

**Maharashtra State Electricity Distribution Co. Ltd.'s
Consumer Grievance Redressal Forum
Nagpur Zone, Nagpur**

Case No. CGRF(NZ)17/2017

Applicant : M/s. Central Institute for Cotton Research
2, Shankar Nagar
Nagpur.

Non-applicant : Nodal Officer,
The Superintending Engineer,
NUC, MSEDCL,
NAGPUR.

Applicant's representative :- Shri Kranti.

Respondent by 1) Shri Wath, SE, EE, Nodal Office/NUC
2) Shri Dhoble, EE(Adm.) NUC.
3) Shri Khadatkhar, DyEE, NUC.

Quorum Present : 1) Shri Shivajirao S. Patil,
Chairman.

2) Shri N.V. Bansod
Member

3) Mrs. V.N. Parihar,
Member, Secretary

ORDER PASSED ON 22.03.2017.

1. The applicant filed present grievance application before this Forum on 04.02.2017 under Regulation 6.4 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as said Regulations).

2. Applicant's case in brief is that, applicant is agricultural research institute and discharging work of research regarding agricultural crop. Applicant has been charged

by the impugned action under HT-V (HT Agriculture non-express) to HT-II (HT commercial non-express). Right from the beginning applicant has been charged as an agricultural activity (HT-V) and accordingly the charges are paid. In the year 2008 tariff was changed from HT-V (Agriculture) to HT-II (commercial). Applicant filed case no.CGRF(NUZ)/016/2010 and as per order dated 01-04-2010 it was ordered to charge the applicant at the rate as HT-V Agriculture.

3. By communication dated 30-04-2016 the non-applicant by referring the MERC tariff order dated 16-08-2012 and 26-06-2015 the existing tariff connection of the applicant i.e. HT-V (HT Agriculture) have changed to commercial category (HT-II commercial) w.e.f. 01-08-2012. Applicant approached to IGRC but his application was rejected by IGRC as per order dated 12-08-2016. Being aggrieved by the said order applicant filed present grievance application.

4. Non-applicant denied the applicant's case by filing reply dated 23-02-2017. It is submitted that Superintending Engineer, NRC Nagpur on observation and report of Dy.EE, Flying Squad had charged the tariff category of the applicant from HT-V (Agriculture) to HT-II (Commercial) in May-2009 and difference amount towards change in tariff from June-2008 to April-2009 amounting to Rs.35,01,990/- was issued to the consumer. Applicant paid the amount under protest. CGRF passed order dated 01-04-2010 in case no.16/2010 and directed to change the tariff as HT-V (Agriculture) and refund excess amount with interest to the applicant.

5. MERC in their subsequent order introduced new categories, incorporated new categories, re-categorized applicability of tariff of various activities, therefore, detail inspection was carried out by Addl. Executive Engineer, Flying Quad (U) Nagpur on

04-03-2015 and submitted report of the inspection. As per inspection report, the connected load comprises of 17 Nos. Agricultural pumps (96 HP i.e. 72 kW) and load of 250 kW for Director's office, Institute (Krishi Vigyan Kendra), Canteen and Residential Quarters etc. In order to segregate the use of electricity installation of sub-meters was proposed by Addl. Executive Engineer, Flying Squad (U), Nagpur. But applicant did not respond to this letters dated 01-12-2014, 03-03-2015, 22-04-2015, 21-05-2015 & 07-08-2015.

6. Executive Engineer, Butibori and Dy. Executive Engineer, Buttibori inspected the premises and informed as per letter dated 29-01-2016 that predominant load of this connection is for R&D purpose and non-feasibility of installation of sub-meters. Executive Engineer, Testing (U) Division Nagpur as per directives of Chief Engineer, Nagpur submitted report dated 20-01-2016 informing about non-feasibility of installation of sub-meters.

