

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM ,
AURANGABAD ZONE, AURANGABAD

Case No. CGRF/AZ/AUR/U /352/ 2011/32

Date of Filing: 13.09.2011

Date of Decision: 21.09.2011

Wockhardt Limited,
R&D Centre at D-4,
MIDC,Chikalthana,
Aurangabad- 431 210
(Consumer No. 490019003555)

Complainant.

V/s

1.Maharashtra State Electricity Distribution Co. Ltd.
Through Chief Engineer, Zone Office, Respondents
Aurangabad.

2. GTL Limited,
(Distribution Franchisee, MSEDCL, Aurangabad)
having its branch office at Vitthalachidaya, 1st floor above
YZ Ford Car Show Room, Cannought Place, CIDCO,
Aurangabad – 431 003

Coram:

Shri V.B.Mantri	President
Shri V.S.Kabra	Member
Shri Mohd.Qamaruddin	Tech/ Member

JUDGEMENT

1. The complainant has filed the complaint before this Forum for setting aside and quashing the supplementary bill issued by the respondents as against consumption of electricity from the year June 2008 till March 2011 at Commercial rate by changing the category. It is further prayed for conclusion that, the action of the respondents, changing category of the user from “Industrial” to “Commercial” from June 2008 till March 2011, without following principals of Natural justice is, to be illegal one.

2. The complainant has filed an application for interim relief to restrain the respondents, from making recovery of Rs. 3,95,79,407 on the basis of supplementary bill issued on 25.4.2011 at commercial rate for the period June 2008 to March 2011, till disposal of main complaint. The respondents be further restrained from raising bills at commercial rate. The respondents may be restrained from taking **coercive** steps against the complainant, for recovery of disputed bill.

3. The complainant has claimed the relief of injunction with the case in brief is, that, the complainant hereinafter called as applicant is Global Pharmaceutical and bio-technological company, engaged in manufacturing of pharmaceutical products. The company has set up a separate, Research and Development Division at D-4, MIDC Area, Chikalthana, Aurangabad. The said division of the applicant had applied to MSEB for grant of electricity connection, and it was granted in the year 1994. The applicant has been paying the energy charges regularly at Industrial rate as per demand of Distribution Licensee.

4. On 25.3.2011 the flying squad of distribution licensee visited the R&D Division of the applicant and recommended that R&D Unit should be levied charges at Commercial Rate instead of Industrial rate. The Distribution Licensee has issued the bill for the month of April 2011 for Rs.37,74,700/-. The Distribution Licensee then suddenly on 25.4.2011 issued a supplementary bill for Rs. 3,95,79,407 by changing tariff from HT-I (Industrial) to HT II E-I (Commercial) w.e.f. June 2008 till April 2011 without any notice.

5. The applicant has made representation and requested to withdraw the said bill and to issue the bill as per Industrial tariff which was applied to the applicant since 1994. The S.E.(Urban Circle) had recommended to Executive Director(Commercial) by its letter dated 30.4.2011 to retain original tariff. Change of rate of tariff and the category from Industrial to Commercial is against the circular of D.L. dated 5.8.2010. The supplementary bill issued by the respondents as such is against their own Notification and therefore needs to be quashed. The applicant therefore prayed that, pending hearing and disposal of the grievance, the D.L. respondents be restrained from making recovery of disputed supplementary bill issued at Commercial rate instead of Industrial rate from June 2008 to March 2011. The applicant be permitted to pay bills at Industrial rate

6. The respondent MSEDCL has appeared in response to the notice and submitted contesting reply to the application of injunction.

7. It has been submitted that, the R&D unit of the applicant is separate and independent from its manufacturing unit and therefore liable for application of commercial tariff, as approved by MERC. Tariff has been determined by the commission. The R&D unit is liable for application of commercial tariff as per MERC tariff order. The distribution licensee is empowered to recover charges in accordance with tariff as may be fixed time to time by the MERC.

It is the distribution licensee to classify and reclassify a particular consumer in to the approved commission tariff category based on the purpose of supply to such consumer. The R&D unit of the applicant has been classified in accordance with Electricity Act 2003 and supply Code 2005. The tariff order has been passed by MERC by holding public hearing in view of Sec. 62 of the Act, and by adopting prescribed procedure u/s 64 of the Act. The application of the petitioner for the relief of injunction as such is without any merit and therefore liable to be dismissed.

8. This Forum heard arguments of Mr.Kapadiya, representative of the applicant. The legal Advisor of MSEDCL Mr. Mundhe made his submissions for MSEDCL Mr. Borde Legal Manager argued for G.T.L. Company.

9. Considering submissions so made on behalf of respective parties and considering documents filed by the parties and considering scope and object of interim objects of orders and its considerations, the following points arise for determinations and our findings to those points are as follows:-

Sr.No.	Points	Findings
01.	Whether the complainant/Applicant is entitled for the relief of injunction to restrain the respondents from making recovery of supplementary bill of Rs.3,95,79,407 for the duration of June 2008 to March 2011 at Commercial rate ?	No
02.	Whether the complainant/Applicant is entitled for the relief of injunction to restrain the respondents from raising bill at Commercial rate.	No
03.	What any other equitable relief for which the applicant complainant is found entitled	No
04.	What relief/Redressal if any	The application is hereby dismissed.

