Consumer Grievance Redressal Forum, Kalyan Zone

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No. **K/E/865/1059 of 2015-16**

Date of Grievance : 20/04/2015
Date of Decision : 06/01/2016
Total days : 262

IN THE MATTER OF THE GRIEVANCE NO. K/E/865/1059 of 2015-16 IN RESPECT OF M/S. HINDUSTAN COCA-COLA BEVERAGES PVT. LTD. S. NO.273, AT VILLAGE KONE, TAL. WADA- 401 312 DISTRICT-THANE REGISTERED WITH CONSUMER GRIEVANCE REDRESSAL FORUM KALYAN ZONE, KALYAN REGARDING REFUND OF EXCESS AMOUNT COLLECTED TOWARDS TARIFF DIFFERENCE .

M/s.Hindustan Coca-Cola Beverages Pvt. Ltd.,
S.No.273, at Village Kone,
Tal. Wada,
Dist-Thane-421 312 …. (Hereafter referred as Consumer)
(Consumer No. HT-010519023520)

Versus

Maharashtra State Electricity Distribution
Company Limited though its
Nodal Officer-Cum-Executive Engineer,
Vasai (E) Circle, MSEDCL,
Vasai (E). …. (Hereinafter referred as Licensee)

Appearance : For Consumer –Shri Abhay S. Joshi-& Shri Shailesh A. Kothe –
Officers of M/s Hindustan Coca-Cola.
For Licensee - Shri R.B.Vaman – Law Officer
- Shri Ramesh Shinde - Sr. Manager (F &A).

(Per Shri C.U.Patil – Executive Engineer-Cum-Chairperson)

1] Maharashtra Electricity Regulatory Commission, is, constituted u/s. 82 of Electricity Act 2003 (36/2003). Hereinafter for the sake of brevity referred as ‘MERC’. This Consumer Grievance Redressal Forum has been established as per the notification issued by MERC i.e.

"Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum Ombudsman) Regulation 2006" to redress the grievance of consumers vide powers conferred on it by Section 181 read with sub-section 5 to 7 of section 42 of the Electricity Act, (36/2003). Hereinafter it is referred as 'Regulation'. Further the regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission. Hereinafter referred as 'Supply Code' for the sake of brevity. Even, regulation has been made by MERC i.e. 'Maharashtra Electricity Regulatory Commission (Standards of Performance of Distribution Licensees, Period for Giving Supply and Determination of Compensation) Regulations, 2014.' Hereinafter referred 'SOP' for the sake of convenience (Electricity Supply Code and other conditions of supply) Regulations 2014'.

The consumer M/s. Hindustan Coca Cola Beverages Pvt. Ltd HCCBPL (hereinafter referred as HCCBPL) is HT consumer of MSEDCL with consumer No. 010519023520 located at 284/P, at Post Kudus, Bhiwandi-Wada road, Tal. Wada, Dist. Palghar and is engaged in the operation related to the Manufacture, Packaging, sale and distribution of Carbonated Water, Packaged drinking water and Fruit based drinks under various brands. The company received the assessed bill of amount Rs.4053564/- on account of change in tariff from industrial to commercial for the period August 2012 to June 2014.

The HCCBPL submitted the letter dated 17/8/2014 and 28/10/2014 to the Office of the Superintending Engineer, MSEDCL, Vasai Circle stating that the above referred connection which is charged at commercial rate is and has always been used for pumping of water for their main activity of industry of HCCBPL where there is another main

industrial HT connection and the water pump from this connection under dispute is used for preparation / manufacturing of Carbonated Beverages and packages drinking water.

The Circle Office conducted the hearing in the above referred matter on km apart and not situated within the same main industrial premises and also are 21/10/2014 in which the HCCBPL also contended that all NOC's from Forest, Irrigation and other department for lifting the water and laying the pipe lines are in place for the consumer No.010519023520. The consumer also contended MERC Orders like Tariff Order dated 16/8/2012 in Case No. 19 of 2012 and also pleaded that plant of water pumping station and plant of manufacturing are situated at about 10 not supplied power from the same point of supply.

The Licensee put up that water pumped is invariably the part of raw material of all manufacturing industries and private pumping station supplying water to these industries are charged as per HT – II all over Maharashtra where water pumps are not situated within the same industrial premises and are not supplied the power from the same single point of supply as per MERC Tariff Order and also viewed that the NOC's of various departments are not relevant in determination of the tariff. Hence lastly, the Circle Office vide letter 8070 dated 1/9/2014 confirmed their assessed bill as per HT-II tariff and requested the consumer to pay the same.

Aggrieved by the decision of Circle Office, consumer approached to CGRF by submitting his grievance in schedule "A" dated 20/4/15 regarding applicability of HT-I tariff as per MERC Tariff Order dated 16/8/2012 to the water pumping unit and Refund of excess amount collected by MSEDCL towards tariff difference by applying HT-II tariff.

The grievance application was registered in the Forum by allotting registration No. K/E/865/1059 dated 20/4/15. The hearing was scheduled on 6th May 2015 at 13:00 hours and the letter intimating the hearing date was sent to the Nodal Officer vide No.EE/CGRF/102 dated 27/4/15 along with the grievance and accompaniments. The copy of hearing letter was also sent to the consumer.

The consumer's prayer to condone the delay of 64 days in filing the present grievance is considered on the following ground:

The consumer is not properly guided in the order given by Circle Office vide letter 8070 dated 01/11/2014. He is not suggested to approach for any appropriate Competent Appellate Authorities with address for further process channel of his grievance.

Hence, the grievance is allowed for further process including its registration after considering the delay of condonation beyond 60 days.

The hearing was conducted on 6/5/15 and then later on 26/5/15, 6/7/15, 22/7/15, 14/8/15 and lastly on 9/9/15. The matter was adjourned to the above given dates considering the request by either HCCBPL or by MSEDCL Officials for submitting their contentions and for their arguments which are included in the order.

The Licensee submitted reply on the grievance of HCCBPL vide their letter No. 03734 dated 15/5/15. Their contentions are as below.

1] The MSEDCL submits that, the Grievance filed by the Complainant is false, baseless and without any cause of action and without following statutory provisions and hence liable to be rejected in view of R.6.7 & 6.9 of MERC & CGRF Regulation,2006.

2] The MSEDCL submits that the all statement, averment and contention raised in present Complaint are totally denied by MSEDCL unless it is specifically admitted herein below.

3] MSEDCL submits that, R.6.5 OF MERC CGRF & Ombudsman Regulation,2006 States that, "*Notwithstanding Regulation 6.4, a Grievance maybe entertained before the expiry of the period specified therein, if the consumer satisfies the Forum that prima facie the Distribution Licensee has threatened or is likely to remove or disconnect the electricity connection, and has or is likely to contravene any of the provisions of the Act or any rules and regulations made thereunder or any order of the Commission, provided that, the Forum or Electricity Ombudsman, as the case may be, has jurisdiction on such matters."*

In view of this to entertain complaint by CGRF under R.6.5 before expiry of 60 days period as stipulated U/R.6.4, the following two conditions must be satisfied - 1]There must be complaint filed before IGRC, 2] Dist. Licensee has threaten or likely to be disconnected electric supply in contravention of Electricity Act,2003 or Regulation made there under or any direction of MERC.

