

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

Case No. CGRF(NZ)/45/2017

Applicant : M/s.GTN Industries Ltd.
At Post Khurajgaon, Tah.Saoner
Dist-Nagpur-441112

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

Applicant's representative :- Shri Pratap Hogade

Respondent by 1) Shri H.M.Gulhane, DyEE(HT) NRC Nagpur

Quorum Present : 1) Mrs. V.N.Parihar,
I/C.Chairman.

2) Shri N.V.Bansod,
Member

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

ORDER PASSED ON 01.06.2017.

1. The applicant filed present grievance application before this Forum on 24.03.2017 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. The matter was fixed for hearing on dt.13.04.2017 at the time of hearing Non-

applicant applied for adjournment under the pretext that they need additional time to file detail reply. Both parties gave consent for the same and case was adjourned till dt. 25.04.17. Again on dt.25.04.2017, during hearing, Non-applicant applied for time to file reply, as they did not receive some documents to complete their reply. Non-applicant assured forum, that they would file Reply on or before 6th May. Both the Parties gave their consent to further hearing of the matter. Therefore as per mutual consent of Applicant and Non-applicant, the forum adjourned the hearing accordingly to dt.18.05.2017 with directions to the Non-applicant to file the reply sought by forum and applicant as well and no further extension would be given in the matter. Accordingly No-applicant filed their reply on dt.06.05.2017.

3. As per grievance application of the applicant, Till July 2012, they were continuous HT-1-C consumer of MSEDCL bearing Consumer no.430019012120 connected on 33KV express feeder line with contract demand 2600 KVA. Due to substantial rise in tariff rates vide MERC's tariff order 16.08.2012, and subsequent order dt.3.03.2014, they find difficult to sustain in industrial competition. Hence as per their application dt.28.03.2014 they had requested Non-applicant for change in their tariff category from Continuous to non-continuous. In spite of this correspondence made by them, they have been charged at HT-1- continuous tariff w.e.f dt. 01.04.2014,till July-2015. However subsequent to commission's order dt.26.06.2015, they again requested for change in category from continuous to non-continuous, which has been accepted by Non-applicant. Accordingly they have been charged according to non-continuous tariff basis w.e.f. dt .1.08.2015.

Therefore Non-applicant has acted contrarily to MERC Regulations and the SOP Regulations 2005, by charging them HT-1-C tariff till dt.31.07.2015, whereas they were eligible for HT-1NC Tariff w.e. from 1.04.2014 as per their request application. Due to this act of Non-applicant, which is in contravention to MERC 's SOP Regulations 2014, They are eligible for refund of the excess amount charged in their electricity bills with interest by Non-applicant since April-2014to Aug-2015, by considering their Tariff as Non-continuous, instead of Continuous.

4. During the hearing, an Applicant stated that Non-applicant filed petition before the commission vide case no. 44 of 2008 seeking clarification of the Tariff Order dt.20.06.2008 in case no.72 of 2007.,requested the Commission as under:

- a) *“the clause “demanding continuous supply” may please be removed from the definition of HT-I (Continuous industry);*
- b) *Existing consumers categorized under HT-I continuous as on 01 April 2008 should be continued under same category;*
- c) *HT-I (continuous) tariff category should be applicable to all industries connected on express feeder irrespective of whether they are continuous or non-continuous process industries”.*

The Commission by its order dt 12.09.2008 ruled in case No.44 of 2008 that, there is no justification for removing the clause “demanding continuous supply from the definition of HT-I continuous category”. The Commission further said that:-

.....However .it is clarified that the consumer getting supply on express feeder may exercise his choice between continuous and non-continuous supply only once in the

year, within the first month after issue of the Tariff order for the relevant tariff period. In the present instance, the consumer may be given one month time from the date of issue of the order for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorization will be continued”.

5. Applicant further stated that, Non-applicant, on the basis of the Commission’s order dt 12.09.2008 ruled in case No.44 of 2008 issued a Circular No.88 on 26th September,2008, which clearly states as follows:-

“The consumer may be given one month time from the date issue of this circular for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorization will be continued”.

6. Applicant stated that, the implementation of any tariff order is made effective only after issue of the Commercial Circular by the MSEDCL.In respect of order of the commission dt.03.03.2014 passed in case no.38/2014.,commercial circular no.221 was issued by the MSEDCL on dt. 15.03.2014.,whereas their request application for tariff choice is dt.28.03.2014.Hence it is well within time frame prescribed by MSEDCL only and hence were entitled for relief. I.e. they are entitled for refund of excessive amount recovered along with Interest.

7. The Applicant also relied upon provision prescribed in clause 9.2 of MERC (SOP of Distribution Licensees, period of giving supply and determination of compensation)Regulations 2014 which provides as under:-

9.2 “Any change in name or change of tariff category shall be effected by Distribution Licensee before the expiry of the second billing cycle after the date of receipt

of application.”

8. The applicant stated that, as per the said provisions even if it is presumed that application of the applicant was not within the period of one month from the tariff order dt 16.08.2012, the Applicant was entitled for relief i.e. Change of tariff category before the expiry of second billing cycle from the date of their applications. The applicant is also entitled for compensation at the rate of Rs.100/- per week for the delay in non-compliance of the said provisions of the SOP Regulations as it was mandatory on the part of Non-applicant to change tariff category w.e.f.April-2014 till July 2015, along with SOP compensation.

9. Applicant rely on the Hon'ble Electricity Ombudsman Mumbai issued on dt.02/12/2014 an order in case No.66 to 100 of 2014 of M/s Ganesh Fondry Pvt. Ltd and 35 applicants V/s. MSEDCL., & Hon'ble Electricity Ombudsman Nagpur in case no.115/2014 dt.13.02.2015 of M/s.Cosmo Films Ltd. V/s. MSEDCL in the matter of change of tariff category from continuous to non continuous, wherein it is presumed that applications for change of tariff category were not within the period of one month from the dt. of tariff order, yet applicant were entitled as per the provisions of the SOP Regulations for the change of Tariff category.

10. During hearing, Applicant also stated that; Non-applicant is issuing wrong bills continuously from April-2012. The wrong doings once brought to the notice of authorities cannot be continued under the garb of cause of action or time limitation. They have given reference of order issued by the Hon'ble Supreme Court of India in Civil

Appeal No.5151-5152 of 2008 dated 13-08-2008 in case of Union of India V/s. Tarsem

Singh in Supreme Court which held that;

4. The principles underlying continuing wrong and recurring / successive wrongs have been applied to service law disputes. A continuing Wrong refers to a single wrongful act which causes a continuing injury. Recurring / successive wrongs are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in Balakrishna S.P.Waghmare V/s. Shri Dhyaneshwar Maharaj Sansthan – [AIR 1959 SC 798], explained the concept of continuing wrong (in the contest of section 23 of limitation Act, 1908 corresponding to section 22 of limitation Act, 1963):

“It is the very essence of a continuing wrong that it is an Act which creates a continuing source of injury and renders the doer of the Act responsible and liable for the continuance of the said injury. If the wrongful Act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the Act may continue. If, however, a wrongful Act is of such a character that the injury caused by it itself continuous, than the Act constitutes a continuing wrong. In this Connection, it is necessary to draw a distinction between the injury caused by the Wrongful Act and what may be described as the effect of the said injury.”

11. Hence Applicant said that, as per Hon'ble Apex Court order, the wrong doing by the non applicant by charging wrong tariff every month amounts to recurring / successive wrongs which occur every month and each wrong give rise to a distinct and separate cause of action. Hence their appeal is not bared by time limitation of cause of action.

12. Applicant further stated that, MSEDCL has stated in their letter no. 12/11/2010 regarding number of HT consumers have been given change in tariff category even

though their applications were not received as per MERC's tariff orders 16.08.2012. Applicant also submitted and quoted that, MSEDCL has given sanction on dt. 28.02.2013, for the change of category from continuous to non-continuous to HT consumer M/s Century Rayon Ltd. Kalyan as per their application dt.23.01.2013, even though it was mandatory to exercise the option within one month from the issue of Tariff order. This is discrimination as per section 45(4) and (5) of EA2003. Hence prayed for non-discriminatory treatment to all applicant consumers in the interest of justice.

13. Applicant also referred, the review petition filed by MSEDCL vide case no.94/2015 on dt 28.07.2015 in the matter of order dt.26.06.2015 passed by the Hon'ble Commission in case no.121 of 2014 in respect of the issue of the exercising option by consumers applying for shift from continuous to non-continuous tariff category. Therein MSEDCL prayed for giving permission to change the categorization even if choice is not given within time frame prescribed by Commission's Tariff orders. In the said matter, MERC has allowed the said review petition and given order on dt. 19.08.2016. Applicant requested forum for taking into account the said order.

14. According to the Applicant, aggrieved by Non-applicant's violation of the terms and conditions of tariff order & Regulation No 9.2 of Commission, applicant filed his grievance with IGRC on dated 11-01-2017. IGRC heard the matter & by its order dt.09.03.2017 rejected complaint application of the Applicant on the ground that, application for change of tariff category was not filed within a period of one month from the date of tariff order dt.16th August 2012 and hence the present grievance application filed with this forum under Regulation 6.4 of the MERC (Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

15. Therefore, Applicant prayed that, On the basis of the tariff order & SOP Regulation-2014 clause no 9.2, they should be benefited prospectively i.e. from the 2nd billing cycle as per their application dated 28-03-2014. So their request of change of the tariff category to non continuous from the month of April-2014 be granted & Prayed to direct Non-applicant to revise all the energy bills from the month of April-2014 to August-2015 considering and applying non continuous supply tariff and refund the excess amount paid by the applicant along with interest under section 62(6) of Electricity Act 2003. Further For the said delay Compensation @Rs.100/-be given as per SOP Regulation 2005.

16. Non-applicant in their parawise reply stated that, since 12/11/1993, the Applicant M/s. GTN Industries Ltd. at Khurajgaon Tah.Saoner is an existing HT consumer bearing consumer no.430019012120 fed on 33 KV Express feeder availing continuous power supply.

17. As per application dt.28.03.2014, an Applicant had requested for change in their tariff category from Continuous to non-continuous one.

18. To justify the ground for rejection of request, Non-applicant referred MERC's tariff order dated 44/2008 which states,

“The consumer getting supply on express feeder may exercise his choice between continuous and non continuous supply only once in the year, within the first month after issue of the Tariff Order for the relevant tariff period. “

19. Non-applicant further stated that, Commission in its clarificatory tariff order dated 12-09-2008 & MSEDCL's related Circular no.88 Dt.26/09/2008 states that, consumer getting supply on express feeder should exercise choice between continuous and non-continuous supply only once in a year within first month after issue of the tariff order for the relevant tariff period and if such choice is not exercised within the specified period, the existing categorization will be continued. The tariff order was issued in this case by the commission on 16th August 2012, and Therefore it was necessary to exercise choice on or before 16th September 2012. But the applicant filed application after 16th September 2012 i.e on dt.28.03.2014 subsequent to Hon'ble MERC's Interim order dt.03.03.2014 passed in case no.38/2014. Same being an interim order, the rejection is fully justified.

20. Non-applicant contended that, when applicant submitted option on dt. 30-06-2015 as per tariff order dt.26.06.2015 passed in case no.121/2014 for change in their billing tariff from continuous to non continuous, the applicant changed the tariff of applicant from the billing month of August-2015. Non-applicant further said that, it is clear from this fact that, when consumer has given the choice of continuous or non continuous within legitimate time frame of one month from the issue of tariff order dt. 26.06.2015 for change in tariff from continuous to non continuous, it was considered by the Non-applicant.

21. Non-applicant stated that, the Hon'ble MERC had passed an interim order on dt.03.03.2014 in case no.38/2014, and the commercial circular no.221 dt 15.03.2014 was issued in accordance with this interim order. Hence contention of applicant of submission of option within one month from this circular has no meaning.

22. Non-applicant stated that, the applicant had utilized the continuous supply on

staggering day also. Hence it is very clear that they were utilizing continuous power supply.

23. For not considering 9.2 of SOP regulation, Non-applicant rely on the order which was issued by Hon'ble Electricity Ombudsman in the representation No.115 of 2014 on dated 13-02-2015 wherein It is mentioned that, *"Because of the clarificatory order, the choice to exercise option as per regulation 9.2 has been restricted to only once in a year within one month after issue of Tariff order. Therefore the applicability of regulation 9.2 to the instant matter does not arise"*.

24. Non-applicant also stated that, the Applicant had never given any consent for self declared load shedding.

25. Non-applicant rely on various orders by Hon'ble Electricity Ombudsman in the representation No.116 of 2013 passed on dated 09-01-2014, order dt 01.03.2011 in case no.137/2010 and 138/2010, order dt.31.12.2015 in case no. 97/2015 rejecting the refund in identical cases.

26. Also Non-applicant stated that, the similar issue before Hon'ble High Court has been disputed by MSEDCL by filing a large number of Writ Petitions viz. Writ petition no.6083/2012, 6084/2012, 6223/2012, 6228/2012, 2389/2014,4662/2015 and 5858/2016 before the Bombay High Court against similar orders of the Electricity Ombudsman, Mumbai. The Hon'ble High court had ruled most of the petition.

27. Non-applicant said, it is clear from the clarificatory Tariff order dated 12-09-2008 & MSEDCL's related Circular no.88 dt.26/09/2008 that, if consumer wants to change its tariff category from continuous to non-continuous the consumer should have given the choice

of continuous or non continuous within one month from the issue of clarificatory order dt. 12/09/2008. But in the instant case, applicant did not exercised his choice against HT-I continuous industry tariff.

Subsequent to Tariff orders dated 12-09-20010 in case no.111 of 2009 which came in effect from 01/09/2010 and Tariff order for the period 2012-13 issued by MERC on dt.16/08/2012, effective from dt. 01/08/2012, again applicant did not give choice between continuous to non continuous industry tariff.

28. Non-applicant hence reiterated that, under the terms of the Tariff order dated 16.08.2012, it was incumbent upon the applicant to have applied within a period of one month from said date if it desired change in category from continuous to non continuous supply. However, said choice was exercised by the applicant on dt.28.03.2014. As the same was beyond the period of one month the applicant was not entitled to the requested change from continuous to non continuous supply.

29. In their additional written submission filed on 18 May, 2017 (on the date of the subsequent hearing), Non-applicant stated as follows:

As per review petition on the issue of time limit for tariff change by HT consumers and SOP Regulations 2014 thereof, filed by MSEDCL vide case no.94/2015.on dt 28.07.2015 in the matter of order dt.26.06.2015 passed by the Hon'ble Commission in case no.121 of 2014,and Hon'ble MERC allowed the said review petition vide its order dt. 19.08.16 in case no 94 of 2015,Therefore, Non-applicant clarified its stand in pursuance to MERC's order dated 19.08.2016 and agreed that request of Applicant for retrospective effect of tariff change is being examined and will be implemented accordingly.

However it is submitted by Non-applicant that, the applicant is rightly charged with HT-IC (HT Industry Express feeder)Tariff category till the consumer submitted the option for non-continuous Industrial tariff on dt 23/07/2015 as per MERC Tariff order dt.26/06/2015 and MSEDCL commercial circular no. 246.and requested the forum for dismissal of the Grievance.

30. At the hearing on 18 May, 2017, the Parties were informed of the Chairperson of the Forum having resigned the office on 16 May 2017, consequent to which the matter would now be heard by the two remaining Members. At the time of hearing Quorum present was

1) Member Secretary & I/C. Chairman.

2) Member (CPO).

As per in clause 4.1(c) of MERC (CGRF & EO) Regulation2006 which reads as under,

4.1(c) "Provided also that where the Chairperson is absent from a sitting of the Forum, the technical member, who fulfills the eligibility criteria of sub-clause (b) above, shall be the Chairperson for such sitting".

Needless to say that, in absence of Hon'ble Chairman, Member Secretary is In-Charge Chairman. There is difference of opinion amongst the two. Since I/Charge. Chairman has one additional casting vote, therefore as per provision given in clause 8.4 of MERC (CGRF & EO) Regulation2006 which reads as under,

8.4 "Provided that where the members differ on any point or points the opinion of the majority shall be the order of the Forum. The opinion of the minority shall however

be recorded and shall form part of the order”.

Hence, the Judgment is based on majority view of I/C chairman and Member Secretary. However the separate dissenting note of Hon'ble Member (CPO) is noted in the judgment and it is part and parcel of the judgment. But the judgment is based on majority view and reasoning thereof is as under:

31. Forum heard the arguments of both the parties and perused the documents on record. Before going to the merits of the matter, it is necessary to decide whether the present application is within limitation.

A) Whether Grievance application dated 24-03-2017 is barred by limitation? - yes

Non applicant has filed their grievance before this forum on dated 24-03-2017 i.e. after 3 years since his application dt.28.03.2014 to Non-applicant requesting them for change of their billing category from Continuous to Non-continuous and demanding benefit from April-2014.

According to Regulation 6.6 of the said Regulation “The Forum shall not admit any grievance unless it is filed within two (2) years from the date on which cause of action has arisen”. Cause of action arose on first dt. of grievance application dt.28-03-2014. Therefore it was necessary for the applicant to file grievance application for change in tariff category and refund of excessive amount charged to them within 2 years from the date of cause of action arose i.e. on or before dt.28-03-2016 but present grievance application is filed before this forum on dt.24-03-2017. Therefore it is hopelessly barred by limitation. On this sole ground of limitation application deserves to

be dismissed.

32. Applicant has also contented, that Non applicant is issuing wrong bills continuously from April-2014.and Recurring /successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. Hence Limitation is not applicable. To emphasis this fact, they rely on section 22 of Limitation Act 1963 which reads as under:-

“In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of Limitation begins to run at every moment of the time during which the breach or the tort,as the case may be continuous”.

Also they relied on various Supreme. Courts order dt 03.01.1979 and dt 13.08.2008 C.A.5151/2008, Aptel order dt.11.03.2011,No.179/2009,Aptel Order dt.13.03.2015. No.127/2013.,and urged that the wrong doings once brought to the notice of authorities under the garb of cause of action has no time limitation. The Forum is of the view, as can be seen from the above orders by the Hon'ble Supreme Court that the wrong doing has to be there, and then only one can challenged it. In this matter, in spite of clear instructions of MERC to give option for change of tariff, consumer did not exercise his option except on dt 30/06/2014 that too as MERC's tariff order dt.26/06/2015 passed in case no.121/2014.Secondly, Honble Electricity Ombudsman's order no.115/2014 in its order dt.13.02.2015 has emphasized that ,”

“Every consumer has an inherent right for change of Tariff category. It is also true that normally such an application can be made at any time in case of Residential,

Commercial, and certain other categories. However in case of HT-I Industry Category, MERC has restricted the right of the consumer to exercise its option only once in the year within first month after issue of the Tariff order. All that clause 9.2 lays down is that the change of Tariff Category shall be effected before the expiry of the second billing cycle after the date of receipt of application. It does not say as to when such application can be moved. Clause 9.2 pre-supposes that consumer has a right to request for change of Tariff Category, but because of the Clarificatory Order, the choice to exercise option has been restricted to only once in a year within one month after issue of Tariff order.”

In view of above facts, the contention of the applicant that, the Non applicant Committed mistake by charging wrong tariff every month amounts to recurring / successive wrongs which occur every month and each wrong give rise to a distinct and separate cause of action, does not hold good in this matter.

33. Now Let us presume that it is not barred by the Limitation, and then what should be the result on merit. Therefore we turned to the merits of the case,

Whether supply of applicant can be categorized as non continuous tariff category w.e.from April14?

The applicant after giving option for choice on dt.28.03.14, had also applied for enhancement of his contract demand thrice mentioning their Industry as continuous.Accordingly additional load was sanctioned. As per regular practice of Non-applicant, applicant executed an agreement thrice, wherein it is categorically stated that, they will be charged at HT-1-C tariff. This fact has not denied by applicant neither while signing the agreement, nor afterward. During this whole process, it is seen that Applicant

never raised an issue for change of tariff categorization from Continuous to Non-continuous.

In the present instance, the fact that “*all applications received within 30 days from the date of the Tariff Order or Circular have to be processed within the time limit of the second billing cycle, when read with Regulation 9.2, for maintaining the standards of performance*” was well known, and clear to the applicant. Same can be seen from the fact that applicant requested non-applicant for change of tariff category to non continuous by making second application dt.23/07/2015 which is as as per MERC tariff order dt. 26/06/2015, and obtained necessary relief.

Moreover Applicant continued to enjoy facilities provided by virtue of being continuous industry such as no staggering day and load shedding applicable to continuous industries as compared to non-continuous industries. This was further substantiated by the fact that, Applicant neither gave any application against the levy of HT-I category nor given his choice between continuous and non-continuous supply within the first month after issue of the Tariff Order dt.16.08.2012 in case no.19 of 2012 for the relevant tariff period.

34. Considering the above facts, the forum holds the view that, the supply of the Applicant was continuous one only. In tariff order of the Commission applicable from June-2008 in which it is mentioned that, “*Only HT industries connected on express feeder and demanding continuous supply will be deemed as HT continuous industry and given continuous supply, while all other HT industrial consumers will be deemed as HT non-continuous industry*”.

In case such choice is not exercised within the specified period, then the existing categorization will be continued

35. It is crystal clear that the Commission has fixed responsibility on Non-Applicant to categories HT industries consumer as HT non continuous industries or HT continuous industries connected on express feeder as per demand submitted by the consumers.

36. Hence it would be most appropriate to consider the submission of the Non-applicant and arguments of the Non-applicant that, option was required to be exercised by such consumers fed from express feeder with continuous supply, and Applicant has not applied for change of tariff in the first month after issue of tariff order 2012 in spite of clear directives of MERC.

37. Therefore Forum is of the of firm opinion that, it was duty of the applicant to give choice to get the deem effect for changing the HT continuous industries to HT non continuous from 01-04-2014 as per deemed provision in the tariff order of MERC *dt.16.08.2012 in case no.19 of 2012* and thereafter in different tariff order of Commission i.e. in case no.121 of 2014 dated 26-06-2015, same condition was specified.

In absence of such choice, existing categorization i.e. HT continuous industry consumer being their supply on express feeder continued for billing purpose is just and in order. When Applicant requested Non-applicant for change of tariff category to non continuous as per his application dt.23/07/2015 as per MERC tariff order dt. 26/06/2015, Non-applicant changed the tariff of the applicant from the month of September-2015.

Also, the time limit for change in the tariff as per the clause 9.2 SOP Regulations, read with Section 57 of the EA, 2003, has to be read with the provisions of the Tariff Orders. If the option of change of category is limited by the Commission through a special dispensation to one month from the date of Tariff Order, the SOP Regulations cannot be invoked after the lapse of such period.

38. A very pertinent fact is also brought to the notice of forum that, the review Petition had been filed by MSEDCL with MERC for review of Tariff Order dated 26.6.2015 in Case No. 121 of 2014 with regard to disallowances relating to exercise of choice between Continuous and Non-Continuous supply.

39. In its Petition, MSEDCL has stated that:-

“The Petition is for review of the Commission’s ruling in the MYT Order regarding the exercise of option by consumers for shifting from Continuous to Non-Continuous tariff category. The ruling in the impugned MYT Order regarding the exercise of choice by consumers between Continuous and Non-Continuous categories has its genesis in a no objection raised during the public consultation process in Case No. 121 of 2014 leading to that Order. The objection was that MSEDCL has allowed change of tariff category from Continuous (HT-1 C) to Non-Continuous (HT-1 C) to several applicants after the period of 30 days from the issue of the relevant Tariff Order as stipulated by the Commission.

While justifying the demand made in review Petition, MSEDCL stated in the review Petition as under”

“The categorization of Continuous and Non-Continuous created at a time when load shedding was prevalent has to be considered in the light of reduced load shedding

since 2012. With reduction in load shedding since 2012, the right of the consumer to decide the kind of supply being supreme, the need for MSEDCL to reduce migration of consumers with the ushering in of Open Access to safeguard subsidized consumers are issues which need to be deliberated to appreciate the bonafide actions of MSEDCL in permitting change of Tariff category by applicant consumers

“The rationale for Continuous / Non-Continuous tariff was availability of power in a Shortage scenario. Once 24x7 powers was available to all consumers, a considered, fair and bonafide view on tariff category was adopted. MSEDCL has taken this action in the letter and spirit of the EA, 2003, the Regulations and Commission’s directives. This was one of the actions necessary to retain cross-subsidizing consumers who might otherwise leave MSEDCL by availing power through Open Access from other suppliers, and hence the Recovery Committee took the decision to protect the interest of MSEDCL. This action has helped industry to survive in the recession period, and MSEDCL to earn revenue for the subsidized categories of consumers.

40. Hon'ble MERC allowed the review Petitions vide its order dt. 19.08.16 MERC in response to MSEDCL’s review petition case no 94 of 2015, and clearly states “*MSEDCL has admitted during these proceedings that it had taken an ad hoc and inconsistent approach not only on such applications but also in different judicial forums with regard to individual cases, and that it had revised its stand in these forums after filing this Petition. The Commission directs MSEDCL to examine and take appropriate action with regard to such selective, inconsistent and discriminatory treatment given to different applicants. In view of the foregoing, the review Petition is allowed. The Commission directs MSEDCL to*

assess the impact of this Order after examining all the applications received by it which merit revision, based on the principles settled in this Order, including the impact on account of any selective, inconsistent or discriminatory treatment given to different applicants, and submit it to the Commission within three month”

41. As per written additional submission of Non-applicant in pursuance of MERC order dated 19.08.2016 agreed that retrospective effect of Tariff change is being examined in case of Applicant and will be implemented accordingly.

Thus If the grievance would not have been barred by limitation, the result would have been “ Non-applicant shall examine the request of the applicant for retrospective effect of tariff change and may implement accordingly as per directives of the commission.”

42. **The separate dissenting note of Hon’ble Member (CPO) is given as under.**

1) It is noteworthy to place Supreme Court’s view on Electricity Boards (MSEDCL) for guidance of non-applicant Licensee’s Officers & Engineers as its action appears to be partition & discriminatory amongst different consumers which is not expected by law & constitution and licensee shall not forget its statutory responsibility.

A) SCI 2005 CTJ 1077-P.S.EBLtd. V/s Zorasing – State Electricity Board – constitution of India – Article 12 & 14 –

“ 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 and Regulations framed there under, it must also fulfill the tests of reasonableness as envisioned under the article 14 of the Constitution of India”.

2) Brief facts of the grievance application are that, consumer is running a factory having HT Industrial supply bearing consumer no.430019012120. The consumer submits that there are different categories of HT industrial consumer i.e continuous (HT-IC) & non continuous (HT-IN) and accordingly separate tariffs are charged since Oct-2006. Circular stated that the consumer may opt his choice between continuous & non continuous as per MERC order in case no.44/2008 dated 12-09-2008. MSEDCL has also issued commercial circular no.88 dated 26-9-2008. Also there is a clear provision regarding change of tariff category in SOP Regulation.

3) Consumer further submitted that there was continuous supply till July 2012 and were continuous category consumer of MSEDCL. But due to MERC order dated 16-08-2012, there was a huge hike in tariff which made us impossible and difficult to survive and run their business. Again as per order of MERC dated 03-03-2014 there was hike in tariff. Further inspite of being continuous category consumer paying tariff there under, they were not using energy on staggering day so as per MERC order, MSEDCL circular and SOP Regulations. Applicant opted for non-continuous category and submitted their written applications on 28-03-2014 & same is acknowledged as Exbt.No.1.

Applicant further stated that as per directions of MERC and SOP Regulations, it was binding upon MSEDCL to implement “ non-continuous” tariff and charge the consumer accordingly there under from Next billing cycle i.e. from 01-03-2014 but request was not sanctioned. As per orders of MERC dated 26-06-2015, applicant again applied for non-continuous tariff and from 01-08-2015, and non-continuous tariff is charged.

Applicant stated that inspite of MERC order & Regulation of standard of performance, MSEDCL failed to consider from 01-03-2014 even though applicant entitle for non- continuous tariff, they were charged HT(I-c) continuous till 31-07-2015. Applicant filed bills for April 2014 to August 2015. MSEDCL charged illegally against orders of MERC & SOP Regulations hence prayed for cancellation of higher tariff since 01-03-2014 and difference be refunded alongwith interest or adjusted in the future bills.

Applicant relies and filed MERC tariff order dated 16-08-2012 and 20-06-2008 (condition no.iv) of 20-06-2016 tariff order, clarification of MERC dated 12-01-2008 in petition no.44/2008, commercial circular no.88 dated 26-09-2008 about staggering day & referred section 62(6) of Electricity Act 2003 i.e. Regarding Refund of Excess amount charged with interest. Appellant said in refund difference of Electricity charges इंधन समायोजन आकार दरफरक & other difference of IC,GC,TC, cross subsidy and also submitted details of the difference calculations and again prayed for its refund with interest.

4) Non-applicant MSEDCL in their reply raised the preliminary objections as under-

A) Instant grievance application is not filed within 2 years from the cause of action and therefore barred by limitation under Regulations 6.6 of the MERC (CGRF & EO) Regulations 2005 and process for SOP is not file within 60 days from the date of

rectification of the deficiency in performance standard under Regulation 12 of SOP Regulations 2005 and be rejected at the first instance.

MSEDCL said, MERC had clarified in case no.44/2008 that “the consumer getting supply on express feeder may exercise his choice between continuous and non-continuous supply once in the year, within the 1st month after issue of tariff order for the relevant period. MSEDCL said applicant applied for change tariff category to non-continuous category on 28-03-2014 on basis of MERC Interim order dated 03-03-2014 in case no.38/2014. MSEDCL filed only 1st page of order (Ane-I) which only mention Interim order on prayer of MSEDCL’s petition case no.38 of 2014 and it was not tariff order & cannot be said as application is received within one month from the issue of tariff.

MSEDCL admitted that applicant’s request dated 30-06-2015 as per MERC tariff order dated 26-06-2015 passed in case no.121/2014, submitted within one month from tariff order is considered and tariff category was changed to non-continuous w.e.f. 01-08-2015.

MSEDCL denied refund alongwith interest as per application dated 28-03-2014 as application was not received within one month of the tariff order and not eligible for the same and prayed for dismissal of grievance application: MSEDCL relied on MERC order in case no.44/2008 arises from clarification by MSEDCL in case no.72/2007 in above context.

MSEDCL relied on observations of Electricity Ombudsman, Nagpur in an order dated 09-01-2014 in representation no.116/2013 observed that the clarificatory order dated 12/09/2008 in case no.44/2008 will not automatically apply to the subsequent tariff

order.

MSEDCL further as per their circular no.36 dated 11-10-2011 in view of the critical power position the industrial staggering of 16 hrs from 6 to 22 hrs which was implemented as per respective staggering day from 12-10-2011 and alleged that applicant utilized continuous supply on staggering day as continuous supply & written communication about interruption during staggering days on 23-04-2014, 07-05-2014, 14-05-2014 & 16-07-2014.

MSEDCL relied on judgement of the Hon'ble High Court vide order dated 10-09-2014 passed in writ petition no.5437/2013 regarding the claim of interest of 9% as per section 62(6) of the Electricity Act 2003 but non-applicant failed to file copy of the order for perusal and interpretation and neither compared the facts in it with the present application hence I did not find any much relevance in the present case and context. MSEDCL also denied application of Regulation 9.2 stating 9.2 has been restricted to only once in a year within one month after issue of tariff order. MSEDCL in additional submissions, stated that applicant had applied for enhancement of load thrice mentioned as a continuous industry and load was sanctioned and agreement to that effect were executed and security deposit were demanded considering it as a continuous industry. MSEDCL stated that applicant had given implied consent and admission for utilization of continuous supply.

5) I heard the arguments of both the parties & perused all the papers on record alongwith various orders/judgements of different authorities filed by both the parties. The following issues are for my consideration to reach to the conclusion as to prayer of the

applicant. Non-applicant MSEDCL raised technical/legal questions which are necessary to discussed

1. Non-applicant in additional submissions (para-1) stated about enhancement of additional load was sanction thrice and agreements to that effect were executed also noted the implied consent of applicant and reach to the conclusion as it is perfect example for application of Doctrine of Estoppels,

A) Terminology of Doctrine of estoppels is as per Chapter VIII section 115 – of The Indian Evidence Act, 1872 –

MERC (CGRF & EO) Regulations 2006 Regulation 6.19 is as under –

6.19 – “The Forum shall not be bound by the code of civil procedure, 1908 (5 of 1908) or The Indian Evidence Act 1872 (1 of 1872) is in force from time to time”

Hence submission of non-applicant is nothing but a futile attempt to impress the forum wrongly which deserves to be rejected/ dismissed on fact of case & prevailing Regulation because the provision of Indian Evidence Act are not applicable . Hence contention deserves to be rejected.

B) Non-applicant filed copy of agreement form “Annexure-F as executed on 02-07-2014 on Rs.100/- stamp embossed on 19-07-2013 which is after more than 6 months from date of purchased ie. 19-07-2013 (At sr.page 48 to 51 of non-applicant).

6) Applicant during arguments raised serious objections about its validity & non availability to the applicant. I wish to mention provision of section 52B of the Maharashtra Stamp Act – Invalidation of stamps & savings,

“[52B. Invalidation of stamps and saving- Notwithstanding anything

contained in sections 47, 50, 51 and 52, --

a) Any stamps which have been purchased but have not been used or in respect of which no allowance has been claimed on or before the day immediately preceding the date of commencement of the Bombay Stamp (amendment) Act, 1989 (hereinafter referred to as “the commencement date”) and the period of six months from the date, may be used before a period of six months from the date of purchase of such stamps is completed, or delivered for claiming the allowance under the relevant provision of this Act, and any stamps not so used or so delivered within the period aforesaid shall be rendered invalid.

b) Any stamps which have been purchased on or after the commencement date but have not been used, or no allowance has been claimed in respect thereof, within a period of six months from the date of purchase thereof, shall be rendered invalid].”

Therefore it is crystal clear that non-applicant has executed the Annexure-F-Agreement form on invalid stamp paper and hence its void in Law.

Secondly on the same invalid document on page 2 & 3, Non-applicant added “Applicable tariff HT-IC” in writing which is not endorsed specifically by the parties and hence non-applicant has dared to add as per his suitability on invalid stamp agreement which is further void in Law as non-applicant obtained agreement without providing copy of Agreements & Acknowledgements of copy of A1 forms etc. from time to time and attempted to relay illegally.

Non-applicant stated load was enhanced thrice but only one agreement form dated 02-07-2014 (invalid) was produced which is clear case of concealment of fact.

Hagi Latif – it is held -

7) “A party in possession of best evidence which would throw light in issue in controversy withholding it – Court ought to draw adverse inference against him not withstanding that on us proof does not lie on him.

Party cannot rely on abstract doctrine of onus of proof or on the fact that he was not called upon to produce it.

Hence adverse inference is necessary to draw against non-applicant.

C) Non-applicant has not provided copy of Agreement etc. and hence not available to applicant.

As per Regulation 6- Agreement - of MERC (Electricity supply code & other conditions of supply) Regulations, 2005,

6. Agreement

“6.1 The Distribution Licensee may require the applicant to execute an agreement for obtaining a new connection, for change of name and for enhancement of sanctioned load:

Provided that for sanctioned load of less than fifty (50) kilo-watts (67 HP/63 kilo-volt-amperes), the agreement provided for in this Regulation 6.1 shall not be required and the application form submitted and accepted shall constitute the agreement.

6.3 A copy of the agreement shall be given to the consumer upon execution of the same.”

Applicant’s load as per invalid agreement is 4201 kw, connected load & 3100 KVA

is contract demand and hence it was binding on non-applicant to give copy of the Agreement to the consumer on every enhancement of load which was not provided to the consumer. Therefore ulterior motive of non-applicant is proved as violated the provision of above Regulations and if it would have been provided, non-applicant would have lost the chance to add & put stress on the words “Applicable Tariff HT-IC” on Agreement form, as is part of the invalid Agreement.

D) On perusal correspondence dated 3/12/2014, 29/11/2014 (corrections in column of shift & units) letter dated 20/10/2014, A1 without date, consent letter dated 18/10/2014, 9/5/2014, 1/3/2014, A1 (without date) does not clearly specify the demand of Applicant whether continuous or non continuous. Hence without specific demand of Applicant for continuous industrial enhanced supply is without any basis. Hence presumption of non-applicant regarding implied consent is without any basis, deserves to be discarded,

It is noteworthy to mention that – MSEDCL denied to rely their own circular dated 24-06-2011 which is baseless contention and supports the contention of applicant even though they possess & well aware of contents of circular.

E) Applicant vide his letter dated 28/3/2014 & letter dated 30/6/2015 received by non-applicant on 1/7/2015 requested for change of Tariff from continuous to non continuous. Non-applicant has acted on letter dated 30/6/2015 and affected change of tariff from 1/8/2015 but non-applicant failed to take cognizance of letter dated 28/3/2014. Not a single correspondence is produced by the non-applicant in connection with application dated 28/3/2014. Now in proceedings before forum, non-applicant stated that application

dated 28/3/2014 is after the Interim order dated 3/3/2014 and filed on record only 1st page of MERC order & not available in record and conclusion is baseless because interim order dated 03-03-2014 is always part of the main order and hence cannot be presumed to be after interim order as well as, as per 9.2 of Regulation of SOP 2005, Applicant rightly submitted the application 28-03-2014. Conclusion drawn by non-applicant is baseless & deserves to be rejected.

8) Non-applicant also raise question of limitation as per MERC (CGRF &EO) Regulation 2006 & SOP Regulation no. 12.2 of 2014 and stated that application for change of tariff dated 28/3/2014 is bar by limitation & not entitle for compensation & interest on difference amount of continuous & non continuous tariff as per section 62 (6) the Electricity Act 2003. Hence the question of payment of difference with interest & compensation is for our consideration.

Non-applicant filed Annexure-1 regarding interim order dated 3/3/2014 in case no 38 of 2014 (1st page) & intentionally avoided to produce the complete copy of order for our scrutiny as relied by non-applicant. But in absence of copy of order dated 03-03-2014, non-applicant's contention deserved to unworthy to be accepted for deciding the controversy. Non-applicant relied various judgment of authorities but fact in this Application before us and due advancement of law & interpretation latest judgements of Appellate Elect. Tribunal etc. & significance of Regulation 9.2 of SOP Regulation, the reliance of citation by non-applicant does not deserve any specific consideration while resolving the dispute between the parties because constitution prevails the Act, Act prevails the Regulations & Regulations prevails the orders is the basis principal of Law.

Regulations have overriding effect on the orders. In the same way substantial Justice is the settled principal of the Law. Hence implementation of such important and overriding and inherent provision of the SOP Regulations is the proper relief to the consumers.

9) Applicant has applied for change of tariff on 28/3/2014 which was neither considered nor rejected. Applicant placed copy of Bills for April 2014 to Aug 2015, which clarify that change of tariff is not effected which is against Regulations 9.2 standard of performance which shows disregards of the non-applicant towards the Regulation.

Applicant admitted that his feeder is express feeder and hence applied for change of tariff from continuous to non continuous due to stiff hike in tariff rate.

10) Applicant stated that as per order of MERC dated 3/3/2014, MSEDCL issued implementation circular no. 221 dated 15/3/2014 which was not denied by non-applicant and acted accordingly and hence Applicant's Application dated 28/3/2014 to change the tariff is within one month. Hence Applicant is entitle for non continuous tariff from 01-03-2014.

Judgment of The High court of Bombay dated 19/1/2012 in writ petition No 9455/2011 (M/s Hindustan petroleum corp. ltd. V/s. MSEDCL & others held as under.

The High court observed that the term cause of action has not been defined in the MERC(CGRF & EO) Regulations 2006. After referring to several provisions of MERC (CGRF&EO) Regulations 2006. The High court concluded that it thus clear that the consumer cannot directly approach the forum in timely manner. The High Court further concluded that the cause of action for submitting Grievance arises when the IGRC does not redress the Grievance.

11) The above ratio was applied by the Electricity Ombudsman Nagpur in case of “Shilpa steel & power ltd.V/s Superintending Engineer Nagpur Urban Circle MSEDCL Nagpur” dated 22/1/2016.

The Hon’ble Ombudsman in Representation no. 45/2016 in an identical facts order dated 5/10/2016. Ashok Kishanchand Virwani V/s. Superintending Engineer MSEDCL. observed as under.

It may be noted that cause of action arose for 1st time when wrong Tariff was applied. There after cause of Action arose every month when the electricity bills were issued. The cause of action lastly arose on 1/7/2015 when applicant applied for refund of the difference between commercial and residential tariff.

In the present case cause of action 1st arose after 28/3/2014 when non-applicant did not change tariff before 2nd billing cycle as per 9.2 SOP Regulation and it is continuous from April 2014 to Aug 2015 because non-applicant issued wrong bills every month for continuous tariff and it is continuous till refund of difference of tariff along with interest as per section 62 (6) & payment of compensation and hence contention of non-applicant on point of limitation & 6.6 of MERC (CGRF & EQ) Regulation 2006 is deserves to discarded which contrary and against Regulation 9.2 of SOP 2014 which is similar to earlier SOP Regulation.

Applicant relied on MERC order dated 12/9/2008 in petition No 44/2008 & Commercial circular No 88 dated 26/9/2008, tariff order dated 12/9/2010 case No. 111 of 2009 page 189, tariff order dated 16/8/2012 case No. 19 of 2012 page No 288, and 9.2 SOP Regulations as applicable to his application which gives total clarity of background

relevant to his contention and hence deserves to be accepted.

Applicant also pointed out that as per head office of MSEDCL letter dated 12/11/2010, it is accepted to consider applications received any time or besides after one month as per circular and filed copy of Annexure No.13 which proves the Discriminatory approach of MSEDCL with different consumers which is violation of provision of constitution which is noted in the begin held by S.C.I.

Applicant categorically brought to the notice vide Annexure 14- (Century Reyon Ltd.Kalyan) in which application was submitted on 23/1/2013 (after one month) accorded sanction on 28/2/2013, further clarified by MSEDCL that to accept application after one month or otherwise is their general policy decision.

12) Applicant also placed before the forum the cases of Akola (4/10/2012 to 15/10/2012) (Annexure 15) but non-applicant is absolutely silent on the discrimination & General policy decision of Head Office and contentions of non-applicant deserves to rejected.

A] Applicant categorically placed before forum the orders of Electricity Ombudsman Mumbai dated 2/12/2014 (Ganesh Foundry Pvt.Ltd. & 35 V/s. MSEDCL in petition No. 66 to 100/2014).

B] Order of Electricity Ombudsman Nagpur 13/2/2015 (Cosmo Films Ltd. Aurangabad in representation no 115/2014.)

In above representations applications were filed after one month and as per 9.2 of SOP Regulation the refunds with interest were ordered.

C] It is noteworthy & of utmost importance that MERC in its order dated 19/8/2016 on clarification petition of MSEDCL case no 94/2015 observed as under.

3.29.4 (page No 105) While MSEDCL's allowing switch over for an extended period has benefited some consumers, the consumers at large cannot be made to bear any additional burden on account of its discretionary and unsanctioned act. From the data submitted, the Commission observes that 28 consumers were granted permission for change in category within the stipulated period. However, MSEDCL received applications from 280 consumers thereafter, out of which it granted permission to 132 consumers, and the remaining 148 are pending.

26.Issue B (page 108) The SOP Regulations, 2005 permit a consumer to seek change of tariff category without any fetters. The Regulations have been infringed by the order dated 12 September, 2008, and there can be no estoppels against the operation of Law.

27. Issue C (page 116) Allowing change from continuous to non-continuous supply ought to be treated as a bonafide action of MSEDCL, for retaining consumers from leaving through open Access, and thereby safeguarding the interests of its cross-subsidized consumers: **27.1** "While MSEDCL's allowing switch over for an extended period has benefited some consumers, the consumers at large cannot be made to bear any additional burden on account of its discretionary and unsanctioned act.

13) It is further noteworthy to mention the citations filed by applicant on point of limitation as under

1] Provisions of limitation Act - Section 22 - as well as 303 & 304 & 305 (containing breach & wrong).

22. Continuing breaches and torts:- In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.

2] SC I – AIR 1979 SC 1144 – Madras Port Trust V/s Hymanshu International – dated 3/1/1079.

Para 2 - (page 7) We do not think that there is fit case where we should proceed to determine whether the claim of the respondent was barred by section 110 of the Madras Port Trust Act (II of 1905). The plea of limitation based on this section is one which the court always looks upon with disfavor and it is unfortunate that a public authority like the port trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government of public authorities takes up a technical pleas, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by government or a public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable.

3] SC I – civil Appellate Jurisdiction – civil Appeal no 5151- 5152 of 2008. Union of

svelia V/s. Tarsen Singh

Para-4 page 9 & 10 The principles underlying continuing wrongs and recurring successive wrongs have been applied to service law disputes A continuing wrong refers to a single wrongful act which causes a continuing injury.

4] Appellate Tribunal for Electricity – Appeal no 197 of 2009 order dated 11/3/2011

MSEDCL V/s. MERC & 8 others - **Para – 21(1) page 36** Electricity Act is a complete code. Any legal bar or remedy under the Act shall manifestly exist in the Act itself. There is no such bar with regard to limitation in the Electricity Act. The Hon'ble Supreme Court has held in a number of decisions that the limitation Act will not apply to the quasi-judicial authorities like the State Regulatory Commissions. It has been further held by the Hon'ble Supreme Court that the State authorities ought not to take such technical pleas to defeat the legitimate rights of the Consumers. The tariff fixation is a continuous process and is to be adjusted from time to time. Therefore, the limitation Act cannot be applied to the enforcement of tariff which constitutes a part of the regulatory exercise. Therefore, the contention that the proceedings initiated in this case before the State Commission was barred by the limitation can not be accepted.

5] Appellate Tribunal of Electricity (Appellate Jurisdiction) Appeal no 127 of 2013 order dated 13/3/2015 - **Page 42-Para 50.** (i) It is settled law that the limitation Act would apply only to Courts and not to the other bodies such as quasi-judicial Authorities as held by the Hon'ble Supreme Court.

page 56- Para 10 Hence, we answer the reference as under:

The limitation Act 1963 is not applicable to the matters pending before the State Electricity Regulatory Commissions and Central Electricity Regulatory Commission.

6] MERC – order in review petition case No 121 of 2014 - 3.3 – of page 91 - C of – page 92, 93

MERC further interpreted and noted the admissions of MSEDCL and observations in above referred para squarely applicable to the present applications and proves discriminately approach of MSEDCL with the present consumer.

7] order of E.O (Mumbai) dated 3/11/2016 in representation no 84 to 88 of 2016.

Para 26.9 page 113 “26.9 from the above judgements, it is clear that the SOP Regulations being in the nature of subordinate legislation, an Order issued in contravention of these Regulations is not tenable. It will also be clear from the wording of Regulation 9.2, quoted above, that it sets the period within which a Licensee has to dispose of an application for change of tariff category, but places no restriction on when such an application can be made. The provisions of the subsequent SOP Regulations, 2005 also do not circumscribe applications in this manner. Hence, the Commission is of the view that the restriction stipulated by it earlier is inconsistent with the SOP Regulations.”

Para 11, 12 – page 115 11- Considering all these aspects, Regulations nos. 68 to 72 of 2015 revived by Regulation nos.84 to 88 of 2016 are allowed. The Respondent

MSEDCL is directed to decide the applications in accordance with the SOP Regulations and give effect to the same within the period of one month from the date of receipt of this order.

12 – Respondent, MSEDCL accordingly is directed to work out the amount of refund alongwith interest payable from 19th August 2016 as per Section 62(6) of the Act. The Respondent will be at liberty to adjust the refund amount together with interest payable in the bills of the Appellants- consumers.

14) Non-applicant Superintending Engineer of MSEDCL NRC Nagpur filed letter dated 18/5/2017 at the stage of Arguments is as under

Para 2 – Hon'ble MERC vide its order dated 19/8/2016 MERC case no 94 of 2015 clarified its stand on time limit for tariff change by consumer and SOP Regulation 2005 thereof.

Para 3 – In pursuance of MERC order dated 19/8/2016 and the request of m/s. GTN Saoner, for retrospective effect of tariff change is being examined and will be implemented.

It is clear that on one side MSEDCL is convinced with order dated 19/8/2016 and its applicability and effects, but further made futile attempt on pretext of examine & implement.

Order of CGRF Kalyan in Grievance no.K/E/1078/1299 of 2016-17 Para 12 & 13 of page 121 & 122 of citation in which in an identical case categorically discussed the

various judgements of different authorities in favour of the consumer.

15) In view of the above observations, the submission of non-applicant does not succeed and Applicant is entitled for refund of tariff difference (continuous to non continuous) as per calculation submitted by Applicant with interest from 19/8/2016 as per section 62(6) of the Act. (Statement regarding date from which applicant agree to consider interest i.e.19-08-2016 was made by representative of Applicant during Argument.)

The respondent MSEDCL is at liberty to adjust the refund amount together with interest payable in the bills of Applicant consumer.

So far as Compensation under SOP is prayed by Applicant, Mr.Hogade fairly does not insist even though Applicant is a limited company is entitled for the SOP compensation as per 9.2 Regulation 2005 Rs 100/- per week from 1/5/2014. Hence I did not like to burden the non-applicant with SOP compensation.

16) Taking into consideration, all the above points, I find it fit to allow the grievance application of the consumer and the licensee is directed to apply non continuous tariff to the consumer from 2nd billing cycle after the application given on 28/3/2014 for change of tariff till 31-03-2015 & further directed to refund the differential amount recovered from the consumer due to wrong application of tariff from the second billing cycle after the application till rectification. The same be done by adjusting it in the next ensuing bills. Licensee is also directed to work out the amount of interest on the differential amount as

per RBI Rate from 19/8/2016 & adjusting it in the next ensuing bills.

(Naresh Bansod)
Member(CPO)

43. Before reaching to the final order it is necessary to decide the matter within two months from the date of filing of the application. Applicant filed application on 24-03-2017. Therefore it was necessary to dispose of the application on or before 22-5-2017. However it is the Non-applicant who requested for many adjournments. On dated 13-04-2017 on the request of Non-applicant, case was adjourned and matter was fixed for hearing on 25-04-2017. However on dated 25-04-2017 again non-applicant applied for extension of time to file detailed reply .Hence final adjournment was fixed as per convenience of both the parties on dt.18.05.2017. Chairperson of the Forum resigned the office on 16 May 2017. Forum heard argument on 18-05-2017. Therefore there was delay in deciding the matter due to adjournment claimed by the non-applicant and Chairperson of the Forum having resigned the office on 16 May 2017

44. In view of the majority we hold that the application is barred by limitation and therefore application deserved to be dismissed. Therefore we proceed to pass the following order.

ORDER

1. Grievance application is dismissed.
2. No order as to cost.

Sd/-
(Shri.N.V.Bansod)
MEMBER(CPO)

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

sd/-
(Mrs.V.N.Parihar),
I/C. CHAIRMAN

