



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

O.P. No. 24 of 2016

Date: 17-03-2018

Present  
**Justice G. Bhavani Prasad, Chairman**  
**Dr. P. Raghu, Member**  
**Sri P. Rama Mohan, Member**

**Between:**

M/s. Aquawave Biotech Pvt. Ltd.  
Sy.No.497/2C, Flat No.101  
Adavi Village, Bapatla Mandal  
Guntur District – 522 101, Andhra Pradesh

... **Petitioner**

AND

1. The Managing Director  
Southern Power Distribution Company of A.P. Ltd.  
Tirupati
2. The Chief General Manager (Operations)  
Southern Power Distribution Company of A.P. Ltd.  
Tirupati
3. The Superintending Engineer (Operations)  
Southern Power Distribution Company of A.P. Ltd.  
Guntur

... **Respondents**

This Original Petition has come up for hearing finally on 03-02-2018 in the presence of Sri Kanuri Venkata Rangadas, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondents. After carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

## **ORDER**

A petition to change the electricity tariff category of the petitioner from HT category I (A) to HT Category I (C) as per the retail tariff order of the Commission for FY 2016-17.

2. The petitioner is M/s. Aquawave Biotech Private Limited, which was approved by Coastal Aquaculture Authority, Government of India as an aquaculture company to produce prawn seeds vide permission dated 09-02-2016. This Commission in its order on tariff for retail sale of electricity during FY 2016-17 dated 31-03-2016 created a new category, HT Category I (C) – Aquaculture & Animal Husbandry in the category of 11 KV with Rs.21/KVA as fixed and demand charges per month and Rs.3.75 per unit as energy charges. Accordingly, the petitioner applied to the 3<sup>rd</sup> respondent / Superintending Engineer for a change of category on 22-06-2016, which was rejected by the 3<sup>rd</sup> respondent by a Memo dated 27-07-2016. The Memo is arbitrary and illegal and the benefit given to the aquaculture industry by the Commission is denied. Hence, the petition.

3. The respondents 1 to 3 filed their counter contending that the service was released under HT I (A) category – Industry General as per the tariff order of FY 2015-16 and a new sub-category was introduced only in FY 2016-17 to the benefit of which the petitioner is not entitled. In fact, in so far as Poultry Hatcheries and Poultry Feed Mixing Plants are concerned, a separate sub-category HT I (D) is created and hence, the respondents desired the petition to be dismissed with costs.

4. The petitioner in its reply affidavit stated that it is dealing with the live products of prawn seeds hatchery which forms part of aquaculture and not industry, which is also stated by the Department of Industries in its letter dated 26-10-2017. The

registration certificate issued by the Coastal Aquaculture Authority also shows the same and the petitioner therefore desired the petition to be allowed.

5. The point for consideration is whether the petitioner is liable to pay the consumption charges for the electricity consumed by it only under HT I (C) category as per the tariff order for FY 2016-17 ?

6. The Coastal Aquaculture Authority (Amendment) Rules, 2009 made by the Central Government [Ministry of Agriculture (Department of Animal Husbandry, Dairying and Fisheries)] under Sections 3 and 24 of the Coastal Aquaculture Authority Act, 2005 defined a hatchery and laid down the guidelines for regulating hatcheries and farms for introduction of *Litopenaeus vannamei* and though the rules may show aquaculture farms and aquaculture hatcheries to be different and distinct, both the activities being within the meaning of aquaculture may not be open to outright rejection more so, as the Act, the Rules and the Authority governing them are the same. The rules were further amended by a notification dated 23-03-2012 expanding the hatchery activity beyond Shrimps by removing the word shrimp from the definition and in a public notice issued by the Coastal Aquaculture Authority on 08-01-2013, coastal aquaculture farms are stated to be including hatcheries as per the 2005 Act and 2005 Rules. Similar is another public notice dated 27-11-2013 in which guidelines governing both hatcheries and farms were specified. Apart from the above, the certificate of registration of coastal aqua hatchery in respect of the petitioner issued by Coastal Aquaculture Authority on 09-02-2016 shows that the petitioner has been recognized by the statutory authority to be entitled to registration under the statute and the rules governing coastal aquaculture.