In present case no such complaint has been filed by Complainant before IGRC ,the letter dtd.17.08.2014 is reply to supplementary bill and asking personal hearing ,it is not in "X" Form and address to IGRC and MSEDCL did not illegally disconnected supply or threaten to disconnect electric supply in contravention of law or there are no contention as such raised by complainant. As such both above condition did not satisfied and hence this Forum could not entertain the present complaint as per R.6.5 of MERC CGRF Reulation,2006 and hence Complaint must have approach to IGRC for redressal of his

Grievance if any and accordingly be directed so and complaint may please be dismissed. Without prejudice to earlier submission even it cannot be presumed that letter dtd.17.08.2014 is intimation to IGRC because the Complainant is Multinational Companies and having expert staff and it is unacceptable to believe that they did not have knowledge of IGRC etc. Further even it is presumed that letter dtd.17.08.2014 is intimation to IGRC ,then appeal before this forum must have been filed with 60 days from that date. As such letter dtd.17.08.2014 cannot be termed as intimation to IGRC and presuming so the appeal is filed beyond period of 60 day and hence liable to be rejected.

4] Without prejudice to earlier submission in para No.3 above MSEDCL would like to submit that, the Complainant is MSEDCL HT consumer vide No.010519023520 for private Work/Pumping station at-Village-Kone, Tal-Wada, Dist- Thane. The MSEDCL Flying Squad in its spot inspection 25.03.2014 observed that the electric supply of Con. No. 010519023520 at-Village-Kone, Tal-Wada was used for private water Work/ pumping Station and water lifted was not used for agricultural purpose or industrial process in same premises through single point of supply and it was carried through pipeline to another premises at- Village Kadus, Tal-Wada, as such consumer should be categorized as HT-II B(Commercial) for tariff purpose , but it has been wrongly categorized as HT-I N(Industrial Non-Continuous) for tariff purpose. Copy of spot inspection report is enclosed by the Licensee. The water lifted through said electric connection was not used to industrial process in same premises through single point of supply and Industrial tariff did not applicable to consumer and hence as per MERC tariff order in Case No.19/2012 dtd.16.08.2012 and MSEDCL

Commercial Circular No.175 dtd.05.09.2012 the appropriate tariff applicable to such activities is HT-Commercial. Copy of relevant Extract of MERC Tariff order in Case No.19/2012 and Commercial Circular No.175 is enclosed by the Licensee. The MSEDCL changed the tariff of complainant as HT-II B and carried out under billing of tariff difference of HT-I N to HT II B for period of August 2012 to June 2014 of Rs.40,53,564/ and issued supplementary bill on dtd.02.08.2014. Copy of letter dtd.02.08.2014,Supplimentary Bill and Calculation Sheet is submitted by the Licensee. Vide letter dtd.17.08.2014, the complainant filed reply to said supplementary bill and requested for personal hearing and accordingly personal hearing was given to Complainant on 21.10.2014 and by letter dtd.01.11.2014 it was informed that MSEDCL ascertained / is sure about the correctness of the supplementary bill and requested him to pay the same. The complainant by letter dtd.29.01.2015 paid under protest said tariff difference bill of Rs.40,53,566.

5] MSEDCL further submits that, tariff changed and supplementary bill raised for tariff difference for period of August 2012 to July 2014 is legal, proper and past period was rightly and legally restricted as allowed u/s.56(2) of Electricity Act,2003.Hence the grievance of complaint is liable to be rejected.

In view of above para No.1 to 5, Licensee requested to reject the Grievance of HCCBPL.

The Vasai Circle Office of Licensee submitted their additional contentions vide letter No. 4586 Dated 19.06.2015

MSEDCL further submitted that in view of R.6.7 OF MERC CGRF & Ombudsman Regulation, 2006, *"The Forum shall not entertain*

a Grievance: (a) unless the consumer has complied with the procedure under Regulation 6.2 and has submitted his Grievance in the specified form, to the Forum."

The MSEDCL has framed manner and procedure for redressal of grievance in accordance with rule 6.2 of MERC CGRF & Ombudsman Regulation,2006 and prescribed 'X' form for submitting grievance to IGRC. The Bombay high court, Nagpur bench in WP No.2675 of 2014 MSEDCL Vs. CGRF, decision Dtd. 21.11.2014 has observed that it is mandatory and obligatory for the consumer to approach to the IGR Cell initially, i.e. Internal Grievance Redressal Cell. The copy of manner and procedure for redressal of grievance and copy of the Bombay high court, Nagpur bench in WP No.2675 of 2014 MSEDCL Vs. CGRF, decision Dtd. 21.11.2014 is enclosed by the Licensee for proving the same. In present case consumer has not complied with rule 6.2 and did not file grievance in 'X' form before IGRC, Vasai and hence his grievance is not tenable as per Rule 6.7 of MERC CGRF & Ombudsman Regulation,2006.

In view of above, the Licensee requested to reject the Grievance of complainant.

It is observed by the Forum that the consumer HCCBPL has already approached to the Circle Office and the Superintending Engineer of the Vasai Circle has conducted the hearing in the matter of grievance of the consumer and also given his opinion vide letter 8070 dated 1/11/2014. It is clear that the grievance of the consumer is heard by the Superintending Engineer of the Circle Office and the Superintending Engineer is the next Higher Authority to the Ex. Engineer – cum – Nodal Officer of the Circle Office. Considering this, the Forum fairly gave the

treatment to the above correspondence of Circle Office as being viewed / observed by the IGRC committee. Also all the members of the IGR Cell are working under the administrative control of the Superintending Engineer of which IGRC is the part and parcel. Hence the argument made by Licensee's Officer in this regard stating that the CGRF should not entertain the grievance as consumer has not approached first before IGRC cannot be upheld and hence the contentions of the Licensee regarding this particular point is not taken in to consideration. The consumer's prayer regarding delay of condonation is hereby allowed.

The Licensee submitted their reply vide letter no. 5322 dated 21/7/15. Their reply is as below.

MSEDCL submits that, MERC in tariff order dtd.20.06.2008 in case No.72 of 2008 ,first time created HT-II Commercial tariff ,to cater all non- industrial, commercial category consumer availing supply at HT Voltage and currently classified under HT-I Industrial. The MERC in case No.116 of 2008 order dtd.17.08.2009,in tariff philosophy made clear that, "It is clarified that the Commercial category actually refers to no-residential, non-industrial purpose, or which has not been classified under any other specific category." It further clarify that," Broadly, the categorization of Industry is applicable to such activities, which entail" manufacture'. The above view has been further upheld by MERC in order dtd.30.12.2009 in case No.11 of 2009 at para No.27 and 33.The MERC in tariff order dtd.16.08.2012 in case No.19 of 2012, has excluded the private water works from HT IV Public Water Work and Sewage treatment Plants and directed to apply them HT-II Commercial tariff.

The Electricity Ombudsman in its order dtd.30.05.2014 in Rep.No.96 of 2013,of M/s. Ultra Tech Cement Ltd. Vs. MSEDCL,

upheld the HT-II Commercial tariff for jetty of M/s. Ultra Tech Cement ltd which is 6.KM away from the factory and also upheld supplementary bill of past period. The present case is having similar fact with said case and hence said order is referred and relied on by MSEDCL in present case. In view of above as the present consumer was not engaged with any industrial process of manufacture at said premises and hence he is rightly categorized as HT-II Commercial for tariff purpose.

In view of above, the Licensee once again requested to reject the Grievance of complainant.

HCCBPL's submission dated 10/8/15 -

After examining all the above submissions of Licensee, i.e. correspondence vide letter dated 15/5/15, dated 19/6/15 and dated 21/7/15, the representative of HCCBPL submitted their contentions vide letter dated 10/8/15 as given below. The points mentioned by the consumer in his Schedule-A application dated 16/4/15 & his rejoinder dated 26/5/15 are included in details in his submission dated 10/8/15. Hence all his contents mentioned in the letter dated 10/8/15 are included in this order.

