

CONSUMER GRIEVANCE REDRESSAL FORUM
(Established under the section 42 (5) of the Electricity Act, 2003)
MAHARASHTRA STATE ELECTRICITY DISTRIBUTION COMPANY LTD.
NASHIK ZONE

Phone: 0253-2591019
Fax : 0253-2591031
E.Mail: cgrfnsk@rediffmail.com

Office of the
Consumer Grievance Redressal Forum
Kharbanda Park, 1st Floor,
Room N. 115-118
Dwarka, NASHIK 422011

No. / CGRF /Nashik/Nagar Circle /Sangamner Dn./601/77-2016-17/

Date: 25/04/2017

(BY R.P.A.D.)

In The Matter Of

Change of tariff code from HT-IC to HT- IN & Refund the ASC for May 2007 to May 2008

Date of Submission of the case : 01/03/2017

Date of Decision : 25/04/2017

To.

1 M/s. Paris Ispat Pvt. Ltd.,
S.No. 151, Plot No. 1 to 8 ,
At post Velhale,
Tq. Sangamner
Dist. Ahmednagar 421605
(Con.No. 155709005810)

Complainant

2 Nodal Officer ,
Maharashtra State Electricity Distribution Com. Ltd.,
Circle office, Ahmednagar,
3 Executive Engineer,
Maharashtra State Electricity Distribution Com. Ltd.
Sangamner Divn. Office
Dist. Ahmednagar.

Distribution Company

DECISION

M/s. Paris Ispat Pvt. Ltd., (hereafter referred as the Complainant). Sangamner is the industrial consumer of the Maharashtra State Electricity Distribution Company Ltd. (hereafter referred as the Distribution Company). The Complainant has submitted grievance against MSEDCL for change of tariff code from HT-IC to HT- IN applied from May 2007 and refund of the ASC for May 2007 to May 2009 with the Internal Grievance Redressal Committee of the Maharashtra State Electricity Distribution Company Ltd. But not satisfied with the remedy of the IGRC , the consumer has filed WP No. 6252 of 2016 on 15/06/2016 to the Hon'ble Aurangabad Bench of the Bombay High Court . The Hon'ble High Court disposed off the petition by an order dated 24th February 2017 with the direction that the petitioner should first follow the procedure laid down for grievance redressal . Pursuant to the court order the complainant has submitted a representation to the Consumer Grievance Redressal Forum in Schedule "A". The representation is registered at Serial No.42 of 2017 on 01/03/2017.

The Forum in its meeting on 03/03/2017, decided to admit this case for hearing on 21/03/2017 at 11.30 am in the office of the forum . A notice dated 03/03/2017 to that effect was sent to the appellant and the concerned officers of the Distribution Company. A copy of the grievance was also forwarded with this notice to the Nodal Officer, MSEDCL, Circle Office Ahmednagar for submitting para-wise comments to the Forum on the grievance within 15 days under intimation to the consumer.

Shri. J.S.Chavan , Nodal Officer represented the Distribution Company during the hearing. Shri. Amit Pandit and Shri B.R. Mantri appeared on behalf of the consumer.

Consumers Representation in brief :

- 1 MERC has decided the tariff order for the FY 2006-07 on the basis of process of factory, continuous or Non-Continuous. Thereafter from FY 2007-08 tariff order, MERC has changed the tariff philosophy for tariff category HT-IC and HT-IN. Commission has simplified the tariff categories in the case of industries, and only HT industries connected on express feeders 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 .
- 2 After the tariff order FY 2008, MSEDCL has to change to tariff code w.r.t Commission's revised tariff policy for industrial consumers on the basis of consumer demand.
- 3 We have not demanded to MSEDCL to provide the Express Feeder. MSEDCL sanction order and agreement also for non-continuous . MSEDCL sanction order also expressed the condition of load shedding on weekly staggering day.
- 4 Thereafter, from Sept. 2009, MSEDCL has changed the tariff code HTIC to HTIN. But till date excess charged amount due to wrongly classified in to HTIC tariff code benefit of HTIN tariff category as per EA 2003 section 62(6) not refunded.
- 5 In the IGRC hearing MSEDCL has agreed to verify the claim and refund the excess collected amount in next billing month.
- 6 But MSEDCL has not taken any action on our matter; we have approached to Hon'ble High Court in W.P. No. 6252 of 2016.
- 7 As per direction of Hon'ble High Court, Chief Engineer Commercial has granted the relief of refund of ASC charges.
- 8 Hon'ble High Court has instructed vide order dated 24/02/2017 to approach to grievance mechanism.

Consumer's Demand :

1. Requested to allow for payment of current monthly bills to till decision of case.
2. Without settlement of our case MSEDCL is likely to disconnect electricity connection. To give the interim order for not to disconnect the supply till final disposal of case.
3. To Change the tariff code from Continuous to non-continuous from the FY 2007 and allow the benefit to HTIN tariff category and allow the refund of the excess collected amount with interest as per EA 2003 Section 62(6) from the date of deposit to date of refund.
4. To allow the ASC refund as per approval of Chief Engineer (Commercial) and allow the refund of the excess collected amount with interest as per EA 2003 Section 62(6) from the date of deposit to date of refund.

Arguments from the Distribution Company.

The Distribution Company submitted a letters dated 20/03/2017 and 29/03/2017 from the Nodal Officer Ahmednagar Circle (ANC), MSEDCL, and other relevant correspondence in this case. The representatives of the Distribution Company stated that:

1. At the outset it is submitted that, the grievance filed by the consumer is beyond two years from the date of cause of action & is not within limitation. In view of Regulation 6.6 of CGRF & EO Regulation 2006, which creates express bar for admitting the grievance filed beyond two years from the date of cause of action grievance of the consumer is not maintainable.
2. It is specifically pointed out that, consumer is raising dispute in respect Tariff category for period May 2008 to Sept. 2009,. In present grievance before Hon'ble Forum consumer for first time is seeking to represent that, without his demand to provide Express Feeder, MSEDCL has charged Express Feeder Tariff to him. This version of the consumer is not reflected in the earlier proceedings before IGRC & before Hon'ble High Court. In earlier proceedings various issues such as RLC, ASC IASC & RGPL were mixed together & they were irrelevantly linked to the alleged interruptions for period May 2007 to May 2008. Issue of Express Tariff categorization without demand for period May 2008 to Sept 2009 is first time raised before Hon'ble CGRF after period of more than eight years, which is absolutely time barred.

3. It would be worthwhile to point out here that, while submitting its affidavit in reply before Hon'ble High Court in WP No. 6252 of 2016, MSEDCL in its very first paragraph has specifically submitted that, claim of consumer is time barred & beyond limitation.
4. Hon'ble Bombay High Court, Nagpur Bench in WP No. 1650 of 2012 in case of MSEDCL Vs. M.R. Salodkar has held that complaint must be filed to the CGRF within two years from the date of cause of action Judgement of Hon'ble High court in the aforesaid case is delivered on 10th of the July 2013 & it has even considered the Judgement of HPCL Vs. MSEDCL in WP 9455 of 2011 which was delivered on 19th of January 2012. It is the settled law that, latter judgement of equal bench on same issue has to be relied upon. Hon'ble Electricity Ombudsman on the issue of limitation in series of its Judgement has ruled that, complaint to the Forum should be made within two years from the date to cause of action. One of the Judgement of Hon'ble Electricity Ombudsman in Representation No. 157 of 2016 is already submitted before Hon'ble CGRF during hearing dated 21/03/2017.
5. Further it is submitted that, version of the consumer in present grievance that, without his demand to provide Express Feeder, MSEDCL has charged Express Feeder Tariff to him, is not only false & opportunistic but is even self contrary.
6. In this context kind attention of Hon'ble Forum is invited to the copy of WP 2019 of 2016 & 6252 of 2016. In both the petitions in its introduction itself consumer has in clear words stated that, the Petitioner company has initially obtained electricity supply on express feeder (without interruption) & thereafter -express feeder has been discontinued from Sept. 2009.
7. This statement is more than sufficient to falsify the present stand taken by the consumer, which is frivolous & opportunistic consumer cannot blow hot & cold at same time. Copy of both the Writ Petitions & replay affidavit of MSEDCL is already submitted before Hon'ble CGRF during hearing dated 21/03/2017.
8. In addition to aforesaid copy of the agreement dated 14/07/2009 executed between MSEDCL & consumer while load enhancement is submitted for kind consideration. It is here submitted that, each clause of this agreement is separately signed by the consumer. Attention of Hon'ble Forum is invited to Clause No. 8(a) of the agreement wherein Tariff Category is clearly specified as HT-I(Express Feeder Tariff) even this clause having specific endorsement in respect of express feeder tariff is also signed by the consumer.
9. Aforesaid submission would amply demonstrate that, grievance of the consumer is not maintainable both on the ground of limitation & even upon on merits. Grievance of the consumer deserves to be dismissed in view of Regulation 6.6 & 6.9 of CGRF & EO Regulation 2006.

Observations by the Forum:

1. The issue raised before the Forum is regarding wrong application of HT-IC till August 2009 and refund of the Additional Supply Charges (ASC) for the period May 2007 to May 2008.
2. By letter dated 02/09/2009 followed by letter dated 15/09/2009 to the Superintending Engineer, ANC the complainant requested to apply charges as per non-express feeder and refund the excess amounts.
3. Later the complainant submitted grievance to the IGRC ,Ahmednagar Circle on 28/08/2015 with a request to refund various charges recovered on account of RLC, ASC (Additional Supply Charges), IASC (Incremental Additional Supply Charges), RGPPL(Additional Capacity Charges for Ratnagiri Gas & Power Pvt. Ltd) ., AEC (Additional Energy Charges) etc. The complainant demanded refund of Rs. 5,08,57,585/- on this account. The IGRC gave decision as per letter dated 08/10/2015.
4. The refund was however delayed by the Distribution Company for the want of guidelines from their head office. Meanwhile the complainant failed to pay the Bill amounting Rs. 82,55,663.59 for the month of January 2016 and the Distribution Company served the notice dated 30/01/2016 for disconnection under section 56 (1) of the Electricity Act 2003.
5. Hence the complainant filed a Writ Petition (Stamp No. 5204/2016.) against the MSEDCL in the Aurangabad Bench of Bombay High Court on 16/02/2016. The same was registered by the Hon'ble Bench under WP No. 2019 of 2016 . In the said petition, the complainant has challenged the recovery of Additional Charges like:
 - i. ASC (Additional Supply Charges)

- ii. IASC (Incremental Additional Supply Charges)
- iii. RGPPL(Additional Capacity Charges for Ratnagiri Gas & Power Pvt. Ltd)
- iv. AEC (Additional Energy Charges)

done by the Distribution Company during the period May, 2007 to May, 2008 and requested the Hon'ble Court to direct the authorities of the Distribution Company to refund the same. This petition was disposed off by the court with following order dated 31/03/2016:

Mr. A.S. Bajaj, learned counsel for respondent No. 2, on instructions, submits that Chief Engineer, (Commercial) MSEDCL would take decision upon the claim made by the petitioner within a period of two weeks from today.

2. In the light of that, writ petition stands disposed of. No costs.

3. If any of the party is aggrieved by the decision, they are entitled to take steps in accordance with law. Interim order passed by this court under order dated 22nd February, 2016 shall continue for a period of two weeks from today. Needless to state that after expiry of two weeks period, the same would come to an end.

6. But as the Chief Engineer, (Commercial) MSEDCL did not take decision upon the claim within a period of two weeks, the complainant then filed a Writ Petition (Stamp No. 16131/2016) against the MSEDCL in the Aurangabad Bench of Bombay High Court on 06/05/2016. The same was registered by the Hon'ble Court under WP No. 6252 of 2016 on 15/06/2016. The following order was passed on 16th June 2016 by the Hon'ble Court

The petitioner claims refund of the amount to the tune of Rs.9,29,00,000/- (Rupees Nine Crores twenty nine lakhs) based on tariff order, which claim has been rejected. The petitioner has been issued a bill for a sum of Rs.5,21,99,863/-. The petitioner assures to deposit 50% of the bill amount within a period of three weeks from today.

However the court was informed by the Distribution Company that the petitioner has not deposited the bill amount as directed by the court. The Hon'ble Court passed following order on 24th August 2016 :

None appears for petitioner.

2. *Mr. Bajaj, learned counsel for respondent informs that pursuant to the order dated 16th June, 2016 of this Court, the petitioner has not deposited current bill amount. The petitioner is directed to deposit the current bill amount. In the event of default, appropriate orders including vacation of interim order would be passed.*
3. *Stand over to 07-09-2016. To be listed in urgent category.*

This petition is finally disposed of by the Hon'ble High Court with the following order dated 24th February 2017:

2. It appears that the petitioner has not yet followed the procedure laid down for redressal of such grievance. It is desirable that he first follows procedure laid down for redressal of such grievance. The petition stands dismissed to follow such procedure. Civil Application is disposed of.

3. The learned counsel for petitioner seeks continuation of interim relief, granted earlier. Such protection is refused.

In view of the above order 24th February 2017 of the Hon'ble High Court, the complainant has submitted the grievance to the Forum which is admitted by the Forum.

7. The issue of the tariff change and refund of the ASC charges was already taken up by the complainant with IGRC, which has decided by the IGRC decision dated 08/10/2015.
8. The Distribution Company has raised the issue of the 2 years limitation and argued that the grievance filed by the consumer is beyond two years from the date of cause of action & is not within limitation in view of Regulation 6.6 of CGRF & EO Regulation 2006. The Distribution Company has referred to a Judgement dated 10th July 2013 in the WP No. 1650 /2012 in the case of MSEDCL Vs Electricity Ombudsman, Nagpur and Shri Mukund Salodkar by the Hon'ble Nagpur Bench of the

Bombay High Court . It has been further argued by the Distribution Company that this Judgement has to be relied upon over the Judgement by the Bombay High Court of HPCL Vs. MSEDCL in WP 9455 of 2011 delivered on 19th January 2012 being a later judgement of equal bench on same issue.

9. The Forum has studied the Judgement dated 10th July 2013 of the Hon'ble Nagpur Bench in detail. In this judgment the Hon'ble Bench has allowed the appeal of the Distribution Company regarding the period of limitation. But the plain reading of the above judgement reveal that background of this case is different as elaborated as under :

- ✓ In this case the consumer was given the electric supply prior to 2003 to his agricultural field where he had a pump set and motor. In 2003, there occurred an accident, due to which the electric supply was disrupted. The consumer complained about this to the then Junior Engineer of the Distribution Company. On 15th January, 2004, the consumer made a complaint in writing regarding disruption of electricity supply. No action was taken by the Distribution Company for restoring electricity supply to the respondent. Thereafter, he kept on making complaints after complaints, but did not take this matter to any redressal cell or forum nor he indicated any legal action.
- ✓ In June, 2010, the electricity line was restored by the petitioner Company and the then Engineer of the Distribution Company demanded 'test report' from the consumer . But the consumer did not submit such test report and thereby indicated that the installations at his end were not ready for receiving electric supply. Despite of this, the consumer for the first time approached the internal grievance redressal Cell on 3rd May, 2011. The Cell did not accept his complaint and therefore, he went before the Forum for redressal of the consumer grievances, by filing a complaint on 4th August, 2011. This complaint was dismissed. It was held by the forum that the complaint was barred by limitation. The consumer then went to the Electricity Ombudsman by filing Representation No. 22/ 2011, on which the order was passed. The learned Ombudsman held that the complaint was not barred by limitation because, since 2004 the cause of action was arisen repeatedly and continuously.
- ✓ The Hon'ble Bench notes that "*The cause of action in the case before the Forum arose way back in 2004 and in 2006 when the Cell did not deal with the complaint within the reasonable time.*" Further that "*The cause of action in the complaint arose in 2003-04, the regulation came into force in 2006, the Forum and Cell were established in 2006, the respondent no. 2 was suffering disconnection since 2003, he was suffering losses because of non supply of electricity since 2003 and so, he could have approached the Forum directly.*" and further that "*The facts thus indicate that the respondent no. 2 delayed the filing of the complaint before the Forum and the Cell inordinately. Prior to 2006, he had opportunity to file a suit for damages etc. Even that was admittedly not done. In my view, the case initiated by the respondent no. 2 even before the Cell and the Forum was delayed. There is no time limit prescribed for approaching the Cell, but when no time is prescribed, it must be 'reasonable time'. As stated above, the complaint was inordinately delayed. The explanation is not forthcoming for the delay. In view of this, the case of the respondent no. 2 was hopelessly time barred.*"
- ✓ While commenting on the decision of the Electricity Ombudsman ,the Hon'ble Bench has remarked that "*The observations of learned Ombudsman in Paragraph No. 17, saying that the cause of action in the present case was continuing one, is grossly erroneous. The cause of action for getting the electricity supply restored arose when the disconnection occurred in 2003. The cause of action for damages arose when the respondent no. 2 suffered loss for non-supply of electricity. The limitation for such an action would commence from the date of disconnection of the electricity supply. The limitation does not start every day or it is not a case of continuous cause of action. This is clear from the Articles 72 to 91 of the Limitation Act, 1963.*"
- ✓ The Hon'ble Bench referring to the Articles 72 to 91 of the Limitation Act, 1963 has set aside the order of the Electricity Ombudsman and mandated as "*These articles provide the period of limitation and the time from which the period starts to run. In all the cases referred in these articles, it is provided that the period of limitation starts on the date breach occurs. This was a case of breach of contract. Admittedly, the electricity supply got disconnected in 2003, long prior to the regulations came into force. In view of the above discussion, the writ petition succeeds. The impugned order dated 27thFebruary, 2012, passed by the Electricity Ombudsman, Nagpur, in Representation No. 22/2011 is set aside.*"

- ✓ The Hon'ble Nagpur Bench has taken note of the Judgement dated 19th January 2012 of the Bombay High Court in the WP 9555 of 2011 in case HPCL Vs MSEDCL and offered the comments as: *"The sentence in paragraph No. 15, "This, according to me is the date on which the cause of action for filing a complaint or Grievance before the Forum as defined under Regulation 2(c) really arose", is pressed into service by the learned counsel when he argued that the limitation for approaching the Forum started when his complaint was rejected by the Cell. This is admittedly an incorrect submission, because, admittedly, before the Cell could reject the complaint, the respondent no.2 suomotu approached the Forum. In my view, in this case, the facts clearly establish that the cause of action for the case arose when the electricity supply was disrupted in 2003 and in my view, the consumer ought to have approached the Forum within two years from the date of cause of action."*
10. Thus as per discussions in para 9 above, it is clear that the rejection of this case on the ground of limitation period is on the different ground and the order dated 10th July 2013 of the Nagpur Bench by no stretch of imagination conflict with the order date 19th January 2012 of the Bombay High Court.
 11. Moreover the facts in the extant case are:
 - ✓ The issue of wrong tariff and ASC was taken up by the complainant in June 2007 by an application dated 19/06/2007 to the Superintending Engineer .ANC, then again by letters dated 02/09/2009 and dated 15/09/2009 .
 - ✓ Cause of action which arose in May 2007 has continued further. Then later the grievance was submitted to the IGRC on 28/08/2015.
 - ✓ The IGRC has decided the case on 8th October 2015 and the complainant had liberty to make an appeal to the Forum upto 7th October 2017 on the decision of the IGRC .
 - ✓ But no remedy was provided by the Distribution Company in spite of decision in the IGRC . Instead a notice of disconnection was received. Hence the complainant file a Writ Petition with the Aurangabad Bench of Bombay High Court.
 - ✓ The Hon'ble High Court itself has ordered the complainant in the order dated 24th February 2017 to take recourse of the grievance redressal mechanism and hence the grievance is submitted to the Forum.
 12. The Hon'ble Supreme Court in the Judgement dated 12th March, 1975 in case of Municipal Committee, Amritsar Vs Hazara Singh has remarked as under " *Several decisions of the Supreme Court are on facts and that Court itself has pointed out in Gurcharan Singh and Anr. v. State of Punjab (1972 FAC 549) and Prakash Chandra Pathak v. State of Uttar Pradesh (AIR 1960 SC 195) that as on facts no two cases could be similar, its own decisions which were essentially on questions of fact could not be relied upon as precedents for decision of other cases.*"
 13. The Hon'ble Supreme Court in the Judgement for Prakash Chandra Pathak vs State Of Uttar Pradesh passed on 10 July, 1957 has observe that *"It is enough to say that decisions even of the highest court on questions which are essentially questions of fact, cannot be cited as precedents governing the decision of other cases which must rest in the ultimate analysis upon their own particular facts."*
 14. Hence the grievance submitted to the Forum can not be denied on the grounds of restriction of 2 years .The Forum is therefore considering the grievance on its merit.
 15. The grievance before the Forum is regarding wrong application of HT-IC till August 2009 and refund of the Additional Supply Charges (ASC) based on the application of the HT-IC tariff for the period May 2007 to May 2008 .
 16. The Hon'ble Commission has issued tariff orders from time to time evolving the concept of continuous and non-continuous industrial consumers . The orders are summarized as under:

Reference	Ruling about continuous category
1. MERC tariff order dated 29/09/2006 in case no.54 Of 2005 (operative from 1 st October 2006)	The HT industrial consumers are bifurcated into the continuous and non-continuous sub-categories based on the nature of the industry as certified by the representatives of the Industry Department.
2. MERC tariff order dated 18/05/2007 in case no.65 of 2006 (operative	The concept of Express Feeder and Non-Express Feeder was used . The HT consumers availing supply from Express Feeder were applied continuous category (HT-IC) tariff of higher rate as

Reference	Ruling about continuous category
from 1 st May 2007)	compared to the non-continuous consumers on non-express feeder. The Commission simplified the tariff categories in the case of industries, and only <u>HT industries connected on express feeders and demanding continuous supply</u> to be deemed as HT continuous industry and given continuous supply, while all other HT industrial consumers to be <u>deemed as HT non-continuous industry</u> . This has become necessary in view of the prevailing uncertainty and absence of clarity as regards certification of industries as 'continuous' by the relevant authorities.
3. MERC tariff order dated 20/06/2008 in case no. 72 of 2007 (operative from 1 st June 2008)	The same concepts continued for HT industrial consumers.
4. MERC order dated 12/09/2008 on the petition by Distribution Company in Case No. 44 of 2008 seeking Clarifications on the Order dated June 20, 2008	While clarifying about the Applicability of HT-I (Continuous Industry) the Commission reiterated that in the Tariff Order, the Commission has specified that " <i>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.</i> "(emphasis added) . In this petition the (Distribution Company) has demanded to remove the <u>clause "demanding continuous supply"</u> from the definition of the HT-I (Continuous Industry) and applying HT-I (Continuous) tariff category <u>should be applicable to all industries connected on express feeder irrespective of whether they are continuous or non-continuous process</u> . However the Commission did not agree to this demand and ruled that " <i>.....there is no justification for removing the clause "demanding continuous supply" from the definition of HT-I continuous category. 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 this Order for exercising his choice. In case such choice is not exercised within the specified period, then the existing categorisation will be continued.</i> "
5. MERC tariff order dated 17/08/2009 in case no. 116 of 2008 (operative from 1 st August 2009)	The same concepts continued for HT industrial consumers with the clarification that " Only HT industries connected on express feeders 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. "
6. MERC tariff order dated 12/09/2010 in case no. 111 of 2009 (operative from 1 st September 2010)	The same concepts continued for HT industrial consumers
7. MERC tariff order dated 16/08/2012 in case no. 19 of 2012 (operative from 1 st August 2012)	The same concepts continued for HT industrial consumers
8. MERC tariff order dated 26/06/2015 in case no.	The same concepts continued for HT industrial consumers. But the consumer availing supply on Express Feeder may exercise

Reference	Ruling about continuous category
111 of 2009 (operative from 1 st June 2015)	his option to choose between Continuous and non-Continuous supply anytime during a financial year but only once in such financial year with one month prior notice. Such consumer shall be required to submit a written request to MSEDCL, giving one month's notice and the Tariff applicable to non-Continuous supply shall apply, from the ensuing billing cycle.
9. MERC tariff order dated 03/11/2016 in case no. 48 of 2016 (operative from 1 st November 2016)	There is no separate subcategories for HT industrial consumers as continuous and non-continuous . The categories are : HT I (A): Industry – General HT I (B): Industry – Seasonal

17. The complainant was applied HTP-II tariff in the beginning. The tariff was changed to HT-IC from May 2007 by the Distribution Company.
18. The complainant had applied to the Superintending Engineer, ANC by a letter dated 19/06/2007 requesting for charging 11% ASC instead of 24% saying that the supply is from non-express feeder.
19. Thereafter the complainant never pointed out till September 2009 that HT-IC is being applied wrongly and continued to pay as per HT-I C tariff
20. Then by letter dated 02/09/2009 followed by letter dated 15/09/2009 to the Superintending Engineer, ANC the complainant requested to apply charges as per non-express feeder and refund the excess amounts. The Distribution Company has changed the tariff code HT-IC to HT-IN from September 2009.
21. Later the complainant submitted grievance to the IGRC ,Ahmednagar Circle on 28/08/2015 with a request to refund various charges recovered on account of RLC, ASC (Additional Supply Charges),IASC (Incremental Additional Supply Charges),RGPPL(Additional Capacity Charges for Ratnagiri Gas & Power Pvt. Ltd) ., AEC (Additional Energy Charges) etc. The complainant demanded refund of Rs. 5,08,57,585/- on this account. The IGRC gave decision as per letter dated 08/10/2015 as under:

0; oLFkki d Wfooy% eMy dk; kty; vgenuxj ; kwh l njhy mPpnkc xkgdki di uhp; k i fji =dku# kj ijrkok nsk vl Y; kl r'kh [kk=h djkoh o v#V#kj 15 P; k fcyki kl # l njhy xkgdki oht fcy n# dkr# rl k ijrkok ns; kr ; kok**

The refund was however delayed by the Distribution Company for the want of guidelines from their head office. Meanwhile the Distribution Company served the notice dated 30/01/2016 for disconnection under section 56 (1) of the Electricity Act 2003 as the complainant failed to pay the Bill . Hence the complainant filed a Writ Petition No. 2019 of 2016 in the Aurangabad Bench of Bombay High Court on 16/02/2016 challenging the recovery of Additional Charges like: ASC ,IASC , RGPPL and AEC done by the Distribution Company during the period May, 2007 to May, 2008 and requested the Hon'ble Court to direct the authorities of the Distribution Company to refund the same. This petition was disposed off by the court on 31/03/2016 on the condition that "Chief Engineer, (Commercial) MSEDCL would take decision upon the claim made by the petitioner within a period of two weeks from today." But as the decision upon the claim was not taken within a period of two weeks , the complainant filed a Writ Petition No. 6252 of 2016 on 15/06/2016 against the MSEDCL in the Aurangabad Bench of Bombay High Court . This petition is finally disposed of by the Hon'ble High Court on 24th February 2017 with the order that : "It is desirable that he first follows procedure laid down for redressal of such grievance. The petition stands dismissed to follow such procedure. Civil Application is disposed of."

22. The CE (Commercial) as per letter no. 13173 dated 9th May 2016 has approved the proposal of the refund of the ASC for the period May 2007 to May 2008 subject to the condition that the refund of the ASC amount during May 2007 to May 2008 will be considered only for the months where no supply/load shedding is carried out as the consumer is a continuous category consumer.
23. There is a contradiction in the claim of the complainant that they have not demanded Continuous (uninterrupted) Supply or Supply from Express Feeder in view of the following facts:

- ✓ In the CE (Commercial) letter no. 13173 dated 9th May 2016 in respect of Paris Ispat Pvt. Ltd. it is specifically mentioned that: *"Consumer has stated that as he required continuous power supply hence, opted for continuous tariff category with zero load shedding . He has requested to withdraw the ASC for the period from May 2007 to May 2008 as he faced interrupting /load shedding even After opted for continuous power supply."*
 - ✓ As pointed out by the Distribution Company *"In both the petitions in its introduction itself consumer has in clear words stated that, the Petitioner company has initially obtained electricity supply on express feeder(without interruption) "*
 - ✓ The Distribution Company has also quoted that the complainant has signed *"the agreement wherein Tariff Category is clearly specified as HT-I(Express Feeder Tariff) even this clause having specific endorsement in respect of express feeder tariff is also signed by the consumer."*
 - ✓ The complainant has submitted the interruption analysis to the Hon'ble High Court as well as the CE (Commercial) for the period May 2007 to May 2008 and claimed refund of ASC on the ground that the interruptions are not justified for continuous category consumer.
24. The Distribution Company has treated the complainant as a "continuous" category consumer with effect from May 2007 , in view of the tariff order dated 18/05/2007 because the connection was given from the express feeder and the consumer wanted continuous supply .
25. Hence the Forum concludes that the Distribution Company is justified in applying HT-IC tariff code to the complainant for the period May 2007 to August 2009. As such the request of the complainant to change the tariff code from Continuous to Non-continuous from the FY 2007 can not be considered
26. Based on the guidelines as per the CE (Commercial) letter dated 9th May 2016, the Superintending Engineer , ANC has prepared a proposal to refund the ASC for the period May 2007 to May 2008 . The office note dated 23/06/2016 prepared by the accounts section and approved by the Superintending Engineer is submitted to the Forum. According to this note a refund of Amount of Rs. 38,04,041/- is approved. As per CPL it is seen that Distribution Company has already adjusted the amount of Rs. 38,04,041/- in the month of June 2016.
27. Thus the issue of the ASC refund as per approval of Chief Engineer (Commercial) is already settled . The complainant has been demanding ASC refund since September 2009 . Hence the Forum directs that ASC refund should be with the interest at Bank Rate as per EA 2003 Section 62(6) from the date of deposit to date of refund. The ASC refund stands modified to this extent.
28. It was requested by the complainant to give the interim order not to disconnect the supply till final disposal of case as MSEDCL is likely to disconnect electricity connection. The Forum in its notice dated 03/03/2017 had directed not to disconnect the supply in case the complainant deposits a) the amount as directed by the Hon'ble High Court in its order dated 16/06/2016 and b) all current bills after May 2016.

After considering the representation submitted by the consumer, comments and arguments by the Distribution Company , all other records available, the grievance is decided with the observations and directions as elaborated in the preceding paragraphs and the following order is passed by the Forum for implementation:

ORDER

1. Distribution Company should recalculate the ASC refund for the period May 2007 to May 2008 along with the interest at Bank Rate in accordance with the section 62 (6) of the Electricity Act ,2003 and refund the amount in the ensuing bill after the date of this order.
2. As per regulation 8.7 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006 , order passed or direction issued by the Forum in this order shall be implemented by the Distribution Licensee within one month and the concerned Nodal Officer shall furnish intimation of such compliance to the Forum .

3. As per regulation 22 of the above mentioned regulations , non-compliance of the orders/directions in this order by the Distribution Licensee in any manner whatsoever shall be deemed to be a contravention of the provisions of these Regulations and the Maharashtra Electricity Regulatory Commission can initiate proceedings *suo motu* or on a complaint filed by any person to impose penalty or prosecution proceeding under Sections 142 and 149 of the Electricity Act, 2003.
4. If aggrieved by the non-redressal of his Grievance by the Forum, the Complainant may make a representation to the Electricity Ombudsman, 606, 'KESHAVA', Bandra Kurla Complex, Bandra (East), Mumbai 400 051 within sixty (60) days from the date of this order under regulation 17.2 of the MERC (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2006.

(Rajan S. Kulkarni)
Member

(Sandeep D. Darwade)
Member-Secretary
& Executive Engineer

(Suresh P.Wagh)
Chairman

Consumer Grievance Redressal Forum Nashik Zone

Copy for information and necessary action to:

- 1 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For Ex.Engr.(Admn)
- 2 Chief Engineer , Nashik Zone, Maharashtra State Electricity Distribution Company Ltd. , Vidyut Bhavan, Nashik Road 422101 (For P.R.O)
- 3 Superintending Engineer, Maharashtra State Electricity Distribution Company Ltd. , Circle office, Ahmednagar .