

**CONSUMER GRIEVANCE REDRESSAL FORUM  
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.  
KOLHAPUR ZONE, TARABAI PARK, KOLHAPUR**

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Con.Comp. No. 331 -2010/

Date :

**JUDGMENT**

- 1) M/s. Hindustan Petroleum Co.Ltd.  
LPG Bottling Plant, Hajarwadi, Bhilawadi,  
Dist. Sangli

Appellant

**V/s**

- 1) Superintending Engineer,  
M.S.E.D.C.L. Vishrambag, Circle Office, Sangli  
2) Executive Engineer, ( Office) & Nodal Officer,  
MSEDCL, Circle Office, Vishrambag, Sangli  
3) Executive Engineer,  
MSEDCL, Rural Division, Sangli

Respondent

- Corum -**
- 1) Shri B.G. Pawar, Chairperson
  - 2) “ G. B. Pankar, Member Secretary
  - 3) “ G.C. Lele, Member

**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION  
( Consumer Grievance Redressal Forum & Electrical obudsman):  
Regulation 8.2 of Regulation 2006**

Judgement by Shri B.G. Pawar, Chairperson of C.G.R.F. Kolhapur Date :

The grievance has been filed in Form Schedule ‘ A ‘ by M/s. Hindustan Petroleum Co. Ltd. LPG Bottling Plant, Hajarwadi, Village Bhilawadi, Tal: Tasgaon, Dist. Sangli through its Senior Regional Manager before the Forum on 14h Dec. 2010 against the decision of MSEDCL Circle Office, Sangli. The brief facts give rise to this grievance narrated in the application are as follows :

M/s. Hindustan Petroleum Co. Ltd. LPG Bottling Plant, Hajarwadi, Bhilawadi, Tal :Tasgaon, Dist. Sangli is H.T.Industrial consumer bearing consumer No. 282469004576 of MSEDCL Rural Division, Sangli.

The LPO bottling plant was categorised as HT-I (Industrial) from the date of its commissioning in the year 1989 until and upto June, 2008 was charged for electricity supply at Rs. 3.95 per unit as per rate applicable under HT-I (Industrial) category which has been paid regularly until and upto June, 2008.

It is contended that although the nature of the activity performed in the plant or the machinery used has not changed, the consumer was charged electricity @ Rs. 7.00 per unit without prior notice. On enquiry with Supdtg.Engineer, Sangli, it was informed that the plant has been recategorised HT II (Commercial) Category which has been created vide Commercial Circular No. 80 dated 10.6.2008 issued by Director ( Operation ) MSEDCL. It is submitted that the plant is not engaged in any commercial activities whatsoever. The product of the activity is in the form of refilled LPG cylinder. The activities comprise of LPG suction, vapour distribution, degassification, compression of LPG vapour, external and internal cleaning, hydro pressure test, refilling, sealing, quality control etc. All the above have been classified as industrial activities, since the commissioning of the plant in Sept. 1889. There has been no change either in industrial process employed, the machinery used, the usage pattern of electricity or the functioning of the plant since Sept. 1889 till this date and there is no logical base for changing category of the plant from HT I (Industrial) to HT II (Commercial).

It is contended that new category " HT-II Commercial " is not applicable to this plant and therefore charging the complainant as per the tariff applicable for HT II Commercial is improper and unjust. The LPG bottling plant performs an industrial activity and a machinery set up which needed in an industry or for any manufacturing unit. The plant receives gas in bulk quantity and has to process the gas with a reprocessing activity and then through machinery it is refilled in to small cylinder.

The industrial activity carried out at the Hindustan Petroleum Corporation Ltd. plant at Hazarwadi is not covered in the new category and hence the application of the category HT II (Commercial) for the LPG bottling plant is improper. It is contended that plant has been allotted land in 1988 for undertaking the above " industrial " activities and all other licenses and registrations given to the plant are specific to "industries ". The supporting documents produced and listed at an Annexure to this grievance application, which are not applicable to any " Commercial " enterprise. The plant is operated by a Company which is a Government of India Undertaking and the market price of the refilled LPG cylinders is determined by the Govt. of India. The activity is covered under the Essential Commodities Act.