Facts of the case:

1] The Consumer is *inter alia* engaged in the business of and/or operations relating to the manufacture, packaging, sale and distribution of Carbonated Water, Packaged Drinking Water and Fruit based Drinks. One of the Consumer's manufacturing unit / plant in Maharashtra is situated at 284/P, Post Kudus, Bhiwandi Wada Road, Taluka Wada, District Palghar, Maharashtra – 421 312 (*"**the Manufacturing Unit**"*). The Consumer's Manufacturing Unit has been provided electricity under Connection No.010519023400 by MSEDCL (viz. Distribution Licensee) under HT-I Industry Category.

2] Water is the main/chief raw material used in all of the Consumer's products. In order to meet its requirement with regard to supply of water, the Consumer had set up a water pumping station at Vaitarna river, for the purpose of sourcing/procuring/ drawing water for its manufacturing unit (***"Water Pumping Station"***).

3] In or about 2001, the Consumer and MSEDCL entered into an Agreement dated 28th May 2001 under which MSEDCL agreed to supply to the Consumer and the Consumer agreed to take from MSEDCL, the electrical energy required by the Consumer for the purpose of its Water Pumping Station situated at S. No. 273, Village Kone, Taluka – Wada for the supply of water to the Consumer's Manufacturing Unit on the terms and conditions as more particularly set out therein. In pursuance of the said Agreement, MSEDCL provided/installed an independent electricity supply connection/meter bearing No.010519023520 at the Consumer's Water Pumping Station. Pertinently, the said Agreement categorically records that the electric supply to the Consumer's Water Pumping Station was for the purpose of a pumping station for supply of water to the Consumer's manufacturing unit / plant at Kudus. A copy of the said Agreement dated 28th May, 2001 is enclosed by the consumer. The Agreement records that the Tariff Schedule applicable to the said connection was HTP-II, which was Industrial Tariff.

4] Accordingly, MSEDCL started supplying electricity to the Consumer's Water Pumping Station at High Tension Voltage and charged the Consumer tariff in respect thereof under the HT-I: Industrial

category. This is reflected in the Bills issued by MSEDCL, few of which have been annexed as Annexure A to the Grievance. Therefore, it is clear that right from the very beginning, MSEDCL treated the Consumer's Water Pumping Station as a part of the Consumer's Manufacturing Unit and provided High Tension Voltage to the Consumer's Water Pumping Station under HT-I Industrial category as an industrial consumer in view of the fact that the Consumer's Water Pumping Station was exclusively used for supplying/drawing water for manufacturing of the Consumer's products at its Manufacturing Unit.

5] Prior to setting up the Water Pumping Station, the Consumer has taken all necessary permissions and approvals. Following are the approvals and permissions obtained by the Consumer in connection with its Water Pumping station:

a. Agreement executed between the Consumer and the Irrigation Department of the Government of Maharashtra, whereunder it is, *inter alia* provided that the Consumer is allowed to draw water for an industrial purpose only. The water which is drawn/pumped/sourced from the Consumer's Water Pumping Station was and is exclusively used for the Consumer's Manufacturing Unit. The Consumer's Water Pumping Station does not supply/provide water to any third party (whether on commercial basis or otherwise). In this regard, the copy of the Irrigation Agreement executed between the Consumer and the Government of Maharashtra is enclosed by the consumer.

b. The Consumer had established a water pipeline from the Consumer's Water Pumping Station to its Manufacturing Unit / plant, pursuant to various permissions granted by the Government

of Maharashtra. A copy of the plan showing the layout of the pipeline is enclosed by the consumer.

c. Various permissions have been granted by the various Ministries under the Government of Maharashtra and Government of India which also show that the Manufacturing Unit and the Water Pumping Station are connected and are owned by the Consumer which uses the water for the manufacture of soft drinks and Packaged Drinking Water and therefore come under the industrial category. The following permissions are:

   i. Permission from Ministry of Environment and Forest Department, Govt. of India for laying pipe line from the Pumping station to the Wada Plant obtained vide proceedings no. 88/021/2000-FCW/542 dated 25.2.2000.

   ii. Permission from Government of Maharashtra for laying pipeline from the Pumping station to the Wada Plant in Forest Land obtained vide proceedings no. FLD 1200/CR-12/F-10 dated 15.3.2000.

   iii. Permission from the Dy. Conservator of Forest, Jawahar for laying pipeline from the pumping station to the Wada plant in Forest Land obtained vide proceedings no. 2632/2000 dated 26.7.2000.

   iv. Permission from Public Works Department for laying pipeline from the Pumping Station to the Wada Plant obtained vide proceedings no. BRD 1099/124/Road-6

   v. Water bills for the 'Water Pumping Station' which also shows that the water supply is for ‘Industrial Purpose’.

vi. The 7/12 extracts issued in respect of the Water Pumping Station reflect that the land cannot be used for any purpose other than for an industrial purpose.

The various permissions / approvals, etc, obtained by the Consumer in this connection and as referred hereinabove, are annexed by the consumer with his submission.

6] From May 2001 till 2nd August 2014, MSEDCL treated the Consumer's Water Pumping Station under the Industrial Category. The Consumer has been regularly making payment of its electricity dues. Few of the Electricity Bills issued by MSEDCL prior to August, 2014 have been annexed by the consumer.

7] In or around March 2014, a flying squad of MSEDCL inspected the Consumer's Water Pumping Station and conducted an inspection of the said Water Pumping Station. It appears that thereafter, the flying squad had submitted its internal Report dated 25th March 2014 to MSEDCL *inter alia* recommending the Levy of electricity charges on the said Water Pumping Station under the "Commercial Category" in place of the "Industrial Category". MSEDCL has not provided the Consumer with a copy of this Report, despite a written request.

8] After about 5 months from the inspection (and Report), MSEDCL suddenly issued a demand notice to the Consumer on 2nd August 2014, *inter alia* recording that the electricity supplied to the Consumer's Water Pumping Station was used for the purpose of '*Private water works/Pumping station*'; that in view of the MERC Tariff Order dated 16th August 2012 and MSEDCL Commercial Circular No.175 dated 5th September 2012, commercial tariff was to be applied

for private water works/pumping station; and that therefore, the Consumer would be charged as per HT-II B tariff (Commercial non continuous tariff). Vide the said Demand Notice, MSEDCL also forwarded to the Consumer a supplemental bill for the tariff difference from August 2012 to June 2014 in a sum of Rs. 40,53,564.03 and called upon the Consumer to make payment of the said sum within 15 days of the Demand Notice. The Demand Notice has been annexed.

9] In response to the Demand Notice issued by MSEDCL, the Consumer addressed a letter dated 17th August 2014 to MSEDCL *inter alia* recording its objection to such unilateral revision and the consequent increase in tariff by MSEDCL. The said letter further recorded that the Consumer's Water Pumping Station was used exclusively for drawing/pumping of water for the Consumer's main business activity i.e. preparation/manufacture of carbonated and non-carbonated, non alcoholic beverages and packaged drinking water; and was therefore, used exclusively for an industrial purpose. The Consumer further recorded that the Consumer's Water Pumping Station, right from the time it was set-up, was supplied electricity charged on an industrial tariff. The Consumer submitted that there has been no change in the nature of activity, which has always been recognized as an Industrial activity and charged on that basis, and as such, there was no basis or requirement or justification for change of tariff from industrial to commercial. The Consumer further submitted that since the electric connection to its pumping station was for industrial purpose only and not for commercial purpose, MSEDCL should charge the Consumer as per its HT-I (non continuous) rates and not as per HT-II (B) rates. The Consumer further

submitted that its activity also fall in the nature of activities entitled to Industrial Tariff as per the MERC's Tariff Order dated 16th August 2012. The Consumer requested for a personal hearing and placed on record that it would be making payment of the bill (calculated on the basis of the revised tariff) for the month of July 2014 under protest and without prejudice to its rights and contentions and only with a view to avoid any coercive action.