REASONS

10. It has been submitted on behalf of the applicant that, the applicant is engaged in manufacturing of the pharmaceutical products. A separate Research and Development Division has been set up by the applicant at D-4, MIDC Area, Chikalthana, Aurangabad. It is not profit generation unit, but it is intended for betterment of the people. The unit as such can not be categorized as commercial unit. It has been submitted that, the applicant is paying energy bills at Industrial rate right from the date of sanction of power till April 2011. Any alteration, modification or change from one category to another category should have been with notice or intimation to the consumer. The flying squad illegally recommended charges at commercial rate instead of Industrial rate. The flying squad traveled beyond its jurisdiction. The supplementary bill issued on the basis

of such illegal recommendation is illegal. The applicant is making payment of bills promptly at industrial rate. Its average monthly bill is about 2.5 Crore where as the monthly bill of R&D unit is about 25 Lakh. Its security deposite is 30 Lakh. The status of the applicant for the unit is HT-I-Express feeder. The applicant made representation against the supplementary bill to S.E. on 28.4.2011. The S.E. tried to seek guidance from Executive Director(Comm.)but there is no clarification or communication. The applicant therefore filed writ petition before the Hon'ble High Court, Aurangabad Bench. The Hon'ble High Court was pleased to direct the applicant to seek relief from this Forum. The representative of the applicant has further submitted that, tariff has been changed without **affording** chance of hearing. The principles of natural justice have been violated. The basis of supplementary bill is illegal. The applicant is therefore entitled for the relief of injunction as prayed for.

11. Mr.Mundhe, the Legal Advisor, on behalf of the MSEDCL on the other hand has submitted that R&D unit of the applicant is not manufacturing unit. As per the decisions made by the MERC in case No.116/2008 and case No.111/2009, category of non-manufacturing unit is commercial category. The respondents have thereby rightly applied tariff of commercial category. It is the flying squad which notice the mistake of incorrect application of tariff during its visit to the unit on 25.3.2011. The mistake was rectified by issuing supplementary bill. No illegality has been committed by the respondents for making recovery of outstanding dues liable to pay by the applicants as per tariff prescribed by the MERC. It is therefore submitted that the applicant has no case for injunction. The respondents can not be prevented from making recovery of lawful charges. The application may be therefore dismissed.

12. Mr. Borde, Legal Manager for GTL has submitted that, the category of R&D unit is commercial category as per tariff order prescribed by MERC. The respondents can not be injected from issuing bills as per prescribed tariff order, even herein after. The applicant as such is not entitled for any relief. The application may be therefore dismissed.

13. There is no dispute that the complainant had applied for power supply in the year 1994. The Power supply was granted to R&D laboratory on **18.10.1994**. The applicant then requested for additional power supply at 11kv to R&D unit, which was sanctioned on **13.1.1998 and again on 26.9.2000**. It is further an undisputed fact that, R&D unit of the applicant is separate unit. It is not connected with manufacturing unit. It is further more an undisputed fact that there were no dual tariff categories prior to 2008. Dual tariff order on the basis of different categories came in existence in the year 2008. The categories are defined by MERC. The respondents are supposed to apply tariff order as defined by MERC to particular unit. The respondent MSEDCL has applied HT-II category tariff to the unit of applicant on the basis of spot inspection report of flying squad. The squad noticed that tariff HT-I was being applied to the R&D unit of the applicant. It needed to be verified. The squad thereby appears to have recommended for application of HT-II(Commercial) category tariff.

The respondents have therefore appears to have proceeded to estimate the bill of arrears w.e.f. June 2008 till March 2011. The supplementary bill of Rs.3,95,79,407 thereby came to be issued. Prima facie the respondents appears to have proceeded to recover the energy charges those are found due against the applicants.

14. No doubt sharp controversy arose in the present matter as to whether Research and Development Unit is chargeable as Commercial or Industrial. The same controversy is the subject matter in issue in the present grievance petition. The said issue is required to be decided on the basis of entire tariff philosophy, decided cases of superior Forum, directives of MERC, Circulars issued by licensee effects, defects & omissions of acts of employees of licensee, commission's ruling, the basis for which different criteria have been used to categorise different types of consumers by considering written statements or para-wise reply to be submitted by the concern respondents. It however prima facie reveals that, the respondents are proceeding to recover the bill for which they are entitled to recover. The supplementary bill thereby appears to have been issued. In case, this Forum during decision of the main grievance petition, by considering aforesaid factors comes to the conclusion that, the respondents are not entitled to charge the R&D unit of the applicant as commercial and the same is chargeable as Industrial, in such event, the amount so came to be recovered can be adjusted in forthcoming bills. In alternate angle in case, the applicant is found liable to pay disputed bill on the basis of commercial category and in case, the respondents are prevented to recover the bill then, the respondents may possibly not in position to recover legitimate bills. The balance thereby **till** in favour of respondents. Every endeavor would be taken to dispose of the main petition as expeditious as possible and within time limit prescribed by the Hon'ble High Court, so we think, no irreparable loss would be caused to the applicants in case interim relief is not granted as claimed for. In the result, sum and substance, the consumer applicants are not entitled for any of the interim relief as claimed by the applicants. We feel at this juncture to make it clear that, what observations are made in this judgment/order are prima facie observations for just decision of interim application. The same are not and will not affect in any way or manner during final decision of the grievance petition on its own merits, by considering aforesaid components and considerations. With these reasons and findings, we, the members of the Forum unanimously proceed to pass the following order.