In para 8 of the Grievance, decision of I.G.R.C. Nasik dated 3.11.2009 and C.G.R.F. Kalyan as well as Hon'ble Madhya Pradesh Electricity Regulatory Commission in case No. 03/07 and Hon'ble Tamil Nadu Pradesh Electricity Regulatory Commission in Petition No. 24/05 holding the activities of LPG Bottling plant as an " Industrial ".

The Supdtg. Engineer (SC) Sangli obtained clarification on the basis of representation by the Plant Manager from the Chief Engineer (Commercial). The Chief Engineer (Comercial) clarified by his letter dated 24.9.2008 that since IOC, BPCL and HPCL depots received petroleum products like HSD (Diesel), SKO (Kerosene) and MS(Petrol) and further supply these products to various retail / industrial consumers, there is no industrial / production activity being performed by these depots. So it is contended the decision of Chief Engineer (Commercial) is erroneous because handling and processing of compressed gaseous petroleum products is far more hazardous and various complex activities are involved.

The entire process is required to be performed under very stringent industrial guidelines and safety norms. Reliance is made to Code of Practice issued by the Old Industry Technical Committee, the activity being performed by the Plant is completely industrial in nature. Review Committee of Mahadiscom vide their Internal note PR-3/Tariff dated 26.6.2009 held that handling, processing, compressing and delivery of "Compressed Natural Gas" (which is also a compressed gaseous petroleum product) as an industrial activity. The complainant initially filed a grievance application on 14.10.2010 to the Internal Consumer Grievance Redressal Cell, Circle Office, Sangli which rejected the application without even giving the complainant an opportunity of a hearing or to present its case. The said Order is improper and without application of mind. The reasons cited for rejecting the application are based on wrong interpretation of law and misappreciation of the facts of the case. It is prayed to revoke from 1<sup>st</sup> July, 2008, decision to change the category of HPCL, Hazarwadi from HT-I (Industrial) to HT-II (Commercial) and electricity charges collected at higher tariff be refunded and the Plant be charged tariff as per HT-I (Industrial) category in future.

The Nodal Officer vide their Say on 11.1.2011 opposed the prayer of complainant to change the category from Commercial to Industrial for H.T. connection on the grounds, it is contended that, activity performed is the process of refilling LPG Cylinders and it does not involve any manufacturing process or production of any new items from raw materials or any transformation of input raw materials into a new product. It is a well known fact that no physical or chemical change of a commodity is taking place at any stage of the refilling process in the premises. Manufacture is the process of conversion of raw materials into different finished products, so the premises of complainant can not be treated as industry.

It is contended no manufacturing activity is carried out in the premises of the complainant. The Liquefied Petroleum Gas from bulk containers is bottled in the smaller cylinders for facilitating convenient retail distribution. This activity is similar to packing an item received in bulk quantity into marketable smaller packs to suit market conditions. This is purely a commercial activity and hence to be categorized under commercial tariff. The process of refilling of LPG Cylinders does not involve any manufacturing process or production of any new item from raw materials or any transformation of input raw material into new product. Hence the premises can not be treated as industry. In support of defence, the reliance is placed upon judgement rendered by Hon'ble KSERC in Petition No.TP 59/2008 dated 18.3.2009 wherein it is observed -

“ The Commission after examining the matter in detail, decides to accept the arguments of the petitioner that since the processes of LPG Bottling plant is transferring the gas received from the Company into cylinders of marketable size which is only a commercial activity and hence shall be classified as LT-VII (A) commercial as is done by the Board at present in the case of other LPG bottling units. “

The reliance is placed upon the judgement in STC 1992, page No. 237 in between State of Gujarat V/s Konkan Gas Company dated 17.06.1991, wherein it is observed that “ LPO transferred into the small cylinders remains to be L.P.G. In other words, there is essentially or commercially no change whatsoever in the basic characteristics of the commodity, namely the L.P.G. The abovesaid small process could not be said to be a process of manufacture.”