7. As per MERC tariff order dated 16-08-2012 and 26-06-2015, HT V: HT-Agriculture tariff is applicable for "For High Tech Agricultural (i.e. Tissue Culture, Green House, Mushroom activities), provided the power supply is exclusively utilized by such Hi-Tech Agriculture consumers for purpose directly concerned with crop cultivation process and further provided that the power is not utilized for any engineering or industrial premises are categorized as per HT-II (HT commercial) tariff category.

8. From the consumer's letter dated 29-09-2009 addressed to Superintending Engineer, NRC, observations and report of Executive Engineer, Buttibori, it is clear that this consumer is Research Institute under Central Govt. carrying out training and R&D activities. From the report submitted by Executive Engineer, Buttibori and

Executive Engineer (U), Testing Division Nagpur, it is clear that MSEDCL can not install Sub-meters for segregation of commercial and agricultural load. The agricultural activity being carried out in consumer's premises is also for research activity rather than cultivation of crop. The consumer can not be categorized as HT-V (HT Agriculture) as power is mainly used for Training, Research and development work and not for crop cultivation process. As per Commercial Circular no.175 and 243 (**MERC tariff order dated 16-08-2012 and 26-06-2015 respectively**). The Consumer is as per category HT-II N (HT commercial – non express feeder) tariff category. MERC before these tariff orders did not categorized Research and Development activities carried out outside Industrial premises in Commercial category. These tariff orders are after the date of CGRF order dated 01-04-2010.

9. Hon'ble High Court, Bombay in writ petition case no.7015 of 2008 ordered to consider date of revise bill amount as the date of sum became first due. It is bring to notice that considering the conflicting Judgement on recovery of such escaped billing, as per directions of Hon'ble Supreme Court of India, among various writ petitions, writ petition no.6783 of 2009, 10764 of 2011 and 498 of 2009 has been clubbed by the Hon'ble High Court, Bombay for clarification and placed before larger Bench and is pending for disposal (copy of the same is enclosed herewith as Annexure – P,Q & R). It is informed that writ petition nos.6545 of 2015, 6552 of 2015 and 6553 of 2015 are pending before the Hon'ble High Court, Bombay where in the Ombudsman, Mumbai is also a party as respondent (copy of the same is enclosed herewith as Annexure-S).

10 Agricultural tariff can not be applicable, as there is no direct crop is production in

applicant's premises as per MERC tariff orders dated 16-08-2012 and 26-06-2015. Any plantation carried out in premises is for Research and Development on cotton/ cotton seeds only. The use of power supply in applicant's premises is for Research and Development only. Therefore change in applicant's existing tariff category HT-IC (HT Industrial express feeder) to HT-II (HT commercial express feeder) from April 2016 w.e.f.01-08-2012 is correct. Grievance application deserves to be dismissed.

11. Forum heard arguments of both the side and perused record.

12. There is difference of opinion amongst all 3 members of Forum. Therefore final decision is based on Majority view of Hon'ble Chairperson and Hon'ble Member/Secretary of the Forum whereas dissenting note of Hon'ble Member(CPO) is noted in the last portion of the judgement and it is part and parcel of the order.

Reasoning of majority view of Hon'ble Chairperson and Hon'ble Member/Secretary of the Forum.

13. "The applicant is relied on order passed by CGRF in case no.16/2010 dated 01-04-2010 passed by our pre-decessor. However it is noteworthy that at that time the relevant tariff which was applicable on 01-04-2010, in that tariff there was no separate categorization for Research and Development, there was no clarification which tariff is applicable. Therefore CGRF decided vide case no.16/2010 dated 01-04-2010 considered the relevant existing tariff of MERC applicable at that time. However it is noteworthy that thereafter i.e. after order of CGRF Nagpur dated 16-02-2010, as per MERC tariff order dated 16-08-2012 and 26-06-2015, HT V: HT-Agriculture tariff is applicable for "For High Tech Agricultural (i.e. Tissue Culture, Green House, Mushroom activities), provided the power supply is exclusively utilized by such Hi-Tech Agriculture consumers for purpose directly concerned with crop cultivation process and

further provided that the power is not utilized for any engineering or industrial process”. Whereas, Research and Development units situated outside of industrial premises are categorized HT-II (HT- commercial) tariff category. Tariff order of MERC dated 16-08-2012 and 26-06-2015 are filed alongwith reply of non-applicant. **MERC in their subsequent order introduced new categories, incorporated new categories, re-categorized applicability of tariff of various activities.**