ORDER

1. The application filed by the applicant/complainant for interim relief is hereby dismissed.
2. No costs or compensation.

(V.S.Kabra)
Member

(Mohd.Qamarudin)
Member/Secretary

(V.B.Mantri)
Chairperson

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM
AURANGABAD, ZONE AURANGABAD.

Case No. CGRF/ AZ /UR/ U/ 352/2011/32.

Date of Filing: 13.09.2011

Date of Decision: 13.12..2011

1. WOCHARDT LIMITED. **COMPALINANT.**
Research and Development Centre.
D-4 MIDC, Chikalhana, Aurangabad.
Pin 431 210.

VERSUS.

1. MAHARASHTRA STATE ELECTRICITY **RESPONDENTS.**
DISTRIBUTION COMPANY LIMITED.
THROUGH ITS CHIEF ENGINEER
URBAN CIRCLE AURANGABAD.
2. GTL LIMITED.
(Distribution Franchisee, MSEDCL Aurangabad.)
Cannaught Place CIDCO, Aurangabad . 431 003.

CLAIM: - To, quash and set aside the Supplementary Bill for the period
June 2008, to March 2011 issued by the Respondent at
Commercial Rate.

CORAM:

Shri V.B.Mantri.	Chairperson.
Shri V.S.Kabra.	Member.
Shri Mohd. Qumaruddin.	Tech. Member

J U D G M E N T.

1. The, Complainant has a grievance against the supplementary bill issued
by the respondents for the period from June 2008 to March 2011 at
Commercial Rate by changing the category from Industrial Category to

Commercial Category, without following Principals of Natural Justice. The complainant has therefore filed this complaint for its Redressal for the relief of setting aside the said Bill and to conclude or to declare that the Respondents have no authority or power or jurisdiction to change the category of the complainant from Industrial to Commercial and thereby the complainant is not liable to pay the supplementary Bill.

CASE OF THE COMPLAINANT IN BRIEF.

1. THE complainant is the global pharmaceutical and bio-technological Company constituted under the provisions of the Indian Companies Act 1956. It is an Industrial concern, engaged in manufacturing of pharmaceutical products. A separate Research and Development Division is set up by the Company at D-4 MIDC area, Chikalthana Aurangabad.
2. The said Research and Development unit herein after referred as R&D unit, for brevity, had applied for Electricity connection to erstwhile MSEB for Electricity connection which was granted in the year 1994.
3. The complainant applied for Additional power supply for R&D unit. The additional power supply was sanctioned in the year 1998 and in the year 2000 respectively.

4. The complainant is paying the electricity charges at Industrial Rate HT with Express feeder, regularly as per the demand of the respondents Distribution Licensee right from the date of sanction of electricity connection until April 2011. Any change, alteration, modification substitution from one category to another category should have been thereby with notice or intimation to the complainant.

5. Flying squad of the respondent visited the R&D unit of complainant on 25.3.2011. The squad caused spot inspection, but found nothing objectionable. The Squad however made a recommendation that R&D unit of the complainant should be levied the Electricity consumption charges at “Commercial rate “instead of “Industrial rate.”. The Distribution licensee through its Chief Engineer has thereby issued bill at commercial rate making demand of Rs. 37,74,700/- for the month of April 2011.

6. The Distribution Licensee through its Superintending Engineer Urban Circle Aurangabad, has then issued a letter dated 25.4.2011 accompanied by a Supplementary Bill for payment of Rs. 3,95,79,407. The supplementary Bill appeared to have been issued due to change of tariff from HT-I (Industrial) to HT-II E-I (Commercial) with effect from June 2008 till the Month of April 2011 .

7. The complainant has made a representation to the Superintending Engineer Urban Circle to withdraw the supplementary Bill. The Superintending Engineer Urban Circle MSEDCL Aurangabad, was pleased to issue a letter to Executive Director (Commercial) Mumbai on 30.4.2011 requesting him to retain original tariff.
8. The Distribution Licensee MSEDCL through its Chief Engineer(Commercial) issued a circular / Notification dated 5.8.2010 informing to all the Superintending Engineers to check the purpose of usage of supply and If in case an industrial Consumer is having testing and R&D laboratory as its ancillary unit. It is pleaded that, the change of tariff and the category by the respondents from Industrial to Commercial is incongruent to the circular of the Distribution Licensee dated 5.8.2010. The supplementary Bill as such is against the own circular of the Distribution Licensee. The supplementary Bill as such is required to be quashed and set aside.
9. The supplementary Bill has been issued in contravention of prescribed procedure and in contravention of principals of Natural Justice. The action of the Distribution Licensee to issue supplementary Bill as such is illegal one.

10. The supplementary Bill is issued with retrospective effect, w.e.f June 2008 which is against the constitutional scheme and statutory prescriptions and therefore it is unsustainable at law. The Distribution Licensee has no right to change the tariff applicable to the consumer and therefore the supplementary Bill issued by the respondents is arbitrary and illegal one. The supplementary Bill issued by the Respondents should be therefore set aside.

11. In response to the Notices issued to the respondents, the respondents have filed their respective Written Statements.

DEFENCE OF THE RESPONDENT MSEDCL.

1. The R&D unit of the complainant is distinct and separate from manufacturing unit of the complainant, and therefore it is to be categorized as commercial for the purpose of tariff.