The grievance was taken for hearing before the Forum on 12.1.2011. Mr. Patel, Senior Regional Manager, Shri Sonar, Project Manager were present on behalf of the complainant.

Shri Kshirsagar, Nodal Officer on behalf of Distribution Licensee present, neither Superintending Engineer nor his subordinates who is in charge of the H.T. connection were present.

Mr. Patel on behalf of complainant submitted that since inception in the year 1989 till the date June, 2008, the complainant's plant treated as industry for the purpose of tariff by the Distribution Licensee and accordingly the bills were issued as per tariff of H.T. industrial, which have been paid regularly. He further submitted that there is no justification to change the category of the complainant's plant as HT II Commercial from July, 2008 as no commercial activity is being carried out at the plant. To support his submission, he relied upon voluminous documents with Annexure A grievance which amply indicates their plant has been treated as industry. He submitted the case law relied and referred by Distribution Licensee, these are not applicable. He further submitted the complainant's plant is operated by Company which is a Govt. of India Undertaking and activity is covered under Essential Commodity Act. He also submitted bottling plant is filling all the LPG into small cylinders requires lot of industrious work ( manual labour work ) hence prayed to allow the grievance and plant be treated as industrial HT I for the purpose of billing or tariff charges and to direct Distribution Licensee to refund the amount collected at higher tariff and the plant be charged tariff as per HT Industrial category, in future.

On query by the Forum, whether the filing of grievance to the Forum is within limitation as per Rule 6.6 of the Regulation 2006 ? Mr. Patel referred various correspondence between the complainant and Distribution Licensee there after charging by a changed tariff.

He was allowed to produce those correspondence mainly letter dated 26.8.2008 to Suptdg. Engineer, Sangli, letter dated 16.9.2008 to Chief Engineer, Kolhapur and letter dated 17.9.2008 to Chief Engineer (Comm) Mumbai, reply from Chief Engineer (Comm) dated 24.9.2008 and reply from Suptdg.Engineer dtd. 22.10.2008, copy of Judgement in complaint No. 1381/2008 before Consumer Court, Sangli during the period from 7<sup>th</sup> March, 2009 to 28.7.2010, copy of the Judgment of Hon'ble High Court, Andhra Pradesh along with Case Law already referred in the complaint.

On behalf of Distribution Licensee Nodal Officer, Shri Kshirsagar submitted that LPG is brought to the plant in bulk container, it is bottled / refilled into cylinders. There is no industrial activity carried out since there is no change of perversion of raw material to final product. So the commercial tariff applied by Distribution Licensee is correct. He requested to refer the Case Law in the written statement. Mr. Sonar, Officer of LPG plant along with Mr. Patel submitted that KERC's decision relied by Distribution Licensee, will not be applicable.

The Members and Chairperson of Forum along with Officers of Distribution Licensee visited the site where the plant of the complainant is located for verification of some facts of which note is required to be taken. Accordingly, on 20.1.2011, joint inspection of the site has been undertaken by Members and Chairperson of the Forum along with Officers of Distribution Licensee.

The presentation made by Officer of H.P.C.L. Hajarwadi, Dist. Sangli before the Members of the Forum and Officers of Distribution Licensee on 20.1.2011, has been transmitted by Email to this Office on 20<sup>th</sup> Jan. 2011. This shall be treated as part and parcel of Judgement Order. Categorized as salient features of spot inspection by the Forum pages 1 to 8 including bulk unloading flow chart as well as details of manpower.

Points for determination.

- 1) Whether grievance filed by LPG bottling plant, hajarwadi against Distribution Licensee is within limitation as per Rule 6.6 of Regulation 2006 ?

Answer : No.

- 2) Is the applicant entitled to relief as claimed against MSEDCL i.e. to revoke position of changing category from HT Industrial to HT II Commercial from 1<sup>st</sup> July, 2008 ?

Answer : No

- 3) Is the complainant is entitled to refund of electricity charges recovered from it at higher tariff from 1<sup>st</sup> July, 2008 onwards as prayed ?