14. Detail inspection of this consumer is carried out by Addl. Executive Engineer, Flying Squad (U) Nagpur on 04-03-2015, copy of the same is filed in reply in Annexure-B. As per inspection report, the connected load comprises of 17 nos. agricultural pumps (96 HP i.e. 72 kW) and load of 250 kW for Director’s office, Institute (Krishi Vigyan Kendra), Canteen and Residential Quarters etc. In order to segregate the use of electricity installation of Sub-meters was proposed by Add. Executive Engineer, Flying Squad (U) Nagpur. But applicant did not respond to this letters dated 01-12-2014, 03-03-2015, 22-04-2015, 21-05-2015 & 07-08-2015. Copy of the same are filed at reply of non-applicant Annexure-C. Executive Engineer, Butibori and Dy. Executive Engineer, Buttibori inspected the premises and informed as per letter dated 29-01-2016 that predominant load of this connection is for R&D purpose and non-feasibility of installation of sub-meters. Copy of the same is filed in reply of non-applicant Annexure-D. Executive Engineer, Testing (U) Division Nagpur as per directives of Chief Engineer, Nagpur also submitted report dated 20-01-2016 informing about non-feasibility of installation of sub-meters. Copy of the same is filed in reply of non-applicant Annexure-E.

15. From the above observations, the said consumer can not be categorized as HT-V (HT Agriculture) as power is mainly used for Training, Research and development

work and not for crop cultivation process. As per Commercial Circular no.175 and 243 **(MERC tariff order dated 16-08-2012 and 26-06-2015 respectively)**. The Consumer is as per category HT-II N (HT commercial – non express feeder) tariff category. MERC before these tariff orders did not categorized Research and Development activities carried out outside Industrial premises in Commercial category. MERC before these tariff orders did not categorized Research and Development activities carried out outside Industrial Premises in Commercial category. These tariff orders are after the date of CGRF order 01-04-2010 passed by CGRF Nagpur.

16. In para no.14 & 15 of reply of non-applicant dated 23-02-2017 non-applicant specifically submitted that **Hon'ble High Court, Bombay in writ petition case no.7015 of 2008 ordered to consider date of revise bill amount as the date of sum became first due.** Copy of the same filed at reply of non-applicant which is Annexure-'O'. As such the amount of Rs.2,83,91,940/- is dated 12-08-2016 is payable by consumer. It is submitted by the non-applicant in para 15 of reply of non-applicant dated 23-02-2017 **considering the conflicting Judgement on recovery of such escaped billing, as per directions of Hon'ble Supreme Court of India, among various writ petitions, writ petition no.6783 of 2009, 10764 of 2011 and 498 of 2009 has been clubbed by the Hon'ble High Court, Bombay for clarification and placed before larger Bench and is pending for disposal.** Copy of the with reply of non-applicant **Annexure-P,Q & R.** It is further submitted by the non-applicant that **writ petition no.6545 of 2015, 6552 of 2015 and 6553 of 2015 are pending before the Hon'ble High Court, Bombay where in the Ombudsman, Mumbai is also a party as respondent** (copy of the same is enclosed with reply of non-applicant as Annexure-S). All these Judgements of Hon'ble Bombay High Court and

Hon'ble Supreme Court are binding on us.

17. In view of this position in our opinion, intimation by MSEDCL to applicant dated 26-07-2016 regarding change in existing tariff HT-V .. HT-Agriculture to HT-II N (HT commercial – non express feeder) w.e.f. 01-08-2012 is legal and proper. Supplementary bill of Rs.2,83,91,940/- as difference amount for the period 01-08-2012 to 30-06-2016 is legal and valid.