2. The flying squad visited the R&D unit of the complainant and submitted a report that the R&D unit of the complainant should be charged at commercial rate tariff. The supplementary Bill has been accordingly issued. The letter issued by the Superintending Engineer is for seeking guideline from the Superior Authorities. The circular issued by the Chief Engineer is regarding direction or instruction to the concern officers to verify actual load and to apply proper tariff as per the guidelines.

3. The tariff has been changed or levied as per approved tariff by MERC.
4. The MERC had held public meeting and hearing prior to approve tariff and therefore there is no breach of principals of Natural Justice.
5. The supplementary Bill has been issued to recover charges as per Section 45 of the Act. Regulation 13 empowers the Distribution Licensee to classify or to reclassify the consumer as per approved tariff categories by the commission. The grievance is devoid of any merit.

DEFENCE OF RESPONDET GTL.

1. The R&D unit of the complainant is a separate unit. The Bills at Commercial rate should have been issued since appropriate time. The supplementary Bill has been thereby issued. The flying squad visited the premises and recommended for issue of bills at commercial rate as per tariff approved by the M.E.R.C.

2. The category of the complainant's R&D unit is Commercial category as per MERC approved tariff order. The R&D unit of the complainant is billed correctly as per tariff order. The supplementary Bill has been issued accordingly. The grievance of the complainant is without any merit.

Considering the controversy involved in this matter and in order to apprise the parties the questions involved in this matter for just decision of the case, so as to facilitate the parties to formulate their submissions and arguments, this Forum proceeded to frame questions in controversies and points for determinations. The points in controversies have accordingly framed. The parties did not raise any controversy on such points for determinations so framed by this Forum for just decision of the case.

The members of this Forum heard submissions of Mr. Kapadiya, the representative of the complainant. Mr. Deshpande, the Executive Director of the M.S.D.C.L. has argued for the M.S.E.D.C.L. alongwith Mr.V.S.Mundhe, Legal Adviser, MSEDCL, Mr. Borde legal manager argued for GTL. Mr. Kapadiya, has objected for the appearances and arguments by Mr. Borde on the ground that he is an Advocate and such his appearance in this Forum is in contravention of Regulation 6.15 of M.E.R.C. Regulation . He has filed a separate application to that effect. Mr. Borde on the other hand submitted that he is not practicing Advocate. His Sanad has been suspended as per his

application Mr. Borde, Legal Manager of the Company has been thereby permitted to argue the case on behalf of the GTL. The objection of the complainant has been set aside on this point.

In addition to oral arguments, the complainant and M.S.E.D.C.L have chosen to submit their written arguments. The written arguments are nothing but repeating of oral arguments.

Considering submissions, Oral arguments as well as written arguments so submitted on behalf of the respective parties, and considering the documents and case of the parties, considering case law cited by the parties, We the members of this Forum, proceed to determine the points so framed as follows for following reasons .

POINTS.	FINDINGS.
1. What should be the categorization of The consumer R&D unit for the Purpose of application of Tariff ?	The R&D unit of the complainant being separate unit, it should be classified as HT-II (Commercial.)
2. Since which date such Tariff shall be made Applicable ?	From the date of newly creation of such category, by M.E.R.C. i.e. with effect from June 2008.
3. Whether the respondents Distribution Licensee has followed the principals of Natural Justice?	There is no violation of Principles of Natural Justice.
4. In case the Principals of Natural Justice are not followed, by D.L. then what are Its effects?	does not arise.

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| 5. What is the effect of letter dated 30.4.2011 Issued by S.E. and Circular Issued by C.E. (comm.) ? | The Letter and the circular are having no binding effects. |
| 6. Whether supplementary Bill w.e.f . June 2008Till March 2011 issued by D.L. on the basis of Recommendation of flying squad dated 25,4,2011 Is proper and recoverable ? | Yes |
| 7. Whether D.L. is empowered or has authority to change the category corrected the consumer from industrial to commercial | The D.L. has not changed the category The classification is corrected the consumer from industrial to commercial |
| 8 For what relief / redress, the complainant for any relief. Is entitled.? | The complainant is not entitled |
| 9. What conclusion /relief / Redress and order? | The grievance is devoid of any merit. Hence No question of its redressal. The complaint is Dismissed. |

REASONS.

POINTS No. 1& 2.

- A. There is no dispute or any controversy regarding the fact that, the Research and Development Division of the complainant is a separate unit, situated at D-4 Chikalhana , Aurangabad. It is not attached directly or indirectly with manufacturing unit of the complainant. The complainant had applied for Electricity Connection for such unit in the year 1994. The complainant has then applied for additional power supply in the year 1998 as well as in the year 2000. The additional supply was accordingly granted by the Distribution

Licensee. The complainant has filed the copy of sanction of fresh power supply at Exhibit B. dated 18.10.94. The copy of sanction of additional power supply is at Exhibit C dated 18.1.1998. The copy of next additional power supply is at Exhibit dated 26.9.2000.

- B. There is furthermore no dispute that the complainant was being charged at Industrial rate and the complainant was making payments as per Industrial rate as per the bills issued by the Distribution Licensee till April 2011.

- C. Admittedly as per the terms of sanction of power order Clause No. 12, or additional power, the consumer is required to execute agreement as per standard agreement. Admittedly none of the parties have produced copy of such agreement. The consumer at the time of arguments applied to this Forum to direct the licensee for production of original agreement. The licensee M.S.E.D.C.L on the other hand submitted that the original agreement is misplaced. The complainant has not produced copy of the agreement.