Answer : No.

What Order ?

As follows

Reasons

The few admitted facts can be stated as under :

The applicant is a consumer of Respondent Company. The LPG bottling plant of the applicant was previously categorised as HT-I Industrial from its commencement in the year 1989 upto June, 2008 and charges for electricity supply were recovered at Rs. 3.95 per unit which is the rate applicable under HT-I (Industrial) category . It is not disputed the applicant have paid regularly bills upto July, 2008.

A dispute started when the Respondent Company started charging electricity at the rate of Rs. 7.00 per unit treating it as a reclassified HT-II Commercial as per Commercial Circular No. 80 dated 10.6.2008 issued by Director (Operation).

Before adverting to the several grounds raised by the consumer – LPG Bottling Plant through its Manager in respect of correctness of charging electricity, let us decide whether grievance is within limitation. Admittedly the grievance has been filed before IGRC Sangli on 14.10.2010 as seen from the judgment of I.G.R.C. Sangli which is not disputed. The grievance do not disclose commencement of correspondence between the Sr. Manager of applicant with Officer of MSEDCL. The Sr. Manager was allowed to produce correspondence at the time of hearing which disclosed first time on 26.8.2008, then Plant Manager wrote a letter to Suptdg.Engineer with request for changing the consumer category HT- I Industrial (N) from HT-II Commercial. Subsequently, a letter dated 16.9.2008 and 17.9.2008 to Chief Engineer (Commercial). The Suptdg.Engineer, MSEDCL, Sangli wrote letter to Chief Engineer (Commercial) on 1.9.2008 seeking clarification and there is a reply by Chief Engineer dated 24.9.2008 No. PR-III/Teriff/36038 which is communicated to plant Manager on 22.10.2008 in response to letter of Plant Manager dated 6.10.2008, referring to subject of payment of electricity bill of Sept. 2008 under protest. In between the said period, it seems the Plant Manager of applicant approached the Consumer Court at Sangli under the Consumer Protection Act 1986 on 7<sup>th</sup> March, 2009 which has been decided on 28.7.2010 as per Rule 6.6 of the Regulation 2006, the Forum shall not admit any grievance unless it is filed within 2 years from the date of cause of action has arisen. In the present case, cause of action has definitely arisen on 1<sup>st</sup> July, 2008 to the knowledge of applicant, since old HT-I Industrial category has been changed to new category HT-II Commercial w.e.f. July 2008 and started charging electricity supply at Rs. 7/- per unit. There is reason to believe that the cause of action has arisen on 1<sup>st</sup> July, 2008.

A grievance has been filed before IRGC Sangli on 14.10.2010, obviously beyond period of 2 years. The Provision of Indian Limitation Act excluding the period of limitation for already prosecuting in wrong Forum, before a Consumer Court, Sangli can not be applied. The last correspondence of the Plant Manager to the Suptdg.Engineer, Sangli is as per the correspondence brought on record is 8.10.2008. Copy of the said letter is not brought on record. Further, as per the subject, it seems that the payment of electricity bill for Sept. 2008 is done under protest. Thus it is clear that grievance is definitely not filed before I.G.R.C. Sangli within a period of 2 years i.e. upto 7.10.2008, which has been filed on 14.10.2008. It is definitely time barred i.e. beyond the period of 2 years, as is provided under Rule 6.6 of Regulation 2006, since the cause of action has arisen on 1<sup>st</sup> July, 2008 and the bills have been issued changing the category, charging at the rate of Rs. 7/- per unit as per Commercial Tariff instead of Industrial. Therefore, filing of the grievance by applicant is beyond the period of 2 years as per Rule 6.6 of Regulation 2006. The point is answered in negative.

Electricity bills issued by Distribution Licensee were not produced with the grievance. As per direction at the time of inspection, these bills were forwarded on 22.1.2011. One of the bills for June, 2010 as well as bill of December, 2010 under the heading consumer type industrial as well commercial category classified as shown charging at the rate of Rs. 7.45 in the bill of December 2010 and in the bill of June 2008 at the industrial rate of Rs. 3.95 and Commercial Rs. 5.25 . Nodal Officer Kshirsagar present before the Forum for hearing in different cases of Sangli Circle was asked to clarify the details in the bill above mentioned i.e. consumption for industrial and commercial recorded in the bill.