7. The Micro, Small & Medium Enterprises (MSME) Policy 2015-2020 of the Government of Andhra Pradesh read with G.O.Ms.No.36 Industries and Commerce (IP&INF) Department, dated 29-04-2015 was referred to by the petitioner and there is a letter from the District Industries Centre, Guntur to the petitioner dated 26-10-2017 stating that they were not given any subsidies under the said industrial policy. The petitioner claims that it is clear from the documents that it does not come under industrial category but only under aquaculture category. The counter of the respondents or the Memo from the Chief General Manager dated 27-07-2016 do not give any reasons as to why the petitioner is not entitled to the change of category and what is the rationale on which their clarification is based. While it is true that there is a separate sub category for Poultry Hatcheries and Poultry Feed Mixing Plants under HT I (D), no such separate sub category was created for aquaculture hatcheries and aquaculture feed mixing plant in the tariff orders of FY 2016-17 or FY 2017-18. The only reference to aquaculture in the tariff order is in HT I (C) without distinguishing further the sub activities under aquaculture. The sub category created for Poultry Hatcheries and Poultry Feed Mixing Plants is at present the subject matter of several writ petitions before the Hon'ble High Court and as the matter is *sub judice*, no opinion can be expressed on the same or with reference to the same.

8. Aquaculture is generally understood as the art, science and business of producing aquatic plants and animals useful to humans and controlled cultivation and harvest of aquatic animals and plants for human use. Consequently aquaculture is a type of agriculture and considered as farming. Producing the seed in a hatchery cannot be considered as beyond the general scope, content and understanding of the word aquaculture. While aquaculture is the production of aquatic plants and animals under controlled or semi controlled conditions, it is rightly called as under

water agriculture. The definition of aquaculture was opined by academicians to encompass many other activities including the hatchery, nursery rearing of stock intended for fisheries enhancement or restocking programmes and the like. Aquaculture was stated by the Oxford Advanced Learner's Dictionary to mean growing of plants in water for food. Sri P. Ramanatha Aiyar's Advanced Law Lexicon 4<sup>th</sup> Edition stated aquaculture to mean the artificial propagation of fishes and other aquatic organisms.

**9.** Keeping in view the general meaning of the word and the general understanding of the same, it cannot be said that the activity of aqua hatchery is beyond the scope, content and meaning of the word aquaculture. The petitioner should have therefore to be understood to be covered by the new sub category created for aquaculture and animal husbandry as HT I (C) and could not be continued in HT I (A) – Industry General under the orders on tariff for retail sale of electricity for FY 2016-17 and 2017-18. However, it will be governed by the appropriate category specified in the respective tariff orders for the subsequent financial years commencing from and including the financial year 2018-19.

**10.** Therefore, the petitioner shall be accepted to be covered by the sub category Aquaculture and Animal Husbandry under HT I (C) during the FY 2016-17 and 2017-18 in compliance with the orders on tariff for retail sale of electricity for those years issued by the Andhra Pradesh Electricity Regulatory Commission and the demand for and collection of consumption charges from the petitioner under HT I (A) category in those two years is illegal and arbitrary. The amount collected in excess from the petitioner during those two financial years shall be given credit to in the future consumption bills of the petitioner during the twelve months of the FY 2018-19

from 01-04-2018 to 31-03-2019 in equal instalments and only the balance consumption charges due from the petitioner as per the tariff applicable to the petitioner in that year as per the tariff orders of this Commission shall be demanded and realized from the petitioner.

**11.** The Original Petition is ordered accordingly. No costs.

This order is corrected and signed on this the **17<sup>th</sup> day of March, 2018.**

**Sd/-**  
**P. Rama Mohan**  
Member

**Sd/-**  
**Dr. P. Raghu**  
Member

**Sd/-**  
**Justice G. Bhavani Prasad**  
Chairman