- A. There is no dispute that, the flying squad of the Distribution Licensee had visited the unit of the complainant on 25.3.2011 and recommended that the unit of the complainant should be charged as per Commercial Rate instead of Industrial Rate. The Bill for the month of April 2011 was issued accordingly

as per Commercial Rate instead of Industrial Rate. The Distribution Licensee was further pleased to issue supplementary Bill for recovery of arrears w.e.f. June 2008 till March 2011 as per commercial Rate. The complainant has put forth his grievance that the category of the R&D unit of the complainant is Industrial and not commercial. The Distribution Licensee is not authorized to change the Category. The supplementary Bill issued by the Distribution Licensee is illegal one. Change of category can not be with retrospective effect.

- B. Mr. Kapadiya, the representative of the complainant has submitted that, R&D unit of the complainant is not profit oriented unit. It is the unit for research for pharmaceutical products. It is not generating any profits, and as such the unit can not be categorized as commercial unit and thereby commercial tariff can not be applied. He further submitted that, the Distribution Licensee was issuing the bills as per Industrial rate till April 2011 and the complainant was paying the bills a regularly as per industrial rate. The Distribution licensee can not change the category more particularly without following principals of Natural Justice. The supplementary Bill issued by the Distribution Licensee as such is illegal one.
- C. Mr. Kapadiya has submitted that there was no dispute regarding the bills or payments of the bills right from initial supply of power that is since 1994 till March 2011. The flying squad visited the unit on 25.3.2011 and it

recommended to apply commercial rate instead of industrial rate. The M.S. E.D.C.L. has acted upon such recommendation and proceeded to issue bill at commercial rate. The flying squad in fact has no authority to make such recommendation, and to change tariff. He submitted that in original agreement industrial tariff has been specifically mentioned. The supplementary bill so issued as such is illegal. It is contrary to the contractual rate. He added that in original agreement the category of the unit was mentioned as HT-I. He added that the purpose of the power supply play important role for deciding category.

- D. The complainant during his written argument repeated aforesaid oral arguments and further in substance added that D.L has no power to decide category of the unit. The decision of the D.L. for application of commercial tariff is unilateral. It is without any source of M.E.R.C. The complainant has then narrated the philosophy of categorization in his written arguments and cited cases in support of such classification . Mr. Kapadiya during his arguments placing reliance upon **Prasad Acharya v/s State of Karnataka reported in 2009 AIR SCW page 1510**, has tried to submit that Judicial , quasi judicial or administrative authorities are under obligation to discharge their duties by adhering to the principles of Natural Justice, which is essence of rule of law.

E. Mr. Deshpande, on the other hand argued that it is the M.E.R.C. which decide and describe the category and not by the D.L. The function of the D.L. is to classify particular unit in particular category as defined by the commission. There are different wings to execute the tariff order. The object of flying squad is to verify and point out in case of mistaken tariff is applied. In the present case also the flying squad visited the unit of the complainant and pointed out mistaken application of tariff to the unit of the complainant. The mistake was corrected by issuing the supplementary bill. Mr. Deshpande has further submitted that the unit of the complainant is separate unit from manufacturing unit. The categorization of the R&D unit is Commercial as per approved tariff order by MERC. Such tariff order came to be made applicable with effect from June 2008. The D.L. has thereby applied such tariff to the R&D unit of the complainant w.e.f. June 2008. The supplementary Bill has been issued accordingly. The supplementary Bill has been issued as per approved tariff order of MERC. Such tariff was approved by M.E.R.C. on public hearing. The principals of Natural Justice were thereby followed. Written arguments have been submitted on behalf of the M.S.E.D.C.L. The written arguments submitted on behalf of the M.S.E.D.C.L. is however nothing but repetition of the same submissions.

- F. There is no dispute that, The Maharashtra Electricity Regulatory Commission has revised the tariff for sale of Electricity. The revised tariff is made applicable with effect from 1st June 2008. The Commission has created a new category by virtue of this new tariff order viz HT-II Commercial. Such category was not recognized prior to June 2008.
- G. This newly created category HT-II (Commercial) includes consumers of Electricity such as Educational institutions, other institutions like Charitable , Public Trusts, Religious institutions, Hospitals Govt. Municipal Corporations etc. The said category is no way concern whether it is commercial as per grammatical meaning or profit oriented institution or otherwise. The said category has been created on the basis of use of Electricity and not on the basis of profit or commerce or loss or profit generating unit. It is the M.E.R.C. which created the categories such as HT- Industries(Express feeder); HT-I Industries (Non Express feeder) HT-I Seasonal Industry ; HT-II (Commercial), HT-III (Railways), HT-IV Public Water Works ; HT-V Agriculture, etc. The entire arguments of the complainant regarding tariff policy relates to the commission which is empowered to create and describe the categories and not to the function of the D.L. The function of the D.L. is to classify the units in particular as per the categories described by the commission. Hence the submissions and arguments of the complainant and the case law cited by the complainant on such submissions are not relevant to

the issue in controversy. No attempt on the other hand is made to point out in what way or how the D. L. has committed error in classifying the R&D unit in HT-II category.