Executive Engineer / Nodal Officer by fax, received in this Office on 14.3.2011, informed that there are two meters in premises of this H.T. consumer. Main meter is used to record consumption of bottling plant and another sub meter is used to record the consumption of office lighting.

According to the consumer, the electricity is used for running machinery installed for filling the LPG in smaller cylinders and allied purpose. It was categorised as HT I industrial upto June, 2008 from its commencement and electricity supplied at the rate of Rs. 3.95 per unit. It is contended that activity performed at the plant for the machinery used, has not been changed. The same has been charged now at Rs. 7/- per unit. It has been disclosed the plant is recategorised as HT II (Commercial) which has been created by Commercial Circular No. 80 dated 10.6.2008 by Director (Operation) MSEDCL. There is no commercial activity.

Let us examine the activity carried out or conducted at site, can be said Industrial one under the Electricity Act or as per the definition by Hon'ble M.E.R.C. in determination of tariff for the year 2009-10 in case No. 116/2008. To strengthen its contention, the consumer has relied upon several documents which disclose the plant is industrial or carries out industrial activity. The details of the documents relied and referred to are given in Annexure A with grievance application at Sr.No. 1 to 8. On going through these documents and its contents, it goes to show that the land has been converted into non-agricultural by Order of Tahasildar for the industrial activity of the plant. The various certificates of Maharashtra Pollution Control Board, Chief Inspector of the factory and Central Registration Certification, License issued by the Chief Controller of Explosives. The prime facie submission of Officer of HPCL plant one is bound to conclude the factory is industry on the basis of certificate and various licenses on record.

However, under the provisions of Electricity Act 2003, MERC Regulatory Body is the Controlling Authority, it regulates operation of the Act and control over all the Licensees as per provisions of law, Regulations approved by it. As per the Order of Hon'ble MERC in case No. 116/2008, Order or A PR F.Y. 2008-09 and tariff determination F.Y. 2009-2010, it is observed, " thus it will be seen as to how different criteria have been used to categorise different types of consumer." Relevant for our purpose, the criteria of ' purpose ' of supply has been used extensively to differentiate between consumer categories, with categories such as residential, non-residential / commercial purposes, industrial purpose, agricultural purpose, street lighting purpose, etc. It is further observed, In this context, quite a few consumers have been representing before the Commission during and after the Public Hearings, stating that they are not undertaking any Commercial activity or activities for making profit within their premises, and hence, they should not be classified under the Commercial category. It is clarified that the commercial category actually refers to all non-residential, non-industrial purpose or which has not been classified under any other specific category.

The Hon'ble Commission in its Order at page 201 of 249 observed that a similar impression is conveyed as regards the ' Industry ' categorisation, with the Commission receiving several representations during and after the Public Hearings, from the hotel industry, leisure and travel industry, etc. stating that they have also been classified as ' industry ' for the purpose of taxation and / or other benefits being extended by the Central Government or State Government, and hence, they should also be classified as ' industry ' for the purpose of tariff determination.

In this regard, it is clarified that classification under Industry for tax purposes and other purposes by the Central or State Government shall apply to matters within their jurisdiction and have no bearing on the tariffs determined by the Commission under the EA 2003 and the import of the categorisation under industry under other specific laws can not be applied to seek relief under other statutes. Broadly, the categorisation of ‘ Industry ‘ is applicable to such activities, which entail ‘ manufacture ‘.

Therefore, I am constrained to observe the various documents produced by the consumer with Annexure A are not helpful to accept the contention of consumer that it is an ‘ industry ‘, which has been wrongly classified as commercial, in view of observation of Hon'ble Commission as mentioned above.

