by the Appellant falls under the Commercial category as per Tariff order dated 13.06.2024. However, this assumption is legally incorrect.

It is submitted that the Appellant's business is engaged in manufacturing, as evidenced by the production of ice candies and its sale to Hawkers for resale. As per the legal definition of "Industry," the business involves manufacturing activities and is not a commercial retail operation. The lack of a direct counter sales to the public further substantiates that the business is industrial in nature. Consequently, the Appellant's business should remain classified under the Industrial category.

Furthermore, the Appellant's unit is registered as a Micro Small and Medium Enterprise Manufacturing Unit under the MSME Act, which further confirms that the business is

engaged in industrial activity. As such, the attempted change in classification is not only inappropriate but also fails to acknowledge the nature of the Appellant's operations.

The Appellant filed a complaint on 14th October 2024, challenging the attempt to change the electricity connection category by the Electricity Department. However, on 5th November 2024, the Consumer Grievance Redressal Forum (CGRF) vide order dated 5.11.2024 dismissed the complaint on the grounds of lack of jurisdiction. The Appellant submits that the dismissal was made without properly considering the facts and merits of the case.

In light of the facts stated above, the Appellant prays that: -

- a) **Review and set aside the decision of the GCRE dated 05/11/2024**, which dismissed the complaint due to lack of jurisdiction.
- b) **Direct the Respondent to reinstate the electricity connection under the Industrial category** and treat the electricity connection bearing Consumer No. D1/2414 as an Industrial connection, in line with the true nature of the Appellant's manufacturing activities.
- c) **Provide an opportunity for a personal hearing** in this matter, as the Appellant does not have access to an Android phone or email and requests an alternative mode of communication.
- d) **Permit the Appellant to be assisted by a suitable person during the hearing** to ensure that the case is adequately presented, considering the Appellant's limited technological access.

The Appellant submits that the electricity connection D1/2414 be classified under the Industrial category, given that the business is a manufacturing unit under the MSME category and does not fit the definition of a commercial enterprise. The Appellant seeks justice and a fair resolution of this matter, in keeping with the applicable laws and regulations

Submissions by the Respondent :

The Respondent, Electricity Department, Andaman and Nicobar Islands, submits the following legal submissions in response to the Appeal filed by the Appellant challenging the attempted change of the electricity connection from the Industrial category to the Commercial category under Consumer No. D1/2414. The Respondent maintains that the action taken was in accordance with the applicable Tariff Orders and the nature of the business conducted by the Appellant.

The Appellant, operating under the name "Ramesh Ice Plant," has been running a business that manufactures ice candy and related products. The Appellant has been duly registered as a Micro Manufacturing unit under Udyog Aadhar Registration Certificate No. AN01A0001898 issued by the Competent Authority (MSME). The Appellant's business also holds a license under the Food Safety and Standards Act, 2006, License No. 129211101000293.

It is acknowledged that the Appellant's electricity connection under Consumer No. D1/2414 has historically been categorized under the Industrial category. However, in light of recent tariff orders dated 13.06.2024 and the operational changes in the business activities of the Appellant, a review of the classification was initiated. The Appellant's electricity connection was reclassified as Commercial based on the nature of the product and its sales model.

The Respondent submits that the reclassification of the Appellant's electricity connection is consistent with the applicable Tariff Orders issued by the Joint Electricity Regulatory Commission vide order dated 13.06.2024. While the Appellant's business involves the manufacturing of ice, it also engages in the sale of ice-related products, including ice candies, which are distributed to hawkers and other third parties for resale. The absence of a direct sales counter does not negate the fact that the products are ultimately sold to the public through third parties.

Under the applicable Tariff Orders, the sale of ice candies and related products falls under the category of "Commercial" when the sale is to third parties for resale. The Appellant's practice of selling ice candies to hawkers for resale classifies the business as a commercial activity, as it involves the distribution and sale of goods for profit. Thus, the Respondent's reclassification of the electricity connection is legally sound and in accordance with the relevant definitions of "Commercial" and "Industrial" activities.

The Respondent submits that the classification of electricity consumers is governed by the Tariff Orders issued by the Joint Electricity Regulatory Commission. The tariff structure differentiates between Industrial and Commercial consumers based on the nature of the activities conducted. In the present case, the Appellant's business, while involving manufacturing, operates in a manner consistent with commercial distribution and resale practices.