- H. Admittedly the R&D unit of the complainant is not manufacturing unit or any way directly or indirectly connected with manufacturing unit. It is non residential unit. It is immaterial whether the unit is profit oriented unit or otherwise. The purpose and usage of electricity is not for manufacture or residential or domestic or agricultural. Hence as per new tariff order which came to made applicable w.e.f. June 2008 the categorization of the complainant's R&D unit should HT-II (Commercial) and it can not be HT-I (Industrial). The Chief Engineer has thereby has issued a circular dated 5.8.2010 instructing to all the Superintending Engineers to apply Commercial tariff to R&D& testing units, in case it is separate unit. The present R&D unit of the complainant is separate unit, not connected to manufacturing activity of the complainant; therefore it is to be categorized as commercial for the purpose of application of tariff. The above point no. 1 is thereby answered accordingly.
- I. It has been submitted on behalf of the complainant that application of the category can not be with retrospective effect. The application of such tariff should be at the most prospective.

J. This Forum agrees that any tariff order can not be made applicable with retrospective effect. It should always be prospective. In the present case, tariff order is however not made applicable with retrospective effect. The tariff order is made applicable with prospective effect that is with effect from 1st June 2008. The bills of the complainant ought to have been charged at Commercial rate from the date of creation and application of such new category i.e. with effect from 1st June 2008 but it appears that for some or other reasons or due to ministerial negligence or ignorance, the D.L. failed to do so or at the most we can say that it was over-looked or lost sight to apply such tariff with effect from 1st June 2008. Simultaneously, it is equally true and liability that, the complainant was required to pay the electricity bill as per new tariff order which was made applicable w.e.f. 1st June 2008 to which the complainant has failed to do so. The complainant thereby can not take benefit of the fact that the respondent did not issue bills or overlooked to issue bills as per new tariff order. The supplementary bill so issued by respondent thereby can not be said it was issued with retrospective effect. The supplementary bill was issued to recover arrears of difference of bills. New tariff order is made applicable w.e.f. 1st June 2008 and hence the complainant is liable to pay electricity bill as per new tariff order w.e.f. 1st June 2008. The point No. 2 has been thereby answered accordingly.

POINT No. 3 & 4.

- K. It has been submitted on behalf of the complainant that the principles of Natural Justice have not been followed by the D.L. The respondents D.L. on the other hand have submitted that there was public hearing at the time of describing categories. All eventualities were considered by M.E.R.C. by holding public hearing and then the category HT-II commercial was created therefore principles of Natural justice were followed.

It reveals that the D.L. did not follow true text of principles of Natural Justice. Point in controversy is not as to whether M.E.R.C. has followed the principles of justice or not. The controversy is as to whether the D.L. has followed the principles of Natural justice or not ? Whether opportunity of hearing to the consumer was given or not prior to issuing supplementary bill. No body should be condemned unless he is heard, that is what is the principle of Natural Justice is. In the present case the supplementary bill of substantial amount came to be issued by applying different tariff without affording opportunity of hearing. However there is no specific arguments or submissions on this particular point or principle.

This Forum is of considered opinion that such principle of Natural Justice would have played an important role in case of change of category. In the present case the D.L. has not changed the category but it is corrected the classification of unit of the complainant in correct category. The question of hearing of the complainant prior to issuing the bills on the basis of correct classification thereby does not arise. There is no violation of principles of Natural Justice. It is the case of correction of category and not change of category. **The Points No. 3 & b4** are thereby answered accordingly.

POINT No. 5.

The letter issued by Superintending Engineer Urban Circle dated 30.4.2011 is for seeking guidance from the Executive Director (commercial) suffixed by his opinion to retain original tariff. The opinion of implementing authority differs from command of proper or competent authority. The said letter of the S.E. dated 30.4.2011 obviously is not command of competent authority in order to make applicable doctrine of **estoppel** , as is submitted on behalf of the complainant in its written arguments. The circular issued by the Chief Engineer (commercial) dated 5.8.2010 appears to be in tune of the tariff order. The Chief Engineer has instructed to all the Superintending Engineers to apply Commercial Tariff in case consumer is having separate or only R&D unit. The said letter or circular as such have no binding effect or adverse effect

on the case or supplementary bill issued by the D.L. The point No. 5 has been answered accordingly.

POINT No. 6.

A. It has been submitted that the flying squad is not recommending authority. The squad can not pass any order under Electricity Act 2003. The squad has no right or authority or jurisdiction to change the category from industrial to commercial.

B. The counter submission is that the object of flying squad is to verify correctness of application of tariff and to point out any irregularity. The flying squad has accordingly pointed out the mistake, in application of tariff.

C. The consumer has produced copy of report of flying squad at Exhibit G. It reveals that, the flying squad of M.S.E.D.C.L. on 25.3.2011. The squad observed irregularity in application of tariff. The squad has accordingly noted down the irregularity in Col No. 15 of the report. The squad has then passed the remarks in Col. No. 17 for application of HT-II tariff to the unit in place of HT-I Industrial.

D. We the members of this Forum agree the contention of the complainant that the flying squad has no authority to pass any order under Electricity Act.

In the present case the squad has not pass any order. The squad has pointed out the irregularity which is being committed by the concern officer while applying the tariff as per tariff order approved by M.E.R.C. We members of the Forum is of the opinion that to detect irregularity in either way in execution or implementation or functioning could be the object of establishment of flying squad. The flying squad is one of the organizational part or one of the organ of administrative or managerial organ of the institution which is required to be established by big organization or the company to watch and to detect any irregularity to the institution. It is for the concern institution or the organization either to act or to ignore the mistake or fault if any committed by its ministerial or managerial staff of the institution.