Mr. Patel, Zonal Officer of consumer H.P.C.L. Hajarwadi draw attention of Forum towards various decisions listed at Sr. No. 9, 10, 11, 12 to conclude that activity of HPCL LPG bottling plant is an ‘ industry ‘. The first decision at Sr.No. 9 by I.G.R.C. Nasik dated 3.11.2009 holding the activities of HPCL LPG Bottling Plant at sinnar to be “ Industrial “. Admittedly, the decision given by I.G.R.C. Nasik is sub- ordinate to Forum, the views laid down by IGRC Nasik are not bindig on Forum under the rules. At Sr.No. 10 - Decision of the Consumer Grievance Redressal Forum, Kalyan Zone dated 3.10.2009, holding the activities of HPCL LPG Bottling Plant at Alibag to be “ Industrial “. In the Judgement rendered by Kalyan Forum, in Para 8 clause (d), of circular No. 81 dated 7.7.2008 (probable it should be Circular No. 80 dated 10.6.2008) issued on the basis of Order of Hon'ble M.E.R.C. dated 31.5.2008 in case No. 72/2007. APR for F.Y. 2007-08 and determination ARR and tariff for financial year 2008-09.

On page 14 of 30 paragraph 38, the Commission has created a new category, viz, HT-II Commercial, to cater to all commercial category consumers availing supply at HT voltages and currently classified under the existing HT-I Industrial or LT-IX (multiplexes and shopping malls). This category will include Hospitals getting supply at HT voltages, irrespective of whether they are charitable, trust, Government owned and operated, etc. The tariff for such HT-II commercial category consumers has been determined higher than the tariff applicable for HT-I industrial, in line with the philosophy adopted for LT commercial consumers.

The activities of HPCL has remained the same as it was earlier, but their installation has been categorised under HT-II tariff (Commercial) based on Commercial Circular No. 80 dated 10.6.2008, classified the HT Commercial category. At 8.5 of the Circular on page 6 of the Judgement of CGRF Kalyan, that the tariff for such HT-II Commercial category consumers has been determined higher than the tariff applicable or HT-I industrial, in line with the philosophy adopted for LT commercial consumers. Such categorization already exists in other licensee areas in the State and is hence, being extended to MSEDCL licensee area also. Hon'ble CGRF Kalyan in paragraph ( g ) at page 7 observed the licensee were asked to submit the field report based on which the tariff was changed from Industrial to Commercial tariff. The CGRF Kalyan further observed that M/s. HPCL getting LPG gas in large quantities and the same is not suitable for use till it is refilled in the cylinders. Thus refilling the cylinders is packing activities required to be done to the product making it suitable for an individual's use. In any of the manufacturing plant, packing activity is the last stage of the manufacturing activity.

This Forum is of the view, the reasons given are not sufficient to conclude refilling of cylinder is packing activity and is the last stage of manufacturing, because the Hon'ble Commission in its Order at page 201 observed " Broadly, the categorisation of " Industry " is applicable to such activities, which entail manufacture ". In the present case, the Distribution Licensee through Nodal Officer, Sangli contended the manufacture is the process of conversion of raw material into different product. The premises of HPCL can not be treated as ' industry '. The process of refilling LPG does not involve any manufacturing process, or conversion of raw materials into new product. No doubt, on going through the flow chart as well as details brought on record by Email in the form of presentation by HPCL Hajarwadi Plan, there is reason to believe industrial activity is being carried out. But it is not helpful to accept contention of Mr.Patel, Sr.Manager for HPCL consumer, in view of observation of Hon'ble Commission in case No. 116/2008 at page 200 and 201 referred and quoted above.

Mr. Patel orally submitted before the Forum as well as this point is raised in para 4 of the petition that Commercial Circular No. 80 dated 10.6.2008 issued by higher officer of MSEDCL is not applicable to consumer plant. He referred clause 7 of Circular under the heading HT- II Commercial.