18. For these reasons we hold that grievance application deserves to be dismiss.

19. **Dissenting note of Hon'ble Member(CPO) is as under;**

“1. Before I proceed with the facts of case, wish to mention below the view / Ratio laid by Supreme Court of India – reported in 2005 CTJ 1077- P.S.E.B v/s Zorasing –State Electricity Board - for the guidance of Non-applicant, Officers & Engineers.

“MSEDCL – A state within Article 12 of the constitution must Act fairly and bonafide. It can not act for a purpose which is wholly unauthorise not germane for achieving the object it professes whether under a statute or otherwise.

The electricity Board is a statutory authority and A state, it is expected to discharge its statutory function within a reasonable time having regard to the fact that undertakes an important public utility service.”

Its inaction besides being governed by the electricity (supply) Act & Regulations framed there under, it must also fulfill the tests of reasonableness as envisioned under the article 14 of the constitution of India.”

2. On perusal of papers on record & Circular of MSEDCL, MERC Orders, orders of Ombudsman (Electricity) Nagpur in case of M/s. Ankur Seeds v/s MSEDCL & other

referred Judgments of High Court and legal comments on it by Ombudsman (Nagpur) and order of C.G.R.F. Nagpur on the identical case, I wish to record findings as under.

3. **The undisputed facts are mentioned here below.**

1) It is an undisputed (Established) fact that Applicant is the consumer of N.A since 1976, having consumer No 430019002866 with HT-V- (HT agriculture) Tariff and Institute is working under the control of Indian Council of Agriculture Research, Ministry of Agriculture & farmer's Welfare, Government of India, New Delhi, since cotton plays a key role in the national Economy.

2) It is an undisputed facts that the applicant is having 173 hectares of agricultural land for which irrigation facility, drip/sprinkler and other irrigation facility has been used crop cultivation & for high tech Agriculture (Tissue culture & Green houses). For irrigation in the fields for cotton crop 17 motors (agriculture pump 96 Hp i.e., 72 kw) have been fitted on well & water is pumped through this well for agriculture/ cultivation of crops only and said water has not been used for any other purpose except Irrigation to crop and for drinking purposes water is purchased from outside Agency. The power supply is used for pumping of water for the purposes of Agriculture/Cultivation of crops, pre cooling plants, cold storage units for Agriculture plants/samples, for high tech agriculture i.e. Tissue culture green house which is concerned with crop cultivation process.

To carry out the research work, there are laboratories, machines for storing of nucleus and particular temperatures, observation rooms, refrigerators etc. and monitoring the research work. Scientists are provided with Rooms / Laboratories with air conditioners, to maintain required temperature for nucleus, germplasms. i.e. 250 kw for Institute (krishi vigyan Kendra, canteen, Residential quarters, Director's office

having post of Director is also a Research management position while Krishi Vigya Kendra is an integral part of the institute, where the research, extension activities are conducted for welfare of the farmers community as per mandate of Krishvi Vigyam Kendra- decided by Govt.of india .

3) To achieve results on research of cotton, it has to follow the process of agriculture i.e. tilling of soil, sowing of seed and by following the farming process under strict supervision of senior eminent scientist, the research product is achieved as well as Tissue cultures, Green house as Hi tech agriculture. The applicant institute has the world's second largest germ plasma collection with samples of 9500 cotton seed varieties which are available national research and represent the national bio-diversity. The seeds have to be stored under refrigerated conditions for long term storage and therefore requires air conditioning facility and mandate is mentioned as 1 to 4 (page 2 of argument) & to achieve, the applicant is purely taking up activity of research in agriculture sector with a view to help the farming community in India.

3A) It is also an undisputed fact that non-applicant failed to specify the connected load which comes under HT V (HT Agriculture) i.e. pumping, cooling, Hi tech Agriculture etc. separately.

1. Power used for residential quarter which is declared redundant by CPWD.
2. Used for precooling plants & cold storage units for Agriculture produce.
3. Used for High Tech Agriculture (Tissue culture, Green house).
4. Used for cold storage units for Agriculture plants/samples
5. Load used to carry out the research work for laboratories, machines for storing of nucleus and particular temp, observation rooms, refrigerators & monitoring research work.

6. Load used for Director's cabin and other offices etc.
 7. Load used by scientists who are provided with rooms/laboratories with air conditioners, to maintain required temperature for nucleus germplasm.
 8. Load used for small canteen.
 9. Load used for krishi vigyan Kendra which is integral part the institute where research, extension activities are conducted for welfare of the formers community.
 10. Total load for power utilization from MSEDCL or DG set at there points as per Ex.Engr.(Testing Division) Urban Nagpur.
4. The applicant institute is a Govt. of India organization not having any commercial concerned for doing the work.
5. The applicant's main grievance is challenging the change of Tariff category from HT-V (Ag.) to HT- II commercial. vide order of MSEDCL dated 12/08/2016 and further affecting recover from 1/08/2012 (HT- II commercial) till June 2016 Rs. 28391940/- by putting reliance MERC Tariff order dated 16/08/2012 & 26/06/2015 (Research and development activities are carried out outside Industrial premises are to be covered.
6. At this juncture, It is necessary to clarify that applicant is not an Industry in the industrial premises or outside the industrial premises with research & development activities but applicant is doing agriculture activities with research & development on cotton in the single same campus under guidance or policy of Government of India. Hence on this pretext the presumption of N.A. regarding research & development activities are carried out outside Industrial premises are to be covered is totally mis conceived approach on the part of N.A. officials without legal & technical knowledge &

ulterior or motive. Hence N.A. totally failed to produced any documentary evidence to prove his contention to applicant be charged HT commercial Tariff.

7. It is necessary to mentioned that NA has created identical situation of change of tariff category from HT-V- agriculture to HT-II (commercial) and issued the bill dated 19/09/2009 Rs.3591680/- on the pretext of tariff order dated 10/05/2008 effective from 1/06/2008. Applicant challenged the application of commercial Tariff before the CGRF (Nagpur Urban Zone) Nagpur vide case No CGRF(NUZ) / 016 / 2010 and vide order dated 1/4/2010, forum set a side the commercial bill and also ordered to refund the amount Rs.3591680/- which was deposited by the applicant under protest.

The afore said order of CGRF dated 1/04/2010 was not challenged by NA before Ombudsman by representation but coolly refunded the amount of commercial bill by realizing the own mistake & further accepting legalities as per order of CGRF Nagpur.

8. N.A. again in the year 2016, tried to take the shelter of commercial circular no.175 of 2012 dated 16/08/2012 & commercial circular No.243 dated 03/07/2015 referring MERC Tariff order dated 16/08/2012 & 16/06/2015 & changed to commercial category (HT-II commercial) w.e.f 01/08/2012. & issued bill of Rs.28391940/-. NA also taken the shelter of inspection report of Flying Squad dated 04-03-2015 (Annexure B of N.A.) & Inspection by EE Butibori dated 20-01-2016 (Annexure E) as well as inspection report of E.E. (Testing) dated 29-01-2016 (Annexure-D) which is necessary to reproduced the relevant portion to conclude the motive behind & contradictions in it.

A) Report of Addl. E.E Flying Squad dated 09/03/2015

1. Electricity is authorized for agriculture & billed as HT-V agriculture tariff .
2. Electricity is used for agriculture pumps of research farm, Director's office,

Training institute, canteen, Residential Quarters.

3. Being Research centre agriculture subsidy is not feasible.
4. Partly supply is used for HT-II tariff and 1) subsidy code should be altered at IT. 2) Recover the past period assessment for difference of tariff for liable units.

Observation on Flying Squad:-

So it is observed that 250 kw Load is of offices & 72 kw Load is of agriculture use. More over consumer is benefitted with agriculture subsidy.

The applied tariff of H-T-V- for total installation is unjustified. As per MERC order dt 16/08/2012 all Govt. offices & R&D units comes under category Ht-II (HT commercial)

Hence you are requested to affix a meter to measure quantum of energy used for offices so that it can be categorized in commercial tariff in billing. Also you are requested to recover past period assessment for tariff change for the applied commercial load.

Being a complex load pattern and agriculture produce activity is for research and development purpose only. No subsidy on agriculture tariff is applicable and may please be withdrawn.

B) Report of Add. EE (M) & Dy EE Butibori subdivision on date 7/6/2015 reported on 29/1/2016.

1. There is a main building located in this premises having Director's cabin. There are laboratories for research attached with their respective Heads cabins in this building. The dominant load of this building is for research and development.

2. The institute (Krishvi Vigyam Bhavan) is for research and development.

3. There is a small canteen for their employees having very less load.

4. In the residential quarter one employee is residing & it is known that these quarters are declared redundant by CPWD.

Submitted for your information and with the note that the predominant load of said connection is for R&D purpose & segregation of load is not at all feasible.

---Report of EE (Testing) Division (v) Nagpur dated 20/1/2016 (Annexure E) of Non-Applicant. (To be mentioned).

Non-applicant vide letter dated 07-08-2015 emphasized that – segregation of meter's to be done & accordingly non-applicant vide their letter's dated 11-01-2011 & subsequently letter also addressed to apply for segregation of load of commercial and agriculture to a particular location at your premises, so that separate metering and billing through MR 9 and MR 10 can be done. After completion of the segregation work it is requested to contact the Asstt. Engineer Butibori for installation of meters.

It is very necessary to note that regarding residential quarter, one employee is residing and it is known that quarters are declared redundant by CPWD (Report of Ex.Engr.Butibory) still non-applicant is repeatedly mentioning use for residential quarters on false pretext which is to be discarded & as of no use to decide as HT II Commercial.

Non-applicant further repeatedly emphasized on segregation of use by installation of separately sub-meters and letters were sent to applicant without scrutinizing report of Ex. Engr. Butibori who in his letter dated 29-01-2016 (Annex-D) in the last para stated as “ segregation of load as stated is not at all feasible.

Hence again non-applicant without scrutinizing report & applying mind as well as common sense emphasized for segregation of load which is deliberate attempt of N.A.

to harass the Govt. Institute.

Non-applicant in their reports & reply repeatedly mentioned that dominant or predominant (word) use of load by applicant and reached to the conclusion to apply commercial tariff. Firstly in entire MERC tariff orders or commercial circulars of MSEDCL, such type of words are no where used. N.A. during arguments and quarry by members of the Forum, repeatedly admitted that the activity of applicant is composite i.e. agriculture forming as well as Agricultural (Cotton) research and development, extension as per guidance / guidelines of Govt. of India. On this count also, N.A. failed to prove that it is merely research & development other than Agriculture & Agriculture R&D Cotton and not used with agriculture produce or crop development. N.A. also failed to prove with cogent evidence that no crop development activities are carried out in the entire 173 hectares of land.

N.A. is also silent on report of Ex.Engr. Butibori dated 20-01-2016 (Annexure-E) para 6.

“However whether power utilized from MSEDCL or DG set at these points can not be distinguished – Further suggested to carry out detail survey of the electrical lay out for ensuring the segregation of Ag. Circuits. There is no further reports or survey by N.A. besides recommendation but reach to the conclusion to apply commercial tariff to applicant, shows the cursory and malafide way of working of N.A. officials.

In the Flying squad report dated 09-03-2015, it is mentioned “ As per MERC order dated 16-08-2012, all Govt. offices & R&D units comes under category HT II (HT commercial) which is not correct because The title of applicant i.e. Central Institute for Cotton Research and under takes various Agriculture activities in the production of cotton & research as well as development. A cotton as well as Hitech Agriculture as

mentioned in the beginning as undisputed facts. Hence contention of flying squad to isolate the main issue is baseless.

Non-applicant is reply para (4) mentioned that In order to segregate the use of electricity installations of sub-meters was proposed by Addl. E.E. flying squad (U) Nagpur. In reply para (6) it is mentioned that E.E. Butibori dated 20-01-2016 informing about non-feasibility of installations of sub-meters and both conclusions in the report are contradictory does not permit N.A. to act as per their whims & fancies.

N.A. relied on Annexure 'F' i.e. MERC tariff order in case no.19/2012 – HT II : HT commercial – HT II(A) express feeder “n” – research & development unit situated outside industrial premises.

In MERC tariff of 2015 in case no 121/2014 – research & development units situated outside industrial premises is separately categorized (Not included) in as under.

9. **Category for testing & R&D labs.**

The industrial tariff will apply only to those administrative units. R&D units and testing laboratories situated in the same premises as the parent industrial unit and taking power supply from the same point of supply. Those located outside the industrial premises will continue to be covered under commercial category. From the plane reading of clauses in 2012 & 2015 tariff orders category for testing & R&D labs is concern with industrial units or industrial premises and remotely there is no concern with the activities of applicant. Hence inference drawn by N.A. & the pleadings based entirely on it does not prove to put applicant in commercial category. Hence contention of N.A deserves to discarded as it is without application of logic & mind on the contrary, applicant is composite unit of agricultural produce, crop cultivation as well as research

& development in cotton etc.

The main issue for my consideration is whether applicant comes under category of HTV – HT – Agricultural. As per 2012 tariff as well as 2015 tariff

i) Applicability – Applicable for electricity / power supply at High Tension for pumping of water exclusively for the purpose of agricultural/cultivation of crops including HT lift irrigation schemes irrespective of ownership and also for.

ii) For pre-cooling plants & cold storage units for agriculture produce units for agriculture produce are being used by formers or traders and irrespective of the ownership of such plants/units.

iii) For High tech agriculture (i.e. tissue culture, green houses) provided the power supply is exclusively utilized by such High tech agriculture consumers for purpose directly concerned with crop cultivation process and further provided that the power is not utilized for any engineering or industrial process.

Firstly on perusal of contention of applicant as well as N.A., It is clear that utilization of power for only engineering or industrial process is out of context as applicant is related to agriculture activities:

10. There is no cogent evidence with N.A. to prove their own contention to put applicant in commercial category i.e. HT-II commercial and other so called pleadings are baseless & report's are contradictory to one another to reach the conclusion.

Hence applicant's power supply neither can be segregated nor can be put in commercial category and applicant's contention is genuine & convincing as well as working under guidance of agriculture dept etc of Govt. of India without any profit business or commercial outlook.

Hence applicant comes under HTV – agriculture category and submissions of

N.A. are deserves to discarded.

11. N.A. relied on judgement of this CGRF excluding dissent order and the order of Ombudsman but the same ratio can not be made applicable (M/s. Ankur Agro Ind. Ltd.) to this applicant because undisputed facts are that mentioned above in para 1 to 3 as well as Govt. of India organization without profit motive & commercial concerned but research & development for welfare & high yield production of cotton and order of CGRF in the year 2010 in case of applicant clears the factum in favour of the applicant. Secondly order of CGRF (Nagpur) & Ombudsman Nagpur in the year 2016 are before MERC by way clarificatory petition which may come any time for finalization. Hence can not be used against applicant.

In report of flying squad he proposed to recover past period assessment for tariff change for the applied commercial load as per MERC order dated 16-08-2012 & 26-06-2015 with effect from 01-08-2012 and N.A. issued the bill of Rs.28391940/- for the period 01-08-2012 to June-2016.

Hon'ble MERC's order dated 11-02-2013 in case no.24/2001. "In para 23, MERC directed that no retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of a consumer even through the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of natural justice and the recovery, if any would be prospective only".

Hence N.A. is not entitle to effect recovery from 01-08-2012 to June-2016 and bill deserves to quash & set aside.

12. It is noteworthy that N.A. intentionally violets the orders of MERC i.e. Regulatory Commission under the Electricity Act 2003.

N.A. relied on the following judgements Bombay High Court

- 1) Writ petition no.7015 of 2008 – Rototex Polyster
- 2) Writ petition no.10764 of 2011 – MSEB V/s. The Electricity Ombudsman Mumbai.
- 3) Writ petition no.6783 of 2009 – MSEDCL V/s. Venco Research & Breeding Farms pvt.ltd.
- 4) Writ petition no.6545 of 2015 MSEDCL V/s. Subhash Kailas Gupta
- 5) Representation no.51/2016 M/s Ankure seeds pvt.ltd. V/s S.E. MSEDCL Nagpur.

13. In concern with reliance of N.A. on above various judgements – it is necessary to quote para 23 & 24 of the order of Electricity Ombudsman (Nagpur) in case M/s Ankur seeds pvt.ltd i.e. -

Para-23:- *“No retrospective recovery of arrears can be allowed on the basis of any abrupt reclassification of consumer even though the same might have been pointed out by the Auditor. Any reclassification must follow a definite process of natural justice And the recovery, if any, would be prospective only as the earlier classification was done with a distinct application of mind by the competent people. The same cannot be categorized as an escaped billing in the strict sense of the term to be recovered retrospectively. With the setting up of the MERC, order of the commission will have to be sought as any reclassification of consumer directly affects the Revenue collection etc. as projected in its Tariff Order. The same could be done either at the time of the tariff revision or through a special petition by the utility or through a petition filed by the affected consumer. In all these cases. Recovery, if any, would be prospective from the date of order or when the matter was raised either by the utility or consumer and not retrospective.”*

Para-24:- *“Relying on certain Judgements of the High Court, it was urged on behalf of the respondent that the amount of supplementary bill can be recovered and there is no limitation for the same All these Judgements are placed by the respondent on record. I do not think it necessary to them for two reasons. First, the demand in question cannot be categorized as escaped billing in the strict sense of the term to be recovered retrospectively as observed by MERC in its order dated 11.02.2003 in case No. 24/2001. Secondly, there has been two conflicting Judgments of the coordinate Benches of the High Court on the question has been referred to a larger Bench comprising of three Judges. In view of this, it cannot be that the respondent is entitled to recover the amount as demanded by It”.*

14. Hence it shows that N.A. had relied on order of Hon'ble Ombudsman and kept blind eye on important para 23 & 24 as well as MERC order dated 11-02-2013 in case no.24/2001. There N.A. failed to prove that they are empowered or entitle to do retrospective recovery and pleadings on this issue deserves to be discarded. Again commercial recovery for period 01-08-2012 to June-2016 amounting bill Rs.28391940/- deserves to be quash & set aside.

Hence the following order –

1. Non-Applicant is directed to re-categorize the applicant from HV II commercial to HT V (HT Agriculture) and also cancel the bill of Rs. 28391940/- for duration 01-08-2012 to June-2016 issued illegally in HT II (HT commercial) category.
2. Non-applicant is also directed not to make any coercive recovery or to stop the supply of electricity of applicant as institute is the national wealth and no damage shall cause to it.”

20. **Concluding opinion of majority view of Hon'ble Chairperson and Hon'ble Member/ Secretary of the Forum.**

For our above discussed detailed reasons, we are of the considered opinion that order passed by IGRC is perfectly legal and proper and needs no any interference. There is no substance and no merit in this grievance application. Therefore grievance application deserves to be dismiss.

21. Hence we proceed to pass the following order.

ORDER

Grievance application is dismissed.

Sd/-
(N.V.Bansod)
MEMBER

sd/-
(Mrs.V.N.Parihar)
MEMBER/SECRETARY

sd/-
(Shivajirao S. Patil),
CHAIRMAN