In the present case, admittedly the complainant had applied for Electricity connection initially In the year 1994. The complainant has then applied for additional power supply. Admittedly the category HT-II (Commercial) was not in existence either in the year 1994 or in the year 1998 or in the year 2000. The M.E.R.C. has created such new category in the year 2008 and made applicable with effect from 1st June 2008. The D.L. should have thereby applied the newly created tariff to the unit of the complainant with effect from the date of its application that is w.e.f. 1st June 2008 itself. The mistake in application of such tariff comes to be detected by flying squad. The D.L. has acted upon such report of flying squad and corrected the irregularity. The complainant is duty bound to pay and the D.L. is entitled to recover Electricity

charges as per tariff order approved by M.E.R.C. The flying squad has not passed any order or made any recommendation, but it has pointed out or detected the irregularity and thereby the D.L. has corrected the irregularity. Category has not been changed but it has been corrected. The Supplementary Bill which has been issued by the D.L. to recover arrears with effect from June 2008 as such is perfectly legal and valid one. The arrears are recoverable by the D.L. and the same is payable by the complainant. The Point No. 6 has been thereby answered in affirmative.

POINT No. 7.to 9.

A. Admittedly the R & D unit of the complainant is non- residential unit. Admittedly the unit is non Industrial unit. Admittedly the R&D unit is not classified under any other specific category in tariff order approved by the M.E.R.C. The complainant agrees to pay Electricity charges as per approved tariff order as may be fixed time to time. The D.L. has not changed the category but it is corrected the classification of R&D unit in the category as per the tariff order as approved by the M.E.R.C. No illegality has been committed by the D.L. in issuing the supplementary Bill. The Complainant is duty bound pay the arrears of the bill. There is thereby no Merit in this complaint or grievance. The same should be therefore dismissed.

B. The Honorable High Court of Judicature at Bombay in Writ Petition No. 4296 of 2011 was pleased to direct this Forum to decide the application on its own merits as expeditious as possible and preferably within a period of three months from the date of the order that is 7.9.2011. This Forum has taken every efforts to decide the application as expeditiously as possible as per the directions of the Hon'ble High Court. This Forum has decided the application for interim relief on against which order the complainant has made representation. The delay in deciding the application is thereby caused. This Forum has there by applied specifically for Extension of time period to the Hon'ble High Court. The delay caused is for bonafide purpose and to afford adequate opportunities of hearing to the parties.

C. The complainant is found not entitled for any relief. The complaint should be therefore dismissed. However considering nature of dispute, this Forum is of the opinion that there should not be order regarding cost or compensation. With these reasons this Forum proceeds to pass following order.

O R D E R.

The Complaint Petition is hereby dismissed.

(V.S. Kabra)
Member

(Mohd. Qamaruddin)
Member/Secretary

(V.B. Mantri)
(Chairperson)

**ग्राहक गा-हाणे निवारण मंच
महाराष्ट्र राज्य विद्युत वितरण कंपनी मर्यादित
औरंगाबाद परिमंडळ, औरंगाबाद.**

जुने पावर हाऊस परिसर.डॉ.बाबासाहेब आंबेडकर रोड, मिल कॉर्नर, औरंगाबाद.- ४३१ ००१, दुरध्वनी व फॅक्स -०२४० -२३३६१७२.

Case No. CGRF/AZ/AUR/U /352/ 2011/ 32

Date:-

To,

1. The Executive Engineer (Adm.)
Nodal Office, O/O Superintending Engineer
O& M Urban Circle, M.S.E.D.C.L.
Aurangabad.
- 2 M/s Aayudh Tools,
Plot No.1E-70/15,MIDC, Waluj ,
Dist. Aurangabad.
(Consumer No. 490019043130)
- 3) GTL Limited,
Cannaught Place, CIDCO, Aurangabad.

Sub : Grievance in case No. CGRF/AZ/AUR/ U /352/ 2011/ 32

**Please find enclosed herewith a copy of order passed by the
Forum in the case mentioned above.**

The consumer, if not satisfied with the decision of the Forum , is at of liberty to make a representation to the Electricity Ombudsman, the contact details of whom is as under, within a period of 60 days from the date of this order.

Encl: A/A

Copy s.w.r.to:-
The Chief Engineer(AZ)
MSEDCL, Aurangabad.

Member/Secretary
CGRF(AZ) MSEDCL,
Aurangabad.

Contact Details of Electricity Ombudsman:
The Electricity Ombudsman
Plot No.12, Shrikrupa, Vijaynagar, Chhaoni,
Nagpur – 440 013
Phone No. (0712) 20 22 198
E-mail – cgrfnz@gmail.in

BEFORE THE CONSUMER GRIEVANCE REDRESSAL FORUM ,
AURANGABAD ZONE, AURANGABAD

Date of application 13.12.2011
Date of Decision: 13.12.2011

Wockhardt Limited,
R&D Centre at D-4,
MIDC, Chikalthana,
Aurangabad- 431 210
(Consumer No. 490019003555)
(Simple application, after deciding the case No. 352/2011/32)

Complainant.

V/s

1.The Executive Engineer,(Admn.)
Nodal Officer, (U) Circle, MSEDCL,
Aurangabad.

Respondents

2. GTL Limited,
(Distribution Franchisee, MSEDCL, Aurangabad)
having its branch office at Vitthalachidaya, 1st floor above
YZ Ford Car Show Room, Cannought Place, CIDCO,
Aurangabad – 431 003

Coram:

Shri V.B.Mantri	President
Shri V.S.Kabra	Member
Shri Mohd.Qamaruddin	Tech/ Member

ORDER

Heard the complainants representative considering nature of dispute and considering the fact that the complainant wants to prefer representation, this Forum two members is of the opinion that, the respondents should be restrained from disconnecting the power for want of disputed bill for the period of two weeks. We the Forum following two members, therefore pass following order.

ORDER

The respondents MSEDCL and GTL, are hereby restrained from disconnecting electricity to the unit of complainant for want of disputed supplementary bill, for the period of two weeks. Inform to the respondents.

Sd/-
(V.S. Kabra)
Member

Sd/-
(V.B. Mantri)
Chairperson

DISSENTING NOTE

The above order has been dictated in absence of undersigned Member/Secretary after main order in petition has been pronounced to all parties by three member bench in Forum hall and all respondents have left the Forum hall and dais has been vacate.

The undersigned Member/Secretary differ for this order and gives dissenting order as applicant petition deserve no reprieve all issue has been negatively decided against applicant petition.

In this case CGRF dismissed the interim application and also dismissed petition in original after complete hearing thereby question of relief does not arise. Hence I differ the above order passed by two members.

Sd/-
(Mohd. Qamaruddin)
Member/Secretary

ग्राहक गा-हाणे निवारण मंच
महाराष्ट्र राज्य विद्युत वितरण कंपनी मर्यादित
औरंगाबाद परिमंडळ, औरंगाबाद.

Old Power House Premises, Dr. Ambedkar Road, Aurangabad. Phone No .2336172

Simple application, after deciding the case No.352/201/32

Date :-

To,

- 1) The Executive Engineer (Administration)
Nodal Office, O/O Superintending Engineer (O & M)
M.S.E.D.C.L. O&M Circle,
Aurangabad.
- 2) G.T.L.Limited ,
Cannaught Place, CIDCO,
Aurangabad.
- 3) Wockhardt Limited,
D-4, MIDC, Chikalthana,
Aurangabad.

Sub:- Application for relief from disconnection.

Please find enclosed herewith a copy of order passed by the Forum in the case No..352/2011/32 after deciding & dismissing petition in original on receipt of simple application from representative of M/s Wockhardt Ltd., for want of relief from disconnection.

Encl: As above

Member/Secretary,
CGRF (AZ) MSEDCL,
Aurangabad

Copy submitted with respect to:-

The Chief Engineer (AZ)
MSEDCL, Aurangabad.

Contact details of The Electricity Ombudsman,
Plot No.12, Shrikrupa, Vijaynagar,
Chhaoni, Nagpur – 440 013
Phone No. (Office) (0712) 20 22 198
E-mail-cgrfnz@gmail.in

BEFORE THE HON'BLE ELECTRICITY OMBUDSMAN NAGPUR
CAMP AT AURANGABAD.

REPRESENTATION NO. 26/11

DATE OF HEARING : 24/02/2012

Appellant by Shri H.A.Kapadia with Shri Ajit Ketkar, Manager, Wockhardt, Chikalhana, Aurangabad.

Shri S.V. Bapat,
Superintending Engineer,
Corporate Office, Mumbai.

Respondent No. 1, (MSEDCL) by
Shri Waiker, Superintending Engineer,
Urban Circle, Aurangabad.

Shri A.B.Deshpande,
Executive Engineer(Adm.)
Nodal Office, MSEDCL, Aurangabad

Respondent No.2 (GTL) by Shri K.D.Borde, Legal Manager, Aurangabad.

Shri H.A. Kapadia submitted that the copy of reply dated 05.01.2012 filed by Respondent No.1 is not received by him. However on behalf of Respondent No.2 it is pointed out that the copy of the said reply was sent to the Appellant by Regd. Post A/D on 05.01.2012 itself.

The Respondent to verify from the postal authorities whether the reply sent by Reg. Post A/D is delivered to the addressee.

Respondent No.1 is called upon to produce the copies of the relevant Tariff Orders, because they are not the record of CGRF, Aurangabad.

In view of the above position the matter is adjourned for hearing. The date of hearing would be communicated to the parties after the same is fixed

Shri Borde for RespondentNo.2(GTL) has filed this pursis to the effect that the written statement filed by Respondent No.2, should be considered as its written argument.

(K.J.Rohee)
Ombudsman
Electricity Ombudsman, Nagpur
Camp at Aurangabad.

BEFORE THE HON'BLE ELECTRICITY OMBUDSMAN
NAGPUR
CAMP AT AURANGABAD.

REPRESENTATION NO. 26/2011

DATE OF HEARING : 26/04/2012

Appellant by Shri H.A.Kapadia , Aurangabad.

Respondent No. 1, (MSEDCL) by
Shri A.B.Deshpande,
Executive Engineer(Adm.)
Nodal Office, MSEDCL, Aurangabad

Shri A.B. Deshpande, Executive Engineer, has filed an application for adjournment . The Appellant has no objection.

Hence it is allowed and the matter is adjourned.

Next date of hearing will be communicated to the parties.

(K.J.Rohee)
Ombudsman
Electricity Ombudsman, Nagpur
Camp at Aurangabad.