BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
AURANGABAD ZONE, AURANGABAD.

Case No. CGRF/AZ/AUC/684/2018/24
Registration No. 2018060043

Date of Admission : 19.06.2018
Date of Decision : 18.09.2018

M/s. Umesh Board and Paper Mill Pvt Ltd. : COMPLAINANT
Gut No. 125, Pandhari Pimpalgaon,
Tq. Dist. Aurangabad 431 001.
(Consumer No. 490019008531)

VERSUS

The Executive Engineer (Admn) : RESPONDENT
Nodal Officer, MSEDCL, Rural Circle,
Aurangabad.

Complainant Representative : Shri Ashish Subhash Chandarana,

Respondent Representative : Shri YB Nikam,
EE(Admn), Rural Circle,
Aurangabad

CORAM

Smt. Shobha B. Varma, Chairperson

Shri Laxman M. Kakade, Tech. Member/Secretary

Shri Vilaschandra S. Kabra Member.

CONSUMER GRIEVANCE REDRESSAL DECISION

1) The applicant M/s. Umesh Board and Paper Mill Pvt. Ltd., Gut No. 125, Pandhari Pimpalgaon, Tq. Dist. Aurangabad is a consumer of Mahavitaran having Consumer No. 490019008531. The applicant has filed a complaint against the respondent, the Executive Engineer i.e. Nodal Officer, MSEDCL, Urban Circle, Aurangabad under Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulation 2006 in Annexure (A) on 19.06.2018.

BRIEF HISTORY & FACTS RELATING T0 THE GRIEVANCE:

2) The applicant is industrial consumer of MSEDCL since 03.12.1997 and was following staggering day regularly. The Grievance of applicant is change in tariff from MSEDCL at their own changing it from HT-1 N to HT-1 C arbitrarily, without any intimation or information and also without any specific request of consumer & in violation of MERC tariff order in case No 44 of 2008 from the billing month November 2010.

3) Applicant has submitted that till the billing month OCT-10, applicant was billed at HT-1 N tariff and suddenly from NOV-10 billing cycle, MSEDCL shifted the tariff from HT-1 N to HT-1 C without any request from consumer or without any intimation or communication with consumer & arbitrarily in violation of MERC tariff order in case No 72 of 2007 & and in case No 44 of 2008 which reads as hereunder:-

MERC vide its operative order dated 31.05.2008 and detailed order dated 20.06.2008 in case No 72 of 2007 vide its tariff schedule effective from 01.06.2008 , ruled 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."

4) Aggrieved with the aforesaid directives of MERC, MSEDCL filed a clarificatory petition on this order which is numbered as case No 44 of 2008 on 5th July 2008 with the stated objective of correct implementation of ensuing order.

5) The relevant extract of the order passed in said petition (case No 44 of 2008) is reproduced as below:

Applicability of HT-I (Continuous Industry) : -

In the Tariff Order, the Commission has specified 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."(emphasis added)

MSEDCL Submission: -

MSEDCL submitted that due to the removal of ASC and the reduction in the tariff differential between continuous and non-continuous industries, many industries may shift from HT-I continuous to HT-I non-continuous, which would adversely affect MSEDCL consumer mix and revenue. Moreover, express feeders are linked to zero load shedding and load shedding cannot be optional. Hence, MSEDCL requested the Commission that :

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 April 1 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.

Commission's Ruling and Clarification :-

"The Commission is of the view that MSEDCL should not ignore the benefits of load relief that could be achieved, in case certain HT-I continuous industries, who are presently not subjected to load shedding, voluntarily agree to one day staggering like other industries located in MIDC areas. Hence, the HT industrial consumer connected on express feeder should be given the option to select between continuous and non –continuous type of supply, and 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 categorization will be continued.

6) Thus vide its order dated 12.09.2008 in case No 44 of 2008, MERC rejected MSEDCL proposal to,

a) Remove the clause "Demanding continuous supply "from the applicability of HT-1 C tariff.
b) HT-1 C should be made applicable all industries connected on express feeder irrespective of process.

7) MERC also ruled that migration from HT-1 N to HT-1 C and vice versa can be possible within one month from the date of tariff order only and therefore changing tariff suddenly from NOV-10 has no legal validity.

8) Since consumer have not demanded continuous supply and consumer was observing staggering day regularly as and when it was applicable , the tariff HT-1N was in force and was billed to applicant consumer till billing month NOV-10. However, in the month of DEC-10, applicant billed at HT-1 C which remains unnoticed till the regulatory audit of applicant consumer took place in Sept-2011 as such the act was done without any intimation or communication to applicant consumer and applicant consumer was of impression that MSEDCL being stated

govt. owned enterprise must have raising bills fairly as per regulators directives which was not correct.

9) It is pleaded that, getting knowledge of the fact, applicant applied for refund of excess recovery on 05.10.2011 and also protested applicability of HT-C Tariff and thus, submitted his expression of interest for getting billed at HT-N Tariff on 5th of October 2011 and thus, applicant applied for change in tariff on 5th of October 2011 with request to refund the excess amount billed during NOV-2010 to OCT-2011.

10) By means of aforesaid letter, consumer had also invited the attention of MSEDCL toward factual scenario that the feeder on which applicant is connected do not constitute EXPRESS FEEDER due to more than one point of supply read with definition of express feeder.

11) Subsequently on 31.03.2014, applicant consumer applied again for restoration of feeder's status from express to non-express along with complaint of huge power tripping's and high level of irregularities in power supply**.** While dealing with this issue SE Aurangabad Rural wrote a letter to EE MSEDCL Rural division on 21.04.2014 asking him to submit detail cause of interruptions during last two years and maintain uninterrupted power supply and thus, failed to restore the actual status of feeder as non-express.

12) MERC subsequently in case no. 94 of 2015, order dated 19.08.2016, upon request of MSEDCL ruled that all the consumers who had applied for change in tariff should be effected change in tariff from second billing cycle and past pending applications should be disposed accordingly to effect this ruling in accordance with MSEDCL'S prayer, the corporate office of MSEDCL issued a letter dated 10.07.2017 outward no. 16720 directing all offices to dispose of pending applications giving effect from second billing cycle & submit the compliance within three months from 19 AUG 2016.

13) It is submitted that, since no relief on the basis of said order was granted by the Respondent also, In order to get relief, applicant applied on 05.02.2018 which is a deemed representation before IGRC which was responded by MSEDCL by rejecting it on 12.02.2008 citing reason that their office record do not show any old pending application of applicant.

14) In order to apprise MSEDCL about pendency of earlier application dated 05.10.2011 (acknowledged by MSEDCL on 07.10.2011), applicant wrote a detailed representation along with supporting applications acknowledged copy on 28.02.2018 which also constitutes supplementary deemed representation to internal grievance redressal cell (IGRC).

15) It is stated that, MSEDCL after due verification process at their office partly allowed the application of Applicant and passed refund of Rs. 70,79,038.35 (Rs. Seventy lakh seventy-nine thousand thirty-nine only) through energy bill of MAY-2018.

16) It is stated that, MSEDCL did not provide the details of calculation and prima facie it appears that MSEDCL have not considered the entire period as such principle claimed amount is about 92.00 lakh and so also not computed the interest in accordance with the provisions of the section 62(6) of the EA 2003 read with the order of Appellate Tribunal of Electricity in appeal No 47 of 2011. In the said order Hon'ble Appellate Tribunal of Electricity held that bank rate as specified under section 62 (6) is the rate at which either consumer or distribution licensee borrow money from bank and thus held that it should be prime lending rate of State bank of India.

17) The complainant has particularized his prayer by filing rejoinder (Page No. 111) as follows :-

a) Respondent may be directed to refund excess tariff recovered from the applicant from November 2010. October 2011 (i.e. tariff difference between continuous & non continuous.

b) Respondent may be directed to pay interest @ PLR dtd. SBI from November 2010 dt. 05.06.2018 i.e. till the date of adjustment in energy bill on entire amount.

c) Direct the Respondent to initiate department enquiry against guilty officers, who changed the tariff of applicant from HT-1 N to HT-1 C in violation of MERC tariff order.

18) The Respondent has submitted written statement (Page No. 49) & raised following contentions :

A) That, the petition is not maintainable.

B) That the contents of Para no. 1 are partly admitted. The complainant has not approached to IGRC but filed petition before this Forum. As per R. 6.7 of CGRF, it is not maintainable.

19) The contents of Para no. 3,4,5,6,7,8, in respect of various MERC Orders.

20) The contents of Para no. 9 & 11 are denied by the Respondent.

21) The contents of Para no. 10 are admitted. The consumer has first applied for change of tariff on date 05.10.2011 for refund of excess charges levied.

22) The contents of Para no. 2 & 12 are partly admitted.

23) The contents of Para no. 13 are admitted by the Respondent.

24) The contents of Para no. 14 are partly admitted by the Respondent, however, it is stated that the data regarding submission of application was not traceable at that time, hence it was intimated to consumer vide letter no. SE/ ARC/HT Billing/ 788 Dt. 12.02.201 8.

25) The contents of Para no. 15 are admitted, the consumer letter dated 28.02.2018 received to this office on the same date. In this letter the consumer has clearly mentioned his first application date as 07.10.2011 for the refund of HT-I-C to HT-I-N tariff. This office confirmed the correctness of consumer letter

from the HR department of Circle office Vide office letter no.SE/ARC/HR/No.1191 Dt.17.03.2018. It was confirmed that the consumer has submitted his first application on date 07.10.2011.

26) The contents of Para no. 16 are admitted by the Respondent that, after due verification this office has passed the refund of Rs.70,79,039.00 (Seventy Lac Seventy nine thousand thirty nine only). This refund was given from the period Nov-2011 to Feb-2016, which was as per the consumer first application dated 07.10.2011 and as per the circular guideline PR-3/Tariff/No.16720 Dt.10.07.2017 and MSEDCL board resolution dt.01.06.2017 and MERC order in case 94 of 2015 dt. 19.08.2012.

27) Vide consumer letter dated 28.02.2018 the consumer has requested as "Applicant request you to process the claim of refund from second billing cycle from the first application dated 07.10.2011 protesting applicability of HT-1-C tariff' and seeking refund thereof."

Thus the consumer is well aware of rules and regulation of refund of tariff from HT-1-C to HT-1-N.

28) The contents of Para no. I7 are partly denied, because the consumer application disposed as per the MERC order in case no 94 of 2015 and as per regulation 9.2 for the approval of change of tariff categories.

29) The consumer has objected for the change of tariff from HT-1-N to HT-1-C and Interruption on the feeder from which supply was provided to the consumer The respondent submits that the respondent has raised the preliminary objections about the limitation prescribed under Reg. No 6.6 of the MERC (Consumer Grievance Redressal Forum and Ombudsman) Regulation 2006, as the consumer has not filed its grievance with the time limit prescribed under the Regulation 2006 and hence the Consumer Grievance Redressal Forum and the

majority judgment is in favour of respondent by which the chairman and secretary of the Consumer Grievance Redressal Forum has rejected the application of appellant on the ground of limitation itself.

30) Hence, it is requested for dismissal of the petition.

31) In the rejoinder (Page No. 76), the complainant has raised following grounds : -

Regarding not approaching to IGRC, it is submitted that, "IGRC" is defined in MERC CGRF & EO Regulations 2006 which are notified in compliance of section 42(5),(6) & (7) of EA 2003 read with Powers vested in Section 181 of EA 2003. Section 42 (5), (6) & (7) nowhere prescribes IGRC but IGRC is designed as a preliminary opportunity to distribution licensee to attend the grievance and to avoid flow of unwarranted litigations**.**

"Internal Grievance Redressial Cell" or "IGR Cell" means such first authority to be contacted by the consumer for redressal of his/her Grievance as notified by the Distribution Licensee;

32) It is submitted that, after the enactment of EA 2003, MERC, CGRF & EO Regulations 2003 were notified wherein IGRC was established. After observing that the grievance submitted before officials are not treated as grievance made before IGRC, MSEDCL issued practice directions to this effect on 31 October 2005 and subsequently incorporated these practice directions while notifying MERC CGRF & EO Regulations 2006.

33) Second proviso of Regulation 6.2 of MERC CGRF & EO Regulations 2006 reads as hereunder : -

Provided also that the intimation given to officials (who are not part of the IGR Cell) to whom consumers approach due to lack of general awareness of

the IGR Cell established by the Distribution Licensee or the procedure for approaching it, shall be deemed to be the intimation for the purposes of these Regulations unless such officials forthwith direct the consumer to the IGR Cell.

34) Thus, IGRC is the first authority to whom grievance needs to be intimated as per definition of IGRC and in the event that any consumer approaches with his grievance before any other authority due to lack of awareness, then such concerned official is supposed to forward that grievance before IGRC. In the event that the said officer failed to remand the grievance before IGRC, then It shall be deemed to be the intimation to the IGRC for the purpose of these regulations. Under these circumstances, the letter submitted by applicant dated 05.02.2018 seeking refund for the Period NOV-10 to FEB-2016 constitutes deemed representation before IGRC which was rejected by SE (IGRC) on 12.02.2018 first time & thus the cause of action for approaching before CGRF aroused on 12.02.2018. This is admitted position on record from respondent that applicant approached before SE Aurangabad Rural on 05.02.2018

35) As per MSEDCL, <u>The consumer has not filed the grievance within the time limit prescribed under Regulation 6.6 of MERC CGRF & EO Regulations 2006.</u>

The aforesaid submission of Respondent is also baseless& not sustainable in the eye of law on following grounds.

a) The primary dispute under consideration vide application dated 05.02.2018 was related to refund for the period ranging from NOV-10 to Feb-16 along with interest. The same was rejected by the authorities vide letter dated 12.02.2018 & thus the cause of action for approaching before forum arose on the date of receipt of aforesaid letter i.e. 15.02.2018.

b) Again, fresh cause of action has been arose when Respondent (IGRC) refunded the amount Rs. 70.79 lakh which is less than claimed and that too without interest when applicant received energy bill for the month of May 2018 on 5.06.2018

36) REJOINDER SUBMISSION ON MERIT FROM APPLICANT.

In the entire reply, MSEDCL failed to explain, as to why the tariff was changed from HT-1-N (Non continuous) to HT-1-C without any specific demand from consumer which is the most important aspect of the grievance. Respondent also failed to address the letter of head office of respondent written by its senior officials addressing identical grievance and thereby providing relief as sought by present applicant.

37) It is submitted that his grievance is not like grievances of other consumers who were availing HT-1 C tariff (Continuous) and later started demanding HT-1N after observing that load shedding is withdrawn. The case of applicant is during the entire scenario of heavy load shedding, applicant consumer availed HT-1 N tariff and subsequently without any demand of consumer, Respondent changed it to HT-1 C from HT-1 N from NOV-10

38) It is stated that, any state government office or enterprise have to follow a decision-making process in the form of office note. No such office note is placed on record in support of their unlawful act.

39) That, the board of director of MSEDCL have resolved that,

"Resolved further that action if any in respect of MSEDCL's employees be decided on receipt of report of fact finding committee constituted by MSEB Holding Company."

40) Complainant has submitted that, the Respondents company's many officials has played a mischievous role in application of HT-1 C and HT-N tariff resulting in PIL before Nagpur Bench of Bombay High court which was filed By Mr. Ashish Chandarana. As a result, MERC examined the whole issue and found selective and inconsistent treatment among consumers by MSEDCL & passed many adverse observations resulting in constitution of fact finding committee whose work is still under process. Consumers were put at sufferance by many officials to make money and therefore fact-finding committee is constituted by parent company MSEB Holding Company Ltd & investigation is in process. There is every likely possibility that the tariff of consumer might have been changed from HT-1 N to HT-1 C with intension to make money while allowing restoration.

41) In the reply, MSEDCL denied that consumer have not demanded continuous supply. However, the same is not supported by demand letter of consumer seeking continuous supply & hence such denial without producing demand letter of consumer which is mandatory as per MERC order can not be accepted. Further It needs to be noted that Respondent Suo Motu processed the refund for the period from NOV-11 to FEB -16 and dispute under question is limited for NOV-10 to NOV-11 & interest on entire amount as per the provisions of section 62 (6) read with APTEL order. On the contrary, applicant consumer is submitting load sanction letter dated 3 OCT-2009 wherein vide clause 17 staggering day is made applicable to establishment of complainant.

42) That, the Respondent has denied that, the said feeder is having more than one point of supply, on ground that the complaint has to produce cogent proof. In fact it is in MSEDCL custody & it is disgusting for a state owned enterprise to surpass such facts. Complainant has submitted that, their feeder is ADUL feeder

& Trend electronics Ltd (Videocon Group) is one amongst other consumers feeded from the said feeder. His complaint letter is produced on record.

43) It is submitted that, the Respondent is reproducing selective text of applicant's submission to suit his desired purpose vide para 11 of its reply. In the letter written to respondent, Applicant have written following para.

> *"Thus, without prejudice to our right to dispute the wrongly made applicable tariff suddenly from billing month NOV-10 without changing feeder or without any specific request from our part, in violation of principles laid down in MERC case No. 44 of 2008, applicant request you to process the claim of refund from second billing cycle from the first application dated 01.10.2011 protesting applicability of HT-1 tariff and seeking refund thereof."*
>
> However, respondent in its reply reproduced only highlighted text.

44) It is pleased that, It is incorrect to interpret that consumer was well aware of all rules and regulations as claimed. In fact, after refusal of SE Aurangabad, Applicant sought help of regulatory consultant and after letter drafted by regulatory consultant with threat to approach before MERC, the SE Aurangabad Rural, who earlier rejected the application subsequently, refunded the amount to the tune of 71 lakh. This amply demonstrates the extortion of consumers from state owned enterprise, who is not bothered to pass on relief to all eligible consumers at one glance, but is passing it again selectively and inconsistently.

45) The calculation sheet is first time produced before CGRF and was never made available. NO communication was made to consumer regarding to acceptance of his application. Hence, complainant has prayed to grant reliefs claimed.

46) We have gone through the pleadings, the documents & arguments submitted by both parties. We have heard Complainant Representative Shri Ashish Subhash Chandarana & Respondent Representative, Shri Y. B. Nikam, Executive Engineer (Admin), Rural Circle, Aurangabad. Following points arise for our determination, & we have recorded its findings thereon for reasons to follow:-

Sr. No.	**POINTS**	**FINDINGS**
1)	Whether the complaint is maintainable ?	Yes
2)	Whether the complaint is within limitation?	Yes
3)	Whether the complainant is entitle for refund for the period November 2010 to October 2011 i.e. tariff difference between continuous to non continuous claimed ?	Yes
4)	Whether the complainant is entitle for interest on complete difference amount from November 2010 to February 2018 @ PLR rate at State Bank of India ?	Yes
5)	What order & cost ?	As per final order

REASONS

47) **Point No. 1 :-** The respondent has raised contention that the complainant did not approach to first authority i.e. IGRC, but directly filed the petition before this Forum & hence it is not maintainable.

48) In this respect, we would like to refer Rule 6.2, MERC (CGRF & Ombudsman) regulation 2006.

6. Procedure for Grievance Redressal

6.2 "A consumer with a Grievance may intimate the IGR Cell of such Grievance in the form and manner and within the time frame as stipulated by the Distribution Licensee in its rules and procedures for redressal of Grievances."

"Provided that where such Grievance cannot be made in writing, the IGR Cell shall render all reasonable assistance to the person making the Grievance orally to reduce the same in writing."

"Provided also that the intimation given to officials (who are not part of the IGR Cell) to whom consumers approach due to lack of general awareness of the IGR Cell established by the Distribution Licensee or the procedure for approaching it, shall be deemed to be the intimation for the purposes of these Regulations unless such officials forthwith direct the consumer to the IGR Cell."

49) In this respect, it is worth to note that, the complainant has submitted letter dtd. 05.02.2018 (Page No. 26) to the Superintending Engineer, Rural Circle, Aurangabad & it is received to the Respondent on same day. Acknowledgement is on the letter itself. By this letter, the complainant sought refund for the period November 2010 to February 2016. Considering the aforesaid proviso, this particular letter constitutes deemed representation before IGRC. Same was rejected by letter of Respondent dtd. 12.02.2018 (Page No. 29) & therefore cause of action arose to file present dispute before this Forum.

50) In this respect we are fortified by the ratio laid down in Representation No. 44/2012, Gajanan Gangane V/s EE (Rural), MSEDCL, Akola, decided by Hon'ble Ombudsman, Nagpur on dtd. 14.08.2012, called by the complainant. It lays down as under :-

> In that case, the consumer filed his grievance before Forum regarding energy bills without consumption & excess reading. Though the consumer approached to MSEDCL authorities in November 2011, his complaint was not redressed, therefore he approached to Forum for revision of bill.
>
> Consider Rule 6.2, it was observed that,
>
> "The consumer with a Grievance may intimate the IGR Cell of such Grievance in the form and manner and within the time frame as stipulated by the Distribution Licensee in its rules and procedures for redressal of Grievances."
>
> "The Regulations nowhere compel a consumer to intimate the IGR Cell before approaching the Forum. It is thus obvious that the Member-Secretary was under a wrong impression that no Grievance can be entertained by the Forum unless the consumer intimates the IGR Cell. So on this ground also, the impugned order cannot be sustained and needs to be quashed and set aside."

Considering the ratio, the aforesaid intimation by the complainant amounts to deemed complaint before IGRC, hence, the present complaint is maintainable. As such, we answer, Point No. 1 in the affirmative.

51) **Point No. 2 :-** As regards limitation, it is pertinent to note that, for the first time in the bill of November 2010, the tariff rate is charged from continuous to non continuous. This particular tariff difference amount was first time protested

by the complainant by its letter dated 05.10.2011 (Page No. 22). Since then the Respondent did not redress the grievance but it was pending.

52) Rule 6.6 of MERC Regulations 2006, (CGRF & Ombudsman) prescribes that "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."

53) Rather pertinent to note that, for first time, the complainant has submitted application on 05.10.2011 (Page No. 22) & it was pending. Then on 05.02.2018 by issuing letter to the Respondent (Page No. 26), the complainant reminded the Respondent about his pending claim of tariff difference for the period November 2010 to February 2016 with interest, it was acknowledged by the Respondent on very day. The claim was rejected by the Respondent on 12.02.2018, So cause of action arose for the first time on 12.02.2018. Then on 28.02.2018, the complainant again protested the rejection by issuing letter in the form of review (Page No. 30 to 32). In response, the Respondent refunded the amount of Rs. 70.79 lakhs, which is deficient than claimed by the complainant & without interest, in the form of adjustment in the bill of May 2018 received to the complaint on 05.06.2018 (Page No. 36). The letter produced by the Respondent dtd. 17.09.2018 (Page No. 114) goes to show that, the intimation of refund in the bill of May 2018 was given to the representative of complainant on 06.04.2018 on phone. Further cause of action arose, on 05.06.2018, i.e. when the bill of May 2018 was received to the consumer, in which the tariff difference claim was partly allowed by the Respondent. The present complaint is filed on 19.06.2018 i.e. within fourteen days from the date of partly refund in the bill of May 2018, hence, it is said to be within limitation.

54) In this respect, we are fortified by the ratio laid down in the following cases cited by the complainant :-

WP No. 3997/2016, MSEDCL V/s Shilpa Steel & Power Limited, decided by Hon. Bombay High Court (Nagpur-Bench), on 31st July 2017

"08] On careful perusal of Clause 6.6 of the Regulations and in view of the judgment of the Division Bench of this Court, submission made on behalf of petitioner that cause of action arose in January, 2010 is unsustainable. Respondent no.1 filed complaint before IGRC on 24/04/2015. By its order dated 29/04/2015, IGRC rejected the grievance of respondent no.1. The order of IGRC was challenged before forum on 08/05/2015. It means from the date of rejection of complaint by IGRC, grievance was filed before the forum within a month i.e. on 08/05/2015,. In this background, respondent no.2 has rightly held that grievance of respondent no.1 was well within limitation, as cause of action has arisen from the date of rejection of grievance by IGRC."

55) Civil Appeal No. 3699 of 2006 Rashtriya Ispat Nigam Limited V/s. M/s. Prathyusha Resources & Infra Pvt Ltd. and Another decided by Hon'ble Appex Court dtd. 12 Feb. 2016. In para5, it is held that,

"We shall now consider the settled law on the subject. This Court in a catena of judgments has laid down that the cause of action arises when the real dispute arises i.e. when one party asserts and the other party denies any right. The cause of action in the present case is the claim of the respondent/claimant to the determination of base year for the purposes of escalation and the calculation made thereon, and the refusal of the appellant to pay as per the calculations."

(Para 6)

"We find that the view taken by the High Court is correct as to when the real dispute arose between the parties to be adjudicated by the Arbitrator."

56) Appeal No. 197/2009 MSEDCL V/s MERC & Another, Decided by Hon'ble Appellate Tribunal for Electricity dtd.11th March 2009, where in amongst other points one of the point was whether the proceedings initialed by R-2, the consumer were barred by limitation? It was laid down in para 10 that,

"It can not be debated that the Electricity Act is a complete Code. Any legal bar or remedy under the Act must exist in the Act. If no such bar to the remedy is prescribed under the Code, it would be improper to infer such a bar under the Limitations Act. Admittedly, there is no provision in this Act, prescribing the bar relating to limitation. That apart, this question has already been decided by the Hon'ble Supreme Court that the Limitation Act would not apply to the quasi-judicial authorities like State Commission. This has been laid down in AIR 1976 SCC 177, AIR 1985 SCC 1279, AIR 2000 SCC 2023, 2004 (VOL 2) SCC, 456 and 1985(VOL 2) SCC 590. Further, it has been held by the Hon'ble Supreme Court in Madras Port Trust V/S Himunshu International reported in (1979) 4 SCC 176 that public authorities ought not to take technical plea of limitation to defeat the legitimate claims of the citizens."

Considering the ratio laid down in the aforesaid cases, the cause of action in this case lastly arose, when the tariff difference amount was adjusted in the energy bill of May 2018 & it was received to the complainant on 05.06.2018, so we hold that the complaint is filed within limitation. We answer point No. 2 in the affirmative.

57) **Point No. 3 :-** Before discussion, it is made clear that, in the complaint, though has initially prayed for refund of excess tariff from November 2010 till the date of restoration of earlier tariff, however in view of partly refund, restricted the claim for the period November 2010 to October 2011. In order to substantiate the claim the complainant has produced on record following communication occurred between the parties :-

Sr. No.	**Letter with particulars issued by claimant**	**Whether replied by Respondent & particulars**
1)	Letter dtd. 05.10.2011 (Page No. 22) raising demand for refund of excess charges, non continuous to continuous for September 2010 to September 2011, Rs. 10,33,628.70 demand received to Respondent on 07.10.2011	Not replied till 11.12.2018
2)	Letter dtd.31.03.2014 (Page No. 24) application for shifting of power supply from Adul Express Feeder to Industrial Feeder.	Received to Respondent on 04.04.2014 & SE wrote letter to EE (Page No. 25) for submitting detail cause of interruption & maintain uninterrupted supply.
3)	Letter dt. 05.02.2018 regarding charging express tariff instead of Non express feeder. In the light of judgment of Hon. MERC refund claimed with interest alongwith	Received to Respondent 05.02.2018 Request for refund rejected by a letter dtd. 12.02.2018 (Page No. 29) on the ground that "the consumer, who have applied previously but

	table demanding Rs. 92,03,597/- from November 2010 to February 2016.	pending for change of category from HT-1-C (Continuous) to HT-1-N (Non continuous) should be considered for refund. From this office record, it is not found that you have earlier submitted application for getting change in tariff from HT-1-C (Continuous) to HT-1-N (Non continuous). Hence, refund for the same will not given to you"
4)	Letter issued by the complainant dtd. 28.02.2018 (Page No. 30 to 32) (Page No. 63) for compliance of MERC order dated 19.08.2016 in case No. 94/2015, which was review petition filed by MSEDCL of their own. Prayer to expedite the process of refund the excess amount recovered from establishment alongwith interest I/D to approach before MERC.	Received to the Respondent on 28.02.2018, in response to aforesaid letter, SE wrote letter (Page No. 56) to the Manager(HR), Rural Circle, Aurangabad for verification about receipt of application on 07.10.2011 by the MSEDCL. On 19.03.2018 the Manager (HR) wrote reply to EE of aforesaid letter communicating receipt of letter of complaint on 07.10.2011 & received to them on 11.11.2011. Consequently refund amount of excess tariff charges Rs. 70,79,038.35 was adjusted in the bill

		of May 2018 (Page No. 36), which was received to the complainant on 05.06.2018.

58) Rather pertinent to note that, while refunding the amount of Rs. 70,79,038.35, it appears that details of the tariff difference were not provided to the complainant. It is for first time alongwith written statement the table of details of difference amount filed before this Forum at (Page No. 72 & 73), which goes to show that the refund amount paid is for the period November 2011 to February 2016. It being lesser amount than claimed by the complainant i.e. Rs. 92,03,597/-. The claimant has specified the prayer claiming the remaining refund for the period November 2010 to October 2011 (Page No. 111) may be granted.

59) In the written statement the Respondent has denied that the consumer has not demanded continuous supply. The power bill (Page No. 11) of complainant dtd. 01.11.2010 (for Sept. 2010) also refers to HT- 1 -N category of consumer. Further the load sanction letter (Page No. 102) para 17 states that, "The Government load restriction order as prescribed & amended from time to time shall be applicable to you. You will have to observe the staggering holiday as decided by the Government at present, it is FRIDAY for Aurangabad District." The feeder of complainant is Adul Feeder. Further, the complainant is observing staggering day. There is no document forthcoming from the side of Respondent in support of their denial. On the contrary, the most important fact of payment of tariff difference non continuous from continuous amounting to Rs. 70,79,039.00 amounts to express admission of admitting the fact that, the power supply provided to the consumer is non continuous. Thus, it is established that the power supply provided to the complainant is non continuous.

It is important to note that, the Respondent has failed to explain as to why the tariff was changed from HT-1 N to HT-1 C, without specific demand of consumer.

60) After adjustment of refund of tariff difference amount Rs. 70,79,039.00 in the bill of May 2018 produced at (Page No. 36) the present claim is filed by the complainant. The Respondent while elucidating calculations of refund amount submitted their explanation at Para 11 of their written statement which is reproduced here :-

> "(11) The contents of Para no. 16 is admitted, after due verification this office has passed the refund of Rs.70,79,039.00 (Seventy Lac Seventy nine thousand thirty nine only). This refund was given from the period Nov-2011 to Feb-2016, which was as per the consumer first application dated 07.10.2011 and as per the circular guideline PR-3/Tariff/No.16720 Dt.10.07.2017 and MSEDCL board resolution dt. 01.06.2017 and MERC order in case 94 of 2015 dt. 19.08.2016. The copies of circular & Board resolution is attached herewith Annexure –C (Pages-5)"

61) While adjusting the amount of refund Rs. 70,79,039=00, the Respondent did not communicate its particulars / details to the consumer. Further, the Respondent has not unfolded the internal submissions made before higher officials, while sanctioning the refund. However, for first time, the calculations are disclosed by the Respondent before this Forum & also to the complainant. On going through the details, it is transpired that, the Respondent has considered the period from <u>November 2011 to February 2016</u> for purpose of payment. As against this the complainant, on acceptance of his partly claim, has claimed to refund of excess tariff difference from November 2010 till the date of restoration

of earlier tariff & specified the claim of tariff difference during the proceeding from November 2010 to October 2011.

62) Considering the contentions raised by the Respondent, at Para 11 of written statement & referred above, now let us refer MSEDCL Board resolution dtd. 01.06.2017 based on order passed by MERC in case No. 94/2015. The resolution relates to appraisal & approval for implementation of MERC order in continuous & non continuous (case No. 94/2015).

> "Resolved that all the pending as well as already disposed of applications be considered in accordance with the MERC order in case 94 of 2015 and as per the provisions of Regulation 9.2, for the approval of change of tariff category."
>
> "Resolved further that the concerned Hon. Court/ Forum be informed about common stand to be taken by MSEDCL, to effect the tariff change as per Regulation 9.2 of SoP regulation-2005, requesting for necessary and suitable action such as withdrawal/disposed off the order and legal cases be withdrawn to that extent (As per mandate of MERC order in case 94 of 2015 dtd. 19.08.2016."
>
> Resolved further that approval be and is hereby accorded for Method of approval :-
>
> a) "In case of dispute on the date of application/ submission of application for tariff change, the same may be verified by Committee headed by Chief Engineer (O&M Zones) and SE(Circle Officer), SE(Neighbour Circle Office, Legal Advisor(Zonal Office) and Senior Manager (Circle Office) as other members of the Committee."
>
> b) "The verified proposal shall be submitted by this Committee to Joint Managing Director (Regional Director within a period of one week.

The said proposal shall be decided upon by Jr. MD/RD within a period of one week from the date of receipt of proposal."

Resolved further that approval be and is hereby accorded to implement MERC order (94 of 2015) in respect of consumers.

"Resolved further that action if any, in respect of MSEDCL's employees be decided on receipt of report of fact finding committee constituted by MSEB Holding Company."

"The Board further directed that the complete details and effect of said tariff changes be given to consumers through MSEDCL IT system only in a transparent manner.

63) Accordingly guidelines were issued by Chief Engineer(Commercial) dtd. 10.07.2017 produce at (Page No. 58). In the Circular guideline – In addition to above contents of resolution for explanation purposes following example is given.

"*Eg: The consumer application for change of tariff from Continuous to Non Continuous receipt dated 01.01.2014. The receipt date shall be verified by Circle in concurrence with date of receipt of application at corporate office. If the receipt date is confirmed as 01.01.2014, then tariff change shall be effective from February 2014 billing, else in case of dispute on the date of receipt of application follow the method of approval as above (Point No.2)"*

64) Keeping in mind, the order passed by MERC in case No. 94/2015, Resolution of Board & guidelines issued by Chief Engineer based on the resolution, the dispute requires to be considered . It is worth to note that the nature of grievance put forth by the complainant is not for change of tariff like other consumer, who were availing HT-1-C tariff (Continuous) & demanding HT-1-N tariff. Here in this case, during the entire period of load shedding, the complainant has availed at Ht-1-N tariff, however without any demand from the

side of consumer, the Respondent has changed it to HT-1-C from HT-1-N. This was done without information to the consumer & no reasons are assigned by the Respondent for such sudden change in tariff. Certainly this particular act of Respondent is unlawful & arbitrary. Therefore, considering such unlawful change of tariff from Non continuous to continuous, the refund is required to be made from the date of when such change was effected i.e. from November 2010 (Bill of October 2010). Considering this aspect that the application of the consumer is different than simple change of tariff, but it is for recovery of excess amount of tariff difference, unlawfully imposed on him by the Respondent, so the rule of payment from the date of second billing cycle from the date of application is not made applicable here. Therefore, complainant is entitle for refund from November 2010. The method of approval in the resolution (Point a & b) & in the guideline (Point No. 2) specifically quoted above i.e. verification by committee & decision of Joint MD is made applicable. No just reasons are assigned by the Respondent for refusal of part claim of the complainant from November 2010 to October 2011. Refusal of the said part claim is in breach of natural justice. The consumer who is not at fault, shall not suffer, but is entitle for the difference amount, since the day he is charged for such continuous tariff instead of non continuous, i.e. November 2010. Hence, we are of the view that the complainant is entitle to get the refund of tariff difference amount from November 2010 (Bill of December 2010) to October 2011.

65) One of the plank of contention raised by the Respondent is that in the letter dt. 20.02.2018 (Page No. 30, 31, 32) at Page No. 3, request for processing claim of refund from second billing cycle from the first application protest dt. 05.10.2011 is made by the complainant & hence, now the claimant is dis entitle for the claim of tariff difference from November 2010 to October 2011. We are in

complete disagreement of the above submission, for the reason that in the said letter in same para, the complainant has specifically communicated "without prejudice to our right to dispute the wrongly made applicable triff suddenly from billing month November 2010 without changing feeder or without any specific request from our part in violation of principles laid down in case No. 44/2008," So considering these contentions, it is crystal clear that the complainant has reserved his right at complete present claim & hence such argument by Respondent does not sustain.

66) Considering the aforesaid reasons, we hold that, the complainant is also entitled for tariff difference non continuous from continuous from November 2010 up to October 2011. According ly, we answer point No. 3 in favour of the complainant.

67) **Point No. 4** :- As regards interest Section 62(6) of Indian Electricity Act 2003 is material which is reproduced below :

> "(6) If any licensee or a generating company recovers a price or charge exceeding the tariff determined under this section, the excess amount shall be recoverable by the person who has paid such price or charge along with interest equivalent to the bank rate without prejudice to any other liability incurred by the licensee."

68) The complainant in this respect has laid his finger on the ratio laid down in the case of Appeal No. 47/2011 & I.a No. 73/2011, Chattisgarh State Power Distribution Ltd. V/s ISA Power Pvt. Ltd., & another decided by Hon'ble Appeallate Tribunal for Electricity dt. 17th April 2012, produced at Page No. 39, wherein while considering the interpretation of the word "Bank Rate", it is observed (at para 37) as follows :-

> "The money that the appellant or the respondent no. 1 borrow from a Commercial Bank will be governed by the prime lending rate of the bank. Therefore, it is logical that the money denied to the respondent no. 1 by the appellant should be linked to the prime lending rate of the Commercial Bank to its customers. Thus, we do not find any reason to intervene with the order of the State Commission to allow interest at prime lending rate of the State Bank of India."

69) Considering the observations, herein the complainant is found entitled for excess amount of tariff difference which is recovered & recoverable, so, it is entitle for interest for the tariff difference amount of the period November 2010 up to February 2016, at the prime lending rate of SBI, prevailing at the material time. Accordingly, we answer paint No. 4 in favour of the applicant.

70) Considering application of wrong tariff, we feel it necessary to order inquiry of guilty officer, who have wrongly applied continuous tariff instead of non continuous & against the officers, who have kept the application dtd. 05.10.2011 of the complainant pending for years together.

71) Considering the total facts & circumstances, In view of refund of part claim, we are now awarding rest of the claim for the period November 2010 to October 2011 & interest for November 2010 to February 2016, we proceed to pass following order in reply o Point No. 5 :-

ORDER

The complaint is hereby allowed in the following terms :

1) The Respondent is hereby directed to refund excess tariff (i.e. continuous instead of non continuous) recovered from the complainant for the period November 2010 to October 2011.

2) The Respondent is further directed to pay interest at the rate of Prime lending Rate of SBI prevailing at the material time, on the tariff difference amount for the period November 2010 to February 2016, till the date of payment of refund.

3) Both the aforesaid amounts be adjusted in post energy bill of the complainant.

4) The respondent is directed to hold **disciplinary enquiry in accordance with provisions of Service Regulation of employee against erring officers**, who have unlawfully applied HT-1-C tariff instead of HT-1-N tariff to the complainant & who have kept the application dtd. 05.10.2011 of the complainant pending for years together.

5) Parties to bear their own costs.

6) Compliance be reported within 30 days from the date of receipt of the order.

Sd/-	Sd/-	Sd/
Shobha B. Varma	Laxman M. Kakade	Vilaschandra S.Kabra
Chairperson	Member / Secretary	Member