10] MSEDCL, thereafter, vide its undated letter addressed to the Consumer called upon the Consumer to attend a personal hearing on 21st October 2014. At the said hearing, the Consumer's representative *inter alia* reiterated the contentions as set out in Consumer's Letter dated 17th August 2014.

11] The Consumer addressed another letter to MSEDCL on 28th October 2014 *inter alia* requesting MSEDCL to consider changing the tariff for its Water Pumping Station to Industrial category. The Consumer also reiterated the fact that the Consumer's Water Pumping Station was owned by the Consumer and the pipeline connected to the Consumer's manufacturing unit / plant at Wada, which uses the water for the preparation/manufacture of carbonated and non-carbonated, non alcoholic beverages and packaged drinking water, fall under the Industrial category. The Consumer also sought copies of various documents relied upon by MSEDCL.

12] Thereafter, MSEDCL addressed a letter dated 1st November 2014 to the Consumer, *inter alia* rejecting the Consumer's contention that tariff applicable to its Water Pumping Station fell under HT-I category. MSEDCL, vide the said letter, further informed the Consumer

that pursuant to MERC's revision of tariff vide Order dated 16th August 2012 in Case No. 19 of 2012, the Consumer's activity in respect of the Water Pumping Station did not fall under the HT-I category. It was alleged in the said letter the Consumer's Water Pumping Station and the Manufacturing Unit were situated about 10 kilometers apart and were not situated within the same industrial premises and were not supplied power from the same point of supply. The letter further alleged that water was invariably part of raw material of all manufacturing industries and that private pumping stations supplying water to these industries were being charged as per the HT-II all over Maharashtra, wherever such water pumps were not situated within the same industrial premises and were not supplied power from the same point of supply. The said letter further recorded that the NOCs given by various government departments were not relevant for determination of the tariff with respect to electricity bills. The said letter dated 1st November 2014 was received by the Consumer vide an email dated 11th December 2014 addressed by the Superintending Engineer, Vasai Circle of MSEDCL to the Consumer.

13] Pursuant to the letter dated 1.11.2014 (received by the Consumer only on 11th December, 2014), without prejudice to the rights and contentions and with a view to ensuring that no inconvenience is caused in the operation of the water pumping station / Industrial Unit, the Consumer vide letter 29.1.2015 paid the amount of Rs. 40,53,564/- for the supplementary bill for the period August 2012 to July 2014 as well an amount of Rs. 6,71,546/- for the month of December, 2014 under protest. It was also mentioned that the Consumer has made

payments of all bills raised from July 2014 at the revised tariff rate only under protest and without prejudice to the rights and contentions.

Submissions made by the Consumer:

The Consumer repeats and reiterates all the grounds taken in the Grievance submitted before the CGRF.

a] At the time of providing electricity supply to the Consumer's Water Pumping station, MSEDCL was aware that:

b] The water Pumping Station and the Manufacturing Unit were both owned and controlled by the Consumer.

c] The Consumer had established a water pipeline from the Consumer's Water Pumping station to its Manufacturing Station to its Manufacturing Unit, pursuant to various permissions granted by various departments of the Government of Maharashtra.

d] The water sourced from the Consumer's Water Pumping station was used exclusively in its Manufacturing Unit for preparation / manufacture of carbonated and non-carbonated, non-alcoholic beverage\s and packaged drinking, which activity was clearly falling under the Industrial category.

e] The Consumer's Manufacturing Unit did not fall within the MIDC Area and therefore, the Consumer had to procure water independently. The only source of water for the Consumer's Manufacturing Unit was the consumer's Water Pumping station at Vaitarna; without such supply of water, the consumer could not operate its Manufacturing Unit.

The Consumer has been charged electricity under the category of HT-I-HT-Industry right from 2001 until July, 2014 under all previous tariff orders passed by the Maharashtra Electricity Regulatory Commission (hereinafter referred to as "MERC"). MSEDCL continued charging electricity to the Consumer under the HTI-HT-Industry even after the MERC Tariff Order dated 16th August, 2012 came into effect. This is evident from the Bills issued by the MSEDCL, some of which have been annexed to the Grievance.

The Applicability Clause, as set out in HTI: HT-Industry of MERC Tariff Order dated 16th August, 2012 continues to apply to the said 'water pumping station', in the same manner as before. Each such part of the Applicability Clause is separately indicated below by giving the breakup of the said Applicability Clause and explaining its application.

d. The first part of the Applicability Clause is set out as under:

> **1st part** (i) *'this category includes consumers taking 3 phase electricity supply at high voltage for industrial purpose'.*

This part of the Applicability Clause would apply independently to consumers who take supply for 'Industrial Purpose'. There is no change in this part of the Applicability Clause, which continues to apply to the said 'Water Pumping Station', there being no change in the factual position.

e. In addition to the first part, the Applicability Clause is further extended for consumers falling in the various categories covered by these extended clauses (such as administrative offices, lifts, fire fighting pumps), subject to the conditions specified in respect

thereof i.e. the same are situated within the same industrial premises and are supplied power from the same point of supply.

1. This extended part of the Applicability Clause would be relevant only if the first part of the Applicability Clause for 'Industrial Purpose' is not independently applicable. This extended part of the Applicability Clause is intended to extend the benefit to supply of electricity even to administrative office, etc., which would not have fallen in the first part of the applicability clause, being not for 'industrial purpose', yet the benefit of industrial tariff rate was extended for such activities. These conditions regarding location and point of supply were put only in respect of the supply which falls in this extended category and not those consumers who fall within the first part of the applicability clause relating to 'Industrial Purpose'.

2. When electricity supply was for 'Industrial purpose', like in the present case, where the entire water supply is solely and exclusively for 'industrial purpose', only the first part of the applicability clause would apply as before and the extended applicability clause in (ii) above is not required to be resorted to. As such, though the extended part of the applicability clause in (ii) above though not relevant also refers to 'water pumps', these pumps are such as are not for 'industrial purpose' and as such would not fall under the first part of the applicability clause. Benefit in respect of such 'water pumps' would be extended under the

extended part (ii) only if the conditions set out in this extended part of the applicability clause regarding situation and point of supply are satisfied.

3. It may also be reiterated that the applicability clause of HTII: HT-commercial would only apply if the applicability clause of HTI: HT-Industry is not applicable. This is so as the applicability clause of HTII (A): Express Feeders, specifically refers to 'non industrial premises'. As such, if the supply is for 'industrial purpose', it would fall under HTI:HT-Industry and not under HTII:HT-commercial .

4. It is significant that even in the letter /order of the Superintending Engineer Vasai Circle dated 1st November, 2014 referred to above it is clearly admitted in paragraph 1 that the activity in respect of the aforesaid HT connection fell under the HTI:HT-Industry category 'prior to the above order (dated 16th August, 2012). As such, it is **admitted** that for the purpose of the MERC's tariff orders for the **earlier years** the said supply was undisputably considered as **'for Industrial purpose'**. Since the same 'Industrial purpose' continues and there is no change in facts even after the tariff order of 2012, the 1st part of the applicability clause of MERC Tariff order dated 16th August, 2012 would continue to apply.

5. As such, the short issue for consideration of this Hon'ble Forum is to interpret and hold that since there is no change either in respect of the facts or the scope of the said 1st part of the said Applicability Clause, the tariff rate under HTI:HT-Industry would continue to apply, even after the MERC's Tariff Order dated 16th August, 2012.

MSEDCL's Case:

The contentions raised by MSEDCL, in its Reply dated 15th May, and Additional Reply dated 22nd June, 2015, have been summarized as follows:

1. The Grievance filed by the Consumer is liable to be rejected in view of the Regulations 6.7 and 6.9 of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 ("**Regulations**") since there has been no formal complaint / grievance made before the Internal Grievance Cell ("**IGR Cell**").