The Respondent's actions are aligned with these Tariff Orders, which define Commercial consumers as those engaged in the sale of goods and services for profit, irrespective of whether the sale occurs at the point of production or through intermediaries. The Appellant's practice of selling products to hawkers for resale clearly falls within the commercial classification.

On 14th October 2024, the Appellant filed a complaint against the reclassification of the electricity connection. However, the Consumer Grievance Redressal Forum (CGRF) dismissed the complaint on 5th November 2024, citing a lack of jurisdiction. The Respondent submits that this dismissal was valid, as the classification of electricity connections falls under the purview of the relevant Tariff Orders and is not within the CGRF's jurisdiction to alter.

The Respondent's decision to reclassify the Appellant's electricity connection from Industrial to Commercial is supported by the applicable regulatory framework and is not arbitrary or unjustified.



The Respondent respectfully submits that the Appellant's appeal should be dismissed. The Respondent's actions in reclassifying the electricity connection to the Commercial category are consistent with the relevant Tariff Orders and regulatory definitions. The Appellant's business, based on its operational model, fits the classification of a Commercial consumer, and the Respondent's decision to adjust the electricity connection accordingly is legally sound.

For the reasons outlined above, the Respondent requests that the appeal filed by the Appellant be dismissed, and that the decision of the Respondent to reclassify the electricity connection from Industrial to Commercial be upheld. The Respondent further requests that the Appellant's grievance be rejected, as the reclassification is in accordance with the applicable legal and regulatory framework.

The Respondent also respectfully submits that the Appellant's request for a hearing should be considered in the appropriate manner, keeping in mind the need for transparency and fairness in the resolution of the matter.

For the reasons stated, the Respondent prays that the appeal be dismissed.

Deliberation during e-hearing on 02.01.2025

During the Hearing the Appellant reiterated his submissions regarding his objections to the category change from Industrial to Commercial by the Electricity Department in view of the tariff Order dated 13.06.2024. The Appellant submitted that he has a valid license issued by the Government of Andaman and Nicobar Island in which kind of Business is mentioned as "Manufacturer-General Manufacturing". This license is valid till 08-08-2026. His Udyog Adhaar Registration has endorsement as Major Activity "Manufacturing-Dairy Products". The connection No D1/2414 was sanctioned in his name under the Industrial Category and it should not be changed into Commercial Category.

The Appellant vide his letter dated 22.11.2024 has also confirmed that the Agreement for availing Electricity Connection is not available with him.

The Respondent, Electricity Department represented by Mrs. Madhuri Shukla, Executive Engineer (HQ) submitted that they have followed the due process of law while changing the category of connection from Industrial to Commercial in compliance to Tariff Order dated 13.06.2024. They have issued a notice dated 16.09.2024 to the registered consumer but no Objections have been raised by the Registered Consumer within the stipulated timelines of 30 days.

FINDINGS AND ANALYSIS

The complainant, Shri Ramesh Kumar Choubey, has been operating a small-scale ice cream manufacturing unit at Babu Lane, Aberdeen Village, Port Blair, for nearly four decades. The unit has been consistently billed under the "Industrial" category since its inception. The unit is registered under the MSME Scheme with Udyog Aadhar Certificate No. ANO1A0001898, which identifies it as a manufacturer of dairy products, ice cream, and Ice candies (kulfi).



Importantly, no sales are made directly from the premises, and the unit primarily supplies these products to local vendors, who, in turn, distribute them to rural and economically disadvantaged communities.

In September 2024, the Electricity Department issued a notice vide letter No EL/AE/SD-1/HQ/24-10/2024/531 dated 16.09.2024 proposing the reclassification of the complainant's electricity connection under Account No. D1/2414 from the "Industrial" category to the "Commercial" category. The complainant strongly objects to this reclassification, stating that it would impose a significant financial burden on his small-scale operation. He contends that the increased charges would jeopardize the viability of his business, which already operates on narrow profit margins. Additionally, he argues that the reclassification could lead to the closure of his unit, adversely affecting not only his financial stability but also the livelihoods of the small vendors who depend on his products. Consequently, he requests that the electricity charges continue to be billed under the "Industrial" category.

The Junior Engineer from the Aberdeen Bazaar site office submitted a report dated 14.09.2024, which examined the complainant's case and specifically the electricity connection under Account No. D1/2414. The report notes that the ice cream manufacturing unit has been consistently billed under the Industrial category for over 30 to 40 years, since the connection was first established. However, it was pointed out that the recent Tariff Order issued on 13.06.2024 does not specify a category for ice plants, leading to inconsistencies. However, Ice candies is mentioned in Commercial category. The report further highlighted, that similar ice plants in other areas were being billed under the Commercial category.

Following this report, a notice was issued by the site office on 16.09.2024, informing Shri Ramesh Kumar Choubey of the proposed reclassification to the Commercial category and inviting any objections within a 30-day period. To date, no formal objection has been received from the complainant.

The Forum noted that the complainant's ice plant has been operational for nearly Four decades under the Industrial category. The Tariff order for the Financial Year 212-13 has also been referred. According to the Tariff for the FY 2012-13 Commercial category is applicable to Ice Candy (Page 90 of Tariff Order). Further, the undersigned also observed that the recent Tariff Order dated 13.06.2024 classifies ice candy as falling under the Commercial category.

When the matter came up for adjudication, the Electricity Department was requested to furnish following documents:

- A. The agreement signed between the Licensee and the Consumer at the time of sanction of connection No D1/2414.
- B. Tariff Policy prevailing at the time of releasing this connection.

C. Date of energization of connection No D1/2414.

The Electricity Department has expressed their inability to provide the following documents for the reasons: -

- A. The electricity connection provided under Account No. D1/2414 is very old, dating back to 30-40 years ago. Unfortunately, a copy of the agreement is unavailable. In this regard, please note that records prior to 2005 were kept in the Revenue Section of the Electricity Department. These records were inundated with seawater during the devastating tsunami that hit the Andaman and Nicobar Islands following the earthquake on 26-12-2004. Due to this is not even possible to provide the exact date of energization.
- B. The tariff policy prevailing at the time of connection issuance is also unavailable due to the age of the connection (30-40 years ago).

The undersigned, further considered the fact that, following the constitution of the Joint Electricity Regulatory Commission (JERC) for the Andaman and Nicobar Islands, the Electricity Department has been filing detailed tariff revision petitions and recategorization requests annually. These proposals are submitted to the Hon'ble Commission, which then publishes the tariff order in newspapers for public awareness and conducts hearings. After reviewing the feedback received during these hearings, including written comments from stakeholders, the Commission has approved retail tariffs applicable to all consumers.

Given these circumstances and after detailed deliberations, the undersigned concluded that it lacked jurisdiction to adjudicate on the reclassification issue, as this falls within the purview of the Hon'ble Commission (JERC).

For the reasons as stated above, the undersigned has decided to dismiss the complainant's appeal. The undersigned further advised Shri Ramesh Kumar Choubey to raise the matter before the Hon'ble Commission during the next public hearing, where his concerns regarding the appropriate classification for his ice cream manufacturing unit could be addressed.

It is Ordered as under: -

1. For the reasons discussed above, the appeal of the Appellant is dismissed with no order as to the costs.
2. The Order in Complaint No- ANI/C.G. No. 36/2024 dated 5.11.2024, passed by Learned CGRF-A&Ni Island is upheld.
3. The connection No D1/2414 was sanctioned under Industrial category from the date of sanction/installation and in spite of the fact that connection has been sanctioned in wrong category no cognizance is taken by the Electricity Department. Now since the tariff category has been affected in compliance to the Tariff Order dated 13.06.2024 it should not have any retrospective effect on the Appellant.

4. The complainant is advised to bring the matter before the Hon'ble Commission (JERC) during the next public hearing to resolve his concerns and determine the appropriate category classification for his unit.
5. As submitted by the Electricity Department that proposal for applicability of Industrial Tariff to Ice Plant & Cold Storage under PMMSY scheme is under examination in accordance to the direction of competent authorities of A&Ni Administration. The relief if any, allowed for this category of connection is approved, the same shall be extended to the Appellant.
6. The appeal is disposed of accordingly.



(C M SHARMA)

Electricity Ombudsman
For Goa & UTs (except Delhi)

Dated: 06.01.2025