" The Commission has created new category, viz. HT-II Commercial, to cater to all Commercial Category consumers availing supply at HT volages, and currently classified under existing HT-I Industrial or LT-IV (Multiplexes and Shopping Malls). This category will include Hospitals getting supply at HT voltages irrespective of whether they are Charitable Trust, Government owned and operated etc. On going through clause 7, I am unable to accept submission of Mr. Patel. The consumers need to be classified under this new category based on the usage of electricity as above and those availing supply on HT voltages.

This coordinates with the case of present consumer. It avails supply on L.T. voltage and classified under existing HT-I Industrial before application of Circular and more particularly clause 7.

Mr. Patel, Sr. Manager of HPCL Bottling Plant consumer has placed reliance upon decision of Tamil Nadu Electricity Regulatory Commission in M.P. No. 24 of 2005 holding the activities of Indane LPG Bottling plant at Chennai to be ' Industrial ' as well as Writ Petition No. 2185 of 2008 before Hon'ble Andhra Pradesh High Court. Hon'ble Andhra Pradesh High Court in Writ Petition No. 2185 of 2008 against Utility set aside Order changing the petitioner's category from HT category I to H.T category II is liable to be declared as void. Since the respondents are directed to issue notice to the petitioner and decide the claim of the petitioner that it should be categorised under HT category I. Another case relied by consumer is decision of Hon'ble Electricity Ombudsman in case No. 03 of 2007 in between M/s. Hindustan Petroleum Corporation V/s. Utility of Licensee dated 22.2.2008. The Utility Licensee's refilling plants have been covered under non-industrial category under the tariff order of March, 2007. In clause iv of para 7 of the Order Hon'ble Electricity Ombudsman that the Tariff Order 2007-2008 classifies refilling plants under the category of Non-industrial consumer for application of HT/LT tariff. Hon'ble Electricity Ombudsman directed Distribution Licensee to submit billing details of consumer's plants situated in other region. It was brought on record that no Act or Regulation allows the Vitaran Company to behave in a discriminative manner. The petitioner should also have been billed as per Industrial tariff HV- 3.1 of the tariff order 2006-07. The Forum Order is set aside.

However, there is no material on record Tariff Order approved by MERC against MSEDCL is similar to Tariff Order of M.P. Electricity Board for the year 2006-07. Therefore in my opinion the consumer can not take much benefit of this judgement. Moreover, the facts of judgement referred, Utility was discriminating in applying industrial or commercial tariff to different stations such Indore, Ujjain in M.P. whereas here is no such a case. one more case law, or the judgement, relied upon by consumer in M.P. No. 24 of 2005 decided on 23.8.2005 between Indian Oil Corporation and Tamil Nadu Electricity Board, Chennai. Wherein the respondent Co. initially contended that there is no manufacturing activities carried out. Packing and pumping of LPG may be part of industrial activity. But these activities alone do not justify to treat the establishment as an industry. Hon'ble Commission ( at Chennai ) relied upon and refer under caption " National Industrial Classification (All Economic Activities) 1998 " as furnished by the Counsel for the Petitioner, it would be seen that Bottling of LPG has been classified under (sub-clause) sub-class 23, 203 under Division 23 – Manufacture of Coke Refined Petroleum products and Nuclear Fuel. The Hon'ble Commission observed above documents furnished by the Petitioner's Counsel sufficiently prove that the Petitioner's activity is an industrial activity. The Hon'ble Commission further observed that the Central Government has declared the IBP of the Petitioner as an industrial undertaking. The above fact can not be disputed by the Respondent Board. In view of the above position, it can be said that the activity of the Petitioner's IBP is an industrial activity.

However, as mentioned above, Hon'ble MERC the supreme authority for Maharashtra State under Electricity Act observed in case No. 116/2008 while determining the tariff at page 201 categorisation of " Industry " is applicable to such activities, which entail manufacture " .

Hon'ble Commission made it clear that " it is clarified that classification under Industry for tax purposes and other purposes by the Central or State Government shall apply to matters within their jurisdiction and have no bearing on the tariffs determined by the Commission under the Electricity Act 2003 and the import of the categorisation under Industry under other specific laws can not be applied to seek relief under other statutes.

Therefore, in the opinion of the Forum, this case law is not much helpful to present consumer operating in Maharashtra or under the control of Hon'ble Maharashtra State Regulatory Commission and Electricity Act 2003. As against it, the Nodal Officer of Distribution Licensee relied and referred to decision of Hon'ble K.E.R.C. Thiruvananthapuram in Petition No. TP-59/08 dated 18.3.2009. Hon'ble Commission concluded in Para 5, the petitioner's activity processes of LPG bottling plant is transferring the gas received from the company into cylinders of marketable size which is only a commercial activity and hence shall be classified as LT-VII (A) commercial as is done by the Board at present in the case of other LPG bottling units. In a petition filed by Chief Engineer (Commercial and Tariff ) Kerala State Electricity Board against Manager, Kerala Co-operative Consumer Federation Ltd. Ernakulam with prayer to direct or issue order to classify LPG bottling plant. In that case, the consumer has requested to assess as per industrial tariff. Wherein it was contended that manufacture is the process of conversion of raw materials into different finished products as in the case of Sugar cane to sugar, cotton to textiles, oil seeds to oil and so on. Hon'ble Commission observed in para 4.2 that no representative of LPG Bottling Plants including that of the respondent company participated in person, or raised any objection in writing to the tariff that they are being charged i.e. commercial under HT and LT.

In Para 4.3 the Hon'ble Commission concluded that activities of LPG Bottling Plants shall be treated only as commercial activity and be classified as such. It has been observed that electricity consumer classification and categorization for the purpose of electricity charges are made on the basis of the purpose of use of the electricity and are not related to the classification made by different departments of State Government or Central Government for other purposes. Thus classification followed either in State Government, or in other States is not a guiding principle for fixation of tariff for any particular class of consumers. In para 5 Commission accepted arguments of petitioner that since the processes of LPG Bottling plant is transferring the gas received from the company into cylinders or marketable size which is only a commercial activity and hence shall be classified as LT-VII(A) Commercial.

The Distribution Licensee placed reliance on case of State of Gujarat V/s Kosan Gas Company decided on 17.6.1991. The facts of the case disclosed whether the Gujarat Sales Tax Tribunal was right in law in holding that the process of transferring and / or collecting and/ or filling liquid petroleum gas (L.P.G.) from a big container into cylinders was not a process of manufacture as defined under Section 2 (16) of the Gujarat Sales Tax Act, 1969 and that the opponent is entitled to the deduction of resales of gas purchased from registered dealer on their turnover. In para 10 Hon'ble High Court observed that Tribunal was perfectly justified in coming to the conclusion that the abovesaid small process could not be said to be a process of manufacture. This question has been answered in affirmative and in favour of the assessee and against the Revenue. In para 8 it has been observed examining the facts of the present reference with the touchstone provided by the Supreme Court in the abovesaid two decisions,

it becomes clear that it can not be said that the L.P.G. was brought into any manufacturing activity.

Therefore, point is answered in the negative concluding the consumer H.P.C.L. Bottling Plant is not entitled to revoke a change of category H.T. Industrial from HT-II Commercial from 1<sup>st</sup> July, 2008 as prayed. In view of finding in point 1 and 2 in the negative, the petition or grievance is liable to be dismissed or rejected as following Order.

Though the inspection was carried out after hearing the grievance on 20.1.2011, copy of the presentation has been received on 28.1.2011. The grievance could not be disposed within two months on account pendency of cases for hearing and decision.

### ORDER

- 1) Grievance filed by Sr. Manager of Hindustan Petroleum Corporation Ltd. LPG Bottling Plant, Hajarwadi, Dist. Sangli against M.S.E.D.C.L. is hereby rejected.
- 2) No Orders as to cost.
- 3) The applicants / aggrieved persons by this Order are having right to prefer appeal within 60 days from the date of this order before the Hon. Ombudsman at ' Keshwa ' Bandra Kurla Complex, Bandra (E) Mumbai.

Date :

( B. G. Pawar )  
Chairperson

1) Shri G. B. Pankar, Member Secretary :

2) Shri G.C. Lele, Member :