2. The procedure for submission of a grievance before the CGRF, as prescribed under the Regulations is mandatory in nature and the Consumer is obligated to follow the procedure. MSEDCL has relied upon a judgment of the Hon'ble Bombay High Court in W. P. No. 2675 of 2014 passed in the case of MSEDCL vs. CGRF. The present Grievance ought to be rejected in view of the failure on the part of the Consumer to comply with the Regulations.

3. The electricity supplied to the Consumer's water pumping station ought to be charged as per the HT-II commercial Tariff in view of the

clarification contained in the Applicability Clause., since the pumping of water cannot be stated to be an industrial purpose.

Arguments of the Consumer in Rejoinder:

1. The letter dated 17th August, 2014 addressed by the Consumer to the Superintending Engineer Vasai Circle, meets all the requirements of a grievance submitted before the Internal Grievance Redressal Cell ("**IGRC**") and hence, the Consumer is justified in treating the letter dated 1st November, 2014 passed by the Superintending Engineer Vasai Circle, as an order passed by the IGRC. If at all, the superintending Engineer, Vasai circle is of a higher designation than the IGRC. However, the said Order cannot be said to be bad on this ground alone. Hence, the Consumer is justified in making the present Representation before this Hon'ble Forum to seek appropriate relief.

2. In any event, the Regulation uses the word '*may*' which means that the same is not mandatory in nature and it is the Consumer's discretion to the approach the IGRC or not.

3. For these reasons, MSEDCL's contention that the Consumer has not complied with the provisions of the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 ("**Regulations**"), is bad and untenable.

Additional submissions made by MSEDCL:

The contentions raised by MSEDCL, in its additional reply dated 21/7/15

have been summarized as follows:

1] HT-II Commercial tariff category was introduced by the MERC, vide its tariff orders dated 20/6/2008 and 17/8/2009. MSEDCL relies on the said orders to contend that the Water Pumping Station fell within the ambit of HT II Commercial category and not industrial.

2] MERC, vide its order dated 16/8/2012 passed in Case No. 19 of 2012 has excluded private water works from HT IV Public Water Work and Sewage treatment Plants and directed HT II Commercial tariff to be applicable to them.

3] In the case of M/s. Ultra Tech Cement Ltd. Vs. MSEDCL (Rep. No. 96 of 2013), the Ombudsman upheld levy of HT II commercial tariff for a jetty situated 6 kms away from the factory.

The Consumer's response to the Additional submissions:

1] The contention of MSEDCL that the Water Pumping Station falls within the ambit of Commercial tariff category, based purportedly on MERC's Tariff Orders dated 20/6/2008 and 17/8/2009, is wholly misconceived and hereby denied. It is evident that even according to MSEDCL, the said Tariff Orders were not intended to apply to HCCBPL's Water Pumping Station. This is clear from the fact that HCCBPL was continued to be charged electricity under the HT I Industrial tariff category even after passing of the said Tariff Orders dated 20/6/2008 and 17/8/2009. The Tariff order dated 17/8/2009 clarified that commercial

category did not include industrial purpose; that HT I category applied to the manufacturing activity which was carried on by the consumer and that base was accepted by MSEDCL by continuing to charge MSEDCL at HT I Industry category tariff. It is also reiterated that the land on which the water pumping station has been set up is owned by the consumer and is permitted to be used only for an industrial purpose, as per the 7/12 extracts. Thus MSEDCL's contention purportedly based on the said Tariff Orders that the consumer's water pumping station falls within the commercial tariff category, is entirely baseless and clearly an afterthought and deserves to be rejected.

2] MSEDCL's contention that MERC ,in its tariff order dated 16th August 2012, has excluded private water works from HT IV Public Works and Sewage treatment Plants and directed to apply HT II commercial tariff to them, is erroneous and misconceived. The consumer repeats and reiterates its submission that the electricity supplied to its water pumping station is used for an industrial purpose and hence, the water pumping station continues to fall within the scope of the first part of the applicability Clause, under HT I Industry category tariff , in the MERC Tariff Order dated 16/8/2012. There is, therefore, no question of the water pumping station falling either within the scope of HT IV Public Works and Sewage Treatment Plant or with the exception thereunder.

3] It is submitted that the order dated 30/5/2014 passed by the Ombudsman in the case of Ultra Tech Cement Ltd. (**Ultra Tech"),** has no application to the present dispute. It is respectfully submitted that the facts of the Ultra Tech cases are very different from the facts of the present case. In the Ultra Tech case, the electricity was used to unload clinker at a jetty leased by Ultra Tech, which was apparently transported

to it's factory. Therefore, the whole activity involved two steps: first, unloading of clinker and second of transportation of the clinker so unloaded to Ultra Tech's factory. As opposed to this, in present case, admittedly, there is a single continuous pipeline connecting the water pump to the consumer's Manufacturing Unit and that the water pumped at the water pumping station directly reaches the consumer's manufacturing unit. Therefore, the order dated 30th May, 2014 passed by the Hon'ble Ombudsman in the Ultra Tech case, has no application to the present case.

Limitation:

The Consumer states that MSEDCL's Order is dated 1st November, 2014 and was received by the Consumer vide an email dated 11th December, 2014. The Consumer has, till date, not received a hard copy of the said Order of the Distribution Licensee. In view thereof, the cause of action to file the present Grievance has arisen only on 11th December, 2014 i.e. the date of receipt of the Order of the Distribution Licensee. It is submitted that the Consumer was required to file this present Grievance within 60 days from date of the decision of the Distribution Licensee i.e. 9th February, 2015. In such circumstances, there has been a delay of about 64 days (till 15th April, 2015) in filing the present Grievance. The Consumer thereafter sought legal advise for challenging the decision of MSEDCL, before being able to ascertain that the Consumer would be required to file its Grievance before this Hon'ble Forum.

In these circumstances, the Consumer prayed that the Grievance filed may be allowed and the reliefs sought thereunder, may be granted in favour of the Consumer.

MSEDCL's reply dated 13/8/15 -

The Licensee submitted their reply vide letter SE / VC /CGRF / 05987 dated 13.08.2015 on the written submission dtd.10.08.2015 of Consumer M/s. Hindustan Coca- Cola Beverage Pvt.Ltd/ (hereinafter referred as Complainant) as below:-

MSEDCL submits that, MSEDCL is not agreeing with the all submission, contention of submission dtd.10.8.2015 except those admitted in its earlier reply and admitted herein below. The water lifted through said electric connection was not used to industrial process in same premises through single point of supply further MERC has excluded the private water works from HT IV Public Water Work and Sewage treatment Plants and directed to apply them HT-II Commercial tariff and hence Industrial tariff was not applicable to it and hence as per MERC tariff order in Case No.19/2012 dtd.16.08.2012 and MSEDCL Commercial Circular No.175 dtd.05.09.2012 the appropriate tariff applicable to such activities is HT-Commercial.

MERC in tariff order dtd.20.06.2008 in case No.72 of 2008, first time created HT-II Commercial tariff ,to cater all non-industrial, commercial category consumer availing supply at HT Voltage and currently classified under HT-I Industrial. The MERC in case No.116 of 2008 order dtd.17.08.2009,in tariff philosophy made clear that, "It is clarified that the Commercial category actually refers to no-residential, non-industrial purpose, or which has not been classified under any other specific category." It further clarify that," Broadly, the categorization of

Industry is applicable to such activities, which entail "manufacture' and categorization of consumer for tax purpose or other purposes by other Govt. bodies has no bearing while determining the tariff under Electricity Act,2003. The above view has been further upheld by MERC in order dtd.30.12.2009 in case No.11 of 2009 at para No.27 and 33.The MERC in tariff order dtd.16.08.2012 in case No.19 of 2012, has excluded the private water works from HT IV Public Water Work and Sewage treatment Plants and directed to apply them HT-II Commercial tariff.

The CGRF ,Kokan in decision dtd.31.07.2013 in Case No.25 of 2013 and Electricity Ombudsman in its order dtd.30.05.2014 in Rep.No.96 of 2013,of M/s.Ultra Tech Cement Ltd.Vs.MSEDCL, upheld the HT-II Commercial tariff for jetty of M/s.Ultra Tech Cement ltd which is 6-10.KM away from the factory premises and used for unloading clinker which is used as raw material for production of cement at factory premises and does having single point of supply and also upheld supplementary bill of past period. The present case is having similar fact with said case and hence said order is referred and relied on by MSEDCL in present case.

That the MERC in tariff philosophy of tariff order dtd.26.06.2015 in case No.121 of 2014 categorized stated that,"***The Commission has earlier ruled in its order in case No.19 of 2012 , that such activity(water works or water supply scheme for self consumption by industrial complexes/premises of individual private indistries) may have commercial motives if it is not completely under the ownership, operation and maintenance of Govt.body or local authority.***" In the background of this commission is of view that water supply exclusively for industrial purpose should not be covered under the commercial

category. Therefore, ***the commission has decided that water works or water supply schemes for self consumption by industrial complexs/premises of individual private industries shall be included in the industrial tariff category from this tariff order which is effective from 01.06.2015***. The MSEDCL accordingly now categorized the complainant as HT-I from July 2015 and issued energy bill accordingly.

From the above tariff order of MERC it is clear that water works or water supply scheme for self consumption by industrial complexes/premises of individual private industries was earlier categorized as HT-II Commercial category as per tariff order in case No.19/2012.As such the supplementary bill issued and categorization of complainant as HT-II commercial during period of said tariff order is legal and proper.

HCCBPL's submission dated 24/8/15

The Consumer has filed his additional reply dated 24/8/15 to deal with the contentions raised by MSEDCL in its additional Reply dated 13th August, 2015.

1] HT-II Commercial tariff category was introduced by the MERC, vide its Tariff Orders dated 20th June, 2008 and 17th August, 2009. MSEDCL relies on the said Tariff Orders to contend that the Water Pumping Station fell within the ambit of HT II Commercial category and not Industrial.

2] MERC, vide its order dated 16th August, 2012 passed in Case No. 19 of 2012, has excluded private water works from HT IV

Public Water Work and Sewage treatment Plants and directed HT II Commercial tariff to be applicable to them.

3] In the case of M/s. Ultra Tech Cement Ltd. vs. MSEDCL (Rep. No. 96 of 2013), the CGRF upheld levy of HT II commercial tariff for a jetty situated 6 kms away from the factory.

4] The Tariff Order dated 26th June, 2015 in Case No. 121 of 2014 clarifies that water works or water supply schemes for self-consumption by industrial complexes/premises of individual private industries shall be included in industrial tariff. Therefore, this implies that prior to this Tariff Order, such water works or water supply schemes were included in the Commercial category and not Industrial.

THE CONSUMER'S RESPONSE TO THE ADDITIONAL SUBMISSIONS

1] At the outset, the Consumer submits that the contentions raised by MSEDCL in its Additional Reply dated 13th August, 2015, are a mere repetition of what has already been contained in MSEDCL's Reply dated 21st July, 2015. The Consumer has already dealt with the said contentions in its Written Submissions dated 10th August, 2015. The Consumer therefore repeats and reiterates what has been stated by the Consumer in the said Written Submissions dated 10th August, 2015.

2] The Consumer repeats and reiterates that the contention of MSEDCL that the Water Pumping Station falls within the ambit of Commercial tariff category, based purportedly on MERC's Tariff Orders dated 20th June, 2008 and 17th August, 2009, is wholly misconceived and hereby denied. It is evident that even according to MSEDCL, the said Tariff Orders were not intended to apply to the Consumer's Water

Pumping Station. This is clear from the fact that the Consumer was continued to be charged electricity under the HT I Industrial tariff category even after passing of the said Tariff Orders dated 20th June, 2008 and 17th August, 2009. It is further submitted that the fact that the Consumer's water pumping station fell within the HT I Industrial category is clear from the Tariff Order dated 17th August, 2009. The Tariff Order dated 17th August, 2009 clarified that commercial category did not include industrial purpose; that HT I Industrial category applied to manufacturing activity, which is what was carried on by the Consumer; and that this was accepted by MSEDCL by continuing to charge MSEDCL at HT I Industry category tariff. It is also reiterated that the land on which the water pumping station has been set up is owned by the Consumer and is permitted to be used only for an industrial purpose, as per the 7/12 extracts. Thus, MSEDCL's contention purportedly based on the said Tariff Orders that the Consumer's water pumping station falls within the commercial tariff category, is entirely baseless and clearly an afterthought, and deserves to be rejected.

3] The Consumer further repeats and reiterates that MSEDCL's contention that MERC, in its Tariff Order dated 16th August, 2012, has excluded private water works from HT IV Public works and \Sewage treatment Plants and directed to apply HT II Commercial tariff to them, is erroneous and misconceived. The Consumer repeats and reiterates its submission that the electricity supplied to its Water Pumping Station is used for an industrial purpose and hence, the water pumping station continues to fall within the scope of the first part of the Applicability Clause, under HT I Industry category tariff, in the MERC Tariff Order dated 16th August, 2012.

There is, therefore, no question of the water pumping Station falling either within the scope of HT IV Public Works and Sewage Treatment Plants or within the exception thereunder.

4] The Consumer further submits that the Orders dated 31st July, 2013 and 30th May, 2014 passed by the CGRF and the Ombudsman, respectively, in the case of Ultra Tech Cement Ltd. ("**Ultra Tech**"), have no application to the facts of the present case. The Consumer repeats and reiterates that the facts of the Ultra Tech case are very different from the facts of the present case. In the Ultra Tech case, the electricity was used to unload clinker at a jetty leased by Ultra Tech, which was apparently transported to its factory. Therefore, the whole activity involved two steps: first, unloading of clinker and second, of transportation of the clinker so unloaded to Ultra Tech's factory. As opposed to this, in present case, admittedly, there is a single continuous pipeline connecting the water pump to the Consumer's Manufacturing Unit and that the water pumped at the water pumping station, directly reaches the Consumer's Manufacturing Unit. The said activity carried out by the Consumer's Water pumping Station cannot be said to be anything but industrial in nature.

Therefore, the consumer prayed that the Orders dated 31st July, 2013 and 30th May, 2014 passed by CGRF and the Ombudsman in the Ultra Tech case, have no application to the present case.

5] The Consumer submits that MSEDCL's contention that it is only pursuant to the clarification issued vide the Tariff Order dated 26th June, 2015, that water works/water supply Schemes for self-consumption by industrial complexes/premises of individual private

industries, were to be included in industrial tariff; and that prior to such clarification, the same were included in commercial category, is false and erroneous. The very fact that a "clarification" has been issued, itself suggests that, that is what was intended by MERC from the very beginning when the Tariff Order dated 16th August, 2012 was issued by MERC, which position has been merely clarified by MERC vide its Tariff Order dated 26th June, 2015. The Consumer submits that the reasoning given by the MERC for issuing the clarification, makes it evident that the water works/water supply scheme for self consumption of private industries, would be covered under industrial tariff only, if the same were owned and managed by such private industry.

In these circumstances aforesaid, the Consumer prayed that the Grievance filed may be allowed and the reliefs sought thereunder, may be granted in favour of the Consumer.

Forum's observation -

The Forum considered all the above contentions made by consumer and Licensee. Also the arguments made by both the parties at length are heard by the Forum.

The Forum carefully read all the MERC Tariff Orders, i.e. order dated 20/6/2008 in case No 72/2008, order dated 16/8/2012 in case No 19/2012 and order dated 26/6/2015 in case No 121/2014.

The consumer's submission that the order of Hon'ble Ombudsman Mumbai, dated 30/5/2014 in Representation No.96/2013 (in case of M/s. Ultra Tech Cement Ltd) should not be applied to the facts of the present case. His contention that the single continuous pipe line is connected in between the main industry and water pumping station

and there is no unloading of water like clinker at a Jetty where it is collected, transported through trucks and unloaded again at main unit of Ultra Tech's factory. However, the contention of the consumer as above is not accepted to the Forum.

In the above case of Ultra Tech, the separate electric connection was availed at Jetty because the factory premises and the Jetty premises are not adjacent to each other. The Factory premises are owned by M/s. Ultra Tech whereas the Jetty premises are held on lease. The activity being carried out at Jetty is a part and parcel of the activity which is being carried at Ultra Tech Unit. Both plants together constitutes a cement factory. The appellant (M/s. Ultra Tech) contended in the case that they do not carry trading business in clinker, hence the activity at Jetty has no independent existence.

Inspite of above contentions, the Hon'ble Ombudsman allowed the recovery of difference of amount between commercial and industrial tariff vide order dated 30/5/15 referred as above.

In the present case also, both the connections are located apart from each other and both plants, i.e. water pumping station and Manufacturing unit constitutes together HCCBPL.

Also , it is observed by the Forum that in both cases, the nature and properties of both the raw materials is different and hence the handling operation including its collection from the resource station and its transportation–cum- unloading at main unit is completed by appropriate different methods / technology. These different methods will not affect in the applicability of the tariff and it will be the same, i.e. commercial tariff for clinker operation where it is transported through trucks from the main resource station to the main industrial unit, and for water pumping

operation also where it is transported / delivered through the continuous pipe line to the main industrial unit.

Hence, the contention of the consumer to give the treatment of "Continuous Process" to the lifting operation of water at Pumping Station located at near about 10 kms away from the main industrial unit and delivery of the same water through the single connected pipe line up to main industrial unit is also not justified. It cannot be treated as a single activity as it is performed at different locations / units, which are connected with power supply by two different connections. Hence, the observation of Hon'ble Electricity Ombudsman made by him in the case No. 96/2013 mentioned above, i.e. applying commercial tariff to the Jetty connection located away from the main unit cannot be neglected and will have to refer for the similar cases in which the tariff is to be applied by the Licensee for the connections involved in collecting / lifting of the raw material / s for further delivery of such raw material / s up to their main industrial units.

Also, in this case, it is observed by the Forum that after inspection of consumer's water pumping station on 25/3/14, the Licensee has served the supplementary bill on account of tariff different from August 2012 to June 2014 of amount Rs.4053564/- by enclosing the letter SE/VC/HTB /6020 dated 2/8/2014. It was also asked to the consumer to pay this amount within 15 days. In this regard, the consumer vide his letter dtd 17/8/14 made plea that the change of tariff is unilateral and without notice to it. We have also observed that after the date of inspection, i.e. 25/3/14, after about five months Licensee suddenly issued a demand notice to the consumer on August 2014.

In this regard the Licensee's contention vide their

submission dated 15/5/15 that supplementary bill raised for tariff difference for the period of August 2012 to July 2014 is legal, proper and past period was rightly and legally restricted as allowed u/s 56 (2) of Electricity Act 2003, is also reflected in the above mentioned similar case of M/s. Ultra Tech Cement Ltd.

In the case of M/s. Ultra Tech, the observations of Hon'ble EO, (Mumbai) in its order dated 30/5/14 mentioned at Sr No 18,19 and 20 are reproduced as below.

> " 18 - In the case of Review Petition No.146 / 2010, in writ petition No.6783, decided on 24th March, 2011, the Honourable High Court of Judicature of Bombay considered the ratio of Judgment passed by the division bench in Awdesh Pandey V/s. Tata Power Co. Ltd. & Ors as well as M/s. Rototex Polyester & Anr V/s. Administrator, Administration of Dadra & Nagar Haveli (U.T) and held as under:
>
> *"5. It is to be noted that the amount of arrears beyond two years is recoverable as per the provisions of law and it cannot be restrict4ed for two years. Therefore, the view taken in Rototex about the recovery of arrears cannot be said as conflicting view with the view taken in Awadesh Pandey wherein the scope of notice under Section 56 (1) of the Act is comprehensively dealt with. In Rototex Division Bench has not ref erred case of Awadesh Pandey though it was decided earlier to Rototex and is also the reported judgment of the Division Bench of this Court. Therefore, the view taken by this Court while deciding the matter in hand is the best possible view based on the ratio laid down in Awadesh Pandey.*

19 – There is a conflict of opinion between the judgments of two Division Benches of High Court of Bombay regarding interpretation of Section 56 (2) of the Act and matter is referred to a Larger Bench in the matter of MSEDCL versus Electricity ombudsman reported in 2012 (11) AIC 822 (Bom) and reference is pending.

20 - Considering various judgments of Bombay High Court, it has been held by this Electricity Ombudsman in several Representations, that past arrears for a period of more than two (2) years, proceeding the date of demand / supplementary bill, are not recoverable, in terms of Section 56 (2) of the Electricity Act, 2003. I reiterate the same view. The

Respondent, therefore, cannot recover past arrears from 2008. The Respondent is entitled to recover the difference amount between commercial tariff and industrial tariff for a period of two years i.e. from August, 2010 to July 2012, in terms of the provision of Section 56 (2) of the Electricity Act, 2003. The respondent is, therefore, directed to revise the demand for the difference amount between commercial tariff and Industrial tariff for a period of two years i.e. August 2010 to July 2012. Amount of Rs.6705140/- already deposited by the Appellant with the Respondent should be adjusted while revising the bill.

However, in addition to the opinion expressed by the Hon'ble Ombudsman in its order dated 30/5/14 about the applicability of section 56 (2), this Forum is of the opinion that the section 56 (2) is regarding the issue related to ' Disconnection of supply in default of payment '. Section 56 (1) clarifies about the procedure of giving not less than 15 clear days notice in writing to the defaulters and section 56 (2) when read with 56 (1) clarifies that by giving such notice, the amount recoverable for the period of two years can be dealt for disconnection of supply.

It is clear that the section 56 is not clarifying anywhere about the limitations of the period of any kind of assessment which remained uncharged/unrecovered from any consumer/s.

On the above grounds the consumer's plea to refund the amount of difference of electricity charges recovered under HT-II – commercial instead of HT-I- Industrial Tariff cannot be accepted / upheld.

The Forum had also taken into account the MSEDCL's submission made by them on the topic regarding tariff to be applied for water supply to industrial premises. The Clause 6.36 at Page No 257 (out

of 381) included in the tariff order (Case No 121/2014 – Tariff Order dated 26/6/15) is viewed for MSEDCL's submission on the above topic.

In this regard the MSEDCL's submission (6.36.1) and Commission's Ruling (6.36.2) are reproduced below:

6.36.1 – MSEDCL's submission –

> It has been suggested that the water works/supply in small private industrial complexes or premises may be billed as per the PWW Category, as in case of water works in Maharashtra Industries Development Corporation (MIDC) Areas. In response, MSEDCL has submitted that water works or water supply schemes owned by private industrial complexes or premises which are being used for self-consumption by such complexes or premises may be billed as per the Industrial category. However, water supply schemes not owned by the them should continue to be billed under the Commercial category.

6.36.2 – Commissions Ruling –

> Commission has earlier ruled in its Order in Case No. 19 of 2012, that such activity They may have commercial motives if it is not completely under the ownership, operation and maintenance of a Government body or local authority. However, the Commission is also of the view that water supply exclusively for industrial purpose should not be covered under the Commercial category. Therefore, the Commission has decided that water works or water supply schemes for self-consumption by the industrial complexes/premises of individual shall be included in the industrial tariff category.

After reading of the Hon'ble Commission's Ruling, it is observed that the Commission has expressed their view 'now' that the water supply exclusively for industrial purpose should not be covered under the commercial category. It means that the Hon'ble Commission

has taken note of the fact that such water supply connections utilized for industrial purposes were being charged on commercial basis by the MSEDCL in reference to the previous tariff order dated 20/6/2008 (Case No 72/2008) and order dated 16/8/2012 (case No 19/2012).

However, we have also observed that as per the order of Hon'ble Commission in case No. 121/2014 and decided in the tariff order dated 26/6/15, the Licensee has re-categorized 'now' consumer's water pumping station as HT-I (Industrial Tariff) from July 2015 and issued energy bills to the consumer accordingly. Also, after passing of new Tariff Order dated 26/6/15, the provision of Section 56 (2) laid down in the Electricity Act -2003 and the order dated 30/5/14 passed by Hon'ble EO Mumbai considering the above section cannot be set aside.

Considering the Judgment of Hon'ble Electricity Ombudsman (Mumbai) in its order dated 30/5/14 and also observing the tariff order dated 26/6/15 of Hon'ble Commission as mentioned in above paras, the consumer's grievance application cannot be upheld for any kind of decision.

This matter could not be decided within time as Licensee was to provide the details sought from time to time, those were provided on 14/09/15 and their submissions are heard on that day and clarification taken on 14/09/15. **Moreover, the Forum is functioning in absence of regular Chairperson and the Member Secretary is discharging the additional work of Chairperson along with the regular work of Member Secretary.**

Under the circumstances described in above paras, the grievance of the consumer deserves to be rejected.

(Chandrashekhar U.Patil)
Chairperson-cum- Member Secretary
CGRF, Kalyan

Per Member – CPO, Mrs. S.A.Jamdar -

I, Respectfully disagree with the above observations and the conclusion for the reasons stated below…

According to my opinion, the order passed by the Hon'ble Ombudsman Mumbai on 30/5/14 in Representation No 96/2013 regarding Ultra Tech cannot be made applicable in the present grievance application as the facts in both the cases are totally different.

As consumer has rightly contended that the case of Ultra Tech Cement Ltd. (**Ultra Tech"),** has no application to the present dispute. Consumer further contended that the facts of the Ultra Tech cases are very different from the facts of the present case. In the Ultra Tech case, the electricity was used to unload clinker at a jetty leased by Ultra Tech, which was apparently transported to it's factory. Therefore, the whole activity involved two steps: first, unloading of clinker and second of transportation of the clinker so unloaded to Ultra Tech's factory. As opposed to this, in present case, admittedly, there is a single continuous pipeline connecting the water pump to the consumer's Manufacturing Unit and that the water pumped at the water pumping station directly reaches the consumer's manufacturing unit.

Moreover, according to my opinion the pipe line connected to the water pumping station is a part and parcel of main manufacturing unit, and it is **owned** by the consumer itself. The pipe line

connected to the water pumping station being the integrated part of the main manufacturing unit, it has no separate identity.

However, in the case of Ultra Tech vehicles used for unloading clinker and for transportation to its factor may not be owned by Ultra Tech itself. There is possibility that the unloading of clinker and its transportation may be done by some other private vehicles not **owned** by Ultra Tech itself, for which Ultra Tech may had paid for loading and transportation on commercial basis.

I have also noted that in the present case the work of carrying water from pumping station up to the main manufacturing factory is done through a single pipe line owned by the consumer itself. Hence the procedure of lifting of water and the procedure of lifting clinker till the main operation of the commodity are totally different.

I have also observed that after the date of inspection i.e.,25/3/2014, after about five months Licensee suddenly issued a supplementary bill to the consumer, which is absolutely against the provision of Hon'ble MERC. I have also observed that tariff was changed by the Hon'ble MERC in Tariff Order dated 16/8/2012 in Case No.19/12 However, it was not brought to the notice of the consumer, on the contrary, Licensee went on issuing the bills to the consumer by industrial tariff till 2014.

As per SOP 2014, **Appendix – A** -- Clause 8 (ii), tariff category should be changed by the Licensee from the next billing cycle which is not done by the Licensee. Though, in reference to the previous tariff Orders by the Hon'ble MERC dated 20/6/2008 (Case No. 72/2008) and dated16/8/2012 (Case No. 19/2012), MSEDCL was charging to the consumer for the water supply which is exclusively used for the industrial

purpose on commercial basis. However, Hon'ble MERC has taken note of this.

We have not came across any additional guild lines regarding the applicability of such commercial tariff from the period of tariff order dated 16/8/2012 (Case No.19/2012) to the present tariff order dated 26/6/15 (Case No. 121 /2014) by Hon'ble MERC. However, it is observed while going through the order of MERC in case No 121/2014 Hon'ble Commission has decided and declared in the tariff order dated 26/6/15 that the water work or water supply scheme for its consumption by industrial complexes / premises of such individual private industries shall be included in the industrial tariff category.

Therefore, it will not be proper to express any view regarding the applicability of the tariff to such cases during the period prior to 26/6/15.

Hence, it is emphasized that when the provisions which govern the rules and regulation of Hon'ble MERC are absolutely clear specific and unambiguous regarding the jurisdiction, it will not be proper to give any direction to the Licensee to charge as per industrial or commercial tariff.

In my opinion, since it is a policy matter, to give directions to the Licensee for the relief sought by the consumer in its main grievance application:

i] ------

ii] ------

iii] To direct the distribution Licensee to refund the amount of differential electricity charges recovered under HT II : HT commercial instead of HT I : HT – Industry under MERC's tariff order dated 16/8/2012.

….. will be jurisdictionary error.

I also do not inclined to go in to the correctness or otherwise in to the exercise of calculation done by the Licensee in the matter of applicability of tariff, because it being a question of involving policy decision and the calculation of amount will be according to the policy decision. There is no scope for interference by CGRF in this matter.

Hence, it will be opened to the consumer to pursue its grievance before the Competent Authority.

(Mrs.S.A.Jamdar)
Member
CGRF, Kalyan

Hence the order.

*** (As per section 8.1 in the event, where the Forum consists of a single member, the Chairperson shall have the second and casting vote)**

**** (In the sitting of Forum, the Chairperson is not available. As per MERC Regulations (2006), Clause 4, the technical member shall be the Chairperson of such sitting in which Chairperson is not available and hence in the present case, the technical member performed the role of Chairperson of the Forum).**

ORDER

[Order is placed under the provisions of MERC Regulations – 2006, Section 4 (c) and Section 8.1)

The grievance application of the consumer is hereby rejected.

Date: 06/01/2016.

(Chandrashekhar U.Patil)
Chairperson-cum- Member Secretary
CGRF, Kalyan.

NOTE

a) The consumer if not satisfied, may file representation against this order before the Hon. Ombudsman within 60 days from the date of this order at the following address.

"Office of the Electricity Ombudsman, Maharashtra Electricity Regulatory Commission,606/608, Keshav Bldg, Bandra Kurla Complex,Mumbai 51".

b) Consumer, as per section 142 of the Electricity Act, 2003, can approach Hon. Maharashtra Electricity Regulatory Commission for non-compliance, part compliance or

c) delay in compliance of this decision issued under "Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Ombudsman) Regulation 2003" at the following address:-

"Maharashtra Electricity Regulatory Commission, 13th floor, World Trade Center, Cuffe Parade, Colaba, Mumbai 05"

d) It is hereby informed that if you have filed any original documents or important papers you have to take it back after 90 days. Those will not be available after three years as per MERC Regulations and those will be